

**COMPLAINT INVESTIGATION
NEVADA DEPARTMENT OF EDUCATION
(#NDE061411)**

Report Issued on 8/12/11

INTRODUCTION

On 6/14/11, the Nevada Superintendent of Public Instruction received a complaint dated 6/13/11 from an advocate alleging that there was a discrepancy between federal and state law with respect to the requirements for determining eligibility for special education for students with specific learning disabilities. An investigation team was appointed to examine the allegation that the Nevada Department of Education (NDE) requires districts to use a severe discrepancy formula as the sole criteria to determine whether a student is eligible for special education as a student with a specific learning disability.

COMPLAINT ISSUES

The allegations articulated in the complaint raised the following issue under the jurisdiction of the NDE:

Issue: Whether the eligibility criteria adopted by the NDE for determining whether a child has a specific learning disability requires the use of a severe discrepancy between intellectual ability and achievement in violation of 34 C.F.R. §300.307.

PERSONNEL REVIEWED

Person interviewed:

- NDE Special Education Program Professional

DOCUMENTS REVIEWS

The documents reviewed by the investigation team included the following:

- NDE Special Education Record Review Forms for Monitoring for eligibility for special education as a student with a specific learning disability-2010-2011 (Monitoring Form)
- Spanish and English versions of the NDE Policy Statement Response to Scientific, Research-Based Intervention April 2007 (RTI Policy Statement)
- NDE Tips for Documenting “Specific Learning Disabilities Eligibility Decisions” August 9, 2010 (Documenting Specific Learning Disabilities)

The investigation team also reviewed the following authorities:

- Nevada Administrative Code (NAC), Chapter 388, including NAC §388.420.
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300

FINDINGS OF FACT

Federal law 34 C.F.R. §300.307(a)(1) requires that a State must not require the use of a severe discrepancy between intellectual ability and achievement to find a student eligible for special education as a child with a specific learning disability.

The NDE has established eligibility criteria for student with disabilities by state regulation, including students with a specific learning disability.

The NAC §388.420 provides the eligibility criteria for students with a specific learning disability and, as part of that criteria, includes alternative standards to be applied by an eligibility team in the determination of whether a student has a specific learning disability, specifically whether there is any identified underachievement or a severe discrepancy between achievement and intellectual ability.

The NAC §388.420(2) provides additional standards for the public agency if the agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance or achievement, or both consistent with NAC §388.420(1)(c)(2).

The NAC §388.420(3) provides additional standards for the public agency if the agency determines that a pupil has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards consistent with NAC §388.420(1)(c)(2).

Districts may establish additional eligibility criteria, as long as the criteria are consistent with the eligibility criteria in the NAC and the IDEA, including the choice of which of the above options to use in identifying students with specific learning disabilities.

The NDE conducted training for district special education directors in August 2010 that included guidance for determining whether a student has a specific learning disability through determining an underachievement based on scientific, research-based interventions. The NDE has published policy papers on the use of scientific, research-based interventions in both English and Spanish.

The Monitoring Form used by the NDE when it reviews districts' compliance with the standards for finding students eligible for special education as students with specific learning disabilities shows both options described above, and districts are found compliant if they use either one of the options in accordance with the criteria specified in the corresponding section of NAC.

CONCLUSIONS OF LAW AND REASONS

Issue: Whether the eligibility criteria adopted by the NDE for determining whether a child has a specific learning disability requires the use of a severe discrepancy between intellectual ability and achievement in violation of 34 C.F.R. § 300.307.

Federal regulations at 34 C.F.R. §300.307(a)(1) state that a State “(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability...”.

State regulations at NAC §388.420(1)(c) state, with respect to finding a student eligible for special education as a student with a specific learning disability, that: “The pupil:

- (1) Does not make sufficient progress to meet the age appropriate standards or the state-approved grade level standards ... when using a process based on the pupil's response to scientific, research-based intervention; **or [emphasis added]**
- (2) Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, that is determined by the eligibility team to be relevant to the identification of a specific learning disability using appropriate assessments;

State regulations at NAC §388.420(2) state **[in reference to NAC §388.420(1)(c)(2) above]** that "...If the public agency determines that a pupil exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to the pupil's age, the state-approved grade level standards or intellectual development, the public agency shall determine whether the pupil has a severe discrepancy between achievement and intellectual ability ...".

State regulations at NAC §388.340(3) state **[in reference to NAC §388.420(1)(c)(1)]** above that "...If the public agency determines that a pupil has not made sufficient progress to meet the age appropriate standards or the state-approved grade level standards in one or more of the areas set forth in paragraph (a) of subsection 1 when using a process based on the pupil's response to scientific, research-based intervention, the public agency shall document: ...".

This complaint concerned an allegation that the NDE requires districts to use a severe discrepancy between ability and achievement to determine whether a student is eligible for special education as a child with a specific learning disability.

The regulations promulgated by the Nevada State Board of Education and cited above provide the eligibility criteria for students with a specific learning disability. The regulations offer two distinct options for determining that a student has a specific learning disability and the NAC enforces compliance with these criteria. Only one of the options requires the determination of the existence of a severe discrepancy for finding that a student has a specific learning disability. Each district has the choice of which option to use. In addition, the NDE provides policies, training and specific monitoring of districts to ensure that, consistent with the NAC, districts are knowledgeable about both options for determining whether students have a specific learning disability.

Therefore, the investigation team concluded that the NDE does not require the use of a severe discrepancy between intellectual ability and achievement and is in compliance with 34 C.F.R. § 300.307.