

**COMPLAINT INVESTIGATION
LYON COUNTY SCHOOL DISTRICT
(#LY031412)**

Report Issued on 5/11/12

INTRODUCTION

On 3/14/12, the Nevada Superintendent of Public Instruction received a complaint dated 3/14/12 from a parent alleging a violation in the special education program of a student with disabilities attending the Lyon County School District (LCSD). An investigation team was appointed to examine the allegations that the LCSD violated the student's 2/2/12 individualized educational program (IEP) and the 4/1/11 behavior intervention plan (BIP) with respect to an incident on 3/14/12. The complaint specifically alleged that: 1) the daily log was not kept up; 2) the paraprofessional made physical contact with the student which was prohibited by the BIP; 3) the student was not sent to the special education classroom after two attempts at redirection failed; and 4) the parents were not contacted within 15 minutes of the failure of the attempts to redirect the student.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by interviews and a review of documents, raised the following issue under the jurisdiction of the NDE to investigate under the special education complaint process:

Issue: Whether the LCSD complied with federal and state regulations to implement the student's IEP on 3/14/12 specifically with regard to:

- a. Following the requirements for recording an incident in the daily log
- b. Following the requirements of the BIP with respect to the use of physical contact
- c. Following the requirements of the BIP in responding to the student's conduct when an incident occurred

PERSONS PROVIDING INFORMATION

The investigation team interviewed and received information from the following people:

- Parent
- Principal

DOCUMENTS AND MEDIA REVIEWED

The documents reviewed by the investigation team included the following:

- IEP
- BIP
- 3/14/12 daily log (daily log)
- 3/14/12 incident report (incident report)
- 3/14/12 DVD recording of alleged incident

The investigation team also reviewed the following authorities:

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

FINDINGS OF FACT

This investigation involved an elementary school student eligible for special education services under the category “other health impairment”. A review of the information received revealed the facts set forth below with respect to an incident that occurred on 3/14/12 (incident).

The IEP had an accommodation that stated “Notebook [daily log] to go with [student] to specials and therapy settings. If there is an incident, note time, place, person”. There were no other requirements with respect to the daily log.

The time, the place and the persons involved in the incident described below were noted in the daily log.

The incident occurred beginning at approximately 10:00 A.M. The paraprofessional took the student to the resource room because attempts to redirect the student had been unsuccessful. When the student and paraprofessional arrived at the resource room, there was a sign stating that the resource teacher was testing a student and to not enter the room. The student walked into the room. The paraprofessional walked after the student, placed her hand on the back of the student’s neck, turned the student around and guided the student out of the classroom.

The paraprofessional then took the student to the occupational therapy (OT) classroom to wait for the resource teacher to complete the testing. At that point the student started yelling at the paraprofessional and she brought the student to the principal’s office at approximately 10:05. The principal brought the student back to the resource room as soon as the resource teacher had completed the testing, at approximately 10:15. Because the student was still agitated and not responding to redirection, the principal contacted the parents at 10:25. The resource teacher gave the student an alternative recess beginning at 10:30 until one of his parents arrived at school to pick the student up.

The BIP stated that there would be no physical restraint except in case of emergency. Neither the IEP or the BIP made any statements, nor included any restrictions, prohibiting a teacher or staff member from having physical contact with the student. The paraprofessional did not engage in restraint when she guided the student from the room by putting her hand on his neck.

The BIP also stated the consequences for continued student demonstration of problem behaviors were:

1. Alternative recess or computer time.
2. “[Special education teacher’s] room [resource room] for behavior that has not been redirected successfully. Call parents if can’t recover within 15 minutes.”

Conclusions of Law

Issue: Whether the LCSD complied with federal and state regulations to implement the student’s IEP on 3/14/12 specifically with regard to:

- a. Following the requirements for recording in the daily log
- b. Following the requirements of the BIP with respect to the use of physical contact
- c. Following the requirements of the BIP in responding to the student's conduct when a behavioral incident occurred

This complaint concerned allegations that the LCSD failed to implement the student's IEP and BIP because: 1) the daily log was not kept up; 2) the paraprofessional made physical contact with the student which was prohibited by the BIP; 3) the student was not sent to the special education classroom after two attempts at redirection failed; and 4) the parents were not contacted within 15 minutes of the failure of the attempts to redirect the student.

State regulations at NAC §388.281(6)(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee."

In this case, the IEP required that the daily log indicate the time, the place and the person involved in an incident. Nothing else was required to be noted in the daily log. The time, the place and the persons involved in the 3/14/12 incident were noted in the daily log.

The BIP had no prohibition against having physical contact with a student as the paraprofessional did when she placed her hand on the back of the student's neck and guided him out of the resource room.

The BIP had two consequences for continued student demonstration of problem behaviors: 1) the student would receive an alternative recess; and/or 2) the student would be taken to the resource room if attempts to redirect the student's behavior were unsuccessful and, if the attempts at redirection were unsuccessful, the student's parents would be notified within 15 minutes.

The student was first taken to the resource room when the attempts to redirect his behavior were unsuccessful at approximately 10:00 A.M. Although there was a short delay of approximately ten to fifteen minutes before the student could actually be placed in the resource room, (time he had to spend in the principal's office), the complaint investigation team determined that based on the unavailability of the resource room, the wait was not unreasonable and the use of the principal's office was an acceptable substitute for this short duration.

Because attempts to redirect the student's behavior were unsuccessful when the student was returned to the resource room at approximately 10:15, the student's parents were contacted by 10:25, within 15 minutes. While waiting for student's parents to arrive, the student received an alternative recess. The LCSD followed the BIP's requirements with respect to providing consequences for continued student demonstration of problem behaviors during the incident.

Therefore, the complaint investigation team concluded that the LCSD complied with state requirements to implement the student's IEP with respect to following the requirements for recording in the daily log and for following the requirements of the BIP with respect to the use of physical conduct and other actions when it responded to the student's conduct following a behavioral incident.