

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL012324)**

Report Issued on March 22, 2024

INTRODUCTION

On January 23, 2024, the Nevada Superintendent of Public Instruction received a State Complaint dated January 17, 2024 from a Parent alleging violations by Clark County 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 a number of allegations with numerous facts in support. For brevity, the allegations are characterized by subject matter:

1. Changes to the student's least restrictive environment without holding an IEP meeting;
2. Not following the student's IEP by adjusting the Behavior Intervention Plan as needed;
3. Not providing requested education records of the student, specifically the record refusing to allow the parent to observe the classroom;
4. Discriminatory field trip practices;
5. Contradictory information in the IEP progress report;
6. The student not meeting IEP goals in behavior and social skills and regressing with minimal academic progress;
7. Not providing a Prior Written Notice and request for consent in response to multiple requests for an occupational therapy and Functional Behavioral Assessment.

The Parent's proposed resolution to address these allegations were: to notify CCSD Office of Compliance and Monitoring so training can be provided to school personnel; to conduct school training on special education, inclusiveness and discrimination; the school principal issue a written apology; and a CCSD memorandum be sent to all CCSD personnel on specifically named topics.

The allegations in the Complaint that are under the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint process raise the following issues for investigation through January 17, 2024, the date of the State Complaint:

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's May 11, 2023 IEP commencing August 1, 2023 with regard to adjusting the student's Behavior Intervention Plan as needed.

Issue Two:

Whether CCSD complied with the requirements of IDEA and NAC, Chapter 388, with regard to CCSD's administrative determination on or about August 29, 2023 to change the provision of the student's special education services from the general education classroom of age peers to the resource room; specifically:

- a. Whether, if the change was a change of placement, basing the determination on the student's IEP and ensuring that the student's Parent was a member of the group that made the educational placement decision.
- b. Whether the change was in conformity with the least restrictive environment; specifically, after the consideration whether the nature or severity of the student's disability was such that education in the regular class with the use of supplementary aids and services could not be achieved satisfactorily.

Issue Three:

Whether CCSD complied with IDEA and the NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records; specifically, the record documenting CCSD's response to the Parent's written request on November 7, 2023 to observe the student in the classroom.

Issue Four:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice and request for consent within a reasonable period of time; specifically, after the Parent's request in the 2023/2024 school year (on or before October 10, 2023) to conduct an occupational therapy and functional behavioral assessment.

Issue Five:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the student a Free Appropriate Public Education to meet the student's behavioral and social educational needs; specifically, whether CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination on the annual goals in these skill areas in the student's January 5, 2024 IEP that was reasonably supported by the student-specific data.

Issue Six:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the student being allowed to participate in the nonacademic/extracurricular activity of an October 13, 2023 field trip; specifically, if applicable, providing the service of transportation and adult assistance in the student's IEP to participate in extracurricular and other nonacademic activities.

Issue Seven:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the Parent a copy of the student's January 5, 2024 IEP.

The State Complaint included allegations of violations outside NDE's jurisdiction through the special education complaint process; specifically, allegations that occurred more than one year prior to the date of the receipt of the State Complaint and allegations of falsification of data and discriminatory field trip practices. The Parent was notified that these allegations were not within NDE's jurisdiction to investigate through the special education complaint process, and the basis, and was informed of the procedure to file a grievance with CCSD and/or the U.S. Department of Education, Office of Civil Rights, if the Parent wanted to pursue the allegation of discrimination.

In the January 31, 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 February 21, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely provide a response; denied all of the allegations of noncompliance; provided the statement of the factual basis and clearly referenced the provided documentation. CCSD also stated that while it denied the allegations in the Complaint, if NDE determined an alleged violation occurred, CCSD proposed resolution was to conduct a training to the school staff regarding parental and student rights under IDEA and the school would revise the extra-curricular activities policy to ensure that all students' families are notified and included in future activities and field trips.

The Parent's State Complaint, including the attachment, and CCSD's denial of all claims and all documents submitted by CCSD in response to the issue in the Complaint were reviewed in their entirety in this investigation. 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 is a student with a disability who was enrolled in CCSD in the 2023/2024 school year that commenced August 7, 2023. There were 97 school days since the commencement of the 2023/2024 school year to January 17, 2024, the date of the State Complaint. The student was absent for nine school days during this time period. (Calendar, Student Attendance Data, State Complaint, CCSD Response)

IEPs

2. The student had four IEPs in effect in the 2022/2023 and 2023/2024 school years: a January 12, 2023 annual IEP; a May 11, 2023 revision IEP; an October 2, 2023 revision; and a January 5, 2024 annual IEP. All of the student's IEPs up to January 5, 2024 included the same four annual goals in the behavior/social and social/emotional areas that addressed the ability to initiate and engage in appropriate play with peers; the ability to engage in preferred tasks with peers; improvement of frustration tolerance skills by using communication and/or coping strategies; and following directions given to the whole group, both preferred and non-preferred. The student's anticipated three-year reevaluation date was January 25, 2025. (IEPs)
3. The student's May 11, 2023 revision IEP provided the student specially designed instruction in behavior/social skills and the supplementary aid/service of following the student's behavior plan and adjusting as needed. The beginning and ending dates for this service was May 11, 2023 to July 31, 2023 and August 1, 2023 to January 11, 2024 with the frequency of services throughout the school day with the location for services of the school campus. The student's October 2, 2023 IEP revision maintained this supplementary aid/service, commencing on the day of the IEP revision. (May 11, 2023 IEP, October 2, 2023 IEP)
4. The student had a January 28, 2018 Behavior Intervention Plan in effect during the relevant time period of this State Complaint. (It is unclear whether this date is in error based on information in the State Complaint; however, CCSD did not provide documentation otherwise.) The student's target behavior in the January 28, 2018 Behavior Intervention Plan was when given a work task or

the student wants something, the student will not follow directions. The behavior that occurs is yelling, screaming, pushing, grabbing, poking, hitting peers/teachers in order to gain attention. The desired goal behavior the student would be taught to use, instead of the problem behavior, was that the student would communicate wants and needs with peers while refraining from screaming, yelling, and making physical contact. (January 28, 2018 Behavior Intervention Plan, State Complaint, CCSD Response)

5. The student's January 28, 2018 Behavior Intervention Plan had an implementation and progress monitoring plan to monitor the frequency, duration, intensity of problem behavior, as well as the implementation and effectiveness of interventions, strategies, and supports. The Behavior Intervention Plan was to be reviewed every nine weeks by the team to determine the effectiveness of the interventions. There were two full nine-week periods and a partial period from the commencement of the school year on August 7, 2023 to January 11, 2024. October 6, 2023 was the end of the first ninth week of school in the 2023/2024 school year. The student was absent two days from October 16, 2023, the week after the first nine-week period, to January 17, 2024. (January 28, 2018 Behavior Intervention Plan, Calendar, Student Attendance Data)
6. Intensity data collected from December 5, 2022 to January 19, 2023 (a period of 22 school days) was reported on the January 28, 2018 Behavior Intervention Plan. The data showed that the student engaged in level one behaviors (yelling and screaming) 26 times; level two behaviors (pushing grabbing, poking) 10 times and level three behaviors (hitting peers/teachers) 13 times. However, no documentation was provided in the course of the investigation that the student's January 28, 2018 Behavior Intervention Plan was reviewed by the team commencing August 1, 2023 through the effective period of the student's May 11, 2023 and October 2, 2023 IEPs, up to January 11, 2024. (January 28, 2018 Behavior Intervention Plan, Review of the Record)
7. The student's January 19, 2024 Behavior Intervention Plan was developed two days after the date of the State Complaint. The student's target behavior in the January 19, 2024 Behavior Intervention Plan was when given completing a preferred or non-preferred task in both the self-contained or general education classroom, the student will leave designated areas, engage in verbal outbursts (shouting), hit, push, bite peers/staff and throw or step on objects to order to gain peer and adult attention. There was no known setting event at the time of the hypothesis statement. Baseline frequency data from October 3, 2023 to December 14, 2023 (a period of 45 school days) indicated that the behaviors occurred an average of nine times a day. The desired goal behavior the student would be taught to use, instead of the problem behavior, was that the student would raise a hand to request attention from staff and wait for a response. (January 19, 2024 Behavior Intervention Plan)
8. The student's January 19, 2024 Behavior Intervention Plan has an implementation and progress monitoring plan to monitor the frequency, duration, intensity of problem behavior, as well as the implementation and effectiveness of interventions, strategies, and supports: Daily frequency data would be collected by the special education and general education teacher to document the student's use of the replacement behavior and occurrences of the problem behaviors. The Plan was to be reviewed in nine weeks to determine the effectiveness of the interventions, strategies and support. (January 19, 2024 Behavior Intervention Plan)
9. Based solely on the behavior data from December 5, 2022 to January 19, 2023 (a period of 22 school days), the student's targeted conduct occurred a little over two times a day on average. Based on the behavior data from October 3, 2023 to December 14, 2023, (a period of 45 school days), the student's target behavior occurred an average of nine times a day. (January 28, 2018 and January 19, 2024 Behavior Intervention Plans, Calculation)

10. CCSD relied upon the assessment results of a January 26, 2022 multidisciplinary team report and social/emotional/behavioral data collection/observation from August 2023 to December 2023 in the determination of the present levels of functional performance in the student's January 5, 2024 IEP:
 - a. The student requires direct support with self-control issues. The student acts out many times before thinking of the consequences. The student is often observed to act inappropriately with peers and staff:
 - i. Screaming. The student will get in both students' and teachers' faces and scream. The student has yelled at every special, in the general and self-contained classrooms, recess and lunch. Incidences: Self-contained – Data for November and December 2023: 35 outbursts in 13 days of data collection with two days of no outbursts. General education: Trend data from September 2023 to December 2023 changed from 34 outbursts in 48 data collection sessions and 34 data collection sessions with zero outbursts in September to one outburst in nine data collection sessions and eight data collection sessions with zero outbursts in December.
 - ii. Hitting. Although this behavior does not occur daily or even weekly, the student does become aggressive with classmates and teacher. The student has physically touched (hitting, slapping, pushing, biting) all of the student's peers and also pulled several student's hair. Incidences: Self-contained - Trend data from August 2023 to December 2023 changed from eight incidences in August 2023 to zero for the month of December. General education: Trend data from September 2023 to December 2023 from one incident in September to zero in December.
 - iii. Taking turns. The student does not like to wait the student's turn and becomes upset if the student does not win in the school environment. Many of the students in the class refuse to play with the student in fear of the student pushing, hitting or screaming at them. Most of the times the games are played with an adult and these maladaptive behaviors are still exhibited, but far less often.
 - iv. Following directions. The student chooses which directions the student will follow. With one-to-one attention the student does great, but struggles with the rules when there is a small group at the table as the student prefers one-to-one. (January 5, 2024 IEP, January 5, 2024 Notice of Intent to Implement IEP, CCSD Response)
11. Upon consideration of additional data provided in the course of this investigation, such as the student anecdotal notes and texts, including reported hitting on December 8, 2023 and December 12, 2023, a month cited as zero incidents in the student's January 5, 2024 IEP, it is likely the occurrence of target behaviors was higher than the assessment results considered by the student's IEP Team in the development of the student's January 5, 2024 IEP. (Student Anecdotal Notes, Texts)
12. The student's January 5, 2024 IEP had four annual goals addressing the student's behavioral and social needs:
 - a. Social/Behavioral. By the annual review in the classroom setting, the student will increase the ability to follow classroom rules and expectations in all school settings achieving a criteria of 80% in eight out of 10 opportunities as measured by data collection and implements by the general and special education teachers, resource teacher and staff.
 - b. Behavioral: By annual review, the student will increase the ability to complete work related task independently at the student's level, across all school settings achieving a criteria of 80% in eight of 10 opportunities as measured by data collection and implements by the general and special education teachers, resource teacher and staff.
 - c. Behavioral: By annual review, the student will increase the ability to remain on task within a group activity by following the rules for 20 minutes across all classroom settings

achieving a criteria of 80% in eight out of 10 opportunities as measured by data collection and implemented by the general education teacher, resource teacher, and self-contained teacher and staff.

- d. Behavioral. By annual review, the student will increase in the ability to use functional communication to express the student's frustration or things the student does not want to do across all school settings achieving a criteria of 80% in eight of 10 opportunities as measured by data collection and implements by the general and special education teachers, resource teacher and staff.
13. The Parent disagreed with the IEP on the basis of the correlation between the December 15, 2023 Progress Report and the student's present levels in the IEP. Other than the allegation regarding falsification of data that, as discussed in the introduction, was not within the scope of this investigation, the Parent did not allege that CCSD failed to follow the procedures in the development of the student's January 5, 2024 IEP. (January 5, 2024 Notice of Intent to Implement IEP, State Complaint)

Change of Placement?

14. The student's designated placement in the student's May 11, 2023 IEP was in a self-contained classroom. Placement of the student in a regular education class and special education class (e.g., resource combination) was not selected. All of the student's specially designed instruction was in the location of the self-contained classroom, except for social-emotional skills for 500 minutes per week in the general education classroom (lunch, recess and specials). This placement determination was made by the student's IEP Team, including the Parent, and agreed to by the Parent. (May 11, 2023 IEP)
15. On August 28, 2023, CCSD administratively changed the student's schedule to replace one period of 45 minutes in the general education classroom to resource room and one period of 30 minutes with "push in pull out." The rationale for the change was that behavior data starting August 8, 2023 showed the student was not successful in the general education setting. While CCSD refers to this schedule change as temporary, no information was provided in the course of the investigation on the duration of the schedule change. (CCSD Response, August 28 – August 29, 2023 Email Communications)
16. The student's Parent was notified of this schedule change on August 29, 2023 at a parent-teacher conference. (State Complaint)

Inspect and Review

17. On October 10, 2023, the student's Parent asked for a clarification as to what CCSD's policy was for parent observations and CCSD responded that the school allows a 30-minute observation with a school designee if it is mutually agreed upon by the teacher and parent. (October 17 – 18, 2023 Email Communication)
18. On October 17, 2023, the student's Parent requested to observe the student in the classroom and school staff refused the request. School staff did agree to meet with the student's Parent before or after school or during preparation time. (Confidential Status Record).

19. On November 7, 2023, the student's Parent requested written documentation of CCSD's refusal to allow the Parent to observe the student in the classroom or a copy of the status record documenting that the Parent's request had been denied. (November 7, 2023 Email Communication)
20. CCSD's Confidential Status Record Form serves as a log with note entries of occurrences for an individual student. The student's Confidential Status Record contains handwritten notes of the noted occurrences entered by various CCSD personnel and was provided in response to this State Complaint. The student's Confidential Status Record for the relevant time period of the State Complaint has the student's name, date of birth and student ID on it and documents CCSD's refusal to allow the Parent's October 17, 2023 request to observe the student in the classroom. (Student Confidential Status Record)
21. CCSD denied the allegation regarding CCSD's failure to provide the Parent the requested education record of the student documenting the denial in response to the Parent's November 7, 2023 written request to observe the student in the classroom. However, the provided documentation, regarding a prior observation of a private service provider in September 2023, was not responsive to the allegation. (CCSD Response, September 27 – October 3, 2023, 2023 Email Communications)

Prior Written Notice and Consent

22. On October 10, 2023, the student's Parent requested CCSD complete a Functional Behavioral Assessment to help with the development of an effective Behavior Intervention Plan for the student and an occupational therapy assessment due to repeated concerns with the student's inattention, hyperactivity, and sensory regulation issues. (October 10, 2023 Email Correspondence)
23. On October 12, 2023, CCSD responded to the Parent's request for a Functional Behavioral Assessment and an occupational therapy assessment. CCSD agreed to conduct a Functional Behavioral Assessment and provided the Parent survey forms to be completed to assist the student's teacher in completing the Assessment. (CCSD did not, however, provide a Prior Written Notice or request parental consent for the conduct of the assessment.) CCSD did not agree to conduct the requested occupational therapy assessment:
 - a. "Occupational Therapy requests require certain procedures. A referral for OT can come through an initial evaluation or through the IEP process for students already in special education, which is the case here. I will provide the procedures for the teacher and the OT assessment request can be put in the IEP. The OT referral form, Parent Permission to evaluate form, and a copy of the related service page of the iep (indicating that an assessment will take place) is sent to the OT office and our school OT will be informed that the assessment is ready to begin." (Inconsistently, on October 11, 2023 a request for the parental consent was provided the Parent with a notation that it was for the conduct of the occupational therapy assessment.) (October 10, 2023 and October 12, 2023 Email Communications)
24. In response to CCSD's explanation of the internal procedure to request an occupational therapy assessment, the Parent requested the student's IEP Team meeting be held before November 17, 2024 to discuss occupational therapy. CCSD responded with a proposed meeting date of November 17, 2023 for the student's revision IEP Team meeting and the Parent inquired whether that is the only date everyone could meet: "I would prefer to meet sooner than later but if that is the first available that will have to work." CCSD indicated the Parent would be put on the list to call if anyone cancels. (October 18 - 19, 2023 Email Correspondence)

25. Due to scheduling conflicts, including the Parent's, the student's IEP Team meeting did not occur until December 14, 2023, with the IEP finalized on January 5, 2024. (November 7, 2023 and November 15 -16, 2024 Email Communications, January 5, 2024 IEP, Confidential Status Record)
26. The student's January 5, 2024 IEP includes the related service of a direct occupational therapy assessment with the beginning and ending date of January 5, 2024 to January 4, 2025. (January 5, 2024 IEP)
27. From the Parent's request for a Functional Behavioral Assessment and an occupational therapy assessment until the conduct of the student's January 5, 2024 IEP Team meeting was 87 calendar days or 47 school days. (CCSD 2023/2024 School Calendar for Students)
28. On January 5, 2024, CCSD provide the Parent a Prior Written Notice with the proposed action of an occupational therapy and feeding assessment, but not a Prior Written Notice provided to conduct the Functional Behavioral Assessment of the student. (Review of the Record, January 5, 2024 Parental Prior Notice of District Proposal)
29. On January 5, 2024, CCSD sent the student's Parent two forms requesting the Parent's consent: "Consent for Special Education Supports" that may include the conduct of a Functional Behavioral Assessment, observations, and social/emotional/behavior assessment and one for consent for evaluation to conduct the occupational therapy and feeding assessment. The Parent signed consent for both that same day. (January 5, 2024 Consent for Special Education Supports and Parental Consent for Evaluation Form Student Services)

Copy of the IEP

30. On January 9, 2024, CCSD provided an electronic copy of the student's January 5, 2024 IEP to the student's Parent. (January 5, 2024 IEP, January 9, 2024 Email Communication, Confidential Status Notes)
31. The student's Parent acknowledged the receipt of both an electronic and hard copy of the student's January 5, 2024 IEP from the student's special education teacher. However, the Parent indicated the IEP provided was not a copy of the final IEP, given some missing information such as the Parent's signature confirming receipt of a statement of procedural rights and indication of disagreement with all or part of the IEP, and the student's designated eligibility category. Consistently, the copy of the student's January 5, 2024 IEP provided as an attachment to the State Complaint did not include this information. (State Complaint)
32. The January 5, 2024 IEP provided by CCSD in the course of this investigation includes the Parent's signature confirming receipt of a statement of procedural rights and indication of disagreement with all or part of the IEP, and the student's designated eligibility category. (January 5, 2024 IEP, CCSD Response)
33. The provided CCSD January 9, 2024 email transmittal showing the attachment of an electronic copy of the student's January 5, 2024 IEP did not include the attachment sent that same day. (January 9, 2024 Email Communication)

Field Trip

34. The student's October 2, 2023 IEP in effect at the time of the October 13, 2023 field trip included the related service of direct curb-to-curb transportation 10 minutes per week. The only adult assistance in the student's October 2, 2023 IEP was adult supervision when transitioning from special education to general education and general education to special education, and fade when can. The student's IEP did not include any supplementary aids and services for the student to participate in nonacademic or extracurricular activity occurring at school or exclude the student's participation. (October 2, 2023 IEP)
35. On September 15, 2023, the student's school sent a communication to the families of general education students at the student's grade level regarding the October 13, 2023 field trip. The administrator/designee attending the field trip was the student's grade level general education teacher. The chaperone arrangements for all students in the student's grade was one adult for every eight students. (Request for Approval of Student Travel – Preliminary Approval)
36. The student's Parent signed permission for the student to participate in the field trip on September 18, 2023 and returned the form to the school. (Request for Approval of Student Travel, Text Communication)
37. CCSD transportation was approved and provided for the field trip. The student's special education teacher contacted the student's Parent, and other parents, and the student's Parent was invited to chaperone the student on the field trip and to follow the bus. (Request for Approval of Student Travel, October 12, 2023 Text Communication, State Complaint, Response)
38. The student was absent the day of the field trip for medical reasons. (Student Period Attendances Detail)

CONCLUSIONS OF LAW

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's May 11, 2023 IEP commencing August 1, 2023 with regard to adjusting the student's Behavior Intervention Plan as needed.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with a student's IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007).¹

“Part B does not contain specific requirements for public agencies to document that a child with a disability has been provided with FAPE in accordance with the child's IEP. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80 are applicable to the Part B program. Section 76.731 requires that a State and a subgrantee must keep records to show its compliance with Federal legal requirements.... Consistent with the EDGAR provisions cited above, States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed

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

sufficient to demonstrate whether its public agencies are in compliance with this requirement....” *Letter to Broussardes*, (OSEP, June 9, 2010).²

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies these measures were implemented, including that each student identified as a student with a disability is receiving services appropriate to the student’s disability. This requirement for a verifiable system of records is particularly important in the State Complaint process because, unlike due process hearings where testimony is under oath; cross examination of witnesses is available; and there is an opportunity for the Hearing Officer to judge credibility on matters with conflicting evidence, this process is an investigation process. Accordingly, verifiable documentation is required to reach a determination whether the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

In this case, the student’s May 11, 2023 IEP and October 2, 2023 IEP included the supplementary aid/service of following the student’s behavior plan and adjusting as needed. The initial beginning and ending dates for this service was May 11, 2023 to July 31, 2023 and August 1, 2023 to January 11, 2024. (Finding of Fact (FOF) #3) The student had a Behavior Intervention Plan dated January 28, 2018 in effect during the relevant time period of this State Complaint and this Plan remained in effect until the development of a new Behavior Intervention Plan on January 19, 2024. (FOF #4)

The student’s January 28, 2018 Behavior Intervention Plan had an implementation and progress monitoring plan to monitor the frequency, duration, intensity of problem behavior, as well as the implementation and effectiveness of interventions, strategies, and supports and was to be reviewed every nine weeks by the team to determine the effectiveness of the interventions. (FOF #5) Data were provided in the course of the investigation of this State Complaint on the frequency and intensity of the student’s conduct, included data reported on the student’s January 19, 2024 Behavior Intervention Plan that showed the increasing intensity of the student’s target behaviors as compared to the prior year. (FOFs #6 - #9) However, the only documentation provided by CCSD on the review and/or adjustment of the student’s Behavior Intervention Plan as needed during the relevant time period of this State Complaint was the student’s January 19, 2024 Behavior Implementation Plan, developed two days after the date of this State Complaint. (FOF #7)

As discussed above, CCSD was required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to the student. NAC §388.215. Based on the absence of documentation otherwise, the State Complaint Investigation Team determined that CCSD neither adjusted the student’s January 28, 2018 Behavior Implementation Plan as needed during the relevant time period of the State Complaint nor was the Plan, reviewed every nine weeks from August 11, 2023 through January 11, 2024 to determine the effectiveness of the interventions. (FOFs #5, #7, #9)

Therefore, CCSD failed to comply with IDEA and NAC, Chapter 388, in the implementation of the student’s IEPs in effect, commencing August 1, 2023, with regard to adjusting the student’s Behavior Intervention Plan as needed.

Issue Two:

Whether CCSD complied with the requirements of IDEA and NAC, Chapter 388, with regard to CCSD’s administrative determination on or about August 29, 2023 to change the provision of the

² This United States Department of Education policy letter is publicly available at: <https://sites.ed.gov/idea/files/idea/policy/speeed/guid/idea/letters/2010-2/broussardes060910sea2q2010.pdf>

student's special education services from the general education classroom of age peers to the resource room; specifically:

- a. Whether, if the change was a change of placement, basing the determination on the student's IEP and ensuring that the student's Parent was a member of the group that made the educational placement decision.
- b. Whether the change was in conformity with the least restrictive environment; specifically, after the consideration whether the nature or severity of the student's disability was such that education in the regular class with the use of supplementary aids and services could not be achieved satisfactorily.

In accordance with IDEA, 34 C.F.R. §300.116, and NAC §388.245(6) in determining the educational placement of a student with a disability, each public agency must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and is made in conformity with the least restrictive environment. The requirements of least restrictive environment include that, to the maximum extent appropriate, students with disabilities must be educated with students who are nondisabled; and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §300.114; NAC §388.245.

Any change in the placement of a student with a disability must be based upon the student's current IEP; the initial evaluation or most recent reevaluation of the student, as applicable; and information relating to the current educational performance of the student. NAC §§388.245(6), 388.255; 34 C.F.R. §300.116. Procedurally, a parent must be provided a Prior Written Notice a reasonable time before the public agency proposes or refuses to initiate or change the educational placement of the student. 34 C.F.R. §300.503(a), and NAC §388.300(8).

The student's placement in the student's May 11, 2023 IEP was in a self-contained classroom, not placement in a regular education class and special education class (e.g., resource combination). All of the student's specially designed instruction were to be provided in the location of the self-contained classroom, except for social-emotional skills for 500 minutes per week in the general education classroom (lunch, recess and specials). This placement determination was made by the student's IEP Team, including the Parent, and agreed to by the Parent. (FOF #14)

At issue in this State Complaint is CCS'D's administrative change of the student's class schedule on August 28, 2023 to replace one period of 45 minutes in the general education classroom to resource room and one period of 30 minutes with "push in pull out" of the general education classroom. CCS'D's rationale for the change was that behavior data starting August 8, 2023 showed the student was not successful in the general education setting. (FOF #15)

In order to resolve this issue, it is necessary to determine whether the schedule change that resulted in a removal from the general education classroom to the resource room constituted a change in placement that required a Prior Written Notice (34 C.F.R. §300.503(a), NAC §388.300(8)) and parental participation (34 C.F.R. §300.116, NAC §388.245(6)), or a change in location³ within the administration discretion of the

³ In the discussion of IDEA regulations in 2006, the United States Department of Education explained that: "...a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement." *Discussion of IDEA regulations: Federal Register*, Vol. 71, No. 156, Aug. 14, 2006, pp. 46587 and 46588.

CCSD.

Citing to other Federal Circuit Court of Appeals cases, including *Concerned Parents & Citizens for Continuing Educ. at Malcolm X (PS 79) v. New York City Bd. of Educ.*, 629 F.2d 751 (2d Cir. 1980), the Ninth Circuit Court of Appeals has determined the meaning of “educational placement” under IDEA: “Based on Supreme Court case law, Congress's express intent in the statute, the agency's implementing regulations, and sister circuits' decisions, we hold that "educational placement" means the general educational program of the student. More specifically we conclude that under the IDEA a change in educational placement relates to whether the student is moved from one type of program -- i.e., regular class -- to another type -- i.e., home instruction.” *N.D. et al. v. State of Hawaii Department of Education*, 600 F.3d 1104; 54 IDELR 111 (9th Cir. 2010).

“In determining whether a “change in educational placement” has occurred, the public agency responsible for educating the child must determine whether the proposed change would substantially or materially alter the child’s educational program. In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child’s IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement is the same option on the continuum of alternative placements. If this inquiry leads to a conclusion that a substantial or material change in the child’s educational program has occurred, the public agency must provide prior written notice. . . .” *Letter to Tymeson*, 81 IDELR 23 (OSEP April 7, 2022).⁴

Applying these factors to CCSD’s unilateral determination to remove the student from the general education classroom to the resource room, the change: was not consistent with the educational program in the student’s IEP; diminished the extent to which the student was able to be educated with students without a disability; and was not the same option on the continuum of alternative placements. As such, the removal was a change in placement subject to the requirements of IDEA and NAC, Chapter 388. Further, the change in placement was not in conformity with the least restrictive environment in the absence of the IEP Team’s consideration whether the nature or severity of the student’s disability was such that education in the regular class with the use of supplementary aids and services could not be achieved satisfactorily prior to the removal of the student from the general education classroom. 34 C.F.R. §300.114; NAC §388.245.

Even if behavior data showed the student was not successful in the general education setting (FOF #20), the review of this educational data and determination to change the student’s placement was one for the student’s IEP Team to make, including the Parent. Accordingly, a Prior Written Notice, rather than the provided notice after-the-fact (FOF #16), and parental participation was required pursuant to IDEA, 34 C.F.R. §§300.116 and 300.503, and NAC §§388.245(6) and 388.300(8).

Therefore, CCSD failed to comply with the requirements of IDEA and NAC, Chapter 388, in the change of the student’s placement from the general education classroom of age peers to the resource room in that CCSD failed to base the determination on the student’s IEP; ensure that the student’s Parent was a member of the group that made the educational placement decision; and ensure the change was in conformity with the least restrictive environment.

Issue Three:

⁴ This OSEP letter is publicly available at: <https://sites.ed.gov/idea/files/osep-policy-letter-22-03-to-tymeson-04-07-2022.pdf>

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records; specifically, the record documenting CCSD's response to the Parent's written request on November 7, 2023 to observe the student in the classroom.

Pursuant to IDEA, 34 C.F.R. §§300.501, 300.613, the parents of a student must be allowed to inspect and review any education records relating to their child that are collected, maintained, or used by the public agency. (See also NAC §388.287.) Relevant to this case, this access right requires the public agency to comply with a parent's request to do so without unnecessary delay and in no case more than 45 days after the request has been made. 34 C.F.R. §300.613.

The term "education records" under the IDEA, 34 C.F.R. §300.611(b), means the type of records covered under the definition of "education records" in Title 34 C.F.R. Part 99 (the regulations implementing the Family Educational Rights and Privacy Act (FERPA)). FERPA defines "education records" as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.⁵ It is important to note that there are exceptions to what constitutes an education record. For example, a record of a teacher that are in the teacher's sole possession and are not accessible or revealed to any other person except a substitute is not an "education record." 34 C.F.R. §99.3.

Similarly, not every piece of paper is "maintained" by the public agency: "The ordinary meaning of the word "maintain" is "to keep in existence or continuance; preserve; retain." Random House Dictionary of the English Language 1160 (2d ed. 1987)." As the United States Supreme Court determined with regard to a student's quiz, "...the student papers are not, at that stage, "maintained" within the meaning of § 1232g(a)(4)(A)." *Owasso Independent School District v. Falvo*, 534 U.S. 426 (2002).

In this case, on November 7, 2023, the student's Parent requested written documentation of CCSD's refusal to allow the Parent to observe the student in the classroom or a copy of the status record documenting that the Parents' request had been denied. (FOFs #17 - #19) The only record provided in the course of this investigation of CCSD's denial of the Parent's October 17, 2023 request to observe the student, other than the Parent's email communications, was the student's Confidential Status Record. (FOF #21)

CCSD's Confidential Status Record Form serves as a log with entries of occurrences for an individual student by various CCSD personnel and is maintained by CCSD. The student's Confidential Status Record included the student's name, date of birth and student ID on it and documents CCSD's refusal to allow the Parent to observe the student in the classroom as requested on October 17, 2023. (FOF #20) Therefore, the State Complaint Investigation Team determined that this requested document is an education record under IDEA, 34 C.F.R. §300.611(b).

While the entries in the Student's Confidential Status Record are handwritten notes, given the Record was provided to NDE in the course of this investigation, the requested record of the refusal does not meet the above referenced sole possession exception. 34 C.F.R. §300.611(b); 34 C.F.R. §99.3. In the absence of an exception, the State Complaint Investigation Team determined that CCSD failed to timely provide the Parent the opportunity to inspect and review the requested education record of the student documenting the denial of the Parent's October 17, 2023 request to observe the student in the classroom.

Therefore, CCSD failed to comply with IDEA and NAC, Chapter 388, with regard to the Parent's right to

⁵ Chapter 388 of the NRS and NAC, Chapter do not define the term "education record" or "educational record". The general confidentiality provisions for pupils in NRS §392.029(9) does define "education record" by incorporating the FERPA definition.

inspect and review the student's education records; specifically, the record documenting CCSD's response to the Parent's written request on November 7, 2023 to observe the student in the classroom.

Issue Four:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice and request for consent within a reasonable period of time; specifically, after the Parent's request in the 2023/2024 school year (on or before October 10, 2023) to conduct an occupational therapy and functional behavioral assessment.

With limitations, upon the receipt of a parent's request for a reevaluation of a student, a local educational agency must ensure that a reevaluation of each student with a disability is conducted. 34 C.F.R. §300.303; NAC §388.440. In this case, CCSD was required to consider the Parent's request for an occupational therapy and functional behavioral assessment of the student (FOF #22) and provide the Parent a Prior Written Notice a reasonable time before CCSD's proposed or refused to initiate the requested assessments and, if CCSD agreed to conduct the assessments, to seek parental consent within a reasonable period of time after the referral for reevaluation. CCSD was also 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. §§300.503(a), §300.504; NAC §388.300; *Discussion of IDEA regulations*, 71 Fed. Reg., 46540, 46637 (August 14, 2006).

Neither IDEA nor NAC, Chapter 388, provide timelines for a local educational agency to act on a request for reevaluation of a student and to request parental consent, if the agency proposes to evaluate the student. The United States Department of Education, however, indicated in the discussion of the 2006 IDEA regulations regarding initial evaluations: "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*, 71 Fed. Reg., 46540, 46637 (August 14, 2006).

As noted in the statement of this issue, NDE adopts this "reasonable period of time" standard from the date of the Parent's request for a Functional Behavioral Assessment and an occupational therapy assessment to CCSD's issuance of a Prior Written Notice and request for consent to reach a determination in this case. The student's Parent requested CCSD conduct a Functional Behavioral Assessment and an occupational therapy assessment on October 10, 2023. (FOF #22) CCSD responded to the Parent's request two days later and agreed to conduct a Functional Behavioral Assessment, but informed the Parent that certain internal CCSD procedures had to be followed to conduct the requested occupational therapy assessment. These cited procedures required the student's IEP Team to revise the student's IEP to include the service of an occupational therapy assessment, if an assessment was warranted. (FOF #23)

It was not until January 5, 2024, after the student's IEP Team included the related service of a direct occupational therapy assessment, that CCSD provided the Parent a Prior Written Notice with the proposed action of an occupational therapy and feeding assessment with the beginning and ending date of January 5, 2024 to January 4, 2025. CCSD also requested parental consent that same day to conduct a Functional Behavior Assessment, observations, and social/emotional/behavior assessment. (In the absence of documentation otherwise, NAC §388.215, the State Complaint Investigation Team determined that CCSD did not provide the student's Parent a Prior Written Notice to conduct the Functional Behavioral Assessment of the student.) 34 C.F.R. §§300.503(a), §300.504; NAC §388.300. (FOFs #26, #28, #29)

The passage of time from the Parent’s request on October 10, 2023 for a Functional Behavioral Assessment and an occupational therapy assessment until CCSD’s issuance of the Prior Written Notice to conduct an occupational therapy assessment and request for parental consent for the requested assessments was 87 calendar days or 47 school days. (FOF #27) 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 Appeals 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, waiting 99 days was too long.)

Neither IDEA nor NAC establish the procedure for a local educational agency to determine whether to make the determination whether to propose or refuse the conduct of an assessment upon parental request. 34 C.F.R. §§300.303; NAC §388.440(1). In this case, CCSD chose to establish a procedure in the case of the occupational therapy assessment that required the student’s IEP Team to make that determination (FOF #23), and that is certainly their discretion. However, the State Complaint Investigation Team finds the *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008)⁶ case instructive in the consideration of the facts of this case: “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.”

In order to determine the reasonableness of the delay in this case, it is necessary to look at the circumstances. At the time of the Parent’s request for assessment, the student’s annual IEP was due to be reviewed January 11, 2024. (FOF #2) It is recognized that the subsequent delays regarding the scheduling of the student’s IEP Team meeting to consider the Parent’s request for an occupational therapy assessment was due in part to the Parent’s availability. 34 C.F.R. §300.322(a)(2); NAC §388.281(8). (FOFs #24, #25) However, IDEA, 34 C.F.R. §300.324(a), and NAC §388.284(2) require a student’s IEP Team to consider the results of the initial or most recent evaluation of the student; and the student’s academic, developmental, and functional needs in the development of the student’s annual IEP. The State Complaint Investigation Team determined that, given the facts of this case, in particular the approaching date for the development of the student’s annual IEP and the persistent incidences of concerning behaviors, CCSD’s delay of 87 calendar days (47 school days) to follow internal procedures to decide whether to even assess or not was not reasonable. 34 C.F.R. §§300.303; NAC §388.440(1). (See related Issue Five regarding the appropriateness of the student’s annual social/behavioral/emotional goals in the January 5, 2024 IEP.)

Therefore, CCSD failed to comply with IDEA and NAC, Chapter 388, with regard to providing the Parent a Prior Written Notice and request for consent within a reasonable period of time; specifically, after the Parent’s request in the 2023/2024 school year (on or before October 10, 2023) to conduct an occupational therapy and functional behavioral assessment.

Issue Five:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the student a Free Appropriate Public Education to meet the student’s behavioral and social educational needs;

⁶ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

specifically, whether CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination on the annual goals in these skill areas in the student's January 5, 2024 IEP that was reasonably supported by the student-specific data.

“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, Office of Special Education Programs (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))⁷

“The appropriateness of a determination regarding a student's eligibility should be assessed in terms of its appropriateness at the time of the child's evaluation and not from the perspective of a later time with the benefit of hindsight.” *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 68 IDELR 121 (9th Cir. 2016), citing *Adams v. Oregon*, 31 IDELR 130 (9th Cir. 1999). Accordingly, the determination whether CCSD provided the student a Free Appropriate Public Education in the 2023/2024 school year is based on whether CCSD followed required procedures and applied required standards under IDEA and NAC and reached a determination on the annual goals in the cited skill areas in the student's January 5, 2024 IEP that was reasonably supported by the student-specific data available to CCSD at the time.

In this case, the student's Parent did not allege that CCSD failed to follow procedures within the scope of the investigation in the development of the student's January 5, 2024 IEP (FOF #13) With regard to the substantive determination of the provision of a Free Appropriate Public Education to address the student's behavioral and social educational needs, the student's IEP Team considered assessment results from a January 26, 2022 multidisciplinary team report and social/emotional/behavioral data collection/observation on the frequency and intensity of identified student behavior in the determination of the present levels of functional performance in the January 5, 2024 IEP and, ultimately the student's annual goals. The data collection assessment results were in the area of self-control regarding the student's conduct of screaming; hitting, including other physical touching of hitting, slapping, pushing, biting, and pulling hair; taking turns; and following directions. (FOF #10)

In accordance with IDEA, 34 C.F.R. §300.320, and NAC §388.284(1)(b), a student's IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the student's needs that result from the student's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the student's disability. In this case, there is no disagreement between the Parent and CCSD that annual goals were needed to address the student's behavioral conduct for both purposes, rather the disagreement is with regard to the appropriateness of the determined annual goals in this area.

The student's January 5, 2024 IEP had four annual goals addressing the student's behavioral and social needs to increase the ability to follow classroom rules and complete work-related task independently at the

⁷ This policy letter is publicly available at: https://sites.ed.gov/idea/files/policy_speced_guid_idea_memosdcltrs_acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf

student's level; and remain on task within a group activity and to use functional communication to express the student's frustration or things the student does not want to do. (FOF #12) Upon consideration of the student's conduct, the State Investigation Team determined that the student's annual goals in the January 5, 2024 IEP with replacement behaviors are reasonably supported by the child-specific data, but are not sufficiently comprehensive.

It is concerning that the student's targeted behavioral conduct has been persistent since 2018 (based on the January 28, 2018 Behavior Intervention Plan); the student's annual goals focused solely on the same replacement behavior goals since the January 12, 2023 IEP; there was an increase in the incidence of the targeted conduct from school year 2022/2023 to 2023/2024; the potential consequence of the student's physical touching with students and staff; and the emergence of new conduct such as leaving the designated area, biting peers/staff and throwing or stepping on objects.(FOFs #4, #9, #10, #11) Given these facts, limiting the student's annual goals to the determined replacement behaviors to eliminate/reduce the incidence of these behaviors is not reasonably supported by the data, particularly when there is no known setting event for the conduct.

Therefore, CCSD complied with IDEA and NAC, Chapter 388, with regard to following required procedures under IDEA and NAC in the development of the student's January 5, 2024 IEP, but failed to apply required standards to reach a determination on the student's annual goals to provide the student a Free Appropriate Public Education to meet the student's behavioral and social educational needs.

Issue Six:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the student being allowed to participate in the nonacademic/extracurricular activity of an October 13, 2023 field trip; specifically, if applicable, providing the service of transportation and adult assistance in the student's IEP to participate in extracurricular and other nonacademic activities.

In accordance with NAC §388.245(5), unless the needs or performance of the student preclude participation, a student with a disability must be allowed to participate with students who are not disabled at mealtime, recess, or any other nonacademic or extracurricular activity occurring at school to the maximum extent appropriate and the public agency must ensure that the student receives the supplementary aids and services determined appropriate by the student's IEP Team for the student to participate in those activities. If a student with a disability is excluded from such participation because of the student's needs or performance, the basis for the exclusion must be clearly set forth in the student's IEP. (See also 34 C.F.R. § 300.117)

Accordingly, each student's IEP must include the statement of the special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and include services that will be provided to enable the student to participate in extracurricular and other nonacademic activities with other students with disabilities and students without disabilities. In addition, each student's IEP must include an explanation of the extent to which the student will not participate with students without a disability in the regular class and in nondisabled children and extracurricular and other nonacademic activities. 34 C.F.R. §300.324(a)(4); NAC §388.284(1)(c)(3).

In this case, the student's IEP in effect at the time of the October 13, 2023 field trip did include the related service of direct curb-to-curb transportation 10 minutes per week and adult supervision as a supplementary aid/service when transitioning from special education to general education and general education to special education. However, while the student's IEP did not exclude the student's participation with students without disabilities in extracurricular and other nonacademic activities, the student's IEP not include any

supplementary aids and services for the student to participate in nonacademic or extracurricular activity occurring at school. (FOF #34)

The field trip at issue in this State Complaint was an October 13, 2023 field trip and the student's Parent signed permission for the student to participate in the field trip on September 18, 2023 and returned the form to the school. (FOFs #35 - #37) CCSD transportation was approved and provided for the field trip. Nevertheless, the student's Parent was invited to chaperone the student on the field trip and follow the bus for the student to participate. (The State Complaint Investigation Team noted that the student was absent the day of the field trip for medical reasons (FOF #38); however, that fact would go to the impact of any determined violation.)

As discussed in the introduction of this State Complaint, NDE's jurisdiction with regard to this issue is under IDEA and Chapter 388 of NRS/NAC with regard to the implementation of the student's IEP, not the alleged discrimination set forth in the State Complaint. The student's IEP did not include the service of transportation or adult assistance to participate in extracurricular and other nonacademic activities. As such, CCSD did not fail to provide a supplementary aid/service in the student's IEP for this purpose.

Therefore, CCSD complied with IDEA and NAC, Chapter 388, with regard to the student being allowed to participate in the nonacademic/extracurricular activity of an October 13, 2023 field trip in that the student's IEP did not include the service of transportation and adult assistance to participate in extracurricular and other nonacademic activities.

Issue Seven:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the Parent a copy of the student's January 5, 2024 IEP.

In accordance with IDEA, 34 C.F.R. §300.322(f) and NAC §388.281(6)(h), a public agency must provide a copy of a student's IEP and any revisions to the parents of the student at no cost. Implicit in this requirement is that the copy provided to the parents is, indeed, a copy of the final developed/revised IEP. In this case, both parties agree that the student's Parent did receive the student's January 5, 2024 IEP electronically; however, the parties disagree whether the transmitted IEP was the student's final IEP or a prior draft. (FOFs #30 - #32)

As previously discussed, a verifiable system of records is particularly important in the State Complaint process to reach a determination whether the assertions of the public agency should be believed over the assertions of the complainant or vice versa. The State Complaint Investigation Team independently reviewed and weighed all information and documentation provided in the course of this investigation. The quandary is that CCSD did provide documentation that a copy of the student's IEP was provided to the student's Parent (FOF #33) However, without verifiable documentation from CCSD or the student's Parent of the actual copy transmitted on January 9, 2024, there is no impartial method to reach a determination that the copy provided the Parent was or was not the final copy of the student's IEP. As such, the State Complaint Investigation Team determined that the evidence was insufficient to make a determination as to the probable truth of the matter in this case.⁸

Therefore, there was insufficient evidence to make a determination whether CCSD complied with IDEA and NAC, Chapter 388, with regard to providing the Parent a copy of the student's final January 5, 2024 IEP.

⁸This conclusion does not preclude the student's Parent, of course, from requesting CCSD a copy/another copy of the student's January 5, 2024 IEP.

ORDER OF CORRECTIVE ACTION⁹

In accordance with IDEA, 34 C.F.R. §300.151(b), in resolving a State Complaint in which the State Education Agency has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities.

The State Complaint Investigation Team determined that both a student-specific corrective action and a systemic action are required for CCSD's failure to: implement the student's IEP by adjusting the student's Behavior Intervention Plan as needed; follow procedures in changing the student's placement; allow the Parent to inspect and review a requested education record; provide a Prior Written Notice and request for consent in a reasonable period of time; and provide the student a Free Appropriate Public Education with regard to the student's annual goals in the January 5, 2024 IEP. The Parent's and CCSD's proposed remedies were considered by the State Complaint Investigation Team in determining the appropriate Order of Corrective Action.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action plan (CAP) from CCSD within 20 CCSD business days of the date of this Report on CCSD's plan to implement the ordered actions below, including the timeline. **(Note that the request for parental consent for the conduct of an assessment (Order One) is required to be completed before the submission of the CAP.)** Other than the ordered implementation of the request for parental consent, the CAP must be approved by NDE prior to implementation and documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

Student-Specific Remedy

“A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP.” “[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been a significant shortfall in the services provided.” *Van Duyn*.

In this case, upon consideration of the increase of the incidence of the targeted behaviors, and other factors described under Issues One and Five relative to the student's conduct, it is determined that CCSD's failure to implement the student's IEP by adjusting the student's Behavior Intervention Plan as needed during the relevant time period of this State Complaint; the 47-school day delay in initiating the assessment process in response to the Parent's request; and the failure to provide appropriate annual goals to meet the student's behavioral and social educational needs are material failures (*Van Duyn*) that warrant compensatory education to address the needs of the student. 34 C.F.R. §300.151(b).

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005).

Upon consideration of the several findings of noncompliance in this State Complaint that involved the provision of appropriate services to address the student's social/emotional/behavioral needs, the State

⁹ The Order of Corrective Action in this State Complaint does not preclude the Parent or CCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.

Complaint Investigation Team determined that the appropriate student-specific remedy must do the same. As such, the remedy not only addresses the educational benefits that would have accrued to the student during the relevant time period of this State Complaint through an order of compensatory education, but a prospective student-specific remedy to provide an additional assessment tool/strategy to assess the student's social/behavioral/emotional needs to assist the student's IEP Team in reviewing and revising, as appropriate, the content of the student's IEP in this area. 34 C.F.R. §300.304.

In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. Parents of Student W. This approach for determining compensatory education is considered 'qualitative' in nature, rather than strictly 'quantitative' and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services.

Therefore, unless an alternative student-specific remedy is otherwise agreed to in writing by CCSD and the Parent¹⁰, the CAP must provide for the following student-specific directed actions and provide the timeline to enable the completion of all of the actions as ordered:

1. As soon as possible, but no later than **six school days** after the date of this Report, CCSD must provide the student's Parent a request for parental consent for the conduct of a social/emotional/behavioral assessment of the student by a school psychologist for the purpose, at minimum, of providing additional data to the student's IEP Team to address the student's behaviors characterized as self-control conduct: (screaming; hitting, slapping, pushing, biting, and pulling hair; taking turns; and following directions.)¹¹

Upon the receipt of parental consent¹² for the conduct of this assessment(s), CCSD must conduct the assessment(s) no later than 22 school days after the receipt of parental consent. A copy of the evaluation report must be provided to the Parent and other members of the student's IEP Team at least two days prior to the IEP Team meeting.

The IEP Team meeting must take place as soon as possible at a mutually agreed upon time and place after the provision of the evaluation report to the student's IEP Team, including the Parent. 34 C.F.R. §300.322(a)(2); NAC §388.281(8). The school psychologist who conducted the ordered assessment must participate as a member of the student's IEP Team and the IEP Team must consider the results of the ordered assessment and the Functional Behavioral Assessment¹³ in reviewing the student's January 5, 2024 IEP and revising, as appropriate.

2. CCSD must provide 48 hours¹⁴ of the compensatory education/service to the student of the direct related service of a BCBA to address the student's conduct characterized as self-control. At

¹⁰ If CCSD and the Parent agree to an alternative student-specific remedy, that written agreement must be submitted with the CAP and all required documentation in this Order applies to the implementation of the agreed-upon alternative remedy.

¹¹ The student's anticipated three-year reevaluation is not until January 25, 2025. (FOF#2)

¹² If the Parent elects not to consent to the ordered assessments, as is the Parent's right, CCSD must provide documentation of the Parent's denial of consent to NDE with the submission of the CAP.

¹³ The remedy of the assessment of the student by a school psychologist is in addition to the prior agreed-upon conduct of a Functional Behavioral Assessment. The Functional Behavioral Assessment must also be completed prior to the ordered IEP Team meeting, if not already completed.

¹⁴ The State Complaint Investigation Team determined that the appropriate basis to calculate the required compensatory education remedy in this case was to focus on the period of time that the student's behavior plan was

CCSD's discretion, the direct services of a BCBA may be provided by a qualified private provider. If the student's IEP Team determines that the student requires the direct services of a BCBA during the school day at the IEP Team meeting conducted after the conduct of the ordered assessment, the ordered direct compensatory education/service must be in addition to any direct and/or consultative BCBA related services determined to be required to assist the student to benefit from special education. The ordered compensatory education/service of direct BCBA services to the student must be implemented as soon as possible and completed no later than March 22, 2025.

CCSD must consult with the student's Parent(s) on the appropriate means to provide this ordered compensatory education/service to meet the student's educational needs prior to the submission of the CAP and must consider any concerns of the Parent and/or proposals in the development of the compensatory education/services plan.

In addition to the above required documentation of completion, CCSD is required to send documentation of the progress toward the provision of the ordered compensatory education/service to the student **no later than August 15, 2024**, unless the ordered compensatory education/service was previously completed and documentation provided to NDE of that completion prior to that date.

Systemic Remedy

CCSD's CAP must include the provision of this State Complaint Report to the current principal at the school the student attended in the 2023/2024 school year as soon as possible, but no later than one business day after the submission of the CAP to NDE. In addition, the CAP must include a training on parental and student's rights to the professional staff at this school prior to the commencement of the 2024/2025 school year that must address:

- a. The requirement that each student's IEP must be implemented with fidelity, including the absence of administrative discretion to unilaterally change the student's services or placement as set forth in the student's IEP.
- b. Upon a parent's request for a reevaluation, the requirement that the school act within a reasonable period of time thereafter with a Prior Written Notice and, if an assessment will be conducted, a request for parental consent. If there are internal procedures that must be followed for any requested assessment, the training must include how to ensure compliance with the timeliness requirements of IDEA and NAC Chapter 388.
- c. A parent's right to inspect and review their child's education records under IDEA Part B, including the timeline to do so.

The CAP must include a method for CCSD to determine that the participants have mastered the contents of the training.

to have been reviewed and adjusted as needed. There were 51 school days during the relevant period after the first nine-week period after the commencement of the 2023/2024 school year to January 17, 2024. Taking into consideration the student's absence on two days during this period (FOF #5) and the time period of one year for the completion of all compensatory education/services, 34 C.F.R. §300.600(e), the State Complaint Investigation Team determined that 48 hours of the compensatory education/service of direct BCBA services is appropriate to address the needs of the student.