

**COMPLAINT INVESTIGATION  
DOUGLAS COUNTY SCHOOL DISTRICT  
(#D0031517)**

**Report Issued on May 23, 2017**

**INTRODUCTION**

On March 15, 2017, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC) with regard to the eligibility of a student with a disability enrolled in the Douglas County School District (DCSD). The Parent alleged that since the commencement of the 2016/2017 school year the DCSD failed to find the student eligible for an Individualized Education Program (IEP); failed to provide a Prior Written Notice as to why the student was not eligible for special education; unreasonably delayed a response to the Independent Educational Evaluation (IEE) that showed the student's need for special education; and failed to address all of the student's educational needs under the IDEA, including speech therapy. The Parent's proposed resolution to the Complaint included that an IEP be put into place for the student immediately and compensatory services be provided to the student, including outside tutoring in the areas of math, reading and writing for a minimum of 100 hours.

At the time of the Complaint, the student was eligible as a student with a disability under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. Sections 705, 794, 794a, 794b; 34 C.F.R. Part 104. With regard to the allegation that the DCSD failed to address all of the student's educational needs under the IDEA, the Complaint did not include the facts on which the statement of noncompliance was based as required by the IDEA, 34 C.F.R. §300.153, and the Parent was informed that this allegation was not accepted for investigation.

Both the IDEA and the NAC permit an extension of the 60-day timeline to conduct the investigation and issue the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC, §388.318(5)(a)) As described below, the student was determined to be eligible as a student with a disability under the IDEA and NAC, Chapter 388, after the filing of the Complaint. Given these events, the Nevada Department of Education (NDE) determined that additional information was necessary in order to complete the investigation and, if appropriate, to determine the corrective action to address the noncompliance and the needs of the student. Due to this exceptional circumstance, the NDE extended the time limit to conclude its investigation and issue the Report from May 14, 2017 to May 23, 2017.

## **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 DCSD complied with the IDEA and NAC, Chapter 388, to either convene an eligibility meeting to determine whether the student was eligible as a student with a disability or provide the parent a Prior Written Notice of the DCSD's refusal to convene an eligibility meeting in response to the Parent's request for IEP services at the commencement of the 2016/2017 school year.

### **Issue Two:**

Whether the DCSD complied with the IDEA, 34 C.F.R. §300.502, and the NAC §388.450 with regard to the requirements for an IEE, specifically did the DCSD, without unnecessary delay, consider the IEE that was obtained by the parent in January 2017.

## **FINDINGS OF FACT**

### **General**

1. The 2016/2017 school year commenced on August 15, 2016 and will end on June 7, 2017. The student does not require extended school year services. (School Calendar, IEP)
2. The student was eligible as a student with disability under the IDEA and NAC, Chapter 388, under the category of Developmentally Delayed until the student turned six years of age and was determined ineligible. As recently as December 2015, the DCSD again evaluated and determined the student was not eligible as a student with disability under the IDEA and NAC, Chapter 388. At the time of the Complaint, the student was a student with a disability under Section 504 and had a Section 504 plan. (IEP, IEE)
3. In the spring of 2016, the student received B and C grades with one A and one D. At the time of the DCSD's determination of the eligibility of the student under the IDEA and NAC, Chapter 388, on March 27, 2017, the student had failing grades in most classes. Based on the IEE, academically, the student has close to grade-level ability in all areas except reading comprehension. (DCSD August 24, 2016 Email, IEP, IEE)
4. The 2016/2017 school year is comprised of 180 instructional days. At the time of the implementation of the student's IEP, only 29 school days remained in the 2016/2017 school year. From August 15, 2016 to the filing of this Complaint on March 15, 2017, the student was absent at least five of the six school periods for 20 school days and another five days when the student was out of school for three to four periods. (School Calendar)

## **Prior Written Notice**

5. On or about August 23, 2016, the student's Parent orally informed the assistant principal of the student's school and the middle school counselor that the Parent wanted the student on an IEP (variously stated as a request for an evaluation of the student for an IEP) and also contacted the DCSD Special Services Office. (August 24, 2016 DCSD Assistant Principal Email, May 1, 2017 DCSD Counselor Email, December 8, 2016 Parent Notice of Section 504 Reevaluation)
6. The DCSD did not provide the Parent a Prior Written Notice in response to the Parent's August 2016 request to evaluate the student and/or determine eligibility under the IDEA and NAC, Chapter 388. The DCSD's explanation for the failure to issue a Prior Written Notice either proposing or refusing to evaluate the student in response to the Parent's August 2016 request for an evaluation was that there was no "formal request" for an evaluation. (DCSD Undated Special Services Email, Review of the Record, Complaint)
7. At the student's Section 504 review meeting on December 8, 2016, the student's Section 504 Team discussed the Parent's request for an evaluation for eligibility under the IDEA and the NAC, Chapter 388, and determined at the annual review that the student should continue with the Section 504 plan with some modifications. The DCSD did provide the student a Parent Notice of a Section 504 reevaluation on December 8, 2016. The stated reason for the proposed assessment was that the Parent requested additional testing and the need to assess the accommodations. (Parent Notice of Section 504 Reevaluation, DCSD Undated Special Services Email)

## **IEE**

8. In a request dated November 27, 2016, the Parent requested an IEE at public expense. On December 8, 2016, the DCSD issued a Prior Written Notice proposing to assume financial responsibility for the Parent's request for an IEE. (November 27, 2016 Parent Correspondence, December 8, 2016 Prior Written Notice)
9. The independent evaluator set the dates for the evaluation from January 5, 2017 through February 2, 2017. There were some delays in the completion of teacher rating forms and the final requested information was provided to the evaluator on February 17, 2017. (December 19, 2016, February 10, 2017, February 14, 2017, February 16, 2017 and February 17, 2017 DCSD Emails, February 16, 2017 Independent Evaluator Email)
10. The completed IEE was dated February 21, 2017. The independent evaluator mistakenly sent the IEE report to the DCSD's prior street address. The report was redirected to the correct address and the DCSD received the mailed IEE report on March 3, 2017. Contrary to the Parent's belief that the DCSD received a facsimile copy of the IEE in the middle of February, based on the date stamp on the only facsimile copy provided in the course of the investigation, the DCSD received the facsimile copy in the morning on March 2, 2017. (March 3, 2017 DCSD and Independent Evaluator Emails, March 6, 2017 Parent Email, Facsimile Copy of the IEE)

11. After the filing of the Complaint, the student's Eligibility Team met on March 27, 2017 to review the IEE and other data and determined the student was eligible for special education under the category of health impairment. This determination of the student's Eligibility Team was based on the February 21, 2017 IEE and staff input on the student's present levels of performance at school. (March 27, 2017 Eligibility Team Determination and Report, Prior Written Notice)
12. The student's IEP was developed on April 26, 2017. The student's April 26, 2017 IEP provides 250 minutes per year of the specially designed instruction of study skills in the 2017/2018 school year from August 14, 2017 through April 26, 2018; no related services, including speech/language. The student's IEP includes seven supplementary aids to be provided commencing April 27, 2017 in core classes and general setting and a supplementary aid that the student will check in and check out with a designated counselor twice a week (minimum). In addition, the student was provided the supplementary aid of 250 minutes a week of a study skills class (communication instruction) in the 2017/2018 school year in the resource room. The Parent participated in the IEP meeting and agreed with the components of the April 26, 2017 IEP. (IEP)

## **CONCLUSIONS OF LAW**

### **Issue One:**

Whether the DCSD complied with the IDEA and NAC, Chapter 388, to either convene an eligibility meeting to determine whether the student was eligible as a student with a disability or provide the parent a prior written notice of the DCSD's refusal to convene an eligibility meeting in response to the parent's request for IEP services at the commencement of the 2016/2017 school year.

In accordance with the IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. A Prior Written Notice serves an important purpose: "We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously." (*Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994))

Neither the IDEA nor the NAC, Chapter 388, require that educational agencies assess all children for whom evaluations are requested. An educational agency is only required to conduct an evaluation when it suspects a child 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 agency refuses to conduct the parentally requested evaluation, it must provide the parents with a Prior Written Notice of its refusal, including the means by which the parents can challenge the agency's decision. (*Pasatiempo v. Aizawa*, (103 F.3d 796; 25 IDELR 64 (9th Cir. 1996))

In this case, shortly after the commencement of the 2016/2017 school year, the student's Parent contacted the DCSD and orally requested an evaluation of the student for an IEP and/or variously indicated the Parent wanted the student on an IEP. (Finding of Fact (FOF) #5) Contrary to the stated belief of the DCSD (FOF #6), neither the IDEA nor the NAC, Chapter 388, required the Parent's referral for an evaluation of the student to be made in writing. The

Parent's oral request to the assistant principal of the student's school and the middle school counselor was sufficient to require the DCSD to provide the Parent a Prior Written Notice of its refusal to evaluate and/or determine the eligibility of the student as a student with a disability under the IDEA and NAC, Chapter 388, and the DCSD did not do so. The DCSD's belated discussion of the Parent's request at the student's Section 504 review meeting on December 8, 2016 and the issuance of a Section 504 Parent Notice, only, at that time (FOF #7) did not excuse the DCSD's failure to provide the Parent the required Prior Written Notice under the IDEA, 34 C.F.R. §300.503, and NAC §388.300(8) a reasonable time before the public agency refused to initiate the identification or evaluation of the student as a student with a disability in August 2016.

*Therefore, the DCSD failed to comply with the IDEA and the NAC, Chapter 388, with regard to either evaluate/convene an eligibility meeting to determine whether the student was eligible as a student with a disability or provide the parent a prior written notice of the DCSD's refusal to evaluate/convene an eligibility meeting in response to the parent's request for IEP services at the commencement of the 2016/2017 school year.*

### **Issue Two:**

Whether the DCSD complied with the IDEA, 34 C.F.R. §300.502, and the NAC §388.450 with regard to the requirements for an IEE, specifically did the DCSD, without unnecessary delay, consider the IEE that was obtained by the parent in January 2017.

If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. Further, if the parent obtains an IEE 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 child. (34 C.F.R. 300.502(c)(1), NAC §388.450(6))

The Parent's only issue in this Complaint with regard to the student's IEE is the period of time it took the DCSD to consider the requested IEE after it was completed. (FOF #8) While a public agency must either ensure an IEE is provided at public expense or request a hearing to show that its evaluation is appropriate without unnecessary delay, the IDEA and the NAC do not provide a timeline for a public agency to consider an IEE after it is completed other than the requirement that it be considered in any decision with respect to the provision of a free appropriate public education to the student.

In the discussion of the IDEA regulations, the United States Department of Education declined to establish a specific timeline for a public agency to consider an evaluation after it is completed:

"We decline, however, to specify the timeframe from referral for evaluation to parental consent, or the timeframe from the completion of an evaluation to the determination of eligibility, as we are not in a position to determine the maximum number of days that should apply to these periods in all circumstances. However, it has been the Department's longstanding policy that evaluations be conducted within a reasonable period of time following the agency's receipt of parental consent, if the public agency agrees that an initial evaluation is needed to determine whether a child is a child with a disability. Likewise, the Department believes that eligibility decisions should be made

within a reasonable period of time following the completion of an evaluation.” (Discussion of the IDEA regulations: Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46637)

In accordance with the IDEA, 34 C.F.R. §300.153(b)(1), and the NAC §388.318(3)(a), a complainant may file a Complaint that a public agency *has violated* the IDEA or NAC, Chapter 388. As such, the NDE’s jurisdiction in this Complaint is limited to alleged violations up to the date of the filing of the Complaint, rather than concerns regarding future events. This instant Complaint was dated and received on March 15, 2017.

Subsequent to the filing of the Complaint, the student’s Eligibility Team met on March 27, 2017 to review the IEE and other data and determined the student was eligible for special education under the category of health impairment. (FOF #11) The student’s IEP was developed on April 26, 2017 with some services to be implemented commencing April 27, 2017. (FOF #12)

These subsequent events are not within the scope of this Complaint; however, they are relevant in that the DCSD made no decision after the receipt of the IEE on March 2, 2017 with regard to the provision of a free appropriate public education to the student prior to the filing of the Complaint. In addition, at the time the Complaint was filed, the DCSD only had the IEE report for 13 days. (FOFs #9, #10) The Complaint Investigation Team determined that this period of time did not exceed a reasonable period of time for the DCSD to review the IEE and other existing evaluation data on the student and convene the student’s Eligibility Team to make the eligibility decision following the completion of the evaluation.

*Therefore, the DCSD complied with the IDEA, 34 C.F.R. §300.502, and the NAC §388.450 up to the date of the Complaint with regard to the requirements to consider the IEE that was provided to the DCSD on March 2, 2017.*

## **ORDER OF CORRECTIVE ACTION**

The DCSD is required to take corrective action to address the violation found in this Complaint, specifically the DCSD failed to issue the required Prior Written Notice under the IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8) a reasonable time before the public agency refused to initiate the identification or evaluation of the student as a student with a disability in August 2016.

### **Directed Action - Compensatory Education**

Given the subsequent determination of the DCSD that the student was eligible as a student with a disability under the IDEA and the NAC, Chapter 388, and the student’s failing grades in most classes by the time of the eligibility determination, the Complaint Investigation Team determined that it is appropriate to award compensatory education to the student for the failure to provide a Prior Written Notice to the Parent on its refusal to identify/evaluate the student. A Prior Written Notice would have provided the Parent notice that the student had protection under the procedural safeguards of the IDEA and NAC, Chapter 388, including the opportunity to challenge the refused action of the DCSD at the commencement of the school year.

The only specially designed instruction in the student’s April 26, 2017 IEP is 250 minutes per year of study skills from August 14, 2017 through April 26, 2018, a period of approximately eight months in the 2017/2018 school year. (FOF #12) Therefore, the Complaint Investigation Team determined that the compensatory education would be directed at augmenting the

student's specially designed instruction of study skills in the area of reading comprehension, the area in which the student has below grade-level ability. (FOF #3)

The DCSD must provide the compensatory education of four hours of individual specially designed instruction of study skills in the area of reading comprehension.<sup>1</sup> The specially designed instruction of study skills may be provided by school personnel and must take place before or after school or during days students are not in attendance at school. The compensatory education must be provided to the student no later than October 15, 2017. The amount, content and/or timeline for the delivery of the compensatory education may be changed if the DCSD and the Parents agree in writing to the change and provide the agreement to the NDE prior to September 15, 2017.

The DCSD must provide documentation to the NDE of the delivery of the compensatory education to the student within 15 days of its completion.

## **Directed Action - Systemic**

### **Training**

No later than the commencement of the 2017/2018 school year, the DCSD must train at least the principal and assistant principal(s) at the student's current school, the middle school counselor, relevant special services staff assigned to the school and any other individual at the student's current school responsible for the issuance of Prior Written Notices that:

In accordance with the IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a Prior Written Notice a reasonable time before the public agency proposes or refuses to initiate the identification and/or evaluation of a student in response to a parent's request to do so. The responsibility to provide a Prior Written Notice is required for both oral and written parental referrals for evaluation/identification when a parent suspects a disability under the IDEA or NAC, Chapter 388.

The DCSD must provide a method for the DCSD to determine that the participants have mastered the contents of the training. The training may be conducted electronically at the DCSD's discretion. Documentation of that mastery of the contents and the completion of the training by role must be submitted to the NDE within 15 school days after the training.

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<sup>1</sup> This amount of compensatory education was calculated based on the 250 minutes of the specially designed instruction of study skills in the student's April 26, 2017 IEP, which is the equivalent of 31.25 minutes a month for the designated approximately eight months from the beginning and ending dates for the service and the approximately seven months from the date the Parent referred the student to the DCSD for determination of eligibility as a student with a disability under the IDEA and NAC, Chapter 388, to the filing of the Complaint. At 31.25 minutes per month for seven months, it totals 3.65 hours rounded up to four. Given the nature of the violation and the time period over which the required 250 minutes in the April 26, 2017 IEP could be implemented, the Complaint Investigation Team did not reduce the amount of service for the student's absences. (FOF #4)