

**COMPLAINT INVESTIGATION
ESMERALDA COUNTY SCHOOL DISTRICT
(#ES030123)
Report Issued on May 11, 2023**

INTRODUCTION

On March 1, 2023, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations by Esmeralda County School District (EsCSD) in a student's special education program. The allegations, as clarified by the supporting facts in the Complaint, were that EsCSD:

- Would not create and implement an appropriate Individualized Education Program (IEP) for the student in that EsCSD did not provide an IEP within 45 days of a signed intent to evaluate and did not implement in-person speech therapy from September 12, 2022 to February 15, 2023;
- In the development of the student's IEP, would not use two independent evaluations from Bishop Speech Therapy and Motivated Kids Therapy Las Vegas provided to EsCSD on October 4, 2022;
- Denied the Parent's November 2, 2022 request for mediation to help create and implement the IEP;
- Denied previously offered reimbursement for mileage to an independent speech facility located 229 miles away for the student's receipt of appropriate in-person speech therapy;
- With regard to a signed Initial Intent to Evaluate form, school personnel bullied and lied to the Parent on documents throughout the process; and
- Special Education Director is delaying the reevaluation of other students for their IEPs.

The Parent's proposed resolution was to complete the student's IEP to further the student's academics to give the student the support needed for success; reimbursement of past and future mileage; payment for the past and future costs of Las Vegas Speech Therapy; and payment of lawyer fees. The Parent was informed that, while Nevada Department of Education (NDE) would order an appropriate remedy if it is determined through this investigation that EsCSD violated the IDEA and NRS/NAC, Chapters 388, attorney fees are not available through the State Complaint process.

While the allegations in the Complaint included sufficient supporting facts to be accepted as a State Complaint, it was unclear whether the student did in fact have an IEP in effect during the relevant period of this Complaint or the Parent was seeking the development of an IEP. Therefore, a member of the Investigation Team contacted the Parent for clarification in advance of the identification of the issues(s) and the Parent clarified that the student did not have an IEP and the Parent was in the process of getting an IEP for the student.

The Parent was informed that NDE has jurisdiction through the special education complaint process to investigate Complaints alleging a violation of the requirements of IDEA or the Nevada Administrative Code for special education programs, but that this jurisdiction is limited to alleged violations that have occurred in the past rather than concerns regarding future events. Given there is no IEP in effect at this time, the Parent was informed that NDE does not have jurisdiction through the State Complaint process over the allegations regarding the implementation of direct speech and language services, including transportation, or the use of independent evaluations at a future IEP meeting and would not conduct an investigation regarding these allegations. However, if it is determined that EsCSD violated the requirements of IDEA and NRS/NAC, Chapters 388, with regard to the issues under the jurisdiction of NDE, the Parent was informed that these concerns would be considered in the determination of an appropriate corrective action.

With regard to several other allegations not included in the stated issues below, the Parent was informed that NDE does not have jurisdiction to investigate:

- The referenced local personnel issues in the State Complaint process. For resolution of these believed violations, the Parent was informed the Parent could contact the EsCSD Superintendent if the Parent wanted to pursue the stated concerns.
- That other children are not getting reevaluated for their IEPs and are being told to wait until next year since the State Complaint did not include the facts on which this statement of systemic violations was based.

COMPLAINT ISSUES

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

Issue One:

Whether, in the time period after the Parent signed consent to evaluate the student in school year 2022/2023, EsCSD complied with IDEA and NAC, Chapter 388, and timely conducted a meeting to develop the student's IEP after the student was evaluated and determined to be a student with a disability in need of special education and related services.

Issue Two:

Whether EsCSD complied with IDEA and NAC, Chapter 388, with regard to the conduct of mediation, specifically with regard to EsCSD's refusal to participate in mediation in the development of the student's IEP upon the Parent's request on November 2, 2022.

On March 23, 2023, counsel for EsCSD requested an extension from March 31, 2023 to April 14, 2023 to provide NDE the requested written response and documentation regarding the issues raised in the State Complaint. The stated reason for the extension was that, as EsCSD's counsel in the matter, counsel would not be able to adequately respond to the Parent's Complaint on behalf of EsCSD by the designated timeline of March 31, 2023. Given the stated reason, the requested extension for NDE's receipt of documentation and/or written response from all parties was extended to April 14, 2023. Pursuant to IDEA, 34 C.F.R. §300.152(b), NDE has the authority to permit the extension of the 60-day timeline for the submittal of the final report in a complaint investigation due to exceptional circumstances. It was determined that in this case, EsCSD's request for a two-week extension to allow EsCSD to have the assistance of counsel in the submission of the requested response and documentation was reasonable and, due to that exceptional circumstance, NDE extended the time limit to conclude its investigation and issue the decision from April 30, 2023 to May 12, 2023 to allow for sufficient time for NDE to conduct its investigation and issue the Complaint Investigation Report.

In the March 13, 2023 issue letter to EsCSD, NDE requested additional documents and information in order to investigate the State Complaint. EsCSD was notified in that same correspondence that if EsCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; reference to the provided documentation that factually supported the denial; and that a failure to do so by March 13, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. EsCSD did timely respond by the extended timeline; denied the alleged noncompliance; and provided the requisite statement of the factual basis and documentation.

The State Complaint, the Parent’s response with additional documents, and EsCSD’s response were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

FINDINGS OF FACT

Timely Evaluation

Background

1. At the date of this Report, the student has not been determined to be a student with a disability in need of special education and related services. (Complaint, EsCSD Response)
2. The student has a severe phonological disorder and characteristics of Childhood Apraxia of Speech. (March 11, 2021 Northern Inyo Healthcare District Outpatient Rehabilitation Services – Speech/language Pathology Initial Evaluation, Complaint, October 4, 2022 Private Provider Letter)
3. A speech/language pathology evaluation of the student was conducted March 11, 2021 by a speech/language pathologist at a healthcare facility and provided to EsCSD on October 4, 2022. The speech/language pathologist determined there was a medical necessity for “skilled speech-language intervention” since, due to the severe phonological disorder, the student is unable to communicate appropriately in the student’s environment. The speech/language pathologist also recommended that the student seek evaluation by a speech/language pathologist specializing in motor speech, if symptoms (or signs) of Childhood Apraxia of Speech persisted throughout treatment. Telepractice was not able to be provided to the student at the time of the evaluation for the reason that the clinician did not have a Nevada license to perform telepractice. (Northern Inyo Healthcare District Outpatient Rehabilitation Services – Speech/language Pathology Initial Evaluation, Complaint)
4. The student has been receiving private speech/language therapy and, at the time of the Parent’s request for an initial evaluation from EsCSD, the student was receiving those services through healthcare pediatric speech services located approximately one and a half hours from the student’s residence. (Complaint, November 30, 2022 Parent Attorney Letter)

Referral for Evaluation

5. On September 11, 2022, the Parent notified EsCSD that the Parent suspected that the student had a disability in the area of speech apraxia and requested a complete multidisciplinary team initial evaluation under IDEA. EsCSD acknowledged receipt of the Parent’s referral on September 12, 2022. (September 11, 2022 Parent Letter to EsCSD with Notation)
6. In the determination of the scope of the initial evaluation of the student, the Parent wanted EsCSD to use existing data. However, all of the EsCSD members of the group, who either reviewed existing data or were consulted regarding existing data, determined that the data was not current or valid and that a speech and language evaluation and an academic evaluation needed to be conducted. The projected date for the conduct of the initial evaluation was September 29, 2022 through October 4, 2022. (September 15, 2023 Determination of Scope of Evaluation and Need for Additional Data)

7. EsCSD provided the Parent a September 20, 2022 Prior Written Notice of EsCSD's proposal to evaluate the student's needs based upon the initial referral. The action was being proposed due to speech/language concerns. (September 20, 2022 Notice of Intent to Evaluate)
8. EsCSD provided the Parent a request for consent and the Parent consented to the conduct of the initial evaluation of the student on September 21, 2022 in the areas of speech, language, and communication; medical history/status; and academics. (September 21, 2022 Signed Consent)
9. On September 29, 2022, the student was administered the Kaufman Test of Educational Achievement, Third Edition for academic testing. (Evaluation Results - September 29, 2022 Kaufman Test of Educational Achievement, Third Edition, September 29, 2022 Text Message)
10. On September 29, 2022, EsCSD Special Education Director/Teacher and Special Programs Coordinator notified the Parent that the student's academic evaluation was finished and the EsCSD evaluation would be finished the following week and it was anticipated the IEP Team meeting would be the following week. (September 29, 2022 Text Conversation)
11. By dated notation on the determination of the scope of the evaluation of the student, next to the parent consultation, EsCSD added an October 4, 2022 notation that the Parent withdrew permission to evaluate on October 3, 2022. Referencing a group text from the Parent, a notation of the Parent's withdrawal of consent was also added to the Parent's consent for evaluation; however, this notation was next to the communication area of speech, language and communication area only. (September 21, 2022 Nevada Consent for Evaluation, Determination of Scope of Evaluation and Need for Additional Data)
12. The Parent's stated reason and "only disagreement" for the withdrawal/withholding of consent to EsCSD's speech/language evaluation was a disagreement with the options EsCSD provided for the conduct of the evaluation: a telehealth evaluation the Parent believed was not appropriate for the student or, alternatively, an in-person evaluation at the location of the speech/language pathologist's house with the pathologist's family member present. (The Parent's concerns with regard to the family member being present in the house during the conduct of the in-person evaluation were based on the medical diagnosis of the family member; distance of the location from the student's residence; and a perceived safety threat.) (Complaint, December 21, 2022 Parent Counsel Letter to EsCSD)
13. EsCSD sent multiple other Prior Written Notices and requests for consent for evaluation to the Parent, with some variations:
 - a. A day before the Parent withdrew consent, EsCSD provided the Parent an October 2, 2022 Prior Written Notice of EsCSD's proposal to evaluate the student's needs based on an initial referral due to speech/language concerns and a request for consent to conduct an initial evaluation of the student in the sole area of speech, language and communication. (October 2, 2022 Notice of Intent to Evaluate, October 2, 2022 Nevada Consent for Evaluation)
 - b. EsCSD provided the Parent an October 24, 2022 Prior Written Notice of EsCSD's proposal to evaluate the student's needs based on an initial referral with the notation that it would be in person at the EsCSD evaluator's office located in Reno or via teletherapy. A second notation indicated the date Parent acknowledged receipt. (October 24, 2022 Notice of Intent to Evaluate)

- c. EsCSD provided the Parent an October 24, 2022 request for consent to conduct an initial evaluation of the student in the area of speech, language and communication, specifically naming the speech therapist to conduct the evaluation. The notation indicated the Parent acknowledged receipt on October 31, 2022. (October 24, 2022 Nevada Consent for Evaluation)
14. The Parent provided EsCSD a letter dated October 4, 2022 from a speech and language pathologist who worked with the student indicated that the student was not an appropriate candidate for teletherapy due to the student's diagnosis of Childhood Apraxia of Speech. The speech/language pathologist explained that children with Childhood Apraxia of Speech benefit from in-person services that provide clear visual models and feedback to correct errors and that telehealth is a less effective treatment method for Childhood Apraxia of Speech. (Complaint, October 4, 2022 Letter from Speech/Language Pathologist)

Services, IEP References

15. In October 2022, before and after the revocation of parental consent to evaluate the student, there are a series of conversations between the Parent and EsCSD regarding the provision of recruitment of speech/language therapists and options to provide in-person speech/language therapy to the student. For example:
- a. On October 3, 2022, EsCSD acknowledged the Parent's text to not utilize EsCSD's "current Speech/Language Pathologist Teletherapy services." "The administrative team discussed how we should proceed, and it was determined that we will write the IEP to reflect the need for speech services from another source as long as you provide our district with a letter from a licensed speech pathologist stating that teletherapy is not appropriate therapy for Childhood Apraxia of Speech. Once we have the documentation we will write the IEP, have the meeting to approve or disapprove the IEP, and begin offering you mileage reimbursement. We will continue advertising for a part-time speech pathologist to provide weekly in-person therapy. At that time we will reconvene to amend the IEP to reflect our ability to provide weekly in-person therapy." (October 3, 2022 EsCSD Email Communication to Parent)
 - b. On October 7, 2022, the EsCSD Special Education Director/Teacher and Special Programs Coordinator informed the Parent that EsCSD was researching the options to be able to initiate therapy as soon as possible. (October 7, 2022 Text Message)
 - c. On October 12, 2022, the Parent asked the EsCSD Special Education Director/Teacher and Special Programs Coordinator about the meeting date for the student's IEP. (October 12, 2022 Text Message)
16. On November 2, 2022, by letter to the Parent, EsCSD documented a discussion that occurred at a meeting that took place with the Parent on November 1, 2022. In relevant part, it was documented that the Parent expressed a desire to have someone else perform the student's evaluation for eligibility and EsCSD agreed to have a second qualified specialist conduct another evaluation if the Parent was dissatisfied with the evaluation that the EsCSD speech/language pathologist performed. During the meeting EsCSD explained why EsCSD wanted the speech/language pathologist to do the initial evaluation, including the speech/language pathologist's qualifications; the need to have current data since the student had been receiving speech therapy for a significant amount of time;

and that the document the Parent provided dated March 11, 2021 was insufficient to determine eligibility and make a placement decision. EsCSD reiterated that in order to proceed, EsCSD needed the Parent's permission to have the EsCSD speech/language pathologist evaluate the student's need and eligibility for services; and after that would review the findings with the Parent and if the Parent felt that the results were not satisfactory EsCSD would obtain a second evaluation from another qualified specialist. (November 2, 2022 EsCSD Letter to Parent, November 1, 2022 Meeting Notes)

Mediation?

17. Parent reports requesting mediation to guide the parties on creating an IEP at the November 1, 2022 meeting with EsCSD. No documentation was provided in the course of this investigation of this request. (Review of Record, November 2, 2022 EsCSD Letter to Parent, November 1, 2022 Meeting Notes)
18. NDE maintains the State special education mediation system under IDEA and NAC, Chapter 388. NDE has no record of either the Parent, or Parent's counsel on Parent's behalf or EsCSD, or EsCSD's counsel on EsCSD's behalf, requesting mediation of a dispute under IDEA Part B in the time period addressed by this State Complaint. (NDE)
19. The Parent's counsel did make several demands to EsCSD as possible grounds for settlement of the dispute between the parties with regard to the conduct of the student's initial evaluation and EsCSD Counsel responded. (November 30, 2022, December 23, 2022, February 27, 2023 Counsel Letter to EsCSD Counsel)

CONCLUSIONS OF LAW

Issue One:

Whether, in the time period after the Parent signed consent to evaluate the student in school year 2022/2023, EsCSD complied with IDEA and NAC, Chapter 388, and timely conducted a meeting to develop the student's IEP after the student was evaluated and determined to be a student with a disability in need of special education and related services.

Introduction

At the time of this State Complaint Report, the student had not been determined to be a student with a disability under IDEA and NAC, Chapter 388. (Finding of Fact (FOF) #1) Pursuant to IDEA and NAC, Chapter 388, prior to the conduct of the meeting to develop a student's IEP, an initial evaluation must be conducted and a determination must be made that the student is a student with a disability. 34 C.F.R. §§300.301, 300.306; NAC §388.340. Given the stalemate between the Parent and EsCSD on the conduct of the initial evaluation of the student since at least October 3, 2022, these mandatory processes under the law have not yet been completed.

At its core, this is a disagreement between the Parent and EsCSD about the appropriate initial evaluation of the student, specifically whether EsCSD proposal to have the EsCSD speech/language pathologist conduct the student's speech, language and communication assessment is appropriate. But that is not the issue in

this State Complaint.¹

Timely IEP Meeting

IDEA and NAC, Chapter 388, provide specific eligibility criteria, 34 C.F.R. §300.8; NAC §388.387 - §388.427, to determine if a student has one of the required categorical disabilities and who, by reason thereof, needs special education and related services. Upon the determination that a student is a student with a disability and needs special education and related services, a local educational agency is required to conduct an IEP Team meeting within 30 days. 34 C.F.R. §300.323(c); NAC §388.281(13)(a).

However, as previously discussed, before making the determination that a student is a student with a disability and the initial provision of special education and related services, a local educational agency is required to conduct a full and individual initial evaluation. 34 C.F.R. §300.301; NAC §388.340. In order to do so, the local educational agency must obtain informed parental consent. 34 C.F.R. §§300.9 and 300.300; NAC §388.300(1). Parental consent is voluntary on the part of the parent and may be revoked at any time. 34 C.F.R. §300.9(c).

In this case, the Parent referred the student for an initial evaluation to determine whether the student was eligible under the IDEA as a student with a disability on September 11, 2022, (FOF #5) On September 15, 2022, EsCSD, with the participation of the Parent, reviewed existing data and determined the scope of the initial evaluation of the student and need for additional data. (FOF #6) 34 C.F.R. §300.305; NAC §388.336.

EsCSD provided the Parent a September 20, 2022 Prior Written Notice on EsCSD's proposal to evaluate the student and request for parental consent to conduct the initial evaluation of the student in the areas of speech, language, and communication; medical history/status; and academics. The Parent consented to the conduct of the initial evaluation of the student in the designated areas on September 21, 2022. (FOFs #7, #8) In accordance with NAC §388.337(1)(a), with some exceptions not applicable in this case, when EsCSD determined that good cause existed to evaluate the student, it was required to conduct the initial evaluation within 45 school days after the Parent provided informed written consent. (See also 34 C.F.R. §300.301(c).)

On September 29, 2022, EsCSD completed the student's academic testing. (FOFs #9, #10) Then the evaluation process ground to a halt after the Parent withdrew consent to, at least, the conduct of an evaluation in the area of speech, language and communication due to a disagreement with the options EsCSD provided for the conduct of the speech/language evaluation. (FOFs #11, #12)

Upon the Parent's revocation of parental consent, properly, EsCSD did not proceed in the conduct of the initial evaluation of the student in the designated area of speech, language, and communication. 34 C.F.R. §300.9. EsCSD did, however, continue to make efforts to explain the evaluation process to the Parent and to obtain parental consent to resume the evaluation of the student in the area of speech, language and communication. (FOFs #13, #16) The Investigation Team finds these additional efforts to obtain informed consent as reasonable given the initial referral was due to the Parent's concern that the student had speech apraxia; the reason for the proposed initial evaluation of the student was due to speech/language concerns; the determined need for additional data; and the Parent's clinician recommendation for further evaluation by a speech/language pathologist if there were continued signs of Childhood Apraxia of Speech. (FOFs #3, #5, #6, #14) 34 C.F.R. §300.300; NAC §388.300. Further, based on the assessment conducted in the area of academics and efforts to conduct the assessments in the other determined areas of assessment prior to the revocation of consent, EsCSD was also proceeding in a timely manner prior to the revocation of Parental

¹ The determination of the issue in this State Complaint does not limit the Parent's and/or EsCSD's access to alternative appropriate dispute resolution procedures to resolve any disagreement regarding the appropriateness of EsCSD's proposed speech/language assessment of the student, including, if both parties agree, mediation.

consent. (FOFs #9, #10) NAC §388.337(1)(a).

As the Parent was previously informed, NDE's jurisdiction in the State Complaint process is limited to alleged violations in the past rather than concerns regarding future events that may not occur as anticipated. 34 C.F.R. §300.153(b); NAC §388.318. Given EsCSD did not complete the evaluation of the student to determine if the student qualifies as a student with a disability under IDEA, 34 C.F.R. §300.8, and NAC §388.387 to §388.427 due to the Parent's revocation of consent, the issue of EsCSD's timely conduct of a meeting to develop the student's IEP after the student was evaluated and determined to be a student with a disability in need of special education and related services is anticipatory.

As a final matter, it is recognized that the perceived violation in this State Complaint may have arisen from communications that seemed to have caused an expectation for services under the IDEA before the student was evaluated and determined to have a specified categorical disability and need special education and related services, (FOF #15) Any misunderstanding in this regard is indeed unfortunate, but the law is clear that these conditions must be met. 34 C.F.R. §§300.8, 300.306.

Therefore, EsCSD proceeded in a timely manner to comply with IDEA and NAC, Chapter 388 in the time period after the Parent signed consent to evaluate the student in the 2022/2023 school year, up to the date the Parent revoked consent to conduct the initial evaluation of the student. The anticipated future timely conduct of a meeting to develop the student's IEP after the student was evaluated and was determined to be a student with a disability in need of special education and related services is outside the jurisdiction of this State Complaint process.

Mediation

Issue Two:

Whether EsCSD complied with IDEA and NAC, Chapter 388 with regard to the conduct of mediation, specifically with regard to EsCSD's refusal to participate in mediation in the development of the student's IEP upon the Parent's request on November 2, 2022.

Mediation under the IDEA and NAC, Chapter 388, is voluntary on the part of both parties. 34 C.F.R. §300.506; NAC §388.305. Given mediation is voluntary, either the parent or the public agency may decline to participate. NAC §388.305.

As such, even if the Parent did request EsCSD engage in mediation through the State mediation system on November 2, 2022 or at any other time during the relevant time period of this Complaint (FOFs #17 - #19), EsCSD would have had the right to refuse to participate in mediation.

Therefore, EsCSD complied with IDEA and NAC, Chapter 388 with regard to the conduct of voluntary mediation.