

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL030923)
Report Issued on May 2, 2023**

INTRODUCTION

On March 9, 2023, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations by Clark County School District (CCSD) in a student's special education program. The allegations in the Complaint were that CCSD violated the participation, consent, and records rights under Free Appropriate Public Education and Least Restrictive Environment by failing to provide the Parent the requested "hard data" collected by CCSD (despite agreeing to do so during an IEP Team meeting); and placing the student at a different school in a more restrictive environment without the Parent's consent. The Complaint did not include a proposed resolution to address these allegations.

The State Complaint did include extensive additional facts and concerns relating to other matters not in the stated violations and it was determined that those facts were intended as background/contextual information, particularly in light that those facts and concerns were raised in a Due Process Complaint dated the same date as the State Complaint. However, the Parent was informed of the process to amend the State Complaint if it was her intent to raise these additional facts/ concerns as additional issues for investigation. The Parent was also informed that NDE is required to set aside any part of a State Complaint being addressed in the due process hearing until the conclusion of the hearing. However, in this case, the allegations in the State Complaint were not part of the due process action, and the issues stated below were resolved using the applicable State Complaint timeline and procedures. 34 C.F.R. §300.152(c).

The Complaint raises the following issues for investigation that are under the jurisdiction of NDE to investigate through the special education complaint process:

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records to afford the Parent the opportunity to participate in the IEP Team meeting, specifically with regard to the Parent's request at the most recent IEP Team meeting in February or March 2023 to review the 'hard data' collected by CCSD.

Issue Two:

Whether IDEA and NAC, Chapter 388, required CCSD to obtain parental consent prior to placing the student at a different school in February or March 2023.

In the March 17, 2023 issue letter to CCSD, NDE requested additional documents and information in order to investigate the State Complaint. CCSD was notified in that same correspondence that if CCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by April 7, 2023 or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely respond and dispute the allegations of noncompliance in the Complaint in their entirety and specifically referenced the indexed and well-organized documents relevant to that denial.

The State Complaint, CCSD's denial of all claims, and all documents submitted by CCSD in response to the issues in the Complaint were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

FINDINGS OF FACT

1. The student's eligibility for special education services was reevaluated in January 2023 due to the student reaching the age limit for the category of Developmental Disability. The student's Multidisciplinary Team agreed that the student continued to be a student with a disability in need of special education services. (February 14, 2023 IEP)
2. The student's last agreed upon IEP was a November 30, 2022 IEP revision to the student's October 13, 2022 annual IEP. The student's designated placement in the November 30, 2022 IEP was in a regular class and special education (e.g., resource) class combination with 62% of the school day in the regular education environment. (November 30, 2022 IEP)
3. The student's IEP Team, including the Parent, convened to develop the student's annual IEP on February 7, 2023 following the three-year reevaluation of the student. Given the Parent's concerns expressed during the IEP Team meeting regarding the student's proposed change of placement to a self-contained program, the meeting was suspended until February 14, 2023. (February 14, 2023 IEP, February 7, 2023 Confidential Status Record)
4. The student's IEP Team, including the Parent, reconvened on February 14, 2023 and completed the student's annual IEP. The student's placement was changed from the regular class and special education class combination with 62% of the school day in the regular education environment to a self-contained program with 22% of the school day in the regular education environment. (November 30, 2022 IEP, February 14, 2023 Confidential Status Record)
5. While the Parent disagreed with the placement of the student in a self-contained placement, the Parent participated in the development of the student's IEP at the February 7, 2023 and February 14, 2023 IEP meetings and was accompanied by the student's grandparent at both IEP Team meetings and by a parent advocate at the February 7, 2023 IEP meeting. (February 14, 2023 IEP, February 7, 2023 and February 14, 2023 Confidential Status Record)
6. The IEP Team's justification for the student's removal from the regular education environment included the student's unique needs such as the student's demonstrated inability to self-regulate behaviors and described behaviors such as elopement, physical aggression, climbing on structures and furniture, throwing items, and destruction of materials and properties. (February 14, 2023 IEP, Confidential Status Record)
7. The student's February 14, 2023 IEP did not include any reference to required consent for the change in the student's placement or the implementation of the IEP. The IEP did include the checked statement: "As the parent, I disagree with all or part of this IEP, I understand that the school district must provide me with written notice of any intent to implement this IEP. If I wish to prevent the implementation of this IEP, I must submit a written request for a due process hearing to the local school district superintendent." The Parent refused to sign the student's IEP because she disagreed with the placement of the student in a self-contained placement. (February 14, 2023 IEP)

8. CCSD provided the Parent a Notice of Intent to Implement the student's February 14, 2023 IEP on February 27, 2023 with a proposed implementation date of March 9, 2023. The Notice indicated that the Parent agreed with the content of the IEP, but not the proposed self-contained placement, and requested the continuation of the current IEP to allow additional time for additional interventions. This request was refused by CCSD for the stated reason that data existed to support the self-contained placement for both the student's behavioral and academic needs. The Notice included the statement of the Parent's right to seek resolution of disagreements by initiating an impartial due process hearing and/or formal mediation. (February 27, 2023 Prior Written Notice)
9. CCSD denied that it had any written or verbal notification that the Parent requested to inspect and/or review the student's education records or "hard data" at the February 7, 2023 or February 14, 2023 IEP Team meetings. (CCSD Response)
10. The Complaint did not include any documentation in support of the Parent's stated request to review "hard data" at the student's last IEP Team meeting. Neither the student's February 14, 2023 IEP nor CCSD's written notes of the February 7, 2023 and February 14, 2023 IEP meetings documents the Parent's request for "hard data" at either of the student's IEP Team meetings. The student's present level data was discussed and reviewed at the February 7, 2023 IEP Team meeting and, at the February 14, 2023 IEP Team meeting, the Parent refused to sign the student's IEP saying "she wanted to hear from the district people." (Complaint, February 7, 2023 and February 14, 2023 Confidential Status Record, February 14, 2023 IEP)

CONCLUSIONS OF LAW

Issue One:

Whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the Parent's right to inspect and review the student's education records to afford the Parent the opportunity to participate in the IEP Team meeting, specifically with regard to the Parent's request at the most recent IEP Team meeting in February or March 2023 to review the 'hard data' collected by CCSD.

NAC §388.287(1) requires parents of a student with a disability be allowed to inspect and review any education records relating to their child which are collected, maintained, or used by a public agency. The public agency must comply with such request without unnecessary delay and in any event: (a) before an IEP meeting or any hearing relating to the identification, evaluation or placement of the student or the provision of a FAPE; and (b) not later than 45 days after the request has been made. (See also 34 C.F.R. §300.613.)

In this case, there was documentation of the Parent's participation in the development of the student's IEP at the February 7, 2023 and February 14, 2023 IEP meetings. (Finding of Fact (FOF) #5) However, the Parent and CCSD disagree that a request was made by the Parent to inspect and review the "hard data" in the student's education records at the student's February IEP Team meeting(s). (FOF #9) The Parent did not provide any documentation in the course of the investigation to support the Parent's asserted request and CCSD denied any written or verbal notification of the Parent's request at either the February 7, 2023 or February 14, 2023 IEP Team meeting. (The only potentially relevant documentation provided in the course of the investigation is a statement of the Parent at the February 14, 2023 IEP Team meeting that the Parent "wanted to hear from the district people." (FOFs #9, #10) This statement was determined to be insufficient to support the asserted request to inspect/review the "hard data" in the student's education records.)

As such, after independently reviewing and weighing the evidence and arguments, the Complaint Investigation Team decided there was insufficient evidence to come to a determination as to the probable truth of the matter. It is important to note that:

“Unlike due process hearings, State complaints are investigative in nature, rather than adversarial, and do not include the same procedural rights accorded to parties in an impartial due process hearing. Therefore, the Department believes that it is not consistent with the IDEA regulation for an SEA to treat a State complaint like a due process complaint and assign the burden of proof to either party. Under 34 CFR §300.152, once a State complaint is properly filed, it is solely the SEA’s duty to investigate the complaint, gather evidence, and make a determination as to whether a public agency violated the IDEA. It is not the burden of the complainant – or any other party – to produce sufficient evidence to persuade the SEA to make a determination one way or another. Rather, the SEA must independently review and weigh the evidence, generally by reviewing student and school records, data and other relevant information, and come to a determination supported by relevant facts...” (*Letter to Reilly*, 64 IDELR 219 (OSEP November 3, 2014))¹

*Therefore, there was insufficient evidence to make a determination whether CCSD complied with IDEA and NAC, Chapter 388, with regard to the Parent’s right to inspect and review the student’s education records to afford the Parent the opportunity to participate in the IEP Team meeting, specifically with regard to the Parent’s request at the most recent IEP Team meeting in February or March 2023 to review the ‘hard data’ collected by CCSD.*²

Issue Two:

Whether IDEA and NAC, Chapter 388, required CCSD to obtain parental consent prior to placing the student at a different school in February or March 2023.

Pursuant to IDEA, 34 C.F.R. §300.300, and NAC §388.300, informed written consent must be obtained from the parents of the student before conducting an initial evaluation, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a student with a disability. In this case, the student was previously being provided special education and related services by CCSD and the student’s placement at issue was not the initial placement of the student, but rather a change of placement from the regular class and special education class combination to a self-contained program. (FOFs #1 to #4, #6) Therefore, CCSD was not required to obtain the Parent’s consent prior to changing the student’s placement to a self-contained program.

However, in accordance with IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student. CCSD did provide the Parent the requisite written notice of the proposed change in the educational placement of the student and refusal of the Parent’s request to continue the student’s current IEP to allow additional time for additional interventions. (FOF #8) CCSD also notified the Parent of the right to seek resolution of any disagreement regarding the change of placement by initiating

¹ This policy letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-november-3-2014-to-atlee-reilly/>

² This conclusion does not preclude the Parent from requesting to inspect and review any education records relating to the student which are collected, maintained or used by CCSD with personally identifiable information after the issuance of this Report.

an impartial due process hearing and/or formal mediation (FOFs #7, #8) and, as described in the Introduction to this Report, the Parent did so.

Therefore, CCSD complied with the provisions of IDEA and NAC, Chapter 388, in that the Parent's consent was not required prior to CCSD changing the student's placement to a different school February 14, 2023.