

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL092118)**

**Report Issued on November 7, 2018**

**INTRODUCTION**

On September 21, 2018, the Nevada Superintendent of Public Instruction received a Complaint dated September 18, 2018 from a Parent of an adult student enrolled in the Clark County School District (CCSD) regarding the provision of a Free Appropriate Public Education (FAPE) to the student. Pursuant to Nevada Administrative Code (NAC) §388.195 and §388.197, the Parent is authorized to represent the educational interests of this student who has exceeded the age of majority. (Finding of Fact (FOF) #5)

The Parent 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 NAC §§388.150 to 388.450 with regard to the student's entitlement to receive services past the student's 22nd birthday. Specifically, the Parent alleged that, pursuant to Nevada Revised Statutes (NRS) §388.5223, the student will remain eligible for services past the student's 22nd birthday given the student was enrolled for the school year.

The CCSD was provided the opportunity to dispute the stated noncompliance with regard to this Complaint and did so in the course of the investigation. 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 allegation in the Complaint that is under the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint process raised the following issue for investigation:

**Issue:**

Whether the student with a disability's eligibility to receive services will end upon turning 22 years of age on November 30, 2018 or, pursuant to NRS §388.5223, the student remains eligible to complete the 2018/2019 school year, irrespective of turning 22 years of age.

## **FINDINGS OF FACT**

### **General**

1. The student is currently placed in and receiving services in a school within the CCSD. Classes for the 2018/2019 school year began on August 13, 2018 for the school the student is attending. (Complaint, Individualized Education Program (IEP), School Calendar)
2. The student will turn 22 years of age on November 30, 2018. (Complaint, IEP)
3. The student's May 16, 2018 annual IEP includes special education services to be provided to the student with the beginning date of May 16, 2018 and the ending date of May 15, 2019. (IEP)
4. The Complaint does not allege that the CCSD is unable to provide an appropriate special education program and related services for the student's particular disability and grade or level of education. (Complaint, IEP)
5. On November 30, 2012, the CCSD approved the Complainant parent's Application to Represent the Educational Interests of a Special Education Student at Age of Majority. pursuant to NAC §388.197. (September 24, 2012 Application to Represent the Educational Interests of a Special Education Student at Age of Majority)

### **Twenty-two Years of Age**

6. On March 5, 2018, the CCSD issued an Interoffice Memorandum to "superintendency" and high school principals informing them of a change in Nevada law. Citing NRS §388.5223, the CCSD indicated, as a statement of general applicability, that a student with a disability was eligible to receive special education and related services through the end of the school year in which the student turns 22 years of age. (March 5, 2018 CCSD Interoffice Memorandum)
7. It came to the attention of the NDE that, as a result of a statutory revision during the 2015 Nevada legislative session, there was some confusion among school districts regarding the provision of a FAPE to students with disabilities whose 22nd birthday occurred during the course of the school year in which they are enrolled. Therefore, in a June 4, 2018 Memorandum to Nevada special education program administrators, the NDE, Director of the Office of Special Education, reviewed the requirements in the State of Nevada for the provision of a FAPE to students with disabilities between the ages of 3 through 21 and the limited exception to this general rule for students with disabilities who met specific criteria. Highlights of the Memorandum were:
  - a. The definition of a pupil with a disability under Nevada law, NRS §388.417(8), means a "child with a disability," as that term is defined in 20 U.S.C. §1401(3)(A), who is under 22 years of age.
  - b. There is a limited exception in Nevada law regarding the termination of eligibility of a student with a disability upon turning 22 years of age:
    - i. Historically, under Chapter 395, NRS §395.020, school districts could apply for and obtain state funding to support out-of-state or out-of-district placement of students with disabilities for whom the district were

unable to provide a FAPE. NRS §395.020 provided specific criteria for a student with a disability's eligibility for benefits under this program including: the person is under 22 years of age, except that where the enrollment period for the school year is before his or her 22nd birthday; the student's district had prepared an appropriate plan for the individualized education of the person with a disability; and the district was unable to provide an appropriate special education program and related services for his or her particular disability and grade or level of education.

- ii. In 2015, the Nevada legislature repealed much of Chapter 395 and replaced it with the "Contingency Account for Special Education Services". At that time, NRS §395.020, was repealed and replaced with NRS §388.5223. NRS §388.5223 retained exactly the same criteria for a student with a disability's eligibility for benefits under this program, including the limited exception for a student to complete the school year, irrespective of age, where the enrollment period was before the student's 22<sup>nd</sup> birthday. (June 4, 2018 NDE Memorandum)
8. Personnel from the CCSD variously informed the Parents between August 14, 2018 and September 14, 2018 that the student would and would not be eligible upon turning 22 years of age to complete the 2018/2019 school year. (Complaint, Interview with the Parent, September 14, 2018 Email to the CCSD)
  9. On September 14, 2018, in response to a communication from the Parent to the CCSD, the CCSD apologized for the confusion with regard to the date upon which the student's eligibility for services would end and the inconvenience it caused. NDE's recent guidance was cited as the reason for the "change" to services ending upon the student with a disability reaching their 22<sup>nd</sup> birthday. (September 14, 2018 CCSD Email to the Parent, Interview with the Parent)

## **CONCLUSIONS OF LAW**

Pursuant to the IDEA, a FAPE must be available to all children residing in the State between the ages of 3 and 21. 20 U.S.C. §1412(a)(1); 34 C.F.R. §§300.101, 300.102. (There is a limitation under the IDEA for students ages 18 through 21 that is not applicable in the State of Nevada.) The State of Nevada consistently defines a "pupil with a disability" in NRS §388.417(8) as a "child with a disability," as that term is defined in 20 U.S.C. § 1401(3)(A), who is under 22 years of age.<sup>1</sup> The student with a disability who is the subject of this Complaint will turn 22 years of age on November 30, 2018. (FOF #2)

There is a limited exception in Nevada law for eligibility for benefits for persons with disabilities with unique needs to remain eligible to complete the school year when the enrollment period for the school year is before the student's 22nd birthday. NRS §§388.5223 - 388.5243. NRS §388.5223 provides: "A person with a disability is eligible to receive the benefits provided pursuant to NRS 388.5223 to 388.5243, inclusive, if:

1. The person is a resident of the State of Nevada;

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<sup>1</sup> Prior to the 1993 Statutes of Nevada, Page 2159 (Chapter 521, SB 265), a pupil with disabilities was defined as under the age of 18 years of age.

2. The person is under 22 years of age, except that where the enrollment period for the school year is before his or her 22nd birthday, the person remains eligible to complete that school year irrespective of his or her age;

3. The Department of Education has prescribed minimum standards for the provision of a special education program and related services to persons with such a disability; and

4. The person's school district:

(a) Has prepared an appropriate plan for the individualized education of the person with a disability; and

**(b) Is unable to provide an appropriate special education program and related services for his or her particular disability and grade or level of education."** (Bold for emphasis)

It is this limited exception that is at issue in this Complaint. Citing NRS §388.5223, the CCSD issued a March 5, 2018 Interoffice Memorandum to "superintendency" and high school principals informing them that a student with a disability was eligible to receive special education and related services through the end of the school year in which the student turns 22 years of age. The CCSD did not limit this statement of general applicability to those students who met the criteria for eligibility for benefits under NRS §388.5223. (FOF #6)

Given some confusion among districts regarding the provision of a FAPE to students with disabilities whose 22nd birthday occurred during the course of the school year, the NDE issued a June 4, 2018 Memorandum to Nevada special education program administrators to address this confusion. The Memorandum included a review of the requirements under the IDEA and Nevada law for the provision of a FAPE to students with disabilities between the ages of 3 through 21; the general rule under NRS §388.417 that eligibility for a student with a disability ends upon turning 22 years of age; and the limited exception for students eligible for benefits under NRS §388.5223 who were placed in out-of-state or out-of-district placements. (FOF #7)

This case, unfortunately, exemplifies the confusion among some CCSD personnel regarding the provision of a FAPE to the student with a disability who will turn 22 years of age during the course of the school year. Specifically, the student's annual IEP provides the student special education services with the ending date of May 15, 2019, not November 29, 2018 the last day the student is 21 years of age. (FOFs #2, #3) Furthermore, personnel from the CCSD variously informed the Parents at the beginning of the 2018/2019 school year that the student would and would not be eligible upon turning 22 years of age to complete the 2018/2019 school year. (FOFs #8, #9)

As noted above, the limited exception under NRS §388.5223 for a student to complete the school year in which they turn 22 years of age applies to those students with unique needs who were placed in out-of-state or out-of-district placements due to a district's inability to provide an appropriate special education program and related services for a student's particular disability and grade or level of education. In this case, the student is receiving special education services in a school in the CCSD and the Parent does not allege that the CCSD is unable to provide an

appropriate special education program and related services for the student's particular disability and grade or level of education." (FOFs #1, #3, #4) Therefore, the limited exception under NRS §388.5223 does not apply.

As such, the applicable age range for the student is through 21 years of age as set forth in NRS §388.417(8). This statutory limitation was in place at the time of student's May 16, 2018 annual IEP meeting and at the commencement of the 2018/2019 school year when inaccurate information was provided by the CCSD to the Parents regarding the eligibility of the student to complete the school year, irrespective of turning 22 years of age. (FOF #7) While it is indeed unfortunate that the CCSD provided inaccurate and inconsistent information to the Parents that caused confusion over the date the student's eligibility for FAPE would end, the student's eligibility for benefits is determined by the provisions of the IDEA, 20 U.S.C. §1412(a)(1); 34 C.F.R. §§300.101, 300.102, and NRS §388.417(8). In this case, the student's eligibility for benefits under the IDEA and NRS is through November 29, 2018, the last day before the student turns 22 years of age.

*Therefore, the CCSD is in compliance with the IDEA and NRS with regard to the student's eligibility to receive services ending upon turning 22 years of age, rather than the student remaining eligible to complete the 2018/2019 school year, irrespective of turning 22 years of age. In this case, the student's eligibility for benefits under the IDEA and NRS is through November 29, 2018, the last day before the student turns 22 years of age.*