

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL062813)**

Report Issued on 8/27/13

INTRODUCTION

On 6/28/13, the Nevada Superintendent of Public Instruction received a Complaint dated 6/28/13 from parents (Parents or Complainants) alleging violations in the special education program of a student with disabilities attending the Clark County School District (CCSD). The Parents alleged that the CCSD, with respect to their child, did not ensure that: 1) their child's special education teacher attended the 6/3/13 individualized education program (IEP) meeting and 2) their concerns about the placement of their child were considered. The Complainants also alleged, as a systemic complaint, that there was not a continuum of placement options available for deaf/hard of hearing (D/HH) students who attended school in the CCSD.

COMPLAINT ISSUE

The allegations articulated in the Complaint and further clarified during the investigation, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE) to investigate:

- Issue One: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to including the required participants at the June 3, 2013 initial IEP meeting, specifically a special education teacher or provider of special education services to the student?**
- Issue Two: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to ensuring that the CCSD considered the concerns of the Parents with respect to the proposed placement of the student?**
- Issue Three: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to having a continuum of placement options available to meet the needs of students with disabilities who are deaf or hard of hearing?**

PERSONS PROVIDING INFORMATION

The complaint investigation team reviewed documents and information received from the following:

- Complainants
- Deaf and Hard of Hearing (D/HH) Coordinator
- Assistant Principal
- Coordinator, Special Education Due Process Compliance (Compliance Coordinator)
- Instructional Coordinator

DOCUMENTS REVIEWED

The documents reviewed by the complaint investigation team included the following:

1. Complaint and additional correspondence (Complaint or Parent Correspondence)
2. Status Record
3. 6/3/13 Multidisciplinary Evaluation Team Report (MDTR)
4. 6/3/13 Statement of Eligibility
5. 6/3/13 IEP
6. 6/5/13 Prior Written Notice (PWN)
7. Teacher License
8. CCSD Deaf and Hard of Hearing Technical Support Document dated 2006 (D/HH Support Document)
9. 8/12/13 Email from the CCSD

FINDINGS OF FACT (FOF)

1. The student is an elementary school student eligible for special education as a hearing impaired child who uses American Sign Language (ASL) as the primary source of communication. The student had an interim IEP and placement in the CCSD beginning on 5/7/13. An IEP meeting was held on 6/3/13 to develop the student's IEP. (6/3/13 IEP, Parent Correspondence)
2. The student's sole Special Education teacher during the interim placement to the end of the 2012/2013 school year attended the 6/3/13 IEP meeting. The Special Education teacher was a long-term substitute and held an endorsement to serve as a Special Education substitute teacher and was proficient in ASL. (6/3/13 IEP, Assistant Principal, Instructional Coordinator, Teacher License)
3. The 6/3/13 IEP Team agreed, with the exception of the Parents, that the appropriate placement for the student was a self-contained classroom for the D/HH. All CCSD self-contained classrooms for the D/HH were located on regular education campuses. The 6/3/13 IEP Team considered and rejected placement in the regular classroom with supplementary aids and services, and placement in a regular and special education class before determining that a self-contained classroom for the D/HH was the appropriate placement for the student. (6/3/13 IEP, D/HH Support Document, Instructional Coordinator)
4. The 6/3/13 IEP included a statement of the Parents' educational concerns as follows: "Both Dad and Mom are still concerned regarding the appropriate placement for [student]. Both parents still feel strongly [student] needs to be in a School for the Deaf. They feel the D/HH Self-Contained class does not meet [student's] educational needs." When the Parents raised these concerns at the 6/3/13 IEP meeting, the IEP Team discussed the concerns. (6/3/13 IEP, PWN, D/HH Coordinator, Complaint)
5. A PWN was issued on 6/5/13 and provided to the Parents. The PWN stated that the CCSD was aware that the Parents disagreed with the placement but that the IEP Team, with the exception of the Parents, agreed that the placement recommendation would meet the student's needs. The PWN also stated that the Parents requested more time to review the IEP and that they disagreed with the placement because they felt that the total communication program offered by the CCSD wasn't robust enough to provide their child with the necessary tools needed to become a productive

member of society. The PWN further explained that the CCSD rejected the Parents' request for a different placement because "the IEP Team agrees the placement recommendation meets the needs of [the student]." (PWN)

6. The CCSD had available the following placements for students who were in D/HH programs: 1) Itinerant Services at the home zoned school sites for up to 240 minutes per week of direct support and monthly consultation support for students who did not require self-contained classroom placement; 2) Total communication self-contained classrooms for more than 240 minutes per week of direct support with sign language the primary communication mode and 3) Aural/Oral self-contained classrooms that provided more than 240 minutes per week of direct support with spoken language being the primary communication mode. The Itinerant Services and the self-contained classrooms were located on regular education campuses. (D/HH Support Document, Instructional Coordinator)
7. The complaint investigation team asked the CCSD the following: "What policies, if any, are in place to provide a more restrictive placement than a self-contained classroom for a D/HH student if he/she needs it?" In response to the question regarding the continuum of placements available to D/HH students, the CCSD responded "There are no written policies for a more restrictive placement than a self-contained classroom." (Complaint Investigator, 8/12/13 Email)

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to including the required participants at the June 3, 2013 IEP meeting, specifically a special education teacher or provider of special education services to the student?

Both the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) set forth the mandatory members of each IEP Team for the development and review and revision of a student's IEP. It is one mandatory member of the IEP Team that is at issue in this Complaint, specifically the presence of the special education teacher who teaches the student. (34 C.F.R. §300.321(a)(3); NAC §288.281(2)(c))

The Special Education teacher was the student's sole Special Education teacher beginning on May 7, 2013 through the end of the 2012/2013 school year. The Special Education teacher held an endorsement to teach special education as a substitute teacher and was proficient in ASL. (FOF #2) The CCSD convened an IEP meeting on 6/3/13 to develop the student's IEP and the student's Special Education teacher attended the IEP meeting. (FOFs #1, #2)

While the Special Education teacher was a long-term substitute, she was the "special education teacher who teaches the pupil" pursuant to the NAC §288.281(2)(c) and the IDEA, 34 C.F.R. §300.321(a)(3). As such, her participation at the student's 6/3/13 IEP meeting met the requirements of the IDEA and the NAC for the mandatory presence of the special education teacher of the student.

Therefore, it is the determination of the complaint investigation team that the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to including the required participants at the June 3, 2013 IEP meeting, specifically the special education teacher.

Issue Two: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with regard to ensuring that the CCSD considered the concerns of the Parents with respect to the proposed placement of the student?

The IDEA, 34 C.F.R. §300.324(a)(ii), and the NAC §388.384(2)(a) require that the IEP Team consider the concerns of the parents when developing the IEP. It was the Parents' allegation that the 6/3/13 IEP Team did not consider their concern about the placement of the student that is at issue here.

In this case, the 6/3/13 IEP Team agreed, with the exception of the Parents, that the appropriate placement for the student was a self-contained classroom for the D/HH on the regular school campus after considering and rejecting placement in the regular classroom with supplementary aids and services, and placement in a regular and special education class. (FOF #3) A discussion was held with the Parents about their concerns at the IEP meeting. (FOF #4) The 6/3/13 IEP included a statement of the Parents' educational concerns about the placement in the IEP: "Both parents still feel strongly [student] needs to be in a School for the Deaf. They feel the D/HH Self-Contained class does not meet [student's] educational needs." (FOF #4)

Following the 6/3/13 IEP meeting, a PWN was issued indicating that the Parents disagreed with the placement because they felt that the total communication program offered by the CCSD wasn't robust enough to provide their child with the necessary tools needed to become a productive member of society. The PWN included an explanation that the CCSD rejected the Parents' request for a different placement because "the IEP Team agrees the placement recommendation meets the needs of [the student]." (FOF #5)

Parents are an integral part of the IEP process and an educational agency is required to consider their concerns and any information they provide at the meeting. However, the agency is not required to adopt the parents' recommendations; but is required to provide a PWN that included a detailed explanation of why the agency was not adopting the parents' recommendations and to explain any other options it considered and why it did not adopt those options. (32 IDELR 206 (OSEP 1999))

In this case, the student's 6/3/13 IEP Team considered the concerns of the Parents in accordance with the IDEA, 34 C.F.R. §300.324(a)(ii), and the NAC §388.384(2)(a) with respect to the student's placement and provided the Parents a PWN indicating the Parents' disagreement with the student's placement, their reasons for the disagreement, and the district's reasons for rejecting the Parents' request for a different placement. (FOFs #4, #5)

Therefore, it is the determination of the complaint investigation team that the CCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to ensuring that the CCSD considered the concerns of the Parents with respect to the proposed placement of the student.

Issue Three: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, on June 3, 2013, with respect to having a continuum of placement options available to meet the needs of students with disabilities who are deaf or hard of hearing?

As a preliminary matter, it is important to reiterate that this issue is a systemic issue with regard to the CCSD's policy, practice, or procedure on the availability of a continuum of alternative placement options, not a child-specific issue. In accordance with the IDEA, 34 C.F.R. §300.115, and the NAC §388.245(2), the CCSD was required to ensure a continuum of alternative placement options were available to meet the needs of students with disabilities for special education and related services. The United States Department of Education, Office of Special Education Programs, reiterated this stating that "Recognizing that there is no "one size fits all" approach, and that placements in regular classes may not be the least restrictive placement for every child with a disability, the IDEA regulations specify that each public agency is to ensure that a continuum of alternative placements (including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services." (113 LRP 3424 (OSEP 2012))

At the time of this Complaint, the CCSD only had two placement options available on the placement continuum for students who were D/HH: a regular classroom with supplemental itinerant services and self-contained classrooms offering a total communication approach or an aural/oral approach on a regular campus. (FOF #6) As such, the CCSD limited the placement options by category of disability and did not ensure a continuum of alternative placement options was available to meet the needs of students with disabilities beyond the self-contained classroom if a student required a more restrictive placement. (FOF #7)

The CCSD was required to ensure that there was a continuum of placement options available for students with disabilities pursuant to the IDEA, 34 C.F.R. §300.115, and the NAC §388.245(2), and did not with regard to students who were D/HH.

Therefore, it is the determination of the complaint investigation team that the CCSD did not comply with the requirements of the IDEA and the NAC, Chapter 388, with respect to having a continuum of placement options available to meet the needs of students with a disability who are deaf or hard of hearing.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective action to address the systemic violation found in this complaint investigation, specifically that it did not have a continuum of placement options available to meet the needs of students with a disability who are deaf or hard of hearing.

Professional Development/Training

Within 30 days of the receipt of this report, the CCSD must develop and submit to the NDE a proposed Correction Action Plan (CAP). The proposed CAP must:

1. Include a proposal to review and revise, as necessary, the CCSD's policies and procedures, as well as any technical support documents, including the D/HH Support Document, with regard to having the continuum of placement options required under the IDEA and the NAC available to meet the needs of students with a disability who are deaf or hard of hearing.

2. Provide professional development and training to appropriate (as determined by CCSD administrators) personnel, who are directly involved in participating in placement decisions for the D/HH students in the district.

The CAP must be approved by the NDE prior to implementation. Following adoption of the revised policies as referenced above, a copy must be provided to the NDE within 30 days of completion. Following the completion of the revised policies, the professional development and training as described in #2 above, must be completed within 30 days and documentation provided to the NDE within 45 days.