

**COMPLAINT INVESTIGATION
MINERAL COUNTY SCHOOL DISTRICT
(#MN042723)
Report Issued on June 23, 2023**

INTRODUCTION

On April 27, 2023, the Nevada Superintendent of Public Instruction received a State Complaint dated April 18, 2023 alleging a violation of the Individuals with Disabilities Education Act (IDEA) and Nevada Revised Statutes (NRS) or Nevada Administrative Code (NAC), Chapters 388, by Mineral County School District (MCSD).

The Complainant's allegation was that the parent of a named student (hereinafter, student) in MCSD requested MCSD conduct an evaluation at the beginning of the 2022/2023 school year to determine the student's eligibility for special education services and was denied by a school official. The Complainant's proposed resolution was that MCSD conduct an eligibility assessment of the student prior to the start of the next school year and issue an apology to the family for dismissing their concerns. Given the Complainant's proposed resolution of the issuance of an apology, the Complainant was informed that if it is determined that MCSD violated the requirements of IDEA or Nevada law/regulations for special education programs, a corrective action would be ordered to address the needs of the student and the appropriate future provision of services for all children with disabilities. However, ordering an apology did not meet those standards.

Given the Complainant was not the parent of the student, the Complainant was informed that in accordance with IDEA, 34 C.F.R. §§300.9 and 300.622, NDE must obtain parental consent before personally identifiable information is disclosed to unauthorized parties. While the Complainant did include the parent's written consent that met some of the requirements of IDEA, the Complainant was informed that it did not meet all of the requirements and was provided a model form in the event the Complainant elected to request parental consent from the student's parent again. The Complainant did not submit parental consent that met the requirements of the IDEA during the course of the investigation.

In the May 4, 2023 issue letter to MCSD, Nevada Department of Education (NDE) requested additional documents and information in order to investigate the State Complaint. MCSD was notified in that same correspondence that if MCSD 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 May 24, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint.

MCSD requested an extension until June 2, 2023 to provide MCSD's written response and the requested documentation to NDE. The stated reason for the extension was that the requested electronic communications between MCSD and the parent were not maintained in an easily accessible format and, as such, the production of responsive documents would require extensive searching of electronic data bases. Given the stated reason, the requested extension for NDE's receipt of documentation and/or written response from all parties was extended to June 2, 2023. Given the brevity of the extension, it is not necessary to extend the timeline for the issuance of the Complaint Report.

MCSD did timely provide a well-organized response with the requested documentation and information. MCSD also conceded the alleged noncompliance of MCSD's failure to follow the appropriate steps with respect to the parent's requested special education evaluation during the fall of the 2022/2023 school year, including the failure to provide the parent with a Prior Written Notice of MCSD's proposals or refusals.

Upon receipt of the State Complaint, MCSD initiated the process to conduct the initial evaluation of the student and those documented actions are set forth in the Findings of Fact. MCSD also indicated in the response that a memorandum would be disseminated to all staff at the beginning of the 2023/2024 school year reminding them that any staff member who receives a written or verbal request from a parent to conduct a special education evaluation of the parent's child must immediately notify the school administrator so that appropriate and timely steps can be taken to respond to the request in compliance with IDEA and NRS/NAC Chapters 388.

The State Complaint, supplemental information submitted by the Complainant, and MCSD'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.

COMPLAINT ISSUE

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

Issue:

Whether MCSD complied with IDEA and NAC, Chapter 388, with regard to its refusal to conduct an initial evaluation of the student in response to the parent's request at the commencement of the 2022/2023 school year, specifically whether MCSD followed procedures and applied required standards under IDEA and NAC and reached a determination that was reasonably supported by the student-specific data.

FINDINGS OF FACT

1. The student was a student in MCSD in the 2022/2023 school year. The first day of school for the 2022/2023 school year was August 22, 2022 and the last day of school was June 7, 2023. (Complaint, MCSD Response, 2022/2023 School Calendar)
2. It is uncontested that in the fall of the 2022/2023 school year, the parent requested a special education evaluation of the student and MCSD did not take timely and appropriate steps to respond to the parent's request for a special education evaluation, including providing the parent with Prior Written Notice of MCSD's proposals or refusals with respect to the requested special education evaluation. (MCSD Response, Complaint)
3. The student had a history of misconduct in school years 2020/2021 and 2021/2022, including inappropriate physical contact and physical aggression. MCSD tracked the student's behavior in the 2022/2023 school year and the student had several documented incidents of misconduct in March, April, and May, 2023 that involved inappropriate physical contact and disruptive/disrespectful conduct. (Student Behavior Detail Report, School Behavior Tracking Form)
4. In March of 2023, the Complainant contacted MCSD and informed MCSD that the student's parent had approached the school regarding the student and asked who the student's parent should contact to start the "SST" referral process. MCSD informed the Complainant that the SST referral process

could be started, but if it was determined the student should be referred to special education “...it will not happen until the beginning part of the next school year. This is due to are [sic] legal timing.” (Complaint, March 2023 Email Communications)

5. On May 16, 2023, after the filing of this State Complaint, MCSD provided the parent a Prior Written Notice proposing the evaluation of the student for special needs based on an initial referral of the student for academic and behavioral concerns. Academic adjustments and tracking were considered as options, but rejected since general education interventions had been unsuccessful. (MCSD Prior Written Notice)
6. MCSD provided the parent a Consent for Evaluation form and the parent signed consent for the initial evaluation of the student on May 23, 2023. (MCSD Consent for Evaluation)
7. MCSD’s Special Education Policies and Procedures include the procedures for the identification of a student as a student with a disability in need of special education. These procedures include the referral of the student for evaluation if the district proposes to conduct an initial evaluation of a student to determine if the student has a disability and is in need of special education and related services. The referral procedures do not address the steps to be taken if the district refuses to conduct an evaluation after a parent refers the student for evaluation. (MCSD July 2022 Special Education Policies and Procedures)

CONCLUSIONS OF LAW

At the outset, it is important to note that the IDEA does not require that a local educational agency conduct an initial evaluation of all students upon a parent’s request for evaluation to determine whether a student is a student with a disability. A local educational agency is only required to evaluate a student when the agency suspects a student has a disability and is in need of special education and related services. However, if the local educational agency refuses to conduct the evaluation, it must provide the parents with written notice of its refusal, including an explanation of the applicable procedural safeguards and the means to challenge it. *Pasatiempo v. Aizawa*, 103 F.3d 796; 25 IDELR 64 (9th¹ Cir. 1996); *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20, 67 IDELR 227 (9th Cir. 2016).²

Accordingly, in this case, upon the receipt of the parent’s request for the evaluation of the student to identify a suspected disability that might impede the student’s learning (Finding of Fact (FOF) #2), MCSD was required to consider the parent’s request. After determining whether or not MCSD suspected that the student has a disability and is in need of special education and related services, MCSD was then required to provide the parent a Prior Written Notice a reasonable time before MCSD’s proposed or refused to initiate the

¹ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

² This position was articulated by the United States Department of Education, Office of Special Education Programs early on in *Letter to Anonymous*, 21 IDELR 998 (OSEP, August 29, 1994). Since it is no longer publicly available the following relevant paragraph is provided verbatim: “The Department’s position is that parents may request a Part B evaluation at any time. However, the parents’ request for a Part B evaluation does not automatically trigger the obligation of the LEA to conduct the evaluation. Rather, an LEA must conduct an evaluation without undue delay only if the LEA suspects that the child has a disability and is in need of special education and related services. If the LEA refuses the parents’ request to conduct an evaluation, the LEA must provide the parents with a written prior notice of its refusal, including a full explanation of applicable procedural safeguards and due process rights, as well as an explanation of why the agency is refusing to take the action requested by the parent. See 34 CFR § 300.505(a)(1)-(2). If a parent disagrees with the LEA’s refusal to evaluate the child, the parent may request a due process hearing under 34 CFR §§ 300.506-300.508.”

requested evaluation of the student. 34 C.F.R. §300.503(a); NAC §388.300(8). In addition, MCSD was required to provide the parent a copy of the procedural safeguards available to the parent upon the parent's request for evaluation. 34 C.F.R. §300.504; NAC §388.300.

While there is a timeline for a local educational agency to conduct an initial evaluation after the receipt of a parent's informed written consent, 34 C.F.R. §300.301(c.) NAC §388.337(1)(a), neither IDEA nor NAC, Chapter 388, provide timelines for a local educational agency to act on a referral of a student suspected of being a student with a disability and to request parental consent, if good cause is found to evaluate the student. However, as the United States Department of Education indicated in the discussion of the 2006 IDEA regulations: "Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed." *Discussion of IDEA regulations: Final Rule, 71 Fed. Reg.*, 46540, 46637 (August 14, 2006). Consistently, the Ninth Circuit Court of Appeals³ determined: "To allow a state to use its regulations as a safe harbor in the absence of a congressional directive or regulation allowing for such would flout Congress's intent that judicial review of IDEA claims be child-specific. Compliance with the state regulation is relevant and should be considered, but the ultimate and dispositive question is whether the District acted in a reasonable time." *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008).

NDE adopts this reasonableness standard as the timeframe from referral for evaluation to the issuance of a Prior Written Notice on the determined proposal or refusal to conduct the initial evaluation of the student and the request for parental consent to evaluate, if good cause is found to evaluate the student. While MCSD did act without delay upon the filing of this State Complaint, the delay from the referral of the student by the parent in the fall of the 2022/2023 school year to MCSD's issuance of a Prior Written Notice and request for parental consent was not only unreasonable, but significant. (This delay is of particular concern given MCSD was alerted to the parent's request for evaluation again in March 2023; the student's known history of misconduct; and the behavioral incidences of misconduct prior to the filing of this State Complaint. (FOFs #3, #4)

As previously discussed, MCSD conceded the failure to timely follow the appropriate procedures with respect to the parent's requested special education evaluation during the fall of the 2022/2023 school year, including the failure to provide the parent with a Prior Written Notice of MCSD's proposal or refusal to conduct the evaluation. (FOF #2) As such, no further discussion is required.

Therefore, MCSD failed to comply with IDEA and NAC, Chapter 388, with regard to following required procedures in response to the Parent's request to conduct an initial evaluation of the student at the commencement of the 2022/2023 school year.

ORDER OF CORRECTIVE ACTION

In resolving a Complaint in which there has been a failure to provide appropriate services, a State Education Agency must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as compensatory services or monetary reimbursement) and the appropriate future provision of services for all students with disabilities. As discussed above, MCSD failed to comply with IDEA and NAC, Chapter 388, with regard to following the appropriate procedures to

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

determine if the student has a disability and is in need of special education within a reasonable period of time after the parent referred the student for evaluation.

As previously discussed, upon being notified of the incidence of noncompliance with the filing of this State Complaint, MCSD took the initiative to remedy the noncompliance by following required procedures resulting in the initiation of the conduct of the initial evaluation, the Complainant's requested remedy, and that is commendable. (FOF #5) However, additional corrective action is required. The ordered corrective action is twofold: a systemic remedy designed to address the appropriate future provision of services for all students with disabilities in MCSD and, **if the student is determined to be a student with disabilities in need of special education and related services**, a student-specific remedy.

I. Systemic Corrective Action

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from MCSD as soon as possible, but no later than 15 MCSD business days after the date of this Report. The CAP must include the following directed systemic actions, including the timeline within which they will be implemented, and must be approved by NDE prior to implementation.

1. MCSD's proposed systemic corrective action of the dissemination of a memorandum to all staff is accepted by NDE. This memorandum must be disseminated to all staff at the beginning of the 2023/2024 school year reminding them that any staff member who receives a written or verbal request from a parent to conduct a special education evaluation of the parent's child *at any point in the school year* must immediately notify the school administrator so that appropriate and timely steps can be taken to respond to the request in compliance with IDEA and NRS/NAC Chapters 388. (FOFs #2, #4)
2. MCSD's July 2022 Special Education Policies and Procedures, Referral Section, must be revised prior to the commencement of the 2023/2024 school year to include the steps to be taken if MCSD refuses to conduct an initial evaluation of a student to determine if the student has a disability and is in need of special education and related services, including the provision of a Prior Written Notice of the refusal and Procedural Safeguards notice. (FOF #7)

Documentation of the completion of the CAP must be provided to NDE within 14 days of its completion.

II. Student-Specific Directed Action

Since it is unknown at this time whether the student is a student with disabilities under the protection of IDEA, the determination whether MCSD's failure to comply with the procedural requirements of the IDEA and NAC, Chapter 388, warrants a student-specific action is more complicated:

"A procedural violation does not constitute a denial of a FAPE if the violation fails to "result [] in a loss of educational opportunity[.]" *M.L.*, 394 F.3d at 651 (Gould, J., concurring); *Target Range*, 960 F.2d at 1485. A child ineligible for IDEA opportunities in the first instance cannot lose those opportunities merely because a procedural violation takes place. *Cf. Nack ex rel. Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 612 (6th Cir. 2006) (procedural violation denies a FAPE "only if such violation causes substantive harm to the child or his parents" (internal quotation marks and citation omitted)). In other words, a procedural violation cannot qualify an otherwise ineligible student for IDEA relief...." *R.B. v. Napa Valley Unified School District*, 496 F.3d 932, 48 IDELR 60 (9th Circuit 2007).⁴

⁴ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

Therefore, if after the evaluation of the student initiated upon the receipt of the parent's May 23, 2023 consent, the group of qualified professionals and the parent of the student (eligibility team) determine that the student is a student with a disability in need of special education and related services, then the MCSD's failure to timely evaluate the student and determine eligibility upon the referral of the student at the commencement of the 2022/2023 school year would constitute substantive noncompliance. *Van Duyn v. Baker School Dist.*, 502 F.3d 811 (9th Cir. 2007). If, however, the eligibility team determines the student is not a student with a disability in need of special education and related services, the determined noncompliance does not require a student-specific remedy.⁵ *R.B. v. Napa Valley Unified School District*, 496 F.3d. 932, 48 IDELR 60 (9th Circuit 2007).

CAP – If Student is Determined Eligible

If the student's eligibility team determines that the student is a student with a disability in need of special education and related services, a remedy is required to address MCSD's failure to timely provide appropriate services to address the needs of the student due to the identified noncompliance. The dilemma is that in the absence of student-specific data regarding the student's needs, including the IEP Team's determination regarding the special education services the student requires, the Investigation Team is unable to ascertain with finality the appropriate student-specific remedy to provide the student the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

Therefore, rather than ordering a definitive amount of compensatory education/services, the remedy in this case is crafted to establish a process for the determination of the appropriate student-specific remedy to provide the student the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. The parent and MCSD are encouraged to work together throughout this corrective action process.

Unless an alternative student-specific remedy is agreed to in writing by MCSD and the parent, in accordance with NRS §385.175(6), MCSD must provide a CAP no later than 75 MCSD school days after the date of this Report that sets forth a verifiable process to determine and provide appropriate additional targeted intervention(s) for the student in school year 2023/2024 to address one or more of the student's determined annual IEP goals. The CAP must be approved by NDE prior to implementation and must include the following after the development of the student's initial IEP:

- The determination by the student's IEP Team, including the student's parent, of the appropriate additional targeted intervention(s) for the student to remedy MCSD's failure to timely provide:
 - Appropriate services in the 2022/2023 school year; and
 - If the student does not have an initial IEP in place and implemented on the first day of school in the 2023/2024 school year, appropriate services for the school days up to the first day MCSD makes special education services available to the student in the 2023/2024 school year.
- The targeted interventions must be in addition to the services in the student's IEP and, as such, must be provided during school breaks or before or after school;
- The IEP Team must consider any concerns and/or proposals of the parent in the determination of the appropriate additional targeted intervention(s) and the appropriate means to provide the interventions to meet the student's educational needs;

⁵ If the student's eligibility team determines that the student is not a student with a disability in need of special education and related services, upon the receipt of documentation from MCSD of the eligibility team's determination of ineligibility, the student-specific directed corrective action, Order Number two, will be deemed void and unenforceable and only a CAP for the systemic corrective action is required.

- The provision of a Prior Written Notice to the parent regarding the determined additional targeted interventions, including the student-specific data that are the basis for the determined type and amount of targeted intervention(s);
- The provision of a Procedural Safeguards Notice to the parent⁶; and
- The timeline within which the additional targeted interventions will be provided to the student. (The determined targeted interventions must be provided as soon as possible, and be completed no later than one year from the date of this Report. 34 C.F.R. §300.600(e)).

Documentation of the completion of the CAP, or alternatively the implementation of the agreed upon alternative student-specific remedy, must be provided to NDE within 14 days of its completion.

⁶ This State Complaint determination does not limit the parent's and/or MCSD's access to other appropriate dispute resolution procedures available under IDEA and NAC, Chapter 388, if the parent and MCSD disagree whether the student is a student with a disability in need of special education and related services, or, if MCSD and the parent agree that the student is a student with a disability in need of special education and related services, but disagree with the targeted intervention(s) required to address the needs of the student to provide the student the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place.