

**CLARK COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#CL071723)**

Report Issued on September 13, 2023

INTRODUCTION

On July 17, 2023 the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations by Clark County School District (CCSD) of the Individuals with Disabilities Education Act (IDEA) law and regulations, 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300, and Chapter 388 of the Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC).

Prior to the receipt of the July 17, 2023 State Complaint, the Parent had previously filed two intended State Complaints that alleged that CCSD violated NRS §§388.122-135: provision of safe and respectful learning; prohibition of bullying and cyber-bullying - reporting and investigation of violations; NRS§388.133: policy by NDE concerning safe and respectful learning environment; AB 371 of the 81st session of the Nevada State Legislature regarding discrimination based on race; NRS §388.070: maintenance of schools with equal rights and privileges; NRS §388.077: right of students to constitutional expression; limitation; adoption of policy for pupil publications; resolution of complaint by student of violation of right (local process/procedures for resolving complaints); 20 U.S.C. §1232g: Family Educational Rights and Privacy Act (FERPA); and NRS §392.4575: educational involvement accords; policy by school districts for development and distribution; annual review; and violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act.

By letters dated June 26, 2023 and July 10, 2023, NDE notified the Parent that NDE’s jurisdiction through the special education complaint process is limited to the investigation of State Complaints alleging a violation of the requirements of Part B of the IDEA and Nevada special education laws. Therefore, with regard to alleged noncompliance of the other laws cited in the State Complaint that did not include an alleged violation of IDEA and/or Nevada special education law, NDE informed the Parent that NDE did not have jurisdiction through the special education complaint procedures and informed the Parent of the alternative processes to pursue these matters. NDE further suggested that, if the Parent did decide to file another State Complaint, the prior determinations of the absence of NDE’s jurisdiction in this State Complaint process over laws other than IDEA and Nevada special education law be considered and the facts supporting the believed violations clearly identify the violation of IDEA and Nevada special education law.

The 53-page State Complaint filed by the Parent on July 17, 2023 was still replete with allegations over which NDE did not have jurisdiction through the special education complaint process, including the emphasis on CCSD’s alleged violation of Section 504 and Title II of the Americans with Disabilities Act and anti-bullying laws. However, the State Complaint did include the following discernable and distinct allegation of the violation of IDEA and Nevada special education law, with facts on which the allegation was based:

- CCSD’s administrative determination on or about June 28, 2023 restricted the location at which the student was to receive special education services in violation of the Least Restrictive Environment provisions of a Free Appropriate Public Education, specifically with regard to CCSD’s “protective placement” assignment of the student to a school in close proximity to the student’s home, rather than the school the Parent requested.

The Parent's proposed resolution to address this accepted allegation was to reassign the student immediately and without further delay from the student's existing school to the school the Parent requested.

The allegation within the jurisdiction of NDE through the State Complaint process raised the following issue for investigation:

Issue:

Whether CCSD complied with the requirements of IDEA and NAC, Chapter 388, with regard to CCSD's administrative determination on or about June 28, 2023 to reassign the student to a new school, specifically:

- a. Whether the reassignment was in conformity with the student's determined placement in the Least Restrictive Environment in effect at the time of the reassignment;
- b. Whether CCSD was required to adopt the Parent's requested preferred school as the determined reassignment location.

In the July 20, 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; reference to the provided documentation that factually supported the denial; and that a failure to do so by August 9, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. CCSD did timely provide a well-organized response; denied the alleged noncompliance; and provided the requisite statement of the factual basis and documentation.

The Parent's Complaint, including the enclosed documents and information, and CCSD's denial of all claims and all documents submitted by CCSD in response to the issue in the Complaint were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issues in this Complaint.

FINDINGS OF FACT

1. The student is a student with a disability enrolled in CCSD. (Student Enrollment History)
2. The student's IEP in effect in the 2022/2023 school year is a May 18, 2022 IEP.¹ The student's Parent participated in the development of the May 18, 2022 IEP and agreed with the components of the IEP. (May 18, 2022 IEP)
3. The student's designated placement in the May 18, 2022 IEP was in a regular class and special education class (e.g., resource) combination with 98% of the student's day in the regular education environment. (May 18, 2022 IEP)
4. On June 1, 2023, the student's Parent reported the student was a victim of cyber-bullying. CCSD conducted an investigation and substantiated the incident of cyber-bullying and recommended a student safety plan. (Checklist of Parent's Report, Behavior Detail Report, Notice of Reported

¹ CCSD response to this State Complaint indicated that the May 18, 2023 IEP was the student's "stay-put" IEP during the pendency of a due process hearing on an unrelated issue. The appropriateness, including duration, of this IEP was not a subject of this State Complaint; therefore, for purposes of this State Complaint, the May 18, 2023 IEP is relied upon as the student's IEP in effect at the time of the student's reassignment to a new school.

Violation, Written Report of the Findings and Conclusions of the Investigation, Individualized Safety Plan, June 29, 2023 Email Communication)

5. The student's Parent requested reassignment of the student to another school due to the cyber-bullying and specifically requested a school by name. (June 17, 2023 Email Communication, Behavior Detail Report)
6. On June 27, 2023, the Parent was notified by CCSD that in accordance with NRS, Chapter 388, the Parent had sought protective placement and provided the name of the administratively assigned school. CCSD requested the Parent contact school administration prior to enrollment. (June 27, 2023 CCSD Letter)
7. In relevant part, on June 28 2023, the Parent replied to CCSD's protective placement letter, disagreeing with CCSD's decision to administratively assign the student to the named school as the student's protective placement in that the Parent had specifically requested the student's placement at another school. The Parent stated being adamant about the placement request and challenged the placement in the administratively assigned school based on reasons of school performance; lack of cultural diversity; representation of the student's culture among the students; and incidence of cyber-bullying. (June 28, 2023 Email Communication, Review of the Record)
8. On July 5, 2023, CCSD administratively reassigned the student to the previously noticed school as the student's protective placement and indicated curb-to-curb bus transportation would be arranged for the student in accordance with the student's IEP. (July 5, 2023 Email Communication)
9. Upon being notified of the student's assigned school, the student's Parent again informed CCSD that the Parent disagreed with the school assignment for the identified reasons of the lack of cultural diversification and incidence of cyber-bullying and reiterated that the Parent had specifically requested another school. (July 5, 2023 Email Communication)
10. In response to the Parent's objection to the school assignment, CCSD explained that the administrative assignment was made with the goal of assigning the student to a school that was both in close proximity to the student's home and had no student in attendance who harmed the student in the cyber-bullying event. CCSD indicated that of the two schools in close proximity to the student's home the Parent had previously stated a preference for the school selected for reassignment. CCSD also indicated that when making a protective placement decision, the placement is not based on race, ethnicity, backgrounds, or cultures. (July 5, 2023 Email Communication)
11. The student's Parent did not dispute having previously expressed a preference of the reassignment school between the two schools in close proximity to the student's home, but reiterated that the Parent had specifically requested another school. (July 5, 2023 Email Communication)
12. The Parent did not allege at the time of the administrative reassignment of the student or in this State Complaint that the student's May 18, 2022 IEP could not be implemented in the administratively determined school, including the student's designated placement; or that the student would not have the same opportunities to participate in nonacademic and extracurricular services. The Parent did, however, allege in the State Complaint that CCSD's consideration of the location of the school in close proximity to the student's home impermissibly violated the Least Restrictive Environment provisions of IDEA. (State Complaint, July 5, 2022 Email Communications, Review of the Record)

13. Both the school at which the cyber-bullying incident occurred and the reassignment school were on comprehensive campuses and Parent's requested school was a magnet school, an academy of science and mathematics. All three of the schools served the same region in CCSD and same grade levels. (School Profiles, CCSD Response)
14. The student's assigned school at which the cyber-bullying incident had occurred is, in driving distance, three miles from the student's home and the reassignment school is also three miles from the student's home. The Parent's school of preference is five miles from the student's home. (CCSD Response, MapQuest)

CONCLUSIONS OF LAW

In accordance with IDEA, 34 C.F.R. §300.115, and NAC §388.245, each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services. The placement decision for a student with a disability must be based on the student's IEP and must comply with the requirements of Least Restrictive Environment. A student with a disability must also be placed in the school that the student would normally attend if possible, or in the school closest to the student's home which is capable of providing the services required by the student's IEP. 34 C.F.R. §300.116; NAC §388.245.

“Based on Supreme Court case law, Congress's express intent in the statute, the agency's implementing regulations, and sister circuits' decisions, we hold that "educational placement" means the general educational program of the student. More specifically we conclude that under the IDEA a change in educational placement relates to whether the student is moved from one type of program -- i.e., regular class -- to another type -- i.e., home instruction.” (*N.D. et al. v. State of Hawaii Department of Education*, 600 F.3d 1104; 54 IDELR 111 (9th Cir.² 2010); *Concerned Parents & Citizens for Continuing Educ. at Malcolm X (PS 79) v. New York City Bd. of Educ.*, 629 F.2d 751 (2d Cir. 1980).

In the discussion of the IDEA regulations in 2006, the United States Department of Education consistently explained:

“Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability and "location" as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.” (*Discussion of the IDEA regulations*: Vol. 71, Fed. Reg. pp. 46587 and 46588 (Aug. 14, 2006))

In this case, the reassignment of the student from one school to another school was a measure taken by CCSD in response to the Parent's request for reassignment to a protective placement due to a substantiated cyber-bullying incident. (Finding of Fact (FOF) #4, FOFs #5 - #8) At the time of the student's parentally requested reassignment, the student's designated placement in the May 18, 2022 IEP was in a regular class and special education class (e.g., resource) combination with 98% of the student's day in the regular

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

education environment. (FOF #3) The student's Parent participated in the development of the May 18, 2022 IEP, including the determined placement, and agreed with the components of the IEP. (FOF #2)

Given the IEP Team's agreed-upon determination of the type of program the student needed on the continuum of program options, a regular class and special class combination, CCSD's reassignment of the student to another school was required to be in conformity with this determined placement. Importantly, notwithstanding the allegation, the student's Parent did not allege that the specially designed instruction, related services, and supplementary aids and services in the student's IEP(s) or the student's designated placement in a regular class and special education class, with 98% of the student's day in the regular education environment, could not be implemented at the administratively determined school or that the student would not have the same opportunities to participate in nonacademic and extracurricular services. (FOF #12) Consistently, no documentation was provided in the course of the investigation otherwise. Rather, in relevant part, the Parent raised other reasons of the relative performance of the school; lack of cultural diversity; small representation of the student's culture among the students; and incidence of cyber-bullying at the assignment school as the bases for the Parent's stated preference to reassign the student to a named magnet school in CCSD. (FOFs #7, #9, #10, #13)

The Parent did, however, allege that in violation of the Least Restrictive Environment requirements of IDEA, CCSD's impermissibly considered the restrictive factor of proximity to the student's home in the determination of the student's school of reassignment. (FOF #12) As discussed above, in accordance with IDEA, 34 C.F.R. §300.116(b), and NAC §388.245(6), the placement of a student must not only be based on the student's IEP, but must be as close as possible to the student's home. In this case, the student's assigned comprehensive school at which the cyber-bullying incident occurred is, in driving distance, three miles from the student's home and the reassignment comprehensive school is also three miles from the student's home. The Parent's school of preference, a magnet school, is five miles from the student's home. (FOFs #13, #14) Accordingly, CCSD consideration of this factor was not only permissible, but required, and the reassignment of the student to the closest school capable of providing the services in the student's IEP was consistent with IDEA and NAC, Chapter 388.

Upon consideration of the above authority and the uncontested fact that CCSD's reassignment to the named school was in conformity with the student's determined placement in the Least Restrictive Environment set forth in the student's agreed-upon IEP, CCSD's reassignment of the student was not a change in placement requiring parental participation, 34 C.F.R. §300.116, NAC §388.245(6). It was a change in location within the administrative discretion of CCSD. (Even though parental participation was not required, it was noted that CCSD's administrative reassignment was, nonetheless, consistent with the Parent's stated preference of the reassignment school between the two schools in close proximity to the student's home. (FOFs #10, #11)) The fact that the Parent preferred the student be assigned to another school of the Parent's choice and disagreed with CCSD's administrative determination does not diminish the CCSD's administrative discretion to do so.

As a final matter, even though the contested school assignment in this case did not require parental participation, since it was a change in location not a change in placement, upon consideration of the contentious relationship between the Parent and CCSD, the State Complaint Investigation Team determined a further explanation of the right of parental participation under IDEA and NAC, Chapter 388, was warranted for purposes of clarity.

The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student; and the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §§300.322, 300.501; NAC §388.302. While the public agency must consider the parent's concerns and any provided information, this parental right of participation at these meetings does not require the public agency to adopt the parents' recommendations.

However, upon making the decision regarding the identification, evaluation, and educational placement of the student; and/or the provision of a Free Appropriate Public Education to the student, the public agency must provide a Prior Written Notice to the parents that includes an explanation of why the agency is/is not adopting the parents' recommendation; other options it considered; and why it did/did not adopt those options. The parents can then, of course, seek resolution of any dispute regarding the proposals or refusals of the public agency in accordance with IDEA and Chapter 388 of NRS and NAC. *Mrs. S. v. Vashon Island School District*, 337 F.3d 1115, 39 IDELR 154 (9th Cir. 2003); *Letter to Richards*, 55 IDELR 107 (OSEP January 7, 2010).³

Therefore, CCSD complied with the requirements of IDEA and NAC, Chapter 388, with regard to CCSD's administrative determination on or about June 28, 2023 to reassign the student to a new location in conformity with the student's determined placement in the Least Restrictive Environment; and CCSD was not required to adopt the Parent's requested preferred school as the determined reassignment location.

³The OSEP *Letter to Richards* is publicly available at:
<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/richards010710iep1q2010.pdf>.