

**CARSON CITY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CA031824)**

Report Issued on May 23, 2024

INTRODUCTION

On March 18, 2024, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent¹ alleging a violation by Carson City School District (CCSD) of the Individuals with Disabilities Education Act (IDEA) law and regulations, 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC). The State Complaint included extensive attachments. (State Complaint)

The allegation in the State Complaint was that, based on the CCSD evaluations and an evaluation conducted by a named evaluator, the student is eligible as a student with a disability under the category of “health impairment, other than an orthopedic impairment,” (hereinafter, Health Impairment or HI) NAC §388.402, rather than “speech impairment.” The Parent alleged that the decision by the CCSD eligibility team, that the student did not qualify under the Health Impairment category, was flawed because the eligibility team based its determination only on the student’s grades and did not consider all of the testing data, including the BASC, Connors, Nepsy, and Edwards Rating Scales.

The Parent’s proposed resolution to address these allegations was for CCSD to reconvene the multidisciplinary team and reconsider placing student under the eligibility category of Health Impairment; develop an IEP that identifies goals and accommodations that meets the student’s needs and allows the student to make meaningful progress; and provides technical assistance on eligibility determinations for CCSD multidisciplinary team members.

The allegation within the jurisdiction of NDE through the State Complaint process raises the following issue for investigation in the 2023/2024 school year to March 13, 2024, the date of the State Complaint:

Issue:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the determination on February 26, 2024 that the student is not eligible for special education as a student with a disability under the category of health impairment, other than an orthopedic impairment; specifically, did CCSD follow procedures and apply required standards under IDEA and NAC and reach a determination that was reasonably supported by the student-specific data.

FINDINGS OF FACT

1. The student is a student with a disability and was first found eligible for special education and related services on July 24, 2020 under the category of developmental delay, a category limited to children under the age of six. (4/24/23 Psychoeducational Report, p.1)
2. On April 24, 2023, as the student approached the student’s sixth birthday, CCSD conducted another evaluation and found the student eligible for education and related services under the category of

¹ While both Parents participated in the events relevant to this State Complaint, the term “Parent” will be used.

- speech/language impairment. (4/24/23 Eligibility Team Report – Speech and Language Impairment, p.1-2)
3. The Parent agreed with the disability determination and an IEP was developed for the student on May 15, 2023. (4/24/23 Eligibility Team Report – Speech and Language Impairment, p.2)
 4. During the development of the IEP, the Parent requested, and CCSD agreed to pay for, an Independent Educational Evaluation (IEE). The named evaluator subsequently conducted a psychological/neuropsychological evaluation in September 2023 (IEE Report) that yielded several clinical diagnoses, including Attention Deficit-Hyperactivity Disorder, Predominantly Inattentive Type. (IEE Report, p. 12 of 15)
 5. An IEP Team meeting took place on December 18, 2023, to review and address recommendations from the IEE Report, and on that same date, develop a revised IEP (December 2023 IEP) that remained in place through March 13, 2024, the period relevant to this State Complaint. (12/18/2023 IEP)
 6. The December 2023 IEP contained revisions addressing recommendations from the IEE Report related to the student’s focus and attention issues, including visual supports, scaffolded instruction, and repeating back instructions to check for understanding. (12/18/2023 IEP p. 14)
 7. On December 5, 2023, CCSD provided the Parent with prior written notice to conduct a reevaluation, in response to a request by Parent that CCSD conduct a reevaluation to determine whether the student was eligible for special education and related services under the Health Impairment category. (12/5/23 Parental Notification of Meeting)
 8. That same day, members of the student’s IEP Team and eligibility team conducted a review of existing data and determined that the reevaluation required more information, including an assessment of the student’s physical and social/emotional health, and approach to academic tasks. The Parent provided consent for CCSD to conduct the additional assessments. (Determination of Scope of Evaluation & Need for Additional Data, 12/5/23 Explanation of Assessment Procedures)
 9. CCSD performed the additional assessments in January and February 2024, including the Conners Behavior Rating scales, BASC-3, Brown Executive Function/Attention scales, and an in-person observation of student and peer by a school psychologist. (12/5/23 Explanation of Assessment Procedures)
 10. On February 26, 2024, a school psychologist prepared a Psychoeducational Report that reviewed both the historic and the new data to evaluate whether the student qualified for special education under the category of Health Impairment (HI Report, p. 1-12)
 11. CCSD gave notice to Parent of, and subsequently held, an eligibility meeting on February 26, 2024, to determine whether the student was eligible for special education under the category of Health Impairment. Attendees at that meeting included a school psychologist, a special education teacher, the student’s regular classroom teacher, a school nurse, a speech/language pathologist, the school principal, a special education implementation specialist, the student support services Assistant Director, and an Occupational Therapist (HI Evaluation Team), and Parent via zoom. (1/31/24 Parent Prior Written Notification of Meeting, 2/26/24 Statement of Eligibility, Eligibility Team Report, 2/26/24 Eligibility Meeting Notes)

12. The HI Team review included results from the Connor's 3 assessment undertaken by the student's Parent and home room teacher. The teacher indicated typical behaviors in most classroom setting, except for the category of "Inattention," where the teacher rated student as showing "poor concentration, difficulty keeping []² mind on work, distractible." (HI Report, p. 6)
13. The HI Report revealed that on 2/1/24, CCSD undertook a "School Psychologist Observation" of the student, which included minute by minute reporting on whether the student, and non-disabled classroom peer were "on" or "off" the task or activity taking place in the classroom. The observer reported that student was "on task" 86% of the time. The report also noted that the student required extra time to process verbal prompts. (HI Report, p. 10)
14. The HI Report evaluated the student's current grades and measured potential improvement over the course of the kindergarten year. Those data revealed that the student reached grade level standards in 11 of 13 categories, and approached standard in reading on the Literature and the Reading Information Test. (HI Report, p. 9)
15. Student's report card included grade information for three marking periods that revealed the student improved in English, from first and second period grades of 2.5, which is "approaching standard," to a third period grade of 3, which represents "meeting standard." (Elementary Standards-Based Progress Report, 2023-2024 School Year)
16. Growth Charts representing the student's Fall and Winter standardized testing revealed that in Winter the student scored a 143, putting the student in the 31st percentile in Math, a small increase from the 135 score from Fall testing. In English, the student improved from a 117 in the Fall to a 145, putting the student in the 50th percentile, representing a growth rate that put the student in the 99th percentile compared to peers. (MAP Score Reports – Math & English)
17. Notes from the February 26, 2024 eligibility meeting reveal that the school principal discussed with the Parent that the student's MAP scores put student within the average range in reading and slightly below in math, but with increased scores in both areas compared to the beginning of the year. The principal also shared that the student's classroom behavior was similar to peers and that the student was able to access the curriculum with the accommodations put in place through the December 2023 IEP, leading the principal to recommend that those accommodations continue. (2/26/24 Eligibility Meeting Notes)
18. The HI Evaluation Team reviewed whether the student had a disability in the area of Other Health Impairment as defined under NAC 388.46. The HI report found that the student did have an impairment that limited the "strength, vitality, or alertness of the pupil . . . which is caused by attention deficit disorder," based on student's diagnosis of ADHD. (HI Report, p. 11)
19. The HI Evaluation Team then reviewed whether the student's health impairment adversely affected the student's educational performance and determined that the student's "disability is not adversely effecting [] educational performance," noting that the student is "currently earning satisfactory grades in the kindergarten curriculum." (HI Report, p.11)
20. All members of the HI Evaluation Team agreed with the assessment that the student did not qualify under the HI category, save Parent, who indicated a desire to discuss the results of meeting with their advocate. (2/26/24 Eligibility Meeting Notes)

² [] denote the redaction of personally identifiable information.

CONCLUSIONS OF LAW

The United States Department of Education, Office of Special Education Programs (OSEP), established the relevant analysis to determine whether, in this instance, CCSD complied with IDEA and NAC: “We believe that an SEA, in resolving a complaint challenging the appropriateness of a child's educational program or services or the provision of FAPE, should not only determine whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with the requirements in Part B of the Act in light of the individual child's abilities and needs. *Discussion in the 2006 IDEA regulations: Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, Page 46601.*

Citing the Federal Register, the United States Department of Education, OSEP, indicated that: “The SEA may find that the public agency has complied with Part B requirements if the evidence clearly demonstrates that the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data.” OSEP Memorandum 13-08: *Dispute Resolution Procedures Under Part B of the Individuals with Disabilities Education Act (Part B)*, 61 IDELR 232 (OSEP July 23, 2013).³ Simply put, the determination whether CCSD complied with IDEA and NAC, Chapter, 388, is based on whether its decision, on February 26, 2024, that the student was not eligible for special education as a student with a disability under the category of Health Impairment, followed required procedures and applied required standards under IDEA and NAC that were reasonably supported by the student-specific data available to CCSD at the time.

In this case, after the Parent requested a reevaluation to determine whether the student was eligible for special education under the category of Health Impairment, in part based on the IEE Report, CCSD convened an eligibility team meeting on December 5, 2023, to review those data and to determine whether additional information was needed to conduct the requested reevaluation. (Finding of Fact (FOF) #8) After the Parent provided consent for CCSD to collect more data, CCSD conducted additional assessments, including BASC, Connors, Nepsy, and Edwards Rating Scales. (FOF # 6)

CCSD convened the eligibility team on February 26, 2024, to review whether the data supported the request of the Parent to change the student’s eligibility for special education from Speech/Language Impairment to Health Impairment. NAC Chapter 388 requires that the makeup of an eligibility team, here the HI Team, include a school psychologist, a special education teacher, one of the student’s classroom teachers, a school nurse or other person qualified to interpret an assessment of the health of the pupil, a parent of the student, and, if not otherwise a member of the team, one or more persons with sufficient knowledge of the student to interpret information relating to the student’s social, emotional, developmental and familial conditions. NAC §388.402(3).

The student’s HI Team included a school psychologist, a special education teacher, student’s regular classroom teacher, the school nurse, a speech language pathologist, the principal of student’s school, and the Parent. NAC Chapter 388 also requires assessment of the student’s health and ability to perform in the regular classroom. NAC §388.402(4). The HI Report amply addressed both requirements, including through a nurse’s report on the student’s health, and both a classroom teacher, and a psychologist’s observation of the student’s classroom performance. (FOFs # 8, 12-13) The State Complaint Investigation Team finds that the makeup of the HI Team and the assessments of the student that the HI Team considered, met the NAC Chapter 388 requirement. (FOF #’s 8-13) NAC §388.402(3) & (4).

³ This policy letter is publicly available at:

https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf

In accordance with IDEA, 34 C.F.R. §300.306(a)(1), and NAC §388.387 et seq., it is a group of qualified professionals and the parent(s) of the student who determine whether a student is a student with a disability and the educational needs of the student. The determination of whether a student is a student with a disability is twofold: whether the student has one of the specific categories of disability in the IDEA, 34 C.F.R. §300.8, and NAC §§388.093 and 388.387 et seq. and who, by reason thereof, needs special education and related services.

Specific to the Health Impairment issue in this case, pursuant to the NAC §388.046: “Health Impairment” means an impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which: 1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder . . . ; and 2. Adversely affects the educational performance of the pupil.” The next step for the State Complaint Investigation Team was an inquiry into whether the determination of the HI Team -- that the student’s ADHD diagnosis qualified the student as having a health impairment “that limits the strength, vitality or alertness of the pupil,” but that this health impairment did not adversely affect the student’s educational performance (FOF # 19) -- was reasonably supported by the student-specific data. 61 IDELR 232 (OSEP July 23, 2013).

IDEA and NAC require that in interpreting evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations. IDEA, 34 C.F.R. §300.306(c), and NAC §388.340(5)(a). Therefore, CCSD was required, as the Parent noted, to consider more than simply the student’s grades in determining the student’s eligibility for Health Impairment. A review of the facts by the State Investigation Team finds that CCSD did far more than look at the student’s grades.

Beginning in December 2023, at Parent’s request, the HI Team began its investigation into the student’s eligibility for special education under the Health Impairment category and determined that it needed more data before reaching a determination. (FOF # 8) CCSD then conducted numerous tests in January and February 2024, including Connors, BASC-3, and in-person student observation. (FOF #s 9, 12) Notes from the February 26, 2024 eligibility meeting indicate that the HI Team and the Parent also reviewed the student’s grades, which included improved performance in English and Math, and observed behavior on the student’s part that was similar to peers. (FOF #s 13-14) Therefore, the State Complaint Investigation Team finds that the HI Team drew from a variety of sources, including recent test results, observational data, and the student’s grades, including improvements from the beginning of the year to the end of the third quarter, in making a determination that the student was not eligible under the Health Impairment category. As such, that determination was reasonably supported by the student-specific data. 61 IDELR 232 (OSEP July 23, 2013) (FOF #s 9-14)

The State Complaint Investigation Team also finds that a determination of reasonableness can be aided by viewing the situation in context, particularly since one of the Parent’s proposed resolutions was to develop an IEP that identifies goals and accommodations to meet the student’s needs. It is well settled that once a child becomes eligible for special education, the IEP must be designed to provide whatever individualized services are required, notwithstanding the category that makes them eligible. See e.g. 34 CFR 300.304(c)(6), noting that an evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified; Federal Register / Vol. 71, No. 156 / Monday, August 14, 2006/ Rules and Regulations, Pg. 46655 (“Services must meet the child’s needs and cannot be determined by the child’s eligibility category.”) Here, the student’s December 2023 IEP addressed the supports identified in the IEE Report and other assessments related to the student’s attention and focus issues. (FOF #'s 4, 10, 12-13)

Moreover, testing data in the months after these supports went into place showed marked improvement by the student compared to the beginning of kindergarten in September 2023. (FOF #s 11-13)

Therefore, CCSD complied with IDEA and NAC, Chapter 388, with regard to its determination on February 26, 2024 that the student is not eligible for special education as a student with a disability under the category of health impairment, other than an orthopedic impairment.⁴

⁴ Nothing in this State Complaint Report precludes either the Parent or CCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.