

**STATE PUBLIC CHARTER SCHOOL AUTHORITY
COMPLAINT INVESTIGATION
(#SC103023)**

Report Issued on December 19, 2023

INTRODUCTION

On October 30, 2023, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., and IDEA regulations, 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC) by the State Public Charter School Authority (SPCSA) and a named charter school.¹

SPCSA is the local educational agency for all purposes for the charter schools it sponsors, including the provision of a Free Appropriate Public Education to each enrolled student and the provision of special education and related services by the SPCSA-sponsored charter school. NRS §388A.159. The named charter school, hereinafter Charter School, is sponsored by SPCSA and, as such, SPCSA, not Charter School, is the responsible local educational agency for purpose of this State Complaint. 34 C.F.R. §300.151 et seq.; NAC §388.318.

The allegation in the Complaint was that SPCSA and Charter School did not comply with IDEA and NAC by refusing to send a request for consent to start an evaluation of a student, claiming a “scope” was required by law first, after the Parents requested a full evaluation. The Parent’s proposed resolution was to send consent home and immediately start the evaluation of the student. During the course of the investigation of the State Complaint, Charter School requested and received the consent from both of the student’s Parents. The Complainant Parent informed Nevada Department of Education (NDE) that, nonetheless, the Parent wanted NDE to investigate the alleged past noncompliance. (November 7, 2023 Email Communication)

The allegation that is under the jurisdiction of NDE to investigate through the special education complaint process raises the following issue for investigation in the 2023/2024 school year to October 26, 2023, the date of the State Complaint.

Issue:

Whether SPCSA complied with IDEA and NAC, Chapter 388, with regard to seeking parental consent in a timely manner after the Parent’s referral of the student for an initial evaluation, if SPCSA agreed that an initial evaluation was needed.

In the November 7, 2023 issue letter to SPCSA, NDE requested additional documents and information in order to investigate the State Complaint. SPCSA was notified in that same correspondence that if SPCSA 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 November 28, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance

¹ See also NAC §388A.530 that requires the governing body of a charter school to ensure the educational services provided by the school to students with a disability comply with the requirements set forth in Chapter 388 of NRS and NAC 388.150 to 388.450, inclusive.

for purposes of this State Complaint. SPCSA did timely provide an organized response; denied the alleged noncompliance; and provided the requisite statement of the factual basis and documentation.

The Parent's Complaint and subsequent correspondence and SPCSA's denial of all claims and all documents submitted by SPCSA 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

1. The student was enrolled in Charter School in the 2023/2024 school year. (Student Attendance Detail, State Complaint, SPCSA Response)
2. The student's Parents share equal decision-making rights. (SPCSA Response, November 7, 2023 Meeting Notes)
3. In school year 2022/2023, the student was provided "research-based intervention" (RTI) beginning in February 2023. The student demonstrated growth during the 2022/2023 school year, but was still below grade level and it was decided to continue RTI for the 2023/2024 school year and chart the student's progress. (October 10, 2023 Meeting Notes)
4. On September 26, 2023, the student's non-complainant Parent requested that Charter School start an IEP for the student. Charter School telephoned the non-complainant Parent to inquire regarding the Parent's concerns and the Parent stated there were no concerns, but the student's teacher had concerns and told the Parent the student needed an IEP. The student's Complainant Parent contacted Charter School thereafter and inquired about a possible evaluation of the student for special education. Charter School scheduled a meeting that took place on October 10, 2023 with both Parents and the school team to discuss the requests. (September 26, 2023 Special Education Contact Log, October 5, 2023 Email Communications)
5. At the October 10, 2023 meeting the school team shared collected information for the current and previous school year, including the iReady, Map and Dibels assessments and classroom information from the student's teacher. The school team, including the Parents, agreed that Charter School would continue to provide RTI and "PawPower" interventions and monitor the student's progress for nine weeks and meet again on January 3, 2024 to review the winter benchmarks data and make a decision about next steps. Both the Charter School and Parents agreed to complete logs during the continued provision of RTI. (October 10, 2023, October 11, 2023, October 16, 2023 Email Communications, Special Education Contact Log)
6. The following day, on October 11, 2023, the student's Complainant Parent submitted a written request to Charter School that the student be evaluated for an IEP. The Parent indicated being aware that RTI would help show more data for Charter School to better evaluate the student, but wanted the student to be evaluated, rather than wait another nine weeks. The Parent asked when to expect a consent form so the next step for evaluation would be started. (October 11, 2023 Email Communication)
7. Charter School responded on October 12, 2023 with a request to meet on November 7, 2023, the earliest available date. The Parent responded that, while the Parent was happy to meet, the Parent requested consent for an IEP evaluation be sent home prior to the meeting. (October 12, 2023 Email Communications)

8. On October 13, 2023, Charter School informed the Parent that the purpose of the November 7, 2023 meeting was to discuss and consider the Parent's request for an evaluation; review the available information; determine if an evaluation was warranted; and if it was, the consent would be provided at that time. Charter School followed up with a telephone call and email communication to the Parent on October 16, 2020 explaining that there were questions on the form that needed to be answered by the team, including the student's Parents, and that is why Charter School wanted to meet instead of just sending home a form to be signed. (October 13, 2023, October 16, 2023 Email Communications)
9. The student's Parent continued to disagree with the Charter School's determination to meet to discuss the Parent's request for evaluation and complete the scope of assessment prior to requesting parental consent. The Charter School responded to the Parent's concerns and repeatedly attempted to explain the reason for not requesting consent prior to the scheduled November 7, 2023 meeting. (October 16, 2023, October 20, 2023 Email Communications)
10. On or before October 20, 2023, Charter School determined that Charter School did suspect the student may have a disability and be in need of special education and related services and that the November 7, 2023 meeting would start the evaluation process with the scope of assessment and consent, after the discussion of the areas of evaluation. (October 20, 2023 Email Communications, Special Education Contact Log)
11. On October 30, 2023, the date the State Complaint was received, Charter School provided the Parents a Prior Written Notice proposing to evaluate the student and identify student's special education needs based on the initial referral with the following content:
 - The stated reasons for the proposal were academic concerns; parent concerns; and educational history and data.
 - The other options considered were continuing RTI data collection, academic adjusting and tracking or refusing the request for an evaluation. These other consideration options were rejected because the school team had data that suggested an evaluation for special education services may indicate a suspected disability.
 - The Charter School relied on RTI data, iReady assessment data, teacher input and Parent input in making the proposal to evaluate the student.
 - The factors relevant to the proposed action were Parent and staff concerns.A notice of proposed meeting arrangements for November 7, 2023 was attached to the Prior Written Notice and the Procedural Safeguards "book." (October 30, 2023 Parental Prior Notice of School Proposal, Parental Prior Notice – Proposed Meeting Arrangements)
12. A period of 11 school days passed after the Parent's October 11, 2023 request for the student to be evaluated for an IEP to the provision of a Prior Written Notice to the Parent. (It is noted that it was a period of 10 school days to the date of the State Complaint.) While parental consent was requested after the filing of this State Complaint, it is also noted that from the referral of the student to the request for parental consent was a period of 17 school days after October 11, 2023. (2023/2024 School Calendar)
13. Both of the student's Parents attended the November 7, 2023 meeting for the stated purpose to discuss Charter School's proposal to evaluate and identify student's special education needs. Consistent with a conversation on September 26, 2023 with Charter School, the non-complainant Parent indicated at the meeting that the Parent did not believe the student had any kind of special education delays. (Complaint Response, November 7, 2023 Meeting Notes, Special Education Contact Log)

14. At the November 7, 2023 meeting with the Parents, Charter School used a form entitled “SESSNV Initial/Re-evaluation Scope of Assessment.” The stated purpose of the form was: “A request for an evaluation, initial or re-evaluation has been made. In efforts to address the issues, we need to determine whether there is evidence that there are characteristics to suggest the possibility of the disability, what that disability might be, and to determine whether there are any new or additional issues that have surfaced that might need to be addressed.” The form was completed at the November 7, 2023 meeting with the Parents and the school team. The team agreed there were two potential eligibilities to consider: specific learning disability and other health impairment, due to ADHD behavioral concerns. (SESSNV Initial/Re-evaluation Scope of Assessment. Determination of Scope of Evaluation & Need for Additional Data, SPCSA Response)
15. Both Parents signed consent for an initial evaluation of the student to determine if the student has a disability and is in need of special education and related services, one on November 7, 2023 and one on November 8, 2023. The areas to be assessed were medical history/status; observation of academic performance; academic; cognitive ability; and social/emotional. (Nevada Consent for Evaluation, November 7, 2023 Meeting Notes)

CONCLUSIONS OF LAW

Neither the IDEA nor NAC, Chapter 388, require that a local educational agency conduct an initial evaluation of all students upon a parent’s request for evaluation to determine whether a student is a student with a disability. A local educational agency is only required to evaluate a student when the agency suspects a student has a disability and is in need of special education and related services. 34 C.F.R. §300.111. (Pursuant to NAC §388.337(1), the standard for suspicion is good cause.) See also *Pasatiempo v. Aizawa*, 103 F.3d 796; 25 IDELR 64 (9th² Cir. 1996); *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20, 67 IDELR 227 (9th Cir. 2016).

A complicating factor in this case was that the student was being provided “research-based intervention” (RTI) at the time the State Complaint was filed. Finding of Fact (FOF) #3) “A multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student’s responsiveness.” *A Response to Intervention (RTI) OSEP 11-07 Memorandum: Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)*, 56 IDELR 50 (OSEP, January 21, 2011).³

In accordance with NAC §388.325, if a student is experiencing an academic or behavioral difficulty but is not suspected of having a disability by the public agency, the public agency may attempt to remediate such a difficulty through targeted scientific, research-based intervention, RTI. However, during the period in which RTI is being provided, a parent of the student may ask for an initial evaluation of the student if the parent suspects that the student has a disability and may qualify for special education and related services.

² The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

³ This OSEP Memorandum is publicly available at: <https://sites.ed.gov/idea/idea-files/osep-memo-11-07-response-to-intervention-rti-memo/> See also IDEA, 34 C.F.R. §300.307 requiring states to permit the use of a process based on the child's response to scientific, research-based intervention in the criteria for determining whether a child has a specific learning disability.

Relevant to this case, if the public agency suspects the student has a disability, the public agency may not refuse to conduct the initial evaluation or delay the initial evaluation until the RTI is completed and must promptly request parental consent to evaluate the student.

While there is a timeline for a local educational agency to conduct an initial evaluation after the receipt of a parent's informed written consent, 34 C.F.R. §300.301(c).) NAC §388.337(1), neither IDEA nor NAC, Chapter 388, provide timelines for a local educational agency to act on a referral of a student suspected of being a student with a disability and to request parental consent, if good cause is found to evaluate the student. The United States Department of Education, however, indicated in the discussion of the 2006 IDEA regulations: "Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed." *Discussion of IDEA regulations*: Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). Consistently, the Ninth Circuit Court of Appeals⁴ determined: "To allow a state to use its regulations as a safe harbor in the absence of a congressional directive or regulation allowing for such would flout Congress's intent that judicial review of IDEA claims be child-specific. Compliance with the state regulation is relevant and should be considered, but the ultimate and dispositive question is whether the District acted in a reasonable time." *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008).

NDE adopts this reasonableness standard as the timeframe from referral for evaluation to the issuance of a Prior Written Notice on the determined proposal or refusal to conduct the initial evaluation of the student and, in accordance with NAC §388.325, as the standard for promptly requesting parental consent to evaluate, if good cause is found to evaluate this student.

Accordingly, in this case, upon the receipt of the Parent's request that the student be evaluated for an IEP on October 11, 2023⁵ (FOF #6), SPCSA was required to consider the Parent's request. After determining whether or not SPCSA suspected that the student had a disability and was in need of special education and related services, SPCSA was then required to provide the parent a Prior Written Notice a reasonable time before SPCSA's proposed or refused to initiate the requested evaluation of the student. 34 C.F.R. §300.503(a); NAC §388.300(8). If SPCSA determined that the agency did suspect that the student may have a disability and be in need of special education and related services, SPCSA was required to promptly request parental consent to conduct the initial evaluation. 34 C.F.R. §300.300; NAC §§388.300, 388.325(5).

In order for parental consent for the conduct of the initial evaluation to meet the requirements of both IDEA, 34 C.F.R. §§300.9, 300.300, and NAC §388.300, it must be informed consent; that is, the parent must have been fully informed of all information relevant to the activity for which consent is sought. (SPCSA would also be required to provide the parent a copy of the procedural safeguards available to the parent upon the parent's request for evaluation. That is not at issue in this State Complaint. 34 C.F.R. §300.504; NAC §388.300.)

Neither IDEA nor NAC establish the procedure for a local educational agency to determine whether good cause exists to suspect a student may be a student with a disability and in need of special education and related services. 34 C.F.R. §§300.8, 300.111; NAC §§388.215, 388.337(1)(a). In this case, Charter School

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

⁵ While the student's non-complainant Parent requested Charter School start on an IEP for the student on September 26, 2023, and the student's Complainant Parent contacted Charter School thereafter (FOF #4), upon consideration that these referrals resulted in the student's Parents' agreement with the Charter School to continue to provide RTI (FOF #5), it is the October 11, 2023 date that was determined to be the date of referral for purposes of this State Complaint.

chose to establish a procedure that ensured parent participation and the input of various knowledgeable professionals through a meeting process to make that determination. (FOFs #7, #8)

At the time of the referral of the student, Charter School had not made a determination that good cause existed to suspect the student was a student with a disability and in need of special education and related services, but decided to delay that determination until meeting with the Parents on November 7, 2023. At some point on or before October 20, 2023, SPCSA/Charter School presumably determined that good cause existed to suspect that the student was a student with a disability and the evaluation process would be initiated with the November 7, 2023 meeting to determine the scope of assessment,⁶ with the request for consent to be provided after the discussion of the areas of evaluation. (FOFs #8, #10) On October 30, 2023, approximately five school days from that determination, SPCSA issued a Prior Written Notice proposing to evaluate the student. (FOF #11)

A period of 11 school days passed after the Parent's October 11, 2023 request for the student to be evaluated for an IEP to the provision of a Prior Written Notice to the Parent. (FOF #12) The scheduled November 7, 2023 meeting with the student's Parents was for the stated purpose to discuss Charter School's proposal to evaluate the student and identify the student's special education needs. (FOFs #15, #16) At the meeting the school team and the Parents agreed that there were two potential eligibilities to consider: specific learning disability and other health impairment and the areas to be assessed were medical history/status; observation of academic performance; academic; cognitive ability; and social/emotional. Both Parents signed consent for the initial special education evaluation of the student. (FOFs #14, #15)

SPCSA's delay in requesting parental consent was the stated reason for the Complaint. Therefore, while the November 7, 2023 meeting with the school team and the Parents was after the filing of this State Complaint, the State Complaint Investigation Team determined that the time period from the Parent's referral of the student for evaluation to the request for consent should also be addressed for purposes of thoroughness and to, hopefully, avoid future controversy.

The delay from the referral of the student to SPCSA's request for parental consent was a period of 17 school days from the Parent's October 11, 2023 request for the student to be evaluated for an IEP. (FOFs #6, #12, #16) Did the delay of 11 school days after the referral for evaluation to the issuance of a Prior Written Notice and 17 school days to the request for parental consent meet the requirement under NAC §388.325 to promptly request parental consent to evaluate and, consistently, to "seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed?" *Discussion of IDEA regulations: Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006).*

In *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008), the Court 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 for a special education evaluation referral was too long.)

⁶The "scope of assessment" cited in this case was an apparent reference to NAC §388.336 that as part of an initial evaluation if data are available, and as part of any reevaluation, a group that includes the student's IEP Team would, in accordance with IDEA, 34 C.F.R. § 300.305, conduct a review of data from existing evaluations, and based upon the review and input from the student's parents, identify the additional data, if any, that is required to make determinations including the educational needs of the student; and whether the student has a particular category of disability; and whether the student needs special education and related service.

In order to determine the reasonableness of the delay in this case, it is necessary to look at the circumstances. While both Parents share equal decision-making rights with regard to the student's education, the Parents did not agree whether the student had any kind of special education delays. (FOFs #4, #5, #13) In addition, the day before the Complainant Parent's referral, after discussing whether the student should be referred for an IEP evaluation, the school team, including the Parents, agreed that Charter School would continue to provide RTI rather than refer the student for an initial evaluation at that time. (FOF #5) Upon receipt of the Complainant Parent's referral, Charter School promptly responded informing the Parent that Charter School wanted to meet to discuss and consider the Parent's request for an evaluation; review the available information; and determine if an evaluation was warranted. (FOFs #6, #8) The Charter School also consistently continued to respond to the Complainant Parent's communications throughout the period of delay. (FOF #9)

The State Complaint Investigation Team determined that, given the facts of this case, Charter School's delay after the referral of the student on October 11, 2023 to determine whether Charter School suspected the student had a disability and was in need of special education and related services by scheduling a meeting with the Parents was not only an inclusive practice, but reasonable in light of the facts in this case. 34 C.F.R. §§300.111, 300.131; NAC §388.337(1). Similarly, delaying the request for consent until such time as the Parents were fully informed of all of the information relevant to the conduct of the initial evaluation of the student ensured the Parents' consent met the requirements of IDEA, 34 C.F.R. §§300.9, 300.300, and NAC §388.300. As such, it is determined that the delay of 11 school days after the referral for evaluation to the issuance of a Prior Written Notice and 17 school days to the request for parental consent met the requirement under NAC §388.325 to promptly request parental consent to evaluate and "seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed."

Therefore, SPCSA complied with IDEA and NAC, Chapter 388, with regard to seeking parental consent in a timely manner after the Parent's referral of the student for an initial evaluation, when SPCSA agreed that an initial evaluation was needed.