

**COMPLAINT INVESTIGATION  
ELKO COUNTY SCHOOL DISTRICT  
(#EL010913)**

**Report Issued on 3/8/13**

**INTRODUCTION**

On 1/9/13, the Nevada Superintendent of Public Instruction received a complaint (Complaint) dated 1/6/13 from parents alleging violations of the Individuals with Disabilities Education Act (IDEA) and violations of the Nevada Administrative Code (NAC) by the Elko County School District (ECSD) with respect to the implementation of the student's 1/27/12 individualized educational program (IEP) and the qualifications of certain personnel working with the student.

The allegations set forth in the Complaint accepted by the Nevada Department of Education (NDE) for investigation were:

1. The student was not engaged in recreational/leisure, video devices, computers, life skill activities and communication with neurotypical peers as required by the IEP.
2. The Health Plan was not followed with regard to the student's photosensitive epilepsy.
3. The IEP required small group instructional activities with staff who were trained in positive behavior supports and discrete trials but the student was put in large groups.
4. The student's teacher, who had been trained in positive behavioral reinforcement and discrete trial training, was absent every Tuesday. Her absence left the student with untrained or undertrained staff and teachers who could not implement the IEP.

**COMPLAINT ISSUES**

The allegations articulated in the Complaint, and further clarified during the investigation, raised the following issues under the jurisdiction of the NDE to investigate:

Issue One: Whether the ECSD complied with federal and state regulations to implement the IEP, with respect to:

- a. Providing leisure activities and communication with neurotypical peers
- b. Following the Health Plan in regard to photosensitive epilepsy

Issue Two: Whether the ECSD complied with federal and state regulations to implement the IEP, specifically with regard to the size of the group settings in which the student was taught academics

Issue Three: Whether the ECSD ensured that the personnel available to work with the student, when the Special Education Teacher was absent, were appropriately and adequately prepared and trained, specifically with respect to implementing the IEP by providing positive behavioral supports and discrete trial training

## **PERSONS PROVIDING INFORMATION**

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

- Parents
- Director of Special Services
- Case Manager/Special Education teacher (Special Education Teacher)
- Co-Teacher
- Behavior Analyst

## **DOCUMENTS REVIEWED**

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

1. Parent Complaint
2. ECSD Response to Complaint
3. IEP
4. Student daily schedules for 2011/2012 and 2012/2013 school year (Student Schedules)
5. Student Aide Schedules for 2011/2012 and 2012/2013 school year (Student Aide Schedules)
6. Lesson Plans for 2012/2013 school year
7. Healthcare Plan for 2012/2013 school year (Healthcare Plan)
8. Discrete Trial Reports weeks ending 12/2/12 and 1/6/13
9. Training sessions schedule for staff (Training Schedule)
10. NDE teacher licensure website (Teacher Licensing)

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

### **General FOF**

1. This investigation involved a student with disabilities who attended a high school within the ECSD during the 2012/2013 school year.

### **Specific FOF**

#### **Issue One—Leisure Activities, Communication and Health Plan**

2. The student had an annual goal to increase social/behavior skills in 4 out of 5 trials to be measured through teacher observation and/or data collection. (IEP)
3. One of the short-term objectives for the annual goal stated that “[student] will engage in recreational/leisure, video devices and computers and life skills activities with neurotypical peers in 4 out of 5 opportunities”. There was no other specification of the number of opportunities required to be provided to the student. (IEP)

4. There were no other references in the IEP stating that the student would be engaged in activities with neurotypical peers. (IEP)
5. Student Aides, who were neurotypical peers, interacted with the student on a daily basis, sometimes in small group activities and sometimes on a 1:1 basis. Leisure and life skill activities the student aides engaged in with the student included reading books, watching videos, active play facilitated by the “WII”, crafts, coloring, computer play, kicking and/or catching balls, walking around the campus, playing organized games, putting puzzles together, playing music, working in the gardens, socializing, retrieving and delivering school mail and eating in the cafeteria. These activities required communication between the student and the Student Aides. (Student Aide Requirements, Student Aide Schedules, Student Schedules, Special Education Teacher)
6. There was no suggestion or requirement in the Healthcare Plan or in the IEP that the ECSD make any specific lighting arrangements because of the student’s possible sensitivity to bright or flashing lights nor was there any reference to photosensitive epilepsy. (Healthcare Plan, IEP)
7. The ECSD agreed to the parent’s request to use incandescent lights for the room in which the student was primarily taught in the 2011/2012 school year and to seat the student near natural light in the room in which the student was primarily taught in the 2012/2013 school year, although no such modifications or adjustments to the environments were required by the IEP. (IEP, Healthcare Plan)

### **Issue Two—Participation in Academics in Large Group Settings**

8. The student’s placement was in a self-contained special education classroom (classroom). The IEP did not designate the size of the classroom in which the student would be placed or the size of the groups in which the student would be taught within the classroom. (IEP)
9. The student did academic work in small groups of 1-4 students (including the student) within a classroom of approximately 10-14 students. The student worked with either the Special Education Teacher, a paraprofessional, and/or a Student Aide assisting the student. The Special Education Teacher determined the size of the groups on a daily basis depending on the student’s behavior and health. The participation in the small groups demonstrated that the student had made significant progress from previous years when the majority of teaching had to be conducted in 1:1 situations in isolation due to the student’s behaviors. It also indicated that the student was generalizing behavior, a skill necessary to function outside of the classroom. (Special Education Teacher, Behavior Analyst)

### **Issue Three –Qualified Personnel**

10. When the Special Education Teacher was absent each Tuesday to consult with other teachers in the ECSD, as well as on other occasions when she was absent, a regular substitute (Substitute) was assigned to the student's classroom for the 2012/2013 school year. (Special Education Teacher, Director of Special Services)
11. The IEP required the use of positive behavior supports and discrete trial training. (IEP)
12. There were two paraprofessionals (Paraprofessionals) who worked with the student and provided positive behavioral supports and discrete trial training under the supervision of the Special Education Teacher on a daily basis. (Special Education Teacher, Director of Special Services)
13. The Paraprofessionals were available to provide positive behavioral supports and discrete trial training under the supervision of the Substitute when the Special Education Teacher was absent. (Special Education Teacher, Director of Special Education Services)
14. The Substitute had worked in the classroom as a Substitute for the Special Education Teacher beginning in the 2011/2012 school year and provided positive behavioral supports and discrete trial training to the student. (Special Education Teacher)
15. The Substitute and both of the Paraprofessionals participated in on-going training conducted by the Special Education Teacher to provide positive behavioral supports and discrete trial training to the student.
16. The parents, believing that the Substitute and the Paraprofessionals were not qualified to provide positive behavioral supports and discrete trial training, kept the student at home during the 2012/2013 school year on the days the Special Education Teacher was absent and requested that the ECSD discontinue allowing the Special Education Teacher to consult at other ECSD sites on Tuesdays. (Complaint, Special Education Teacher, Director of Special Services)
17. Subsequent to the Complaint, the student attended school on two of the days the Special Education Teacher was absent and replaced by the Substitute. The Substitute and the Paraprofessionals were able to provide positive behavioral supports and discrete trial training to the student on both days as required by the IEP. In addition, the student displayed no aggressive or negative behavior on either day. (Special Education Teacher)

### **CONCLUSIONS OF LAW**

Issue One: Whether the ECSD complied with federal and state regulations to implement the IEP, with respect to:

- a. Providing leisure activities and communication with neurotypical peers
- b. Following the Health Plan in regard to photosensitive epilepsy

State regulations at NAC §388.281(6)(g) require that the public agency shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.” (See also 34 C.F.R. §300.323(c)(2))

a. Providing leisure activities and communication with neurotypical peers

In this case, the IEP had a short-term objective for the social/behavioral skills goal that the student would engage in recreational/leisure, video devices, computers and life skills activities with neurotypical peers. The measurement of the short-term objective was the student’s engagement in the activities 4 out of 5 opportunities. The student was engaged in the above activities with neurotypical peers on a daily basis. While there was no specific requirement that the student engage in communication with neurotypical peers, the student did communicate with the student through the activities described above in this paragraph. (FOFs #2–#5)

*Therefore, the complaint investigation team concluded that the ECSD complied with federal and state regulations to implement the IEP with respect to providing leisure activities and communication with neurotypical peers.*

b. Following the Health Plan in regard to photosensitive epilepsy

Neither the IEP nor the Health Plan included any reference to the student having photosensitive epilepsy and therefore there were no requirements that any modifications be made to the school environment with respect to photosensitive epilepsy. Although not required to by the IEP or Health Plan, the ECSD complied with the parent’s request to use incandescent light bulbs in the classroom that had no natural light and to seat the student near the windows in the classroom that had natural light. (FOFs #6–#7)

*Therefore, the complaint investigation team concluded that the ECSD complied with federal and state regulations in that there was no requirement in the IEP or Health Plan in regard to photosensitivity epilepsy.*

Issue Two: Whether the ECSD complied with federal and state regulations to implement the IEP, specifically with regard to the size of the group settings in which the student was taught academics.

State regulations at NAC §388.281(6)(g) require that the public agency shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.” (See also 34 C.F.R. §300.323(c)(2))

In this case, the IEP did not specify the size of the student’s classroom nor did it specify the size of the groups within the classroom in which the student would be taught academics. Although

there was no requirement that academic activities be taught in a small group, the academics were taught in small groups of 1 to 4 students. (FOFs #8–#9)

*Therefore, the complaint investigation team concluded that the ECSD complied with federal and state regulations with respect to the size of the group settings in which the student was taught academics.*

Issue Three: Whether the ECSD ensured that the personnel available to work with the student, when the Special Education Teacher was absent, were appropriately and adequately prepared and trained, specifically with respect to implementing the IEP by providing positive behavior supports and discrete trial training.

State regulations at NAC §388.171(1) state that “A public agency shall appropriately and adequately prepare and train all personnel employed by the public agency who assist in carrying out the provisions of this chapter ... including, without limitation, special education teachers, personnel who provide related services and paraprofessionals, to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities”. (See also 34 C.F.R. §300.156(a))

In this case, the Substitute and both of the Paraprofessionals assigned to the student participated in on-going training conducted by the Special Education Teacher on the implementation of the positive behavioral supports and discrete trial training in the IEP. Therefore, when the Special Education teacher was absent, the Substitute assigned to the student, along with the Paraprofessionals who worked with the student had the content knowledge and skills to provide positive behavioral supports and discrete trial training. (FOFs #10–#15)

The ECSD was obligated to ensure that the personnel available to work with the student when the Special Education Teacher was absent had the content knowledge and skills necessary to serve the student and did so when the Special Education Teacher was absent.

*Therefore, the complaint investigation team concluded that the ECSD complied with federal and state requirements that the personnel who worked with the student when the Special Education Teacher was absent were appropriately and adequately prepared and trained to provide positive behavioral supports and discrete trial training.*