

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL061518)**

Report Issued on September 6, 2018

INTRODUCTION

On June 15, 2018, the Nevada Superintendent of Public Instruction received a Complaint dated May 17, 2018 regarding the provision of a Free Appropriate Public Education to a student enrolled in the Clark County School District (CCSD) in the 2017/2018 school year. The Complainant alleged the CCSD violated the requirements of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300, or the provisions of the Nevada Administrative Code (NAC) §§388.150 to 388.450 with regard to the failure to provide transition services to the student after moving from an ultra-high security school to a comprehensive campus on May 7, 2018.

The Complaint was completed and signed by a former Educational Surrogate appointed by the Eighth Judicial District Court's Family Division on January 23, 2018, but filed by an attorney from the Legal Aid Center of Southern Nevada on June 15, 2018. Given the Educational Surrogate did not file the Complaint; had withdrawn as the student's Educational Surrogate at the time the Complaint was filed; and referred the Nevada Department of Education (NDE) to the Legal Aid Center of Southern Nevada with regard to the findings and disposition of this Complaint, the NDE determined that the attorney who filed the Complaint was the Complainant in this matter

Since the Complainant was not the parent of the named student, the Complainant was notified that in order for NDE to release any personally identifiable information to the Complainant, including the Complaint Investigation Report, the NDE must receive parental consent authorizing disclosure of such information to the Complainant. (34 C.F.R. §300.622, NAC §388.289) During the conduct of the investigation, the Complainant forwarded a July 12, 2018 Stipulation and Order to Appoint Volunteer Advocate Acting as Educational Surrogate issued by the Eight Judicial District Court's Family Division. The new Educational Surrogate, as the student's Parent in accordance with IDEA, 34 C.F.R. §300.030, and NAC §388.071, did not provide the required consent to the NDE to release personally identifiable information to the Complainant.

In addition to the alleged violation of the IDEA, the Complaint characterizes the allegation as also constituting negligence and child endangerment. The Complainant was informed that the NDE did not have jurisdiction to investigate allegations of negligence and child endangerment through the State Complaint system. However, since the safety of children and protection from abuse and neglect is paramount, the Complainant was notified that while the NDE did not have jurisdiction over these allegations through the State Complaint process, there were other actions that the Complainant attorney was aware of to be pursued if the attorney believed the student had been neglected or endangered.

The Complainant was also informed that the NDE did not have jurisdiction to investigate personnel issues through the State Complaint system. For resolution of the personnel issues raised in the Complaint related to alleged guarantees and falsehood, the Complainant was referred to the school principal or, if that was not satisfactory, to the CCSD Superintendent.

All documents and arguments submitted by the Complainant and the CCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUE

The Complainant did not allege that the CCSD failed to follow required procedures under the IDEA and NAC, Chapter 388 with regard to the provision of a Free Appropriate Public Education to the student. Rather the sole allegation was with regard to the appropriateness of the transfer of the student from the special school to a self-contained classroom on a comprehensive campus without transition assistance. Therefore, the allegation in the Complaint that is under the jurisdiction of the NDE to investigate through the special education complaint process raised the following issue for investigation from April 25, 2018 through May 16, 2018:

Issue:

Whether the student's change of placement from a special school to a comprehensive campus was appropriate with regard to the student's need for transition services after the change in placement; that is, whether the CCSD applied required standards under the IDEA and the NAC and reached a determination that was reasonably supported by the student-specific data with regard to the student's need for transition services after the change in placement.

FINDINGS OF FACT

General

1. Classes began for the student in the 2017/2018 school year on August 14, 2017. May 24, 2018 was the last day of school in the 2017/2018 school year. (2017/2018 CCSD School Calendar, Student Enrollment History, Complaint)
2. During the time period of this Complaint, the student had an October 17, 2017 annual Individualized Education Program (IEP) in effect that was revised on April 25, 2018 and again on May 16, 2018. (IEPs)
3. The student's foster mother was the designated parent at the time the October 17, 2017 IEP was developed. From January 23, 2018 through May 17, 2018, the Eighth Judicial District Court, Clark County, Nevada appointed an Educational Surrogate parent who became the designated Parent for the development of the April 25, 2018 and May 16, 2018 IEPs. (Court Appointment Documents, IEPs)

4. The statement of parent's educational concerns in all three of the student's IEPs in effect in the 2017/2018 school year included concerns for the student's safety and the safety of others as well as the student's "chronic" elopement. (2017/2018 IEPs)
5. The student's placement from October 31, 2018 through May 6, 2018 was in a special school with no percentage of the school day in the regular school environment. A self-contained program was considered and rejected as a placement. (October 17, 2017 IEP)

Student's Social Emotional Skills

6. At the time of the student's change of placement from a special school to a self-contained classroom on a comprehensive campus, the student's most recent Multi-Disciplinary Assessment was dated November 30, 2016. With regard to the student's social emotional skills, the Report provides: "()¹ most profound area of deficit is that of the social/emotional skills area. () has difficulties with authoritative figures and respecting adults as well as () peers. () demonstrates both physical and verbal aggression with any person of () choosing." (April 25, 2018 IEP)
7. The student had eight behavioral incidents in the 2017/2018 school year from August 17, 2017 through October 9, 2017 that included aggressive behavior toward peers; threat to another student; fighting; assault of staff; aggressive behavior; threat to staff; disregard for rules and elopement. Since attending the CCSD special school from October 31, 2017 to April 25, 2018, the student had only two behavioral infractions that occurred on December 14, 2017 and December 21, 2017. These two infractions included fighting. (IEPs)
8. The student's October 17, 2017 Behavior Intervention Plan identified the following Functional Behavior: "When occurrences are not in () favor, is expected to complete a task, and/or frustrated with surroundings and peers, () will display non-compliant behavior, elopement from classroom/campus or engage in verbal and/or physical aggression toward peers and authority figures. This is done in order to avoid any assigned tasks and control the overall situation within the classroom environment. This is more likely to occur if () deems the tasks too difficult, circumstances from home/school are plaguing (), or does not want to comply with what is being asked of (), becomes frustrated, has difficulty expressing appropriately for assistance. Current data indicates that elopement and verbal aggression is a daily occurrence, while physical is at least twice per month." (October 17, 2017 Behavior Intervention Plan)
9. The student's April 25, 2018 Behavior Intervention Plan identified the following Functional Behavior: "When becoming frustrating (sic), due to peer aggravating () or a work assignment that () perceives to be too long, () will stay angry for an extended period of time (usually throughout the school day) to escape the situation." (April 25, 2018 Behavior Intervention Plan)
10. The student reached the three behavior goals in the student's IEP by April 24, 2018 and showed improvement in behavior/social skills, such as demonstrated discipline, maturity and consideration of others. Along with noting that the student met the behavior goals,

¹ () throughout this Report denotes the deletion of personally identifiable information.

the student's teacher indicated that the student benefited from taking a break when there is a chaotic situation or a classroom disruption; the student needs a break when a lot of yelling occurred; and the student does not like authority figures pushing the student into doing something. The effect of the student's behavior/social skills on the student's involvement and progress in the general education curriculum was that due to the student difficulties taking directives from authority figures, the student would experience difficulty in the general education curriculum. (April 25, 2018 IEP – Present Levels of Academic Achievement and Functional Performance)

Change of Placement

11. As early as March 23, 2018, the CCSD was considering the student's transition to a comprehensive campus given the student's progress. (Confidential Status Record - April 26, 2018)

12. At the student's April 25, 2018 IEP meeting, the IEP Team determined that the Least Restrictive Environment was no longer a special school, but rather a self-contained program on a comprehensive campus. The student's Educational Surrogate attended the April 25, 2018 IEP meeting and agreed with the IEP Team's final determination that the student's placement be changed to a comprehensive school. The student's foster mother participated in the IEP meeting and informed the Team that she was not in favor of the student's change of placement due to the student's success at the special school. (April 25, 2018 IEP and Prior Written Notice, Confidential Status Record - March 23, 2018 and April 25, 2018)

13. The student's IEP Team changed the student's placement to a self-contained program on a comprehensive campus with 25% of the school day in the regular education environment at the April 25, 2018 IEP meeting. The location for all special education services was changed from the special school setting in the October 17, 2017 IEP to self-contained and the location for the supplementary aids was changed to special education, general education and on the school campus. The services in the general education setting included supplementary aids with regard to text, tests, and assignments. The student was placed in the self-contained classroom on the comprehensive campus from May 7, 2018 through May 16, 2018. (October 17, 2017 IEP, April 25, 2018 IEP, Student Enrollment History)

14. The Justification for Placement Involving Removal From Regular Education Environments in the April 25, 2018 IEP included that the student required a structured environment where rules and expectations for behavior are clearly defined and consistently reinforced throughout the school day; that the student will require frequent verbal reinforcement and multiple opportunities to practice replacement behaviors for frustration and anger before generalizing these skills into the larger general education setting; and that these supports are necessary to ensure the student's success in both the general and special education environment. These same justifications are included in the student's May 16, 2018 IEP for the change of the student's placement back from the self-contained classroom on the comprehensive campus to the special school. (April 25, 2018 and May 16, 2018 IEPs)

15. The student's IEP Team had a lengthy discussion regarding whether the student's placement would be changed immediately or at the beginning of the next school year at the April 25, 2018 IEP meeting. The student's IEP Team determined the change of placement would occur in the 2017/2018 school year and the student started at the comprehensive campus on May 7, 2018, 14 school days before the end of the school year. (Confidential Status Record- April 25, 2018, May 16, 2018 IEP, School Calendar)
16. The only mention of transition in the student's IEP in this context is a modification of the supplementary aid in the student's October 17, 2017 IEP to warn the student prior to the transition of activities in both the special education and general education locations. The student's Educational Surrogate alleges that at the IEP meeting, the Special Education Facilitator for the comprehensive campus and the representative from the special school stated they would have services to help the student transition to the comprehensive campus. There is no documentation of these statements and no mention of such transition services or support in the student's April 25, 2018 IEP or revised Behavior Intervention Plan. However, the special school transition specialist did attend the student's April 25, 2018 IEP meeting and the CCSD confirmed in the course of this investigation that there were statements from the special school to assist with the student's transition to the self-contained classroom on the comprehensive campus, but that assistance never occurred. (April 25, 2018 IEP and Behavior Intervention Plan, Confidential Status Record- April 26, 2018, Complaint, CCSD August 27, 2018 Email)
17. The student started at the comprehensive campus on May 7, 2018. On May 11, 2018, four school days later, the student received a Behavior Referral for Insubordination for misconduct when transitioning to electives from the special class early in the school day. The misconduct included resisting authority figures and elopement. The CCSD police became involved and the student was excluded from school on May 11, 2018 for the second half of the day and from May 14, 2018 through May 16, 2018 for a Required Parent Conference, Juvenile Detention, and suspension. (April 25, 2018 and May 16, 2018 IEPs, 2017/2018 School Calendar, Confidential Status Record – May 16, 2018, Student Period Attendance Detail, Student Enrollment History)
18. On May 16, 2018, a revision IEP meeting was convened at the scheduled Required Parent Conference to address the student's misconduct. The student's IEP Team determined that the student "needs more transition to be successful on a comprehensive campus." The Team also agreed that there was no transition in place for the student to be successful and comfortable on a comprehensive campus and the student should return to the special school. (May 16, 2018 IEP, Confidential Status Record – May 16, 2018)
19. The student returned to the special school on May 17, 2018 and remained in the special school until the end of the school year on May 24, 2018. (Student Enrollment History)
20. The student's April 25, 2018 IEP, the IEP in effect at the time of the student's exclusion for misconduct, provided 1400 minutes of specially designed instruction per week, slightly over 4.5 hours per day. (April 25, 2018 IEP)
21. The CCSD was provided the opportunity to dispute the stated noncompliance with regard to the student's need for transition services and did not. In the course of the investigation, CCSD confirmed that the absence of transition assistance made the

transition for the student "difficult." (July 2, 2018 Issue Letter and Request for Documents and Information, CCSD August 27, 2018 Email)

CONCLUSION OF LAW

Issue:

Whether the student's change of placement from a special school to a comprehensive campus was appropriate with regard to the student's need for transition services after the change in placement; that is, whether the CCSD applied required standards under the IDEA and the NAC and reached a determination that was reasonably supported by the student-specific data with regard to the student's need for transition services after the change in placement.

State Educational Agencies (SEAs) are charged with investigating State Complaints alleging a violation of a Free Appropriate Public Education and, in so doing, must determine whether the public agency has followed the required IDEA Part B procedures to reach its determination, and whether the public agency has properly addressed the individual student's abilities and needs. (Office of Special Education Programs (OSEP) Dispute Resolution Procedures Under Part B of the IDEA (7/23/2016), 61 IDELR 232, citing 71 FR 46601 (8/14/2006)) As noted previously, whether the CCSD followed required procedures under the IDEA and NAC, Chapter 388, with regard to the provision of a Free Appropriate Public Education to the student was not at issue in this Complaint.

Federal guidance from OSEP further indicates that in investigating an allegation of a denial of a Free Appropriate Public Education to a student, SEAs must review data provided "including evaluation data and any explanations included in the public agency's prior written notice to the parents under 34 CFR §300.503 as to why the public agency made its decision regarding the child's educational program or services." "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. 71 FR 46601 (August 14, 2006)."²

The required standards for the provision of a Free Appropriate Public Education under the IDEA are well-established: A Free Appropriate Public Education is satisfied by ". . . providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Board of Education of the Hendrick Hudson Central School District, Westchester County, Et. Al v. Rowley*, 458 U.S. 176 (1982). "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . . That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be "specially designed" to meet a child's "unique needs" through an "[i]ndividualized education program." §§ 1401(29), (14) (emphasis added). An IEP is not a form document. It is

² This policy letter is publicly available at:
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. §§ 1414(d)(1)(A)(i)(I)-(IV), (d)(3)(A)(i)-(iv)." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

In this case, since at least the 2016/2017 school year, the student has had difficulty with authority figures and demonstrated physical and verbal aggression to both students and adults. (Finding of Fact (FOF) #6, #8, #9) In addition, the student's parents expressed the same educational concerns for the student's safety and the safety of others and for the student's "chronic" elopement at all three of the student's IEP meetings in the 2017/2018 school year, including the IEP meeting that effected the student's change of placement to a self-contained classroom on a comprehensive campus. (FOF #4)

The student's aggressive behavior, toward both peers and adults, and elopement, resulted in eight behavioral incidents from August 17, 2017 through October 9, 2017. After the transfer of the student to the special school on October 31, 2017, the student had only two incidents of misconduct that involved aggressive behavior on December 14, 2017 and December 21, 2017. Overall the student made progress in the area of behavioral and social skills after moving to the special school. (FOFs #5, #10) However, even with this improvement, the student's teacher acknowledged the student still possessed underlying behavioral/social concerns relative to the school environment with regard to chaotic situations, classroom disruption, and authority figures. (FOFs #7, #8, #9)

Approximately six months after the student's enrollment in the special school and as early as three months after the student's last cited behavioral misconduct, the CCSD began considering the student's change of placement. (FOF #11) After four months of no cited behavioral misconduct, the student's IEP Team determined the student's placement in a special school should be changed to a self-contained classroom on a comprehensive campus with 25% involvement in the general education environment. (FOFs #12, #13) However, the student's IEP Team also determined that as a result of the student's difficulties taking directives from authority figures the student would experience difficulty in the general education curriculum (FOF #10); that the student required a structured environment where rules and expectations for behavior are clearly defined and consistently reinforced throughout the school day; that the student would require frequent verbal reinforcement and multiple opportunities to practice replacement behaviors for frustration and anger before generalizing these skills into the larger general education setting; and that these supports are necessary to ensure the student's success in both the general and special education environment. (FOF #14)

In the course of this investigation, the CCSD confirmed that there were statements from the special school to assist with the student's transition to the self-contained classroom on the comprehensive campus, but that assistance never occurred. Despite this apparent concern of the special school with regard to the student's change to this less restrictive environment, the student's IEP did not include any transition services/support to successfully change placement for the last two school weeks of the school year. (FOF #16) Given the persistent underlying behavioral/social concerns at the time of the student's change of placement to this less restrictive environment; the concern of the special school with regard to transition; the behavioral triggers of chaotic situations, classroom disruption, and authority figures; and the student's recently acquired control over aggressive behaviors and elopement, the absence of any transition services/support to the student upon, at least, the student's change of placement is not reasonably supported by the student specific data and did not meet the student's unique needs.

As such it is determined the student was denied a Free Appropriate Public Education in this regard.

It is important to note that this determination was not reached in hindsight (*Adams v. State of Oregon*, 195 F.3d 1141; 31 IDELR 130 (9th Cir. 1999), but rather was based on the data available to the student's IEP Team at the time of the development and implementation of the student's April 25, 2018 IEP. However, in this case, it is believed that the consideration of subsequent events provides further insight into the student's "condition." (*E.M. v. Pajaro Valley Unified School District* (652 F.3d 999, 57 IDELR 1 (9th Cir. 2011)) Specifically, the behavioral misconduct that occurred four days after the student's placement in a less restrictive environment involved previously identified functional behaviors that occurred upon disruption and taking direction from authority figures (FOF #17); occurred after four months of no cited behavioral misconduct in the prior placement (FOF #7); and, at the student's May 16, 2018 IEP meeting, the IEP Team acknowledged that the student "needs more transition to be successful on a comprehensive campus" and there was no transition in place for the student to be successful and comfortable on a comprehensive campus (FOFs #18, #21). Further, the CCSD was provided the opportunity in the course of this investigation to dispute the stated noncompliance with regard to the student's need for transition services and did not. (FOF #21)

Therefore, the CCSD failed to comply with the IDEA and NAC with regard to applying required standards and reaching a determination that was reasonably supported by the student specific data with regard to the student's need for transition services after the change in placement from a special school to a self-contained classroom on a comprehensive campus.

ORDER OF CORRECTIVE ACTION

The CCSD is required to take corrective action to address the identified noncompliance with regard to applying required standards and reaching a determination that was reasonably supported by the student specific data on the student's need for transition services to effect the change in placement from a special school to a self-contained classroom on a comprehensive campus.

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action (CAP) from CCSD by October 19, 2018 to address the identified noncompliance. The CAP must be approved by the NDE prior to implementation and result in the completion of the plan no later than one year from the date of this Report. The CCSD must include in the CAP a plan to determine the nature and amount of appropriate compensatory education to be provided to the student during the 2018/2019 school year to remedy the three-and-a-half-day exclusion of the student from school due to misconduct (FOF #17, #19). Any such determination must include the student's Parent (as defined under the IDEA), the student's foster parent (if the student remains in the foster placement in effect in May 2018) (FOF #3, #12), and the student's current teacher. If the CCSD and the Parent cannot agree on: (1) the amount of compensatory education, it must be for a minimum of 12 hours to be provided during school breaks or before or after school; or (2) the nature of the compensatory education, it must be in the area of behavioral/social skills. (FOFs #10, #20)