

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA122711)**

**Report Issued on 3/23/12**

**INTRODUCTION**

On 12/27/11, the Nevada Superintendent of Public Instruction received a complaint dated 12/23/11 from a parent alleging violations in the special education program of a student with disabilities attending the Washoe County School District (WCSD). An investigation team was appointed to examine allegations that: 1) the WCSD did not complete a functional behavioral assessment (FBA) that was due on 11/16/11 and 2) the teacher's aide asked the student's babysitter for personal information without permission of the parents and 3) the WCSD failed to implement the student's individualized educational programs (IEPs) in effect during the fall semester of the 2011/2012 school year because:

- A wheelchair was used for the student despite the parents' request not to do so which prevented the student from using her orientation and mobility skills as required by one of her goals and objectives
- The student did not have regular access to peer interaction
- Requirements for dealing with negative behaviors were not followed
- Situations aggravating negative behaviors were not addressed
- The student did not have a daily picture schedule
- The student did not receive direct behavior services for five hours per month
- There was no behavior chart
- The student did not receive any direct instruction
- The student was denied access to field trips because of her negative behavior
- The student was denied access to the community.

Under 34 CFR §300.152(b) that permits the extension of the 60-day timeline for the completion of a complaint investigation report due to exceptional circumstances, the Nevada Department of Education (NDE) extended the timeline for the completion of the complaint investigation due to a medical emergency that interfered with the collection of data by the complaint investigation team. The parents and the district were notified of the extension in letters dated 2/24/12.

**COMPLAINT ISSUES**

The allegations articulated in this complaint, and further clarified by interviews and a review of documents, raised three issues under the jurisdiction of the NDE.

Issue One: Whether the WCSD complied with federal and state requirements to conduct a behavioral assessment following the request of the parents.

Issue Two: Whether the WCSD complied with federal and state regulations with regard to the disclosure of personally identifiable information when the school staff spoke to the student's babysitter without parental consent.

- Issue Three: Whether the WCSD implemented the student's IEPs in effect during the 2011/2012 school year with respect to:
- a. Implementing her orientation/mobility goal
  - b. Interaction with non-disabled peers
  - c. Providing a behavior plan
  - d. Using a daily picture schedule
  - e. Providing direct behavioral assessment services five hours per month
  - f. Using a behavior chart with earned rewards
  - g. Providing field trips and access to the community
  - h. Implementing behavior, math, functional word identification, and reading goals/objectives

### **PERSONS PROVIDING INFORMATION**

The investigation team reviewed information received from the following people:

- Parent
- Special Education Area Administrator, Zone 3
- Special Education Teacher
- Special Education Program Consultant

### **DOCUMENTS REVIEWED**

The documents reviewed by the investigation team included the following:

- 6/8/11 IEP and the 10/13/11 IEP revision (IEPs)
- Regional center behavioral plan
- Description of a list of reinforcer items
- List of field trips/community outings
- Daily home notes
- Student's class schedule for 2011 fall semester
- Description of interactions with nondisabled students
- 10/13/11 Progress Report
- Data collection report of progress towards goals and objectives
- Student's attendance record for 2011 fall semester
- 2011/2012 school calendar
- 12/16/11 parent letter addressed to assistant principal

The investigation team also reviewed the following authorities:

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

### **FINDINGS OF FACT**

This investigation involved a high school student eligible for special education services under the category of "multiple impairment". A review of the information received revealed the facts set forth below.

The school year started on 8/29/11. There were 80 school days between 8/29/11 and the date of the filing of the complaint on 12/27/11.

The WCSD conceded that it did not carry out a behavioral assessment following the request of the parents for such an assessment as required by the IDEA.

The WCSD also conceded that a special education teaching assistant had spoken to the student's babysitter without parental consent in violation of confidentiality requirements of the IDEA.

In addition, the WCSD conceded that it did not implement the student's IEPs as required in the following areas:

1. It did not implement the student's orientation/mobility goal
2. It did not provide the mandated time with nondisabled peers
3. It did not provide the accommodation of having a behavior plan for the student
4. It did not provide the accommodation of using a daily picture schedule
5. It did not provide the related service of direct behavioral assessment services five hours a month (required in the 6/8/11 IEP, not in the 10/13/11 IEP revision)

The IEPs required a "behavior chart with earning rewards [behavior chart] to be used daily in the special education setting". The district began using a behavior chart daily in the special education setting the first week of December (more than 63 school days after the 2011/2012 school year began).

The student's transition plan in the IEPs stated "the teacher would assist [the student] in learning about and visiting potential places in the community to shop for food, clothes, etc." Neither the transition plan nor the IEP contained a requirement that specified the number of field trips in which the student would participate, nor did it address whether the student could be prevented from participating in field trips as a consequence of her behavior, prior to such field trips. There were at least 18 field trips during the 2011 fall semester. The student was excluded from at least five of them because she exhibited behavior prior to the field trips. When denied field trips, she was placed in another classroom.

The student's IEP had five annual goals **in addition to** the orientation/mobility goal discussed above. Two of the goals addressed the student's behaviors, one addressed math, one addressed using and identifying functional words in a job/work setting and one addressed reading.

The district submitted a data collection report that was a summary of the number of days the student performed each of her goals/objectives every week from 9/2/11 through 12/16/11. While the special education teacher reported that she worked on all of the goals, she was unable to describe any specific methodology, approaches or charts she used or provide any supporting documentation with respect to the behavior goals/objectives beyond the summary on the data collection report.

The data collection report mistakenly stated that the student used a talking calculator five times a week as required in her math goal/objectives. While a talking calculator was required by the student's math goal/objectives, no talking calculator was available to the student. The data

collection report showed that the student never performed the goal/objective of identifying functional words in a job/work setting and there was no documentation provided by the special education teacher in either the home notes or in a verbal report that the student had the opportunity to be in a job/work setting where she could learn to identify functional words. The data collection report, the special education teacher's verbal report and the home notes did document that the student did work on her reading goal.

Subsequent to the filing of the complaint, the district informed the parents that it was ready to conduct a behavioral assessment as soon as the parent agreed to it and to hold a new IEP meeting. As of the date of the report the behavioral assessment had not been conducted nor had the new IEP meeting been held. The district had been attempting to schedule the IEP. At parent request, the date was delayed. Additionally, the parents subsequently removed the student for WCSD and informed the district they were independently seeking a placement for the student in an out-of-state facility, via Medicaid funding.

On February 21, 2012 the parents informed the district that they were attempting to place the student in a facility in Texas and were awaiting approval from Medicaid for that placement.

### **CONCLUSIONS OF LAW AND REASONS**

Issue One: Whether the WCSD complied with federal and state requirements to conduct a behavioral assessment following the request of the parents.

This issue addresses the allegation that the WCSD did not complete an FBA that was due on 11/16/11.

In this case, the WCSD conceded that it had been required to conduct a behavioral assessment of the student and failed to do so. On the basis of this concession, the complaint investigation team determined that further investigation and analysis was unnecessary.

*Therefore the complaint investigation team concluded that the WCSD failed to comply with federal requirements to conduct a behavioral assessment following the request of the parents.*

Issue Two: Whether the WCSD complied with federal and state regulations with regard to the disclosure of personally identifiable information when the school staff spoke to the babysitter without parental consent.

This issue addressed the allegation that the teacher's aide asked the student's babysitter for personal information without permission of the parents.

In this case the district conceded that the teaching assistant failed to comply with the confidentiality requirements of the IDEA. On the basis of this concession, the complaint investigation team determined that further investigation and analysis was unnecessary.

*Therefore the complaint investigation team concluded that the WCSD failed to comply with the confidentiality requirements of the IDEA.*

Issue Three: Whether the WCSD implemented the student's IEPs in effect during the 2011/2012 school year with respect to:

- a. Implementing her orientation/mobility goal
- b. Interaction with non-disabled peers
- c. Providing a behavior plan
- d. Using a daily picture schedule
- e. Providing direct behavioral assessment services five hours a month
- f. Using a behavior chart
- g. Providing field trips and access to the community
- h. Implementing behavior, math, functional word identification and reading goals/objectives

This issue addressed the allegations that: 1) a wheelchair was used for the student despite the parents' request not to do so which prevented the student from using her orientation and mobility skills; 2) the student did not have regular access to peer interaction; 3) requirements for dealing with negative behaviors were not followed; 4) situations aggravating negative behaviors were not addressed; 5) the student did not have a daily picture schedule; 6) the student did not receive direct behavior services for five hours per month; 7) there was no behavior chart; 8) the student did not receive any direct instruction; 9) the student was denied access to field trips because of her negative behavior; and 10) the student was denied access to the community.

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."

State regulations at NAC §388.281(5)(e) require that the school district shall implement the IEP "as soon as possible".

In this case the WCSD conceded that it failed to implement the student's IEPs with respect to: 1) implementing the student's orientation/mobility goal; 2) providing interaction with non-disabled peers; 3) providing the accommodation of a behavior plan; 4) providing the accommodation of a daily picture schedule; and 5) providing the related service of direct behavioral assessment services five hours a month (with respect to the 6/8/11 IEP only). On the basis of these concessions the complaint investigation team determined that further investigation and analysis was unnecessary with respect to #1–#5 above in this paragraph.

The IEPs required that the student have a daily behavior chart. The behavior chart was not used until the first week in December. The district was required to use the behavior chart as soon as possible following development of the IEP. The complaint investigation team determined that 63 school days after the beginning of the 2011/2012 school year did not meet a reasonable standard of "as soon as possible" with respect to the district's obligation to use a behavior chart.

The district was required to provide the student with opportunities to go into the community to visit potential places to shop for food, clothes, etc. There was no requirement for any specific number of visits into the community or field trips. The student did participate in at least 13 of the field trips. Absent any requirement that the student participate in all the field trips, the complaint investigation team determined that the district met its obligation with respect to field trips. The complaint investigation team limited its finding to the parents' allegation that the denial of the field trips was a failure of the district to implement the IEPs.

While the district provided a weekly data collection report with respect to the implementation of the student's goals/objectives, the complaint investigation team did not give it great weight. It

was inaccurate with respect to the use of the talking calculator. Further, there was no back-up documentation, either orally or in writing, including any specific methodology, approach, or data collection with respect to the implementation of the behavior goals. The complaint investigation team concluded that the district did not implement either the math goals/objectives nor the behavior goals/objectives. However, the complaint investigation team did determine that there was adequate information available from the weekly data collection report, the special education teacher's statements and the home notes to conclude that the reading goal/objective was implemented.

*Therefore the complaint investigation team concluded that the WCSD failed to implement the student's IEP with respect to: a. implementing the student's goals/objectives in the area of math, orientation/mobility, using and identifying functional words and behavior; b. Interaction with non-disabled peers; c. A behavior plan; d. Using a daily picture schedule; e. Providing direct behavioral assessment services five hours a month; and f. using a behavior chart for earning rewards.*

*The complaint investigation team also concluded that the WCSD did implement the student's IEP with respect to implementing the reading goal/objective and providing field trips and access to the community.*

### **ORDER FOR CORRECTIVE ACTION**

WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the WCSD failed to conduct a behavioral assessment for the student, violated the IDEA confidentiality requirements, and failed to implement the student's IEPs with respect to: a. Implementing five of the six annual goals; b. interaction with non-disabled peers; c. providing the accommodations of a behavior plan, a daily picture schedule and a behavior chart; and d) providing the related service of direct behavioral assessment services five hours a month.

The complaint investigation team acknowledges and commends the district for conceding its failure to implement some aspects of the student's IEP and for instituting its own attempts to remedy the situation.

#### **Directed Action**

The NDE recognizes that the district has offered to conduct a behavioral assessment of the student. The behavioral assessment must be conducted within 30 days of the parents' consent to the behavioral assessment. Within 45 days of the completion of the assessment, the district must provide documentation to the NDE of the completion of the assessment.

#### **Compensatory Education**

An order for compensatory services is appropriate under these circumstances. It is ordered that no later than 30 days after receipt of this investigation report, the student's IEP committee must meet to review the student's current educational and behavioral needs unless the parent and the WCSD agree otherwise. Then based on the student's identified needs, **unless the parent and the WCSD agree otherwise**, the WCSD must provide 100 hours of compensatory

services. If the student is enrolled in the out-of-state facility, WCSD and the parent may agree that WCSD can contract with the selected facility for the provision of these services.

The compensatory education must be provided in addition to the hours of education the student receives during regular educational programming.

A copy of the student's IEP reflecting decisions concerning the compensatory education services must be provided to the NDE no later than 45 days from the receipt of this report. The services, unless otherwise agreed to by the parents and the district, must be provided to the student by December 31, 2012. Verification that agreed-upon services have been delivered must be provided to the NDE by March 31, 2013 assuming the student has returned to the district and there has been time to provide the compensatory education.

#### Professional Development/Training

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

Include a plan to review and revise as necessary, the WCSD policies and procedures with regard to:

- a. Implementing students' IEPs
- b. Conducting behavioral assessments
- c. Following the confidentiality requirements of the IDEA

Provide professional development for teachers and administrators at the school site on the requirements for:

- a. Implementing students' IEPs
- b. Conducting behavioral assessments
- c. Following the confidentiality requirements of the IDEA

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