

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

S.L.S, a minor, et al.,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, et al.,

Defendants.

Case No. 2:17-cv-02208-JAD-VCF

ORDER

APPLICATION TO PROCEED IN FORMA PAUPERIS
(EFC NO. 1) AND COMPLAINT (EFC NO. 1-1)

Before the Court are pro se Plaintiffs S.L.S (a minor) and Sonia I. Diaz de Smith's (S.L.S.'s parent and guardian) application to proceed in forma pauperis (ECF No. 1) and complaint (ECF No. 1-1). For the reasons stated below, Plaintiffs' in forma pauperis application is granted. The Court, however, orders that Plaintiffs' complaint be dismissed without prejudice.

DISCUSSION

Plaintiffs' filings present two questions: (1) whether Plaintiffs may proceed in forma pauperis under 28 U.S.C. § 1915(e) and (2) whether Plaintiffs' complaint states a plausible claim for relief. Each is discussed below.

I. Plaintiffs May Proceed In Forma Pauperis

Plaintiffs application to proceed in forma pauperis is granted. Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." According to Plaintiffs' affidavit, Diaz de Smith, "parent and general guardian" of her minor co-Plaintiff, makes \$1,500 from her employment and receives \$300 in child support each month. (ECF No. 1 at 1).

1 She reports \$1,800 in monthly expenses as well as a financial obligation related to a student loan. (Id. at
2 1). Plaintiffs’ application to proceed in forma pauperis is, therefore, granted.

3 **II. Plaintiffs’ Complaint Fails to State a Plausible Claim**

4 **A. Legal Standard for Reviewing the Complaint**

5 Because the Court grants Plaintiffs’ application to proceed in forma pauperis, it must review
6 Plaintiffs’ complaint to determine whether the complaint is frivolous, malicious, or fails to state a plausible
7 claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a) provides that a complaint “that
8 states a claim for relief” must contain “a short and plain statement of the claim showing that the [plaintiff]
9 is entitled to relief.” The Supreme Court’s decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8’s
10 requirements, a complaint’s allegations must cross “the line from conceivable to plausible.” 556 U.S.
11 662, 680 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, (2007)). The Court’s
12 decisions in *Twombly* and *Iqbal* prescribe a two-step procedure to determine whether a complaint’s
13 allegations cross that line.

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15 First, the Court must identify “the allegations in the complaint that are not entitled to the
16 assumption of truth.” *Iqbal*, 556 U.S. at 680. Factual allegations are not entitled to the assumption of
17 truth if they are conclusory or “amount to nothing more than a ‘formulaic recitation of the elements’” of
18 a claim. *Id.* at 681 (quoting *Twombly*, 550 U.S. at 555).

19 Second, the Court must determine whether the complaint states a “plausible” claim for relief.
20 *Iqbal*, 556 U.S. at 679. A claim is plausible if the factual allegations which are accepted as true “allow[]
21 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at
22 678. If the factual allegation, which are accepted as true, “do not permit the Court to infer more than the
23 mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—that the pleader is
24 entitled to relief.” *Id.* at 679 (citing Fed. R. Civ. P. 8(a)(2)).
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1 “[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than
2 formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (quoting Estelle v.
3 Gamble, 429 U.S. 97, 106 (1976)). If the Court dismisses a complaint under § 1915(e), the plaintiff should
4 be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
5 the face of the complaint that the deficiencies could not be cured by amendment. Cato v. United States,
6 70 F.3d 1103, 1106 (9th Cir. 1995).

7 **B. Analysis**

8 The first paragraph of Plaintiffs’ complaint asserts:

9 The Court has jurisdiction under The Civil Rights of the United States
10 Constitution and Federal Law. The First, Second, Fifth, and the Fourteenth
11 Amendment of the United States Constitution; violations of Section 504 of
12 the Rehabilitation Act and the Individuals with Disabilities, The McKinney-
13 Vento Act. Title VI, Title IV, Title IX, denial of access to education, denial
of ELL programs to LEP students and parents, Conspiracy Against Rights
and the United Nations Declaration of the Human Rights of the Child.

14 (ECF. No. 1-1 at 2). The complaint then lists two pages of factual allegations, broken into six long
15 paragraphs, with only five scattered sentences connecting the facts to the laws cited above. (Id. at 2-4).
16 The main focus of the allegations appears to be that (1) Cashman Middle School denied S.L.S. access to
17 its English Language Learner (“ELL”) program in July 2016 because she was born in the United States,
18 despite the fact that she was a Limited English Proficient (“LEP”) student (Id. at 2); (2) Cashman failed
19 to provide adequate translation services to LEP parents (Id.); (3) Cashman failed to diagnose S.L.S.’s
20 learning disabilities (Id.); (4) Clark County School District (“CCSD”) denied transportation to S.L.S for
21 three weeks (Id. at 3); (5) Cashman interfered with LEP parents’ right to assemble, form an association,
22 and participate in meetings at the school (Id.); (6) the principal of Cashman MS and a CCSD police
23 officer...escorted [S.L.S.] around campus as a criminal to intimidate other LEP parents,” (Id.); and (7)
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1 “the principal of Cashman MS hand delivered to [Diaz de Smith], a Trespass Notice without a right to due
2 process” (Id.).

3 Though “[n]o technical form is required for complaints (Fed. R. Civ. P. 8(a)), “[a] party must state
4 its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of
5 circumstances. ...If doing so would promote clarity, each claim founded on a separate transaction or
6 occurrence...must be stated in a separate count or defense” (Fed. R. Civ. P. 10(b)).

7 In this case, the factual allegations are difficult to follow, as they are grouped together in long
8 paragraphs with few references to how they relate to any particular violation of a specific law. For this
9 reason, the Court dismisses Plaintiffs’ entire complaint without prejudice to provide Plaintiffs an
10 opportunity to reformat the complaint and clarify which circumstances are relevant to each claim.

11 To provide further guidance to Plaintiffs, the Court will also analyze the merits of Plaintiffs’
12 complaint, to the extent possible.

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14 **1. Jurisdiction**

15 “The district Courts shall have original jurisdiction of all civil actions arising under the
16 Constitution, Laws, or treaties of the United States. 28 U.S.C. § 1331. Plaintiffs’ complaint cites to
17 several portions of the Constitution (the First, Second, Fifth, and the Fourteenth Amendments) and several
18 federal laws (20 U.S.C. § 1070, 20 U.S.C. § 1400, 20 U.S.C. § 1681, 29 U.S.C. § 794, 42 U.S.C. § 11301,
19 and 42 U.S.C. § 2000d).¹ The Court generally has jurisdiction over claims arising under these provisions.

20 However, Plaintiffs also cite, as a basis for the Court’s jurisdiction, “denial of access to education,
21 denial of ELL programs to LEP students and parents, Conspiracy Against Rights and the United Nations
22 Declaration of the Human Rights of the Child.” (ECF. No. 1-1 at 2). The complaint is not clear regarding
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¹ To the extent that Plaintiffs’ references to laws is ambiguous (such as “Title IV”), the Court used its judgment in applying the law most commonly associated with Plaintiff’s designation.

1 what right to education has been infringed beyond the specific statutes listed above. In addition, the
2 declarations of the United Nations are generally statements of policy rather than binding treaties. See
3 *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 719 (9th Cir. 1992). The Court does not have
4 jurisdiction over any claims based on these asserted rights and declaration.

5 **1. Merits of Plaintiffs' Federal Claims**

6 Plaintiffs cite several federal laws that bear no relation to the allegations in Plaintiffs' complaint.
7 The Second Amendment deals with the right to bear arms, which is not at issue in this case. U.S. CONST.
8 amend. II. The Fifth Amendment applies solely to actions by the federal government, and Plaintiffs' do
9 not allege that any defendant is a federal actor. *Lee v. City of Los Angeles*, 250 F.3d 668, 687 (9th Cir.
10 2001). Title IV (20 U.S.C. § 1070) relates to financial assistance in higher education, which Plaintiffs do
11 not address in their complaint. Title IX (20 U.S.C. § 1681) deals with discrimination based on sex, and
12 Plaintiffs fail to allege that S.L.S or Diaz de Smith faced discrimination based on their sex.

13 The Court now analyzes the remaining law Plaintiffs cite. Plaintiffs' complaint contains at least
14 some relevant allegations relating to each of these laws, and the deficiencies in these claims could be cured
15 through amendments.
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17 The First Amendment prohibits government actions abridging freedom of speech and right of
18 people to peaceably assemble. U.S. CONST. amend. I. "To sustain an action under [42 U.S.C.] § 1983, a
19 plaintiff must show (1) that the conduct complained of was committed by a person acting under color of
20 state law; and (2) that the conduct deprived the plaintiff of a constitutional right." *Balistreri v. Pacifica*
21 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). CCSD is "a political subdivision of the state of Nevada."
22 *Peterson v. Miranda*, 991 F. Supp. 2d 1109, 1120 (D. Nev.). Once a state opens a forum to speech, it
23 "must not restrict access to a forum on the basis of viewpoint, and the restriction must be 'reasonable in
24 light of the purpose served by the forum.'" *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 106-07
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1 (2001) (quoting *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985)) (internal
2 citation omitted). “To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it
3 engaged in constitutionally protected activity; (2) the defendant's actions would “chill a person of ordinary
4 firmness” from continuing to engage in the protected activity; and (3) the protected activity was a
5 substantial motivating factor in the defendant's conduct.” *Arizona Students' Ass'n v. Arizona Bd. of*
6 *Regents*, 824 F.3d 858, 867 (9th Cir. 2016) (quoting *O'Brien v. Welty*, 818 F.3d 920, 933 (9th Cir. 2016)).

7 While the Plaintiffs’ complaint contains allegations relating to the First Amendment, the Court
8 finds the complaint does not contain “a short and plain statement of the claim” sufficient for the court to
9 draw a reasonable inference that the Defendants are liable for violating this amendment. Fed. R. Civ. P.
10 8(a). Plaintiffs allege Cashman “dismissed the initiative of LEP parents to form a parent organization,
11 and replaced us with the president and the secretary of the NV PTA” and denied LEP parents’ “petition
12 to CCSD to use the school facilities to hold our meetings.” (ECF No. 1-1 at 3). The Court is unable to
13 determine how Cashman “dismissed the initiative” to form a group, yet also “replaced” the group. In
14 addition, Plaintiffs failed to allege that the school facilities were generally open to other groups, so the
15 Court is unable to determine that CCSD improperly limited access to any forum. Plaintiffs also allege
16 Diaz de Smith “was expelled from the School Organizational Team and as the Parent ambassador of
17 Cashman” in retaliation for her “advocacy.” (Id.) The complaint is unclear regarding which party
18 removed Diaz de Smith from these positions and what form her “advocacy” took, so the Court is unable
19 to determine that any party retaliated against Diaz de Smith based on constitutionally protected activity.
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21 The Fourteenth Amendment provides that states shall not “deprive any person of life, liberty, or
22 property, without due process of law.” U.S. CONST. amend. XIV.² Plaintiffs allege CCSD denied
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25 ² The Fourteenth Amendment also provides that states shall not “deny to any person...the equal protection of the laws.” U.S. CONST. amend. XIV. As this issue is also addressed by Plaintiffs’ Title VI allegations, the Court will only focus on the due

1 transportation to S.L.S for three weeks “in a direct violation of The Homeless Assistance Act”, “the
2 principal of Cashman [Middle School] and a CCSD police officer... escorted [S.L.S.] around campus as a
3 criminal to intimidate other LEP parents,” and “the principal of Cashman MS hand delivered to [Diaz de
4 Smith], a Tres[pass] Notice without a right to due process” (ECF. No. 1-1 at 3). The Court is unable,
5 based on Plaintiffs’ assertions, to draw the reasonable inference that the defendant is liable for violating
6 Plaintiffs’ right to due process. The complaint also states that Diaz de Smith requested to enroll S.L.S. in
7 the homeless assistance program, but Cashman “provided [her] a different service” (Id.), so the Court
8 cannot determine whether S.L.S. had a right to transportation based on the Homeless Assistance Act. The
9 allegations about S.L.S. bring escorted around campus and Diaz de Smith’s trespass notice are too vague
10 for the Court to determine what allegedly happened.

11 The Individuals with Disabilities Education Act (“IDEA”) (20 U.S.C. § 1400) and Section 504 of
12 the Rehabilitation Act (29 U.S.C. § 794) protect against discrimination towards individuals with
13 disabilities. If “a lawsuit seeks relief for the denial of a free appropriate public education... that plaintiff
14 must first submit her case to an IDEA hearing officer.” Fry v. Napoleon Cmty. Sch., 137 S. Ct. 743, 754
15 (2017). Plaintiffs assert S.L.S has been denied the “right to Free Adequate Public Education,” but fails to
16 mention any administrative proceedings taken in response to CCSD or Cashman’s actions. (ECF. No. 1-
17 1 at 3). In addition, Plaintiffs fail to asset what disability S.L.S. has beyond asserting LEP students “have
18 developed learning disabilities and low self-esteem due to poor academic performance.” (Id. at 2.)

19 The McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11301 et seq.) seeks to meet the
20 needs of homeless individuals, with several provisions specifically directed towards education (42 U.S.C.
21 §§ 11431-11433). Other courts have found at least some of the provisions in the Homeless Assistance
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25 process allegations under the Fourteenth Amendment in this part of the Order. Plaintiffs may clarify in an amended complaint whether they also rely on the equal protection provision of the Fourteenth Amendment in their case.

1 Act to be enforceable through a § 1983 action. See *Lampkin v. D.C.*, 27 F.3d 605, 612 (D.C. Cir. 1994).
2 However, in this case the Plaintiffs, while asserting Defendants violated the Homeless Assistance Act, fail
3 to (1) explain what portion of the Act they are relying on in their complaint, (2) clarify whether CCSD
4 admitted S.L.S. into any homeless assistance program, and (3) plainly assert that Plaintiffs are homeless.

5 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) states that no person shall be
6 “subjected to discrimination under any program or activity receiving Federal financial assistance” on the
7 basis of national origin. Plaintiffs assert Defendants “discriminated on [Diaz de Smith’s] national origin”
8 and this discrimination was “the root cause of a series of other civil rights violations and child abuses
9 against [S.L.S and Diaz de Smith].” (ECF No. 1-1 at 2). While the Court could attempt to guess Diaz de
10 Smith’s national origin from the context of the complaint, Plaintiffs fail to affirmatively state Diaz de
11 Smith’s national origin. Plaintiffs also potentially allege S.L.S. was discriminated based on her national
12 origin (as she was born in the United States), but this allegation is closely linked with S.L.S.’s “mother
13 language,” which is not plainly stated. (Id.). Finally, there is no assertion that Defendants have received
14 Federal financial assistance. Without this information, the Court cannot fully analyze Plaintiffs’ Title VI
15 claim.
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17 ACCORDINGLY,

18 IT IS ORDERED that Plaintiffs’ application to proceed in forma pauperis (ECF No. 1) is
19 GRANTED.

20 IT IS FURTHER ORDERED that the Clerk of the Court file the complaint. (ECF No. 1-1).

21 IT IS FURTHER ORDERED that Plaintiffs are permitted to maintain the action to its conclusion
22 without the necessity of prepayment of any additional fees, costs, or security. This order granting in forma
23 pauperis status does not extend to the issuance of subpoenas at government expense.
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1 IT IS FURTHER ORDERED that Plaintiffs' complaint (ECF No. 1-1) is DISMISSED WITHOUT
2 PREJUDICE.

3 IT IS FURTHER ORDERED that Plaintiffs have until October 20, 2017 to file an Amended
4 Complaint. Failure to timely file an Amended Complaint that addresses the deficiencies noted in this
5 Order may result in a recommendation for dismissal with prejudice.

6 IT IS FURTHER ORDERED that if an Amended Complaint is later filed, the Clerk of the Court
7 is directed **NOT** to issue summons on the Amended Complaint. The Court will issue a screening order
8 on the Amended Complaint and address the issuance of Summons at that time, if applicable. See 28 U.S.C.
9 § 1915(e)(2).
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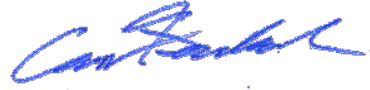
12 NOTICE

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14 Under Local Rule IB 3-2, any objection to this Order must be in writing and filed with the Clerk
15 of the Court within 14 days. The Supreme Court has held that the courts of appeal may determine that an
16 appeal has been waived due to the failure to file objections within the specified time. (See *Thomas v. Arn*,
17 474 U.S. 140, 142 (1985)). This circuit has also held that (1) failure to file objections within the specified
18 time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the
19 District Court's order and/or appeal factual issues from the order of the District Court. (See *Martinez v.*
20 *Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th
21 Cir. 1983)).

22 Pursuant to LSR 2-2, the Plaintiff must immediately file written notification with the court of any
23 change of address. The notification must include proof of service upon each opposing party or the party's
24 attorney. **Failure to comply with this Rule may result in dismissal of the action.** (See LSR 2-2).
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IT IS SO ORDERED.

DATED this 15th day of September, 2017.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE

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