

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL011713)**

**Report Issued on 3/18/13**

**INTRODUCTION**

On 1/17/13, the Nevada Superintendent of Public Instruction received a complaint dated 1/10/13 from a parent alleging a violation of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300) and a violation of the Nevada Administrative Code (NAC, Chapter 388) by the Clark County School District (CCSD) with respect to the failure of the CCSD to conduct an initial evaluation to determine if the student was eligible for special education.

**COMPLAINT ISSUE**

The allegation articulated in the complaint, and further clarified during the investigation, raised the following issue under the jurisdiction of the NDE to investigate:

Issue: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to its obligation to notify the parent within a reasonable time of its refusal to conduct an initial evaluation following the parent's referral.

**INFORMATION PROVIDED**

The investigation team reviewed documents and information received from the following people:

- Parent
- Principal

**DOCUMENTS REVIEWED**

The documents received and reviewed by the investigation team included the following:

1. 11/7/12 Initial Evaluation Request from Parent (Evaluation Request)
2. Student Support Services Referral Form (Support Services Referral Form)
3. Notification of English Language Learner Program Placement for 2012/2013 (Program Placement Form)
4. Response to Instruction/Intervention Form
5. CCSD 2012/2013 Academic Calendar (Academic Calendar)
6. Student status record for 11/16/12–12/14/12 (Status Record)
7. 12/14/12 Prior Written Notice (PWN)
8. NDE "Parent's Guide to Response to Intervention (RTI)"  
[http://www.doe.nv.gov/Special\\_Ed\\_Additional\\_Resources/](http://www.doe.nv.gov/Special_Ed_Additional_Resources/) (Parent Guide to RTI)

## **FINDINGS OF FACT (FOF)**

### **General FOF**

1. This investigation involved a 3<sup>rd</sup> grade general education English Language Learner student in the CCSD.

### **Specific FOF**

2. The parent submitted a written request for an initial evaluation of the student to determine eligibility for special education. The request was dated 11/7/12 and given to the principal by the parent on 11/14/12. (Evaluation Request, Status Record)
3. The student began receiving Tier 1 response to intervention (RTI) in reading on 11/16/12. Tier 1 RTI consisted of small group instruction in reading for 15-20 minutes per day, five days a week. (Support Services Referral Form, Response to Instruction/Intervention Form)
4. The Tier 1 RTI instruction was provided because the student was an English Language Learner and it was thought that small group instruction through Tier 1 RTI could assist in the development of reading skills. It was not provided because there was a suspicion of a disability. (Principal)
5. A meeting was held with the parent on 12/14/12, 25 school days after the CCSD's receipt of the Evaluation Request. At the meeting, the CCSD requested consent for a bilingual evaluation to determine the impact of language on the student's learning and, for the first time, refused to evaluate the student to determine eligibility for special education. A PWN stating that the CCSD was refusing to conduct the initial evaluation to determine eligibility for special education was given to the parent at the meeting and discussed with her. (Academic Calendar, PWN, Principal)
6. In addition to stating that the CCSD refused to conduct the initial evaluation, the PWN stated:
  - a. It was refusing the request because the student was making progress, that language had to be ruled out before evaluating for a specific learning disability and the parent refused consent for a bilingual psychologist examination;
  - b. The other options it considered were getting short-term support with a bilingual assessment to rule out language as the primary cause of learning difficulties and continuing to receive interventions in the RTI process;
  - c. The reason the short-term support for bilingual assessment was rejected was because the parent refused to consent to it;
  - d. The records it utilized as a basis for the refusal to evaluate the student was the data it had collected from the student's response to ongoing interventions;
  - e. The factors that it considered relevant to its refusal were that the student had begun to make progress with the interventions and the parent refused to agree to short-term support for the student through an evaluation by a bilingual psychologist which the team found necessary since the student was an English Language learner;
  - f. The parent had the right to seek resolution of disagreements by initiating an impartial due process hearing and/or formal mediation;
  - g. A copy of the parental rights was attached;
  - h. The school psychologist was available if the parent had any questions regarding her special education rights or needed assistance. (PWN)

## CONCLUSIONS OF LAW AND REASONS

Issue: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, with respect to its obligation to notify the parent within a reasonable time of its refusal to conduct an initial evaluation following the parent's referral.

On 11/14/12 the parent submitted a request for an initial evaluation to determine if the student was eligible for special education services. (FOF #2) A parent can request an evaluation at any time; however, the request does not automatically trigger the right to an evaluation when unaccompanied by teacher referral or other school referral. A district is only required to conduct an evaluation without undue delay when it suspects a child has a disability and is in need of special education and related services. If the district refuses to conduct the evaluation, it must provide the parents with a prior written notice of its refusal. (21 IDELR 998 (OSEP, 1994))

The student began receiving Tier 1 RTI in reading on 11/16/12. (FOF #3) RTI in the State of Nevada is a system of instruction that supports success for all students. (Parent's Guide to RTI) While the initiation of the RTI was two days after the parent's request for an initial evaluation, the CCSD did not provide the services because of any suspicion that the student might have a disability and be in need of special education but rather because the student was an English Language Learner and it was thought that small group instruction through Tier 1 RTI could assist in the development of the student's reading skills. Tier 1 RTI for the student consisted of small group instruction in reading for 15-20 minutes per day, five days a week. (FOF #3 - #4)

Pursuant to the NAC §388.300(8)(b), the CCSD was obligated to provide the parent with a written notice within a reasonable period of time before the implementation of the refused action to conduct an initial evaluation. The PWN was required to include specific content in accordance with NAC §388.300(9). (See also IDEA, 34 C.F.R. §300.503) All of the required content in the NAC and the IDEA was included in the PWN provided to the parent. (FOF #6)

While there is a timeline under the IDEA and the NAC for the conduct of an evaluation following the receipt of parent consent (34 C.F.R. §300.301(c); NAC §388.337(1)(a)), there is no timeline for the issuance of a PWN after a parental referral for evaluation. The United States Department of Education, Office of Special Education Programs, has indicated: "... it would generally not be acceptable for an LEA to wait several months to conduct an evaluation or to seek parental consent for an initial evaluation if the public agency suspects the child to be a child with a disability." (Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, Pg. 46637) The CCSD provided the parent a PWN of its refusal to conduct the initial evaluation on 12/14/12, 25 school days following the receipt of the parent's request for an initial evaluation. (FOF number #5)

In this case, the CCSD did not suspect the student was a student with a disability; wanted to intervene through RTI in the area of reading; and wanted to discuss with the parent the conduct of a bilingual evaluation to determine the impact of language on the student's learning. (FOF #3 – #5) Given these facts, the complaint investigation team determined that providing the parent with the PWN with respect to its refusal to conduct an initial evaluation 25 school days after the referral was received was a reasonable period of time.

*Therefore, the complaint investigation team concluded that the CCSD complied with the IDEA and the NAC, Chapter 388, when it notified the parent of its refusal to conduct an initial evaluation following the parent's referral.*