

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL051010)**

INTRODUCTION

On 5/10/10, the Nevada Superintendent of Public Instruction received a complaint dated 4/30/10 from a non-custodial parent (father) alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine allegations that the CCSD: 1) violated procedural requirements with respect to the 2/8/10 individualized educational program (IEP) meeting because it was conducted without the parent's input; 2) failed to obtain the father's permission prior to implementing the IEP; 3) failed to provide the parent a revised meeting notice for the 2/12/10 IEP meeting informing him of who would be attending and their roles; 4) failed to have the same CCSD staff attend the 2/12/10 IEP meeting who attended the 2/8/10 IEP meeting; 5) had an unqualified person attend the 2/12/10 IEP meeting; 6) failed to provide requested records prior to the 2/12/10 IEP meeting; 7) inaccurately identified the student as having a specific learning disability in the 2/12/10 IEP; and 8) failed to include specially designed instruction for reading and measurable benchmarks in the 2/12/10 IEP.

The complainant also alleged violations that occurred outside of the jurisdiction of the Nevada Department of Education (NDE) to investigate because they had occurred more than a year prior to the date of the receipt of the complaint. The NDE has authority to investigate complaints that have been filed not more than one year after the date on which the alleged violation(s) have occurred (NAC §388.318((1)(b)) and the complainant was informed of such, through correspondence from the NDE.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of NDE related to the annual IEP:

- Issue One: Whether CCSD complied with federal and state regulations with regard to affording the father the opportunity to participate in the development of the student's annual IEP.
- Issue Two: Whether CCSD complied with federal and state regulations with regard to providing the father copies of the requested educational records prior to the annual IEP meeting.
- Issue Three: Whether CCSD complied with federal and state regulations with regard to the contents of the student's annual IEP with respect to:
- b. Measurable benchmarks or short-term instructional objectives
 - c. Specially designed instruction for reading

PERSONS PROVIDING INFORMATION

The investigation team reviewed information provided by the following people:

1. Father
2. Principal
3. Assistant principal
4. Special education teacher
5. Compliance monitor

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. Meeting notices dated 1/25/10, 1/26/10, and 2/1/10 for the 2/8/10 IEP meeting
2. Student status record from 6/30/09 through 5/18/10
3. Student's annual 2/8/10 IEP (annual IEP)
4. Clark County District Stipulation and Order dated 4/26/01 re: Child Custody Issues (Court Order)
5. Father's letters to CCSD personnel dated 1/28/09, 4/24/09 and 2/17/10
6. Student's 2/20/09 IEP
7. Father's emails to CCSD personnel dated 9/6/07, 11/5/07, 9/23/08, 10/13/08, 10/20/08, 10/8/09, 11/19/09 and 2/3/10
8. CCSD personnel emails to father dated 9/10/07, 9/23/08, 10/21/08, 1/21/09, 2/3/09, 10/8/09, 10/9/09, 2/3/10
9. Letter from Lancaster Contact Lens, Inc. dated 2/12/09
10. Parental Consent for Evaluation dated 9/19/07
11. Parental Notice of District Proposal to Evaluate dated 9/19/07
12. Multidisciplinary Evaluation Team Report dated 12/12/07
13. Parental Consent for Evaluation dated 10/23/08
14. Parental Notice of District Proposal to Evaluate dated 10/23/08
15. Statement of Eligibility and Multidisciplinary Team Report dated 1/22/09
16. Meeting Notice dated 12/19/08
17. Meeting Notice dated 2/20/09

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- U.S. Department of Education, Office of Special Education Programs (OSEP) Policy Letter 54 IDELR 60 (August 21, 2009)

FINDINGS OF FACT

This investigation involved a fifth grade elementary school student eligible for special education services as a student with a specific learning disability. A review of documents, as well as information provided by the father, the principal, the special education teacher, the assistant principal, and the compliance monitor revealed the following facts.

The student was determined eligible for special education services under the category of specific learning disability on 1/22/09. The student's parents share joint legal custody while the mother has primary physical custody. The student had a 2/20/09 IEP in effect until an annual IEP meeting was held for the student on 2/8/10.

The school sent meeting notices to each parent for an annual IEP meeting to be held on 2/8/10. The father returned his meeting notice indicating that he planned to attend by phone.

The mother refused to attend the annual IEP meeting if the father was going to be present. In response, the district made a decision to hold two separate annual IEP meetings with one parent in attendance at each meeting, and meeting notices were sent to the father and the mother for their separate meeting times.

Subsequent to the issuance of the separate meeting notices, CCSD decided that the annual IEP meeting should be held only with the mother, and that it would be the official IEP meeting at which the annual IEP would be finalized. CCSD also decided to keep the meeting with the father scheduled for 2/12/10, (after

the annual IEP was finalized on 2/8/10), but solely for the purpose of explaining the contents of the annual IEP and not to take input or make changes.

The father requested copies of testing information in a phone call to school personnel on 1/25/10.

The student's status record stated that: 1) on 2/1/10 the principal called the father, leaving a message that he wished to reschedule the IEP with the father and 2) on 2/3/10 the father spoke with the assistant principal to "schedule IEP review for 2/12/10, and asked the assistant principal for the meeting notices to be sent to him along with copies of all the testing information for receipt five days prior to the 2/12/10 meeting".

The father asked the special education teacher, via email, on 2/3/10 "for all testing information, as well as progress reports and other educational documents to be sent to him prior to the rescheduled meeting as required by IDEA".

The father was notified in a 2/3/10 email from the special education teacher that the draft annual IEP with testing results, current report card, the current Interim assessment results and CRT scores would be sent to him on 2/3/10. The documents referenced in the 2/3/10 email were sent by U.S. mail, postmarked 2/11/10 and received by the father on 2/13/10.

The mother attended the annual IEP meeting on 2/8/10. The annual IEP was finalized at that meeting and she agreed with it.

At the beginning of the 2/12/10 meeting the principal informed the father, who participated by phone, that the meeting was not an IEP meeting but that it was an informational meeting to review the annual IEP that was in place, answer any questions and not to make any changes to the annual IEP because it had been finalized.

The annual IEP indicated that the student was eligible for special education services as a student with a specific learning disability. There were two annual goals in the IEP. The first goal stated that the student would "read to gain and evaluate new information achieving a criteria of 80% as measured by observation, and work samples as implemented by teaching staff". The benchmarks/short-term objectives for the first goal addressed reading informational texts to gain and evaluate new information, finding answers to comprehension questions and using charts and vocabulary to aid with finding answers to comprehension questions. The student was to achieve a criterion of 80% for each of the benchmarks or short-term objectives.

The second goal stated that the student would "copy objectives, demonstrate note-taking, and use spell check to assist with comprehending information achieving a criteria of 80% as measured by observation and work samples as implemented by teaching staff". The benchmarks/short-term objectives addressed copying down daily objectives into his agenda, editing written work and written responses for spelling errors, using spell check devices and taking notes while listening to texts being read aloud. The student was to achieve a criterion of 8 out of 10 trials as implemented by the teaching staff.

The IEP specified specially designed instruction of reading consultation services for 40 minutes a month in the general education classroom. No other specially designed instruction or related services were included in the IEP.

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether CCSD complied with federal and state regulations with regard to affording the father the opportunity to participate in the development of the student's annual IEP.

This complaint concerns allegations that: the father was not provided with his parental right to participate in the development of the annual IEP and did not consent to the implementation of the IEP; the same CCSD staff who attended the 2/8/10 IEP meeting should have attended the 2/12/10 meeting; the district did not provide written notice of all the people who would attend the 2/12/10 meeting; and that one of the CCSD staff members who attended the 2/12/10 meeting should not have attended.

After reviewing documentation and receiving reports from interviewees, the complaint investigation team determined that the 2/12/10 meeting was not an IEP meeting and that therefore the rules and regulations with respect to any required meeting notices and participants for IEP meetings did not apply to it. The complaint investigation team determined that the allegations of the father with respect to the denial of his parental right to participate would be examined in relation to the annual IEP that was developed on 2/8/10.

NAC §388.302(1) states that “The parent of a pupil with a disability may participate in meetings relating to the ...provision of a free appropriate education to the pupil...”.

NAC §388.281(2)(d), and (10) and (11) state that one or both of the pupil’s parents shall be part of the IEP committee unless the parents do not acknowledge receipt of the notice of the IEP meeting or if the reasonable efforts of the district to involve the parents are unsuccessful.

NAC §388.071(1) states that the definition of parent means “1. A biological or adoptive parent;”. (See also 34 CFR §300.30).

NAC §388.300(1) states that “informed written consent must be obtained from the parents of the pupil before conducting an initial evaluation, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a pupil with a disability...”.

It is undisputed that the father is the parent of the child as defined in NAC §388.071(1) and that the child’s father and mother have joint legal custody of the child. As evidenced by the Court Order, the father’s rights with regard to joint legal custody are not limited in any manner. As such, both parents have the right to make educational decisions for the child under both IDEA and Nevada special education law and regulations. The IDEA and Nevada special education law and regulations do not address the resolution of disputes between parents when they disagree regarding educational decisions affecting their child. Further, the IDEA and Nevada special education law and regulations do not authorize the local educational agency (LEA) to permit parental participation of one parent to the exclusion of the other.

The U.S. Department of Education, Office of Special Education Programs (OSEP) has acknowledged, and the NDE concurs, that disputes between parents who share the right to make educational decisions for their child, and who disagree about the provision of special education and related services for their child, place an LEA in a difficult situation (54 IDELR 60 (OSEP August 21, 2009)). The complaint investigation team recognizes that CCSD did in fact attempt to address this dilemma with various strategies, including first inviting both parents to the annual IEP meeting, and then, in response to the mother’s refusal to meet with the father, scheduling two separate meetings. Ultimately however, CCSD made a determination to exclude the father from participation in the annual IEP altogether.

In this case, the father consistently indicated his desire to actively participate in decision-making regarding his son’s educational program in the 2009-2010 school year, including confirmation of his intent to participate, by telephone conference, at the annual IEP meeting. The annual IEP meeting was held with the student’s mother and finalized without providing the father the right to participate. The meeting held on 2/12/2010 with the father was not an IEP meeting to obtain the father’s input and to review and revise, as appropriate, the student’s IEP but rather an informational meeting to review the finalized annual IEP.

Regardless of the difficult dilemma the CCSD faced in this case, the complainant had the right to participate in educational decision making for his son, including the right to participate in the review and

revision, as appropriate, of his son's IEP and was denied that opportunity. However, the CCSD was not obligated to obtain written consent from the father (or from the mother) to implement the IEP (because this was not a juncture that required consent), and therefore did not violate any consent requirements.

Accordingly, the investigation team concluded that the CCSD failed to comply with state regulations with respect to providing an opportunity for the father to participate in the development of the annual IEP.

Issue Two: Whether CCSD complied with federal and state regulations with regard to providing the father copies of the requested educational records prior to the annual IEP meeting.

This complaint concerned allegations that the district did not provide the parent copies of the student's evaluations prior to the annual IEP meeting, although he had requested them first on 1/25/10 and then again by phone and by email on 2/3/10.

NAC 388.287(1)(a) states "The parents of a pupil must be allowed to inspect and review any educational records relating to their child...The public agency shall comply with such request without unnecessary delay and in any event: (a) Before any meeting regarding an individualized educational program...". Districts are not actually required to provide copies in most situations, but in this case, the district apparently agreed to provide copies as the means for the parent to inspect and review.

In this case, the father initially requested the educational records on 1/25/10 and again on 2/3/10. The district subsequently agreed to provide copies of the records, but they were not mailed to the father until 2/11/10 and received on 2/13/10, subsequent to the annual IEP meeting and even the 2/12/10 IEP informational meeting to explain the IEP. The district was required to comply with the parent's request to inspect and review the educational records before any meeting regarding the student's IEP and failed to do so.

Therefore, the investigation team concluded that the CCSD violated state regulations when it did not provide copies of the requested educational records prior to the annual IEP meeting.

Issue Three: Whether CCSD complied with federal and state regulations with regard to the contents of the student's annual IEP with respect to:

- b. Measurable benchmarks or short-term instructional objectives
- c. Specially designed instruction for reading

This complaint concerned allegations that in the annual IEP, the district inappropriately identified the student as having a specific learning disability, did not identify specially designed instruction for the student in reading, and did not include measurable benchmarks.

NAC §388.284(1)(b) states that the IEP shall include: "A statement of the measurable annual goals, including benchmarks or the short-term instructional objectives...related to meeting the needs of the pupil...".

NAC §388.284(1)(c) states that the IEP shall include: "A statement of the specific special education...to be provided to the pupil...and a statement of the modifications to the regular educational program or support for school personnel that must be provided for the pupil...".

In this case, in 2009 a multidisciplinary team determined the student was eligible for special education services as a student with a specific learning disability. The IEP correctly reflected this eligibility category on the front page of the IEP. (It is noted that the father additionally alleged that this eligibility determination was flawed, however the investigation team did not investigate this allegation since it occurred more than one year prior to the receipt of this complaint request).

The IEP included two goals, both of which contained objectives/benchmarks with a criterion of either 80% or its equivalent (8/10) as measured by observation and work samples and implemented by the teachers.

The IEP committee was required to provide a statement of the specific special education to be provided to the student. In this case, the IEP committee determined that specially designed instruction of forty minutes of consultation was to be provided monthly.

The IEP committee was required to include a statement of measurable annual goals including benchmarks or objectives, and to identify the specially designed instruction to be provided for the student, and did do so.

Therefore, the investigation team concluded that the CCSD complied with state regulations with respect to the content of the student's annual IEP.

ORDER FOR CORRECTIVE ACTION

CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not provide an opportunity for the father to participate in the development of the annual IEP nor did it allow the father to inspect and review the requested educational records within a reasonable time prior to the annual IEP meeting.

Directed Action

CCSD failed to provide an opportunity for the father to participate in the development of the annual IEP. Therefore CCSD is directed to schedule an IEP meeting, to review and revise (as appropriate), allowing the opportunity for both parents to participate. The review must be scheduled within thirty days of the receipt of this report, unless the father and CCSD agree otherwise.

Professional Development/Training

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

1. Include a plan to review and revise, as necessary, district policies and procedures with regard to:
 - a. Providing opportunities for both parents with joint legal custody, to participate in the development of their children's IEPs
 - b. Providing an opportunity to inspect and review requested educational records prior to an IEP meeting.
2. Provide professional development for teachers and administrators at the school site on the requirements to:
 - a. Provide opportunities for both parents with joint legal custody, to participate in the development of their children's IEPs
 - b. Provide an opportunity to inspect and review requested educational records prior to an IEP meeting.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.