

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL070918)**

**Report Issued on September 28, 2018**

**INTRODUCTION**

On July 9, 2018, the Nevada Superintendent of Public Instruction received a Complaint dated June 21, 2018 regarding the provision of a Free Appropriate Public Education (FAPE) 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 provision of a FAPE to the student upon transfer to the CCSD from out of state. Specifically, the Complainant alleged the CCSD failed to attempt to implement the student's out-of-state Individualized Education Program (IEP) and failed to provide the student with any supports or meaningful interventions; the assessment of the student was faulty in that no new testing was completed or analysis was conducted; and the student was suspended over ten days without the convening of an IEP Team meeting or Manifestation Determination.

As referenced in the State Complaint, a Due Process Complaint was filed on behalf of this student on April 16, 2018 and was subsequently amended on June 6, 2018. The case closed on July 9, 2018 by Order of Withdrawal as a result of a Resolution Agreement dated July 3, 2018. Given the resolution of this case was not reached by a due process decision issued after a hearing, Title 34 C.F.R. 300.152(c) of the IDEA did not apply. However, the NDE requested and received a copy of the settlement agreement to determine whether the assumption of jurisdiction over this Complaint was precluded by the Resolution Agreement (Finding of Fact (FOF) #27). While the description of the nature of the problem in the resolved Due Process Complaint was the same as the allegations raised in this State Complaint, the NDE determined that the Resolution Agreement did not preclude the filing of this State Complaint. Given the similar nature of the allegations in both processes, the Complainant and the CCSD were informed that the agreed upon remedies in the July 3, 2018 Resolution Agreement would be considered in the event it was determined that noncompliance occurred with regard to the designated issues in this Complaint and corrective action was warranted. The Resolution Agreement included the agreement of the parties that it was not and must not be construed as an admission as to the merits of the other party's position or claims raised in the Due Process Complaint (FOF #28) and it was not in this investigation.

Since the Complainant was not the parent of the named student, the Complainant was notified that in order for the 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) While the Parent did provide Consent for the Disclosure of Personally Identifiable Information, the consent was for the Parent to be provided the personally identifiable

information, not the Complainant. Therefore, the Parent did not provide the required consent to the NDE to release personally identifiable information to the Complainant.

The CCSD was provided the opportunity to dispute the stated noncompliance with regard to this Complaint and did not. (FOF #2) 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 ISSUES**

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raised the following issues for investigation from December 4, 2017 through April 9, 2018:

### **Issue One:**

Upon the student's transfer to the CCSD from another State, whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the student with a FAPE, including services that were comparable to the services described in the student's previous IEP, until the CCSD conducted an evaluation of the student and developed a new IEP, if determined appropriate.

### **Issue Two:**

Whether the CCSD was required to administer new assessments prior to the conduct of the MDT meeting on April 9, 2018.

### **Issue Three:**

Whether the CCSD complied with the IDEA and the NAC, Chapter 388 with regard to the conduct of a Manifestation Determination after the suspension of the student constituted a disciplinary change of placement in March 2018.

## **FINDINGS OF FACT**

### **General**

1. The student's first day of school in the CCSD for the 2017/2018 school year was December 4, 2017. (Student Period Attendance Detail)
2. The CCSD was provided the opportunity to dispute the stated noncompliance with regard to this Complaint and did not. (July 16, 2018 Issue Letter and Request for Documents and Information)

## Transfer

3. The student transferred from another State in the 2017/2018 school year and had a current November 13, 2017 IEP in effect at the time the student enrolled in the CCSD. (2017/2018 CCSD School Calendar, Out-of-State IEP, Student Schedule, Complaint)
4. The student's out-of-state IEP included goals in the areas of reading comprehension, writing, algebra, college/college awareness and adult directives and the following special education and supplementary aides and services:
  - a. 282 minutes a week of specialized academic instruction to be provided four days a week at 58 minutes and one day a week at 50 minutes and 60 minutes yearly of college awareness and career awareness combined; and
  - b. Supplementary aides and services in the regular classroom/public day school:
    - a. Chunk assignments and assessments on a daily basis during assignments and assessments;
    - b. Use of calculator at teacher discretion on math assignments and assessments on a daily basis during the assigned activity;
    - c. Assessment and classroom assignment directions clarified to student after given to the classroom for clarification as needed on a daily basis during each period;
    - d. Redo/retake low scoring assignments/tests within a week after low score was given arranged by the general education teacher and Specialized Academic Instruction (SAI) teacher when given assignments/test scores with the duration of length of assignments/tests;
    - e. Consultation with case manager and SAI support staff with general education staff weekly for 5-10 minutes; and
    - f. Take tests and quizzes in a non-distracting environment daily for all class periods. (Out-of-State IEP)
5. The student's out-of-state IEP included that the student's behavior impeded the student's learning or the learning of others and provided the following positive behavior interventions strategies and supports: preferred seating, modeling and explicit teaching of Positive Behavior Intervention Supports - 16 skills in Encore class, communication with parents, backpack is put away to reduce distractions, given opportunity to take assessments in pre-determined location, and communication with SAI teacher on a weekly basis. (Out-of-State IEP)
6. The student's behavior goal in the out-of-state IEP was: When prompted by a teacher or other adult, student will identify three appropriate social strategies for dealing with anger, disappointment, and frustration and then student will return to focusing on classroom behavior expectation/classroom assignments with 100 percent accuracy in 2 of 3 trials as measured by observation, interview with student and data collection. The student, Parent and SAI teacher were responsible for this goal. (Out-of-State IEP)

7. A December 11, 2014 out-of-state Tier 2 Positive Behavioral Intervention plan was provided in the course of this investigation. These interventions were inconsistent in some regards with the Positive Intervention Supports in the more recent out-of-state IEP. Therefore, the more recent IEP was relied upon in the course of this investigation. (Out-of-State IEP, December 11, 2014 Out-of-State Tier 2 Positive Behavioral Interventions)
8. There was no behavior plan in place for the student in the CCSD up to the development of the student's April 9, 2018 IEP. (Manifestation Determination Summary, April 9, 2018 IEP, Review of Records)
9. The student's out-of-state IEP provided the least restrictive environment for the student was the general education setting with SAI support and services. The student was placed outside the regular class and extracurricular and non-academic activities 11% of the time. The time outside the general education classroom was a "Learning is Power" course. (Out-of-State IEP)
10. The Parent consented to the temporary placement of the student in "resource" at the student's home-zoned school in the CCSD on December 4, 2017 until the "formal diagnostic review of eligibility data." The student's out-of-state IEP was to be utilized to deliver services to the student. (CCSD MDT Report, Notice of Temporary Placement-Parent Consent Form- CCF-554)
11. The student's schedule for the second quarter of the 2017/2018 school year from December 4, 2017 through January 7, 2018 included one class with a special education teacher in principles of leadership and one class with a special education teacher in English. In the third quarter, the student had one class with a special education teacher in math from January 8 to March 14, 2018 and one class with a special education teacher for English from March 13, 2018 to March 14, 2018. Each quarter included eight periods and the CCSD characterized these special education classes as being in resource. (Student Schedule, September 11, 2018 CCSD Email Responses)
12. Based on the student's schedule for quarters two and three, the student was enrolled in special education classes for 422 minutes a week in the second quarter and 211 minutes a week in the third quarter, with the exception of two additional days of 170 minutes for the last two days of the quarter. There was no student schedule provided during the course of the investigation for quarter four that started March 15, 2018. (Student Schedule, September 11, 2018 CCSD Email Responses)
13. The NDE requested documentation of the implementation of the student's out-of-state IEP and behavior intervention plan on multiple occasions during the course of this investigation. The CCSD confirmed that the student's class schedule for quarters two and three was the only documentation the CCSD had of the implementation of the student's out-of-state IEP and behavior interventions plan. (August 30, 2018 Email - Request for Documentation, September 6, 2018 and September 11, 2018 Emails - CCSD Responses)

## **Assessment**

14. At the time of the student's enrollment in the CCSD, the student's last evaluation was a November 24, 2015 Psycho-Educational Evaluation from the state from which the student transferred. The student's next multi-disciplinary evaluation in the transfer state was scheduled for December 4, 2018, the same day the student enrolled in the CCSD. (Out-of-State Psycho-Educational Evaluation, November 13, 2017 Out-of-State IEP)
15. The CCSD requested and received parental consent for evaluation on December 4, 2017. The stated concerns for evaluation were health and sensory motor, vision/hearing assessment; and academic performance/achievement. (Parental Consent for Evaluation Form)
16. From the date the student enrolled in the CCSD and the Parent provided consent to the CCSD, there were 29 school days to the completion of the initial evaluation of the student and 70 school days to the determination of the student's eligibility for special education and the development of the student's initial IEP. (CCSD 2017/2018 School Calendar for Students)
17. The April 9, 2018 CCSD MDT Report indicates that the review of existing evaluation data by the student's IEP Team and other qualified individuals and identification of what additional data, if any, were needed to determine eligibility and educational needs took place. However, there was no documentation of this review, including the identification of needed additional data, available for consideration in the investigation of this Complaint. (September 6, 2018 CCSD Response for Documentation, MDT Report)
18. The CCSD identified the following procedures as comprising the initial evaluation of this student:
  - a. Review of available school records, including reliance on the November 24, 2015 Psycho-Educational Evaluation and other out-of-state records on January 29, 2018;
  - b. Health assessment on January 22, 2018;
  - c. Two Qualifying Conditions of Eligibility Protocol, noted twice, on April 9, 2018, that were used to summarize and document the MDT's conclusions regarding assessment findings;
  - d. Review of Dean's Chronology regarding behavioral incidents on April 6, 2018;
  - e. Teacher's progress reports and observations reported on January 9, 2018, January 22, 2018 and January 29, 2018. (April 9, 2018 MDT Report)
19. The MDT Report cited the evaluation results of "Academic Achievement Assessments/Administered by SPED Teacher." The reported results were based only on teacher reports and observations. The progress reports and observations were from five of the student's teachers on the student's strengths and needs for improvement and did not include the administration of an instrument or document a focused observation of the student at any point in time. (April 9, 2018 MDT Report)

20. In the course of the investigation, CCSD confirmed that there was no further documentation of other assessments administered during the initial evaluation of the student other than the health assessment and cited teacher reports/observations. (August 30, 2018 Request for Information, September 11, 2018 CCSD Response)
21. The CCSD's MDT Report included the evaluation results in the following areas of assessment from the student's November 24, 2015 out-of-state Psycho-Educational Evaluation: November 4, 2015 visual-motor integration and visual processing; November 9, 2015 auditory processing and memory processing; November 12, 2015 academic assessment based on a test of academic achievement; November 6, 2015 oral language assessment based on a test of oral language; and November 15, 2015 social/emotional/adaptive behavior based on a multidimensional assessment system. (April 9, 2018 MDT Report)
22. The CCSD determined the student was eligible in the State of Nevada under the category of Other Health Impairment (primary) and Specific Learning Disabilities (secondary). (April 9, 2018 MDT Report)
23. The Parent consented to the initial provision of special education and related services in the CCSD on April 9, 2018 and the student's IEP and Behavior Intervention Plan were developed on that same day. (Parental Consent for Initial Provision of Special Education and Related Services, April 9, 2018 IEP)

### **Manifestation Determination**

24. From December 4, 2017 through March 2018, the following incidents of misconduct occurred:
  - a. December 12, 2017, general education classroom: Verbal confrontation;
  - b. December 19, 2017, general education classroom: Class Disruption;
  - c. February 2, 2018, hallway or stairs: Insubordination;
  - d. February 7, 2018, hallway or stairs: Tardy Sweep
  - e. February 14, 2018, locker room or gym: Campus Disruption; 7, 2018: Disregard Rules;
  - f. March 7, 2018, hallway or stairs: Insubordination;
  - g. March 12, 2018, computer lab: Class disruption;
  - h. March 2, 2018, cafeteria: Robbery. While this incident occurred on March 2, 2018, the dean's office was not informed of the incident until March 21, 2018. The student was arrested and transported to Juvenile Detention for robbery and kidnapping while at school. (Behavior Detail Report, Dean's Chronology- April 9, 2018 IEP)
25. The student was not removed by the CCSD for misconduct for 10 consecutive days in the 2017/2018 school year through March 2018. The removals were a series of disciplinary removals in the school year for misconduct. From December 4, 2017 through March 2018, the student was removed from the student's current placement for misconduct as follows:

- a. Suspension from February 20, 2018 through February 22, 2018, a duration of three days;<sup>1</sup>
- b. Required Parent Conference from March 8, 2018 through March 9, 2018 for two days;
- c. Suspension from March 13, 2018 through March 19, 2018, a duration of five days;
- d. Documentation that the student was arrested and placed in Juvenile Detention by an outside authority, not the CCSD, from March 22, 2018 through April 3, 2018, a period of four school days;

While the CCSD determined on March 22, 2018 to suspend the student pending expulsion for robbery and kidnapping, the start date for the suspension was April 4, 2018, the day after the student was released from Juvenile Detention, through April 26, 2018. The suspension was determined to be for a duration of 17 school days. (Behavior Incident Report, Student Period Attendance Detail)

- 26. The CCSD conducted a Manifestation Determination on April 9, 2018, four school days after the commencement of the April 4, 2018 suspension and six school days after the CCSD's determination to suspend the student for 17 school days pending expulsion. The Manifestation Determination concluded that the conduct in question was caused by, or had a direct and substantial relationship to the student's disability and the conduct in question was a direct result of the CCSD's failure to implement the student's IEP. The conclusion regarding the failure to implement the student's IEP was based on the Team's determination that the student's initial CCSD IEP should have been developed in February 2018. (Manifestation Determination Summary)

### **Due Process Complaint – Resolution Agreement**

- 27. The CCSD agreed to the following services for the student in the Resolution Agreement that resulted in the withdrawal of the June 3, 2018 Due Process Complaint:
  - e. The CCSD agreed to grant an Independent Educational Evaluation: a psycho-educational evaluation.
  - f. The CCSD agreed to provide 105 hours of compensatory education to address the student's IEP goals and benchmarks.
  - g. The CCSD agreed to obtain parental consent and complete a Functional Behavior Assessment (FBA) and develop a Behavior Intervention Plan, based on results of the FBA, on or before September 14, 2018. (Resolution Agreement)
- 28. The Resolution Agreement included the agreement of the parties is not and shall not be construed as an admission as to the merits of the other party's position or claims raised in the Due Process Complaint. (Resolution Agreement)

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<sup>1</sup> There is an inconsistency between the number of ordered days of suspension in the Behavior Detail Report and the Student Period Attendance Detail. In all cases, the Student Period Attendance Detail included at least one or more partial days of suspension. In the absence of any information to reconcile this inconsistency, the Behavior Detail Report was relied upon in this investigation to ascertain the maximum cumulative removals of the student that occurred.

## CONCLUSION OF LAW

### Issue One:

Upon the student's transfer to the CCSD from another State, whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the student with a FAPE, including services that were comparable to the services described in the student's previous IEP, until the CCSD conducted an evaluation of the student and developed a new IEP, if determined appropriate.

If a student with a disability who is receiving special education services pursuant to an IEP in another state transfers to a school district in the State of Nevada in the same academic school year and enrolls in a school, the Nevada local educational agency must, in consultation with the Parent, provide the student with a FAPE, including services which are comparable to the services described in the student's out-of-state IEP. The provision of FAPE, including these comparable services, are required to be provided to the student until such time as the agency conducts an evaluation of the student and develops a new IEP, if determined appropriate. (NAC §388.263(2); 34 C.F.R. §300.323(f))

In this case, the student transferred from another State to the CCSD during the 2017/2018 school year and enrolled in the CCSD on December 4, 2017. At the time of enrollment, the student had a November 13, 2017 IEP in effect. The CCSD consulted with the Parent and the Parent consented to the temporary placement of the student in "resource" at the student's home-zoned school in the CCSD on December 4, 2017 until the "formal diagnostic review of eligibility data." (NAC §388.263(3)) The student's out-of-state IEP was to be utilized to deliver services to the student in the CCSD until eligibility and the level of need could be established. (FOFs #1, #3, #10)

The student's out-of-state IEP included five goals and 282 minutes a week of special education to be provided four days a week at 58 minutes and one day a week at 50 minutes and 60 minutes yearly of college awareness and career awareness combined. In addition, the following supplementary aides and services were to be provided to the student:

- a. Chunk assignments and assessments on a daily basis during assignments and assessments;
- b. Use of calculator at teacher discretion on math assignments and assessments on a daily basis during the assigned activity;
- c. Assessment and classroom assignments directions clarified to student after given to the classroom for clarification as needed on a daily basis during each period;
- d. Redo/retake low scoring assignments/tests within a week after low score was given arranged by the general education teacher and Specialized Academic Instruction (SAI) teacher when given assignments/test scores with the duration of length of assignments/tests;
- e. Consultation with case manager and SAI support staff with general education staff weekly for 5-10 minutes; and
- f. Take tests and quizzes in a non-distracting environment daily for all class periods. (FOF #4)



The student's behavior impeded the student's learning or learning of others and the out-of-state IEP included a behavior goal and the following positive behavior interventions strategies and supports to be provided to the student: preferred seating, modeling and explicit teaching of Positive Behavior Intervention Supports - 16 skills in Encore class, communication with parents, backpack is put away to reduce distractions, given opportunity to take assessments in pre-determined location, and communication with SAI teacher on a weekly basis. (FOFs #5, #6)

Pursuant to NAC §388.215, the CCSD was required to have a system of records for the purpose of verifying the provision of comparable services to the student in accordance with the student's out-of-state IEP from December 4, 2017 through April 8, 2018. The NDE requested documentation of the implementation of the student's out-of-state IEP and behavioral interventions on multiple occasions during the course of this investigation. The CCSD informed the Complaint Investigator that the only documentation the CCSD had of the implementation of the student's out-of-state IEP from the date of enrollment on December 4, 2017 was the provided student class schedule for two of the three quarters during the time period of this Complaint. (FOF #13)

Since the CCSD did not provide documentation on the fidelity of staff to the schedule, it was determined not to be reflective of the system of records required by NAC §388.215(5)(b) to verify that the student was provided the required special education in the scheduled classes. Despite the absence of such documentation, the Complaint Investigator examined the extent to which the student schedule supported the implementation of the student's IEP during a portion of the applicable time period and determined the following:

- a. The student may have been provided specially designed instruction in excess of the number of minutes in the out-of-state IEP in the second quarter of the 2017/2018 school year.
- b. The student's schedule in the third quarter would not have provided the student the required number of minutes of specially designed instruction in the out-of-state IEP, with the exception of the last week of the quarter. (FOFs #11, #12)

The CCSD provided no documentation of the provision of the required minutes of special education to the student during the course of the investigation for the fourth quarter from March 15, 2018 until the development of the student's April 9, 2018 IEP; the implementation of the student's goals; the provision of the required supplementary aids and services in the student's general education classes and public day school; or the provision of the required positive behavior interventions strategies and supports. On the contrary, the documentation provided by the CCSD in response to the Complaint supported the Parent's allegation that the CCSD's failed to provide the required comparable services in the student's out-of-state IEP for at least a portion of the time. (FOFs #8, #26) It was also noted that several of the cited disciplinary incidents occurred in the general education classroom where supplementary aids and services were required. (FOFs #4, #9, #24)

As a final matter, in accordance with the CCSD's policies and procedures for transfer students in the CCSD Special Education Procedures Manual, section 7.5.5, the student's current out-of-state IEP could only be implemented up to 45 school days from the consent for the temporary placement, at which time, the MDT/IEP Team was required to be convened to address the student's eligibility and develop a comprehensive IEP, as appropriate.<sup>2</sup> In violation of its own

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<sup>2</sup> The CCSD Procedures Manual is publicly available at:  
[https://ccsd.net/employees/resources/pdf/sssd\\_procedures\\_manual.pdf](https://ccsd.net/employees/resources/pdf/sssd_procedures_manual.pdf)

procedures, the CCSD determined the student was eligible for special education and developed the student's IEP on April 9, 2018 (FOF #23), 70 school days after the Parent consented to the temporary placement (FOF #16).

*Therefore, it is determined upon the student's transfer to the CCSD from another State, the CCSD failed to comply with the IDEA and the NAC, Chapter 388 with regard to providing the student with a FAPE, including services that were comparable to the services described in the student's previous IEP, until the CCSD conducted an evaluation of the student and developed a new IEP on April 9, 2018.*

## **Issue Two:**

Whether the CCSD was required to administer new assessments prior to the conduct of the MDT meeting on April 9, 2018.

If a student with a disability, who had an IEP in effect in a previous public agency in another State, transfers to a new public agency in a new State and enrolls in a new school within the same school year, the evaluation conducted by a new public agency in a new State is an initial evaluation. (See Analysis of Comments and Changes to the Part B regulations, 71 Fed. Reg. 46540, 46682 (Aug. 14, 2006) This full and initial evaluation is required to meet the standards of the IDEA, 34 C.F.R. §§300.304 through 300.306 and the NAC §§388.330 to 388.440. (34 C.F.R. §300.323(f)(1); NAC §388.263(2))

In accordance with the IDEA and the NAC, Chapter 388, the evaluation procedures for the initial evaluation of the student were required to include the following:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining: (i) Whether the student is a student with a disability and (ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum;
- In accordance with the NAC §388.340(5), the variety of sources must include, without limitation, aptitude and achievement tests, input from the parent of the student, recommendations from the teacher of the student and any other information about the physical condition, social or cultural background of the student;
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
- The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. (34 C.F.R. §300.304; NAC §388.340)

In addition to the mandates in the IDEA, the NAC, Chapter 388, identifies specific assessments to determine a student's eligibility for special services and programs of instruction under each eligibility category and provides the standards for the required assessments. (NAC §388.345 et seq.) In this case, the student was determined by the CCSD to be eligible in the State of Nevada under the category of Other Health Impairment (primary) and Specific Learning Disabilities (secondary) and those standards of the NAC applied. (FOF #22)

At the time of the student's enrollment in the CCSD, the student's last evaluation was a November 24, 2015 Psycho-Educational Evaluation from the state from which the student transferred. The student's next multi-disciplinary evaluation in the transfer state was scheduled for December 4, 2018. (FOF #14) As such, while this evaluation provided existing data, it did not provide current evaluation data to the MDT. (34 C.F.R. §300.303(b)(2))

The CCSD MDT Report indicates that the review of existing evaluation data by the student's IEP Team and other qualified individuals and identification of what additional data, if any, were needed to determine eligibility and educational needs took place; however, there was no documentation of this review or the identification of needed additional data prior to obtaining the Parent's consent to evaluate the student. (FOFs #17) The following procedures were identified by the CCSD as comprising the CCSD's initial evaluation of the student in its entirety:

- a. Review of available school records, including reliance on the outdated Psycho-Educational Evaluation, and other out-of-state records on January 29, 2018;
- b. Health assessment on January 22, 2018;
- c. Two Qualifying Conditions of Eligibility Protocol on April 9, 2018 used to summarize and document the MDT's conclusions regarding assessment findings;
- d. Review of March 21, 2018 Dean's Chronology regarding behavioral incidents on April 6, 2018;
- e. Teacher's progress reports and observations on January 9, 2018, January 22, 2018 and January 29, 2018. The progress reports were from five of the student's teachers reporting on the student's strengths and needs for improvement and observations and did not include the administration of an instrument or document a focused observation of the student at a point in time. (FOFs #18, #19, #20, #21)

As such, while the CCSD did use the strategy of gathering data from the student's teachers and the dean in the evaluation of the student, the only assessment administered in the conduct of the initial evaluation of the student after receipt of the parental consent and prior to the MDT meeting was the health assessment by the school nurse. Taking all the evaluation strategies and tools used by the CCSD in the initial evaluation of the student into consideration, including the review of the 2015 out-of-state evaluation, the CCSD's initial evaluation of the student did not meet the requirements for a full evaluation using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student to assist in determining not only whether the student was a student with a disability, but the content of the student's IEP. Further, it did not include the required aptitude and achievement tests or technically sound instruments to assess the relative contribution of cognitive and behavioral factors for this student with identified behavioral concerns. (34 C.F.R. §300.304; NAC §§388.340(5)(a), 388.375, 388.420)

*Therefore, while the CCSD did gather information from the student's teachers and the dean of students and conducted a health assessment in the initial evaluation of the student, the CCSD failed to use the variety of assessment tools required for a full initial evaluation of the student in accordance with the IDEA and the NAC, Chapter 388.*

### **Issue Three:**

Whether the CCSD complied with the IDEA and the NAC, Chapter 388 with regard to the conduct of a Manifestation Determination after the suspension of the student constituted a disciplinary change of placement in March 2018.

### **Manifestation Determination**

Pursuant to the IDEA, 34 C.F.R. §300.530, school personnel are authorized to remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536) without the conduct of a Manifestation Determination.

For purposes of disciplinary removals of a student with a disability from the student's current educational placement, a change of placement occurs if the removal is for more than 10 consecutive school days; or the student with a disability has been subjected to a series of removals that constitute a pattern. A series of disciplinary removals constitute a pattern if the series of removals total more than 10 school days in a school year; because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and because of such additional factors as the length of each removal; the total amount of time the student has been removed; and the proximity of the removals to one another. (34 C.F.R. §300.536(a))

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the student's IEP Team must review all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the agency's failure to implement the student's IEP. (34 C.F.R. §300.530(e))

In this case, the disciplinary removals within the scope of this Complaint were not imposed by the CCSD for 10 consecutive school days at a time in the 2017/2018 school year until the determination on March 22, 2018 to suspend the student commencing April 4, 2018 pending expulsion of the student for the misconduct of robbery and kidnapping. Likewise, these prior removals for misconduct did not total more than 10 cumulative school days. (FOF #25) Therefore, the requirement of the CCSD to conduct a Manifestation Determination under the IDEA and the NAC, Chapter 388, was not triggered until the March 22, 2018 determination to suspend the student for 17 school days pending expulsion.

The start date for the March 22, 2018 determined suspension pending expulsion was April 4, 2018. The CCSD conducted the Manifestation Determination on the cited misconduct on April 9, 2018, six school days after the CCSD's determination to suspend the student for 17 school days pending expulsion. (FOF #26) Therefore, the CCSD's conduct of this Manifestation Determination is consistent with the requirement that the review be conducted within 10 school

days of a decision to change the placement of a student with a disability because of a violation of a code of student conduct. (34 C.F.R. §300.530(e))

As a final matter, the student was suspended for an additional four school days after the determination to suspend the student pending expulsion until the conduct of the Manifestation Determination regarding the misconduct of robbery and kidnapping. (FOFs #25, #26) This four-day suspension would have resulted in the student's disciplinary removal by the CCSD of a total of 14 cumulative school days in the school year for separate incidences up to the date of the Manifestation Determination. Was this removal authorized under the IDEA?

The IDEA, 34 C.F.R. §300.536(b), requires the public educational agency to determine on a case-by-case basis whether a series of removals constitute a change of placement. As discussed above, the determination to suspend the student for 17 consecutive school days pending expulsion constituted a disciplinary change of placement pursuant to the IDEA, 34 C.F.R. §300.536, and the Manifestation Determination was timely conducted. With regard to the additional four cumulative days of removal for the misconduct of robbery and kidnapping pending the Manifestation Determination, the Complaint Investigation Team declines to substitute its judgment for the CCSD that this removal did not cause the student to be subjected to a series of removals that constituted a pattern/change of placement. As such, this four-school day removal was authorized.

*Therefore, the CCSD complied with the IDEA and the NAC, Chapter 388 with regard to the conduct of a Manifestation Determination after the suspension of the student constituted a disciplinary change of placement in March 2018.*

## **ORDER OF CORRECTIVE ACTION**

The CCSD is required to take corrective action to address the identified noncompliance with regard to the initial evaluation of this transfer student and the provision of FAPE, including comparable services, until such time as the agency conducted an evaluation of the student and developed a new IEP. As noted previously, the Parent and the CCSD agreed to a Resolution Agreement that resulted in the withdrawal of the Due Process Complaint with the same allegations raised in this State Complaint. The Resolution Agreement requires the further evaluation of the student and the provision of compensatory education to the student (FOF #27) and is enforceable pursuant to the IDEA, 34 C.F.R. 300.510(d)(2). Therefore, it is determined that no further student specific remedy is required as a result of this State Complaint to educationally compensate the student for the failure to conduct a full initial evaluation and provide the student with a FAPE. However, a systemic remedy is necessary.

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 in a systemic manner at the school the student was enrolled in upon the student's transfer to CCSD. The CAP must be approved by the NDE prior to implementation and result in the implementation of the plan no later than the end of the 2018/2019 school year. The CCSD's proposed CAP must include the conduct of a training at the school involved in this Complaint for relevant personnel on the requirements under the IDEA and the NAC, Chapter 388, for out-of-state transfer students, including the conduct of an initial evaluation and the provision of a FAPE, including services which are comparable to the services described in the previous IEP, until such time as the school conducts an evaluation of the student and develops a new IEP, if determined appropriate.

Following the CCSD's implementation of the approved CAP, the CCSD must submit a report to the NDE no later than the commencement of the CCSD 2019/2020 school year documenting the implementation of the approved CAP.