

**CARSON CITY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CA072924)**

Report Issued on September 25, 2024

INTRODUCTION

On July 29, 2024, the Nevada Superintendent of Public Instruction received a Complaint from the advocate (hereinafter Complainant or Advocate) of a named student 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 allegations in the Complaint were that CCSD failed to properly convene and conduct an eligibility team meeting to review an Independent Educational Evaluation (IEE) of the student. Specifically, the facts alleged that CCSD failed to: Follow Prior Written Notice and IEP written meeting notice procedures, including early notification and the identification of purpose, time and location and who would attend the meeting; provide the Parent any procedural safeguards notice, even though the Parent had not received any for almost a year since the first eligibility meeting; and timely convene an eligibility team following the completion of the evaluation measure of a publicly funded IEE to consider the recommendation of IDEA eligibility of the student under two categories.

The Complainant's proposed resolution to address these allegations was for CCSD to provide IDEA training, related to the violations, to its online school staff, CCSD Psychological services, and a named CCSD employee; require CCSD to convene an eligibility/IEP team in compliance with NAC and the IDEA to properly document and consider the IEE to determine the student's eligibility; and compensatory educational services for the student.

The allegations in the Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raised the following issues for investigation from July 29, 2023, through July 25, 2024, the date of the State Complaint:

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, to timely convene an eligibility team meeting to determine the student's eligibility under the categories of specific learning disability and health impairment, other than an orthopedic impairment, following the completion of an IEE on January 31, 2024.

Issue Two:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the provision of:

- a. Timely written notice to the student's Parent for the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student that included the purpose, date, time and location of the meetings and a list of the persons who would attend the meetings; and
- b. A Prior Written Notice in advance of the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student; and
- c. A Procedural Safeguards Notice at the March 19, 2024 meeting to review the IEE of the student.

In the August 5, 2024 Issue Letter to CCSD, CCSD was notified that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; reference to the provided documentation that factually supported the denial; and that a failure to do so by August 21, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD timely provided a response, denying the alleged noncompliance and asserting that it had complied with IDEA and NAC regulations regarding the timing for convening an eligibility team meeting and the related notice requirements. The response also included a statement of the factual basis for the denial and clearly referenced the provided documentation.

NDE reviewed in their entirety, and considered in this investigation, the State Complaint and additional documents received on September 10, 2024 from the non-complainant Parent of the named student who was the subject of the State Complaint, even though the submission was almost three weeks after the August 21, 2024 deadline, and CCSD's denial of all claims, arguments and all documents submitted by CCSD in response to the issues in the Complaint, including documentation of any reports written by CCSD for the student from July 29, 2023, through the July 25, 2024 date of the State Complaint (Relevant Period). The Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this Complaint.

FINDINGS OF FACT

General

1. The student was enrolled in CCSD's on-line program during the Relevant Period. (Attendance Detail, State Complaint, CCSD Response)
2. On March 14, 2018, CCSD determined that the student was a student with a disability, eligible to receive special education services under the category of speech and language impairment. (2021 Report, CCSD Response)
3. On November 4, 2019, CCSD determined that the student was no longer eligible for special education and related services under the category of speech and language impairment. (2021 Report, CCSD Response)
4. Beginning March 2, 2020, student received accommodations in the classroom setting through a Section 504 plan. (2021 Report, CCSD Response)
5. In late 2021 CCSD conducted a further evaluation of the student, and in the November 10, 2021 "Report of Results Evaluation" (2021 Report), determined that the student was not eligible for special education and related services under the categories of speech and language impairment, other health impairment, and specific learning disability. (2021 Report, CCSD Response)
6. The 2021 Report also indicates that when the student's Parent did not agree with the eligibility determination, CCSD agreed to provide an IEE, and to send a list of evaluators to the Parent. (2021 Report, CCSD Response)
7. It was not until Fall 2023 that the Parent requested that CCSD pay for an IEE. (9/7/2023 CCSD Email)

8. On January 31, 2024, CCSD received a faxed invoice from the doctor to cover the cost of the student's IEE. No documentation was provided in the course of the investigation that CCSD received a copy of the IEE at that time. (1/31/2024 Invoice, Review of the Record)

Eligibility Determination

9. The student had a Section 504 plan in effect from the beginning of the 2023/2024 school year through the date of the State Complaint. (3/8/24 Prior Written Notice, CCSD Response)
10. On March 7, 2024, student's Parent sent an email to the school counselor stating "I would like a eligible (sp) meeting to discuss Dr. [] report. I need a 504 request for a vital meeting. If we could do March 19th that would be great if not then it would have to be after spring break". (3/7/2024 Email)
11. After several emails about timing, on March 18, 2024, CCSD provided the student's Parent with a Section 504 meeting invitation to determine 504 eligibility and to develop and/or review the student's 504 service plan. CCSD also included a Prior Written Notice (PWN), proposing to "Determine eligibility and Review and update 504," along with the attached procedural safeguards. There was no documentation provided in the course of the investigation that the student's Parent notified CCSD that the meeting, requested on March 7, 2024, was to determine whether the student was eligible as a student with a disability under IDEA, rather than Section 504. (3/18/24 Meeting Notice, 3/18/24 PWN, Review of the Record)
12. The Section 504 meeting took place in-person on March 19, 2024 (March Meeting). Neither side brought a copy of the IEE, so no discussion of the IEE took place. (State Complaint, CCSD Response)
13. On May 8, 2024, the Advocate sent an email to the school counselor stating that the student had to drop science because CCSD had not timely reviewed the IEE and had failed to identify the student as IDEA eligible. (5/8/2024 Email)
14. The school counselor emailed back the Advocate that same day, noting that the student remained in science class, had good grades on the assignments turned in, and outlining a plan to help the student catch up on missed assignments and productively finish the semester. (5/8/24 Email to Advocate with Assignment Sheet)
15. The next day, May 9, 2024, the Advocate emailed the school counselor noting that CCSD has an affirmative obligation to meet and review the IEE timely, asking whether CCSD was not going to consider the IEE, and seeking a written notice of refusal to review the IEE if not. (5/9/24 Email)
16. The school counselor responded in an email an hour later stating "I AM NOT saying I am refusing to review. I have a call in to the psychologist department to see the status." (5/9/2024 Email)
17. On May 14, 2024, the school counselor emailed the Parent noting "I found out some info to help us get our meeting. I do need some additional info from you. Could you give me a call tomorrow?" (5/14/2024 Email to Parent)
18. The next day, a CCSD representative reached out to the doctor who conducted the IEE and received a faxed copy of the Student's January 2024 IEE on May 15, 2024. (5/15/2024 Email, IEE)

19. On Friday May 17, 2024, the school counselor sent an email to the Parent with a subject line “IEE Discussion Meeting.” The email stated that she had called to set up a meeting, and that the school psychologist could be available for a meeting on May 22nd between 9 a.m. and 2:30 p.m. (5/17/2024 Email to Parent)
20. On Monday May 20, 2024, the Parent email back with the subject line “Eligibility Meeting,” indicating “We can meet virtually (on zoom) at 10 am on Wednesday May 22 for an eligibility meeting and I need a written notice as required by IDEA. Thank you.” (5/20/2024 Email to School Counselor)
21. The Parent did not attend the 10 a.m. zoom meeting on May 22, 2024 (May Meeting). (Review of the Record, CCSD Response)
22. Two hours after the meeting on May 22, 2024, CCSD emailed the Parent “reaching out to discuss our next steps regarding the independent education evaluation . . . I have included a Prior Written Notice proposing to conduct a special education evaluation in the areas of Health Impairment and Specific Learning disabilities. The eligibility team also consider the information in the IEE. Also included are the parents’ rights. We will need to have a signed permission to assess to move forward with the evaluation. I look forward to discussing your concerns and our next steps.” (5/22/2024 Email to Parent with Attachment)
23. The student’s last day of school in the 2023/2024 school year was May 30, 2024. There were 14 calendar days and 10 school days from May 8, 2024 to May 22, 2024. (CCSD 2023-2024 Academic Calendar)

CONCLUSIONS OF LAW

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, to timely convene an eligibility team meeting to determine the student’s eligibility under the categories of specific learning disability and health impairment, other than an orthopedic impairment, following the completion of an IEE on January 31, 2024.

IDEA, 34 C.F.R. §300.502(c), and NAC §388.450 require that if a parent obtains an IEE at public expense or shares with the public agency an evaluation obtained at private expense, the public agency must consider the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. At issue in this case is CCSD’s timely consideration of the IEE in the determination of whether the student was a student with a disability in need of special education and related services.

While straightforward on its face, the facts in this case are not, including precipitous events significantly prior to the Relevant Period of this State Complaint, commencing with a requested and authorized IEE in 2021. (Finding of Fact (FOF) #6) The student’s Parent did not request payment for the authorized IEE until September 7, 2023 and did not obtain it until January 2024 (FOFs #7, 8, 18), during which time the student was receiving services as a student with 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) (FOF #7, 9) On March 7, 2024, the student’s Parent requested that CCSD hold an eligibility meeting to discuss the IEE report and requested notice under Section 504. (FOF #10) CCSD responded to this request by sending a meeting invite, along with a PWN, proposing to “Determine eligibility and Review and update 504.” (FOF #11) Despite the authorization of the IEE under IDEA in 2021, upon consideration of the passage of time,

the student's eligibility under Section 504 since 2020, and the Parent's March 7, 2024 request, the State Complaint Investigative Team finds that CCSD acted reasonably in scheduling a Section 504 meeting to discuss the student's Section 504 plan. This is particularly true given that the student's Parent did not inform CCSD of any disagreement with the nature of the meeting after receiving the meeting notice and PWN under Section 504. (FOF #11) A meeting to discuss a Section 504 plan does not require any procedural or substantive requirements under the IDEA and NAC, Chapter 388.

It was not until May 8, 2024, that an email from the Advocate put CCSD on notice that the student's Parent sought an IDEA eligibility determination. (FOF #13) It is that date that triggered CCSD's responsibility to consider the results of the IEE in the determination of the student's eligibility under IDEA.

Neither IDEA, 34 C.F.R. §300.502(c), nor NAC §388.450(6) provide a timeline for a local educational agency to consider the results of an IEE in a determination of the student's eligibility under IDEA and NAC, Chapter 388. However, in the absence of a specifically prescribed timeline under IDEA, the United States Department of Education, has applied the standard of a "reasonable period of time" to other requirements of IDEA. (See for example: *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006)) As noted in the statement of this issue, NDE adopts this "reasonable period of time" standard and considers the period from the Advocate's May 8, 2024 email, the first time CCSD was put on notice that the student's Parent was raising the issue of IDEA eligibility, to CCSD's May 22, 2024 issuance of a PWN proposing to conduct a special education evaluation in the areas of health impairment and specific learning disabilities to determine whether the student was eligible for special education services under the IDEA and requesting parental consent. (FOF #13, 22)

The passage of time from the May 8, 2024 request for an eligibility determination, until CCSD's issuance of the Prior Written Notice to conduct a special education evaluation, was 14 calendar days and only 10 school days. (FOF #23) Was this delay a reasonable period of time in this case?

In *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008), the Ninth Circuit Court of Appeals¹ found a one month delay reasonable from the date the local educational agency had any notice of the suspected disability to the commencement of evaluation to provide valid test results: "Small administrative delays, like this one, and especially delays needed to promote effective test results, should not render the District's actions unreasonable...." (In contrast, see *Spring Branch Independent School District v. O.W.*, 961 F.3d 781; 76 IDELR 234 (5th Cir. 2020), where the Fifth Circuit Court of Appeals determined that, with regard to child find and the "reasonableness of the delay" of a referral, a 99-day wait was too long.)

To assess the reasonableness of the delay in this case, it is essential to examine the circumstances. After receiving a copy of the IEE on May 15, 2024, CCSD scheduled a meeting with the student's Parent on May 22, 2024, to discuss the IEE. When the student's Parent did not attend the meeting, CCSD issued a PWN proposing to conduct an evaluation to determine the student's eligibility for special education and related services under IDEA. (FOFs #18, 19, 21, 22) While the allegation of noncompliance in the State Complaint assumes CCSD was required to determine the student's eligibility as a student with a disability under IDEA upon receipt of the IEE, CCSD had an obligation under IDEA to perform a comprehensive evaluation before determining whether the student is a student with a disability, particularly given it had been more than three years since the last evaluation of the student under IDEA. 34 C.F.R. §300.304(c)(6); NAC §§388.340(1), 388.402, 388.420. Furthermore, IDEA and NAC, Chapter 388, require that a local educational agency use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information and may not use any single measure or assessment, in this case the IEE, as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational

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

program for the child. 34 C.F.R. §300.304(b); NAC §388.340. Upon completion of the administration of the assessments and other evaluation measures, this obtained assessment information from a variety of source would be drawn upon to determine the eligibility of the student for special education and related services. 34 C.F.R. §300.306; NAC §388.340(5).

Under these circumstances, the State Complaint Investigative Team finds that the 14 calendar days from when CCSD was put on notice that the student's Parent was requesting CCSD to determine the student's eligibility under IDEA, to the issuance of a PWN to conduct an evaluation to determine eligibility, constitutes timely compliance with IDEA and NAC, Chapter 388. 34 C.F.R. §300.304(b)(2); NAC 388.340.

Therefore, in the absence of a requirement to convene an eligibility team meeting to determine the student's eligibility under the categories of specific learning disability and health impairment, other than an orthopedic impairment, following the completion of an IEE on January 31, 2024, CCSD complied with the requirements in IDEA and NAC, Chapter 388 by timely proposing to evaluate the student.

Issue Two:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the provision of:

- a. Timely written notice to the student's Parent for the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student that included the purpose, date, time and location of the meetings and a list of the persons who would attend the meetings; and
- b. A Prior Written Notice in advance of the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student; and
- c. A Procedural Safeguards Notice at the March 19, 2024 meeting to review the IEE of the student.

Meeting Notice

In accordance with IDEA and NAC, Chapter 388, the parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to, in relevant part, the identification and evaluation of the student. As such, a local educational agency must provide notice with specific content consistent with the requirements for IEP Team meetings. 34 C.F.R. § 300.322; 300.501(b). (NAC §§300.302, 388.321 require the meeting notice to be in writing) The meeting notice must also be provided early enough to ensure that the parents will have an opportunity to attend, including enabling the parent to make arrangements to participate in such meetings. 34 C.F.R. § 300.322; NAC 300.302(1).

Notwithstanding these requirements, both IDEA, 34 C.F.R. §300.501(b)(3) and NAC §388.302(4) create an exception for some conversations involving public agency personnel: "A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting."

In this case, CCSD provided notice of the March Meeting to the student's Parent in accordance with Section 504, not IDEA, because at the time the student had a Section 504 plan, not an IEP under the IDEA, and the Parent's request for a meeting asked for notice under Section 504. (FOFs #9, 10, 11) Therefore, the State Complaint Investigation Team determined that CCSD was not required to comply with IDEA and NAC, Chapter 388, notice requirements for the March Meeting.

Looking next at the May Meeting, the student's Parent asked that it be one to determine eligibility, while CCSD offered an informal "IEE Discussion Meeting." (FOFs #13, 19) CCSD only received the IEE on May 15, 2024. (FOFs #8, 18) Given that timing and the fact that the student had not been eligible for special education and related services for almost five years (FOF #3), it was reasonable for CCSD to ask the Parent to attend an informal meeting to discuss the IEE prior to determining how to proceed. The State Complaint Investigative Team finds that the May Meeting was set up to be informal and not one which triggered the notice requirements set forth in IDEA and NAC, Chapter 388. 34 C.F.R. § 300.322; 300.501(b); NAC §§300.302, 388.321. CCSD therefore did not fail to comply with the meeting notice requirements set forth in IDEA and NAC, Chapter 388.

Prior Written Notice

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. *Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994).

In determining whether CCSD was obligated to provide a PWN to the student's Parent under IDEA before the March Meeting, the Complaint Investigation Team finds that Section 504, rather than IDEA requirements, governed the March 19, 2024 meeting. (FOF # 11) Therefore, CCSD was under no obligation to provide a PWN pursuant to IDEA and NAC, Chapter 388.

Next, as alleged in the State Complaint, was CCSD obligated to provide a PWN to the student's Parent in advance of the May Meeting that complied with the IDEA? The answer is no for two reasons. First, CCSD set up the May Meeting to discuss the student's IEE (FOF #19), not to participate in a meeting to make a determination regarding the identification, evaluation, or educational placement of the student, or the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §300.501(b); NAC §§300.302. *Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994)) Second, contrary to the allegation in the State Complaint, a local educational agency is not required to provide a PWN of its proposal or refusal until a determination is made on the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student, not *before* the meeting takes place. *See United States Department of Education, Office of Special Education Programs, Policy Letter to Cindy Chandler* (April 26, 2012)² CCSD was therefore not obligated to provide an IDEA-compliant PWN to the student's Parent in advance of the May Meeting.

Procedural Safeguards Notice

A copy of the procedural safeguards available to the parents of a student with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents upon initial referral or parental request for evaluation; upon receipt of the first State Complaint and upon receipt of the first Due Process Complaint in a school year; and in accordance with the IDEA discipline procedures. 34 C.F.R. §300.504; NAC §388.300.

² The Policy Letter to Cindy Chandler can be found at the following link:
https://sites.ed.gov/idea/files/policy_speded_guid_idea_letters_2012-1_042612pwn1q2012.pdf

Looking next at whether CCSD was required to provide a procedural safeguards notice to the student's Parent in advance of the March Meeting. As discussed previously, Section 504 procedural requirements, and not IDEA, applied to the March 19, 2024 meeting. Accordingly, CCSD had no obligation under the IDEA and NAC, Chapter 388, to provide the procedural safeguards available to the Parent under IDEA and NAC, Chapter 388, in advance of the March Meeting.

Therefore, CCSD complied with IDEA and NAC, Chapter 388, where applicable, in the provision of:

- a. Timely written notice to the student's Parent for the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student that included the purpose, date, time and location of the meetings and a list of the persons who would attend the meetings; and*
- b. A Prior Written Notice in advance of the March 19, 2024 and May 22, 2024 meetings to review the IEE of the student; and*
- c. A Procedural Safeguards Notice at the March 19, 2024 meeting to review the IEE of the student.*