

**COMPLAINT INVESTIGATION
LYON COUNTY SCHOOL DISTRICT
(#LY013113)**

Report Issued on 3/29/13

INTRODUCTION

On 1/31/13, the Nevada Superintendent of Public Instruction received a complaint dated 1/31/13 (Complaint) from a Parent (Parent) alleging a violation of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; and 34 C.F.R. Part 300) and a violation of the Nevada Administrative Code (NAC, Chapter 388) by the Lyon County School (LCSD) with respect to the implementation of the student's individualized educational program (IEP).

The allegations set forth in the Complaint and in subsequent correspondence that were accepted by the Nevada Department of Education for investigation were:

1. The aide (Paraprofessional) gave the student (Student) gummy bears as reinforcement on the playground and in the hallway even though the IEP stated that food would not be used as reinforcement.
2. The LCSD agreed to tell the Parents where the Student was during the day, any changes in the day that could affect the Student, and the amount of behavioral redirects the Student received, but did not provide this information to the Parents.
3. The 4th grade teacher (Classroom Teacher) should be teaching the Student, not the Paraprofessional.

The Parent was invited to submit additional input specific to the issue accepted in the Complaint. The complaint investigation team received additional input from the Parent that was considered by the team.

COMPLAINT ISSUE

The allegations 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 LCSD complied with federal and state regulations to implement the Student's IEPs, with respect to:
- a. The use of gummy bears as a reinforcement on the playground and in the hallway
 - b. Notifications to the Parents of any scheduled changes in the Student's day and the number of behavioral re-directs received
 - c. Additional adult support in the classroom

PERSONS PROVIDING INFORMATION

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

- Parent
- Resource Teacher
- Paraprofessional
- School Nurse (Nurse)

- Principal
- Classroom Teacher

DOCUMENTS REVIEWED

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

1. Complaint
2. Additional Parent Input
3. 9/05/12 Annual IEP
4. Report of Evaluation Results and Review of Existing Data-Explained (Existing Data Form)
5. 8/27/12, 9/28/12, 10/12/12, 11/15/12, 1/23/13 IEP Revisions (IEP Revisions)
6. PWNs issued between 8/20/12 and 1/22/13
7. 5/12/12 and 11/15/12 Positive Behavior Support Plans (Behavior Plans)
8. Health Care Plan
9. Daily Logs dated 1/7/13–2/8/13 (Daily Logs)

FINDINGS OF FACT (FOF)

General FOF

1. This investigation involved a 4th grade elementary school Student in the LCSD eligible for special education as “health impaired”. The Student was placed in a general education 4th grade classroom (classroom) and received instruction in the resource room to reinforce the subjects taught in the classroom. (IEPs, Resource Teacher)
2. During the 2012/2013 school year the Student had an Annual IEP and four IEP Revisions (hereinafter referred to jointly as IEPs). (Annual IEP, IEP Revisions)
3. During the 2012/2013 school year, the Student had a Behavior Plan in effect through 11/15/12. On 11/15/12, the Behavior Plan was revised and approved by the 11/15/12 IEP committee. The Behavior Plans were included as part of the Student’s specially designed instruction and incorporated into the IEPs. (Behavior Plan, Resource Teacher, IEPs)
4. During the 2012/2013 school year, the Student had a Health Plan in effect that was incorporated into the IEPs. (Health Plan, IEPs)

Specific FOF

The use of gummy bears as reinforcement

5. The Parent reported that the Student told her that the Paraprofessional provided gummy bears on the playground and outside of the classroom as a reward to the Student for being good. The Parent did not report personally observing the Paraprofessional giving the Student gummy bears on the playground or in the hallway. (Complaint, Additional Parent Input)
6. The Paraprofessional did not give the Student gummy bears on the playground or in the hallway outside of the classroom, or at any other time. (Paraprofessional)
7. The Behavior Plans did not include or preclude the use of food as reinforcement for the Student. (IEPs, Behavior Plans, Resource Teacher, Paraprofessional)

8. The IEPs contained a note from the Student's cardiologist that said the Student should not be given snacks in the daytime in the classroom except for a special event such as a birthday party. The Health Plan stated the Student was on a low-fat diet and should not be permitted more than one serving at lunch. The Paraprofessional, the Resource Teacher and the Classroom Teacher did not permit the Student any snacks in the classroom except when there was a special event in the classroom. (IEPs, Health Care Plan, Nurse, Classroom Teacher, Resource Teacher, Paraprofessional)

Notifications to the Parents of changes and behavioral redirects

9. The IEPs did not contain any requirement that the Parents be notified of any scheduled changes in the Student's day or that the Parents be notified of the number of behavioral redirects the Student received. (IEPs)
10. There was discussion at the IEP meetings about the possibility of counting redirects, but the IEP committee decided that they were not necessary to track as they were not relevant to any of the Student's targeted behaviors. (Resource Teacher)
11. The IEPs did require that a daily home note be sent to the Parents that tracked the Student's positive behaviors at designated intervals. The daily home note was sent with the Student at the end of each school day. (IEPs, Behavior Plans, Daily Logs, Resource Teacher)

Adult support in the classroom

12. The IEPs included an accommodation for "additional adult support" throughout the school day. The IEPs did not include any further specification regarding this "additional adult support". (IEPs)
13. The additional adult support was provided by the Paraprofessional. (Paraprofessional, Classroom Teacher, Principal)
14. In the classroom, the Classroom Teacher provided all the instruction in all subjects to the Student and all the classmates, and made all the assignments. The Paraprofessional was under the supervision of the Classroom Teacher to provide adult support to the Student. The Parent did not observe the Student, Classroom Teacher or Paraprofessional in the classroom. (Classroom Teacher, Paraprofessional, Principal)
15. During the Classroom Teacher's instruction of all the students in the class, the Paraprofessional provided adult support to the Student when she prompted the Student to stay focused on the Classroom Teacher's instructions. Following the instructions given by the Classroom Teacher, and his giving the same assignments to the entire class, the Paraprofessional provided support to the student when she 1) prompted the Student to follow the Classroom Teacher's instructions; 2) assisted the Student to focus when the Student was inattentive or off-task; and 3) wrote the Student's own dictated answers to questions when writing was too difficult for the Student because of fatigue or the Student's frustration with the slowness of the Student's writing. The Paraprofessional also reviewed the Student's answers on spelling and math assignments and when the Student showed mastery, reduced the additional number of problems the Student had to complete as required by an accommodation in the IEPs and in accordance with the instruction of the teacher. Mastery was determined as 100% correct answers, and additional problems were then reduced to 50% of the total assigned by the classroom teacher. (Classroom Teacher, Paraprofessional, Principal)

CONCLUSIONS OF LAW AND REASONS

Issue: Whether the LCSD complied with federal and state regulations to implement the Student's IEP, with respect to:

- a. The use of gummy bears as a reinforcement on the playground and in the hallway
- b. Notifications to the Parents of any scheduled changes in the Student's day and the number of behavioral re-directs received
- c. Additional adult support in the classroom

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. The use of gummy bears as reinforcement on the playground and in the hallway

The Student's IEPs contained a note from the Student's cardiologist that the Student should not be given snacks in the daytime in the classroom except for a special event such as a birthday party. The Paraprofessional, the Resource Teacher and the Classroom Teacher did not permit the Student any snacks in the classroom except when there was a special event in the classroom. The notation in the IEP did not specifically prohibit the Student from being given a snack, including gummy bears, on the playground or in the hallway. (FOF numbers 7-8)

While there were conflicting reports of whether or not gummy bears were used as reinforcements for the Student on the playground or in the hallway, the complaint investigation team determined that gummy bears were not given to the Student by the Paraprofessional on the playground or in the hallway outside of the classroom. (FOF numbers 5-6)

NAC §388.281(6)(g) requires that the LCSD shall provide the services and instruction deemed necessary by the IEP committee. The LCSD complied with the IEP requirement regarding the limitation of snacks, specifically because no gummy bears were provided as reinforcement for the Student on the playground or in the hallway.

b. Notifications to the Parents of changes in the school day and behavioral redirects

Pursuant to NAC §388.281(6)(g), the LCSD was required to provide the services deemed necessary by the IEP committee. There was no requirement in the IEPs that the Parents be notified of any scheduled changes in the Student's day or of the number of behavioral redirects the Student received. (FOF numbers 9-10)

The IEPs did require that a daily home note that tracked the Student's positive behaviors at designated intervals be provided to the Parents. The LCSD provided the daily home note in accordance with the IEPs (FOF number 11). The LCSD was under no obligation under the IDEA and the NAC to provide information that was not required by the IEPs in the daily home note or in any other format.

c. Additional adult support by the Paraprofessional

The LCSD was required, pursuant to the requirements of NAC §388.281(6)(g) to provide the services and instruction deemed necessary by the IEP committee. In this case, the IEPs required that additional adult support be provided to the Student throughout the school day. The additional support was provided by the Paraprofessional. (FOF numbers 12-13)

The Classroom Teacher provided the instruction to the Student. While the IEPs did not specifically delineate what would be provided through the additional adult support, the support the Paraprofessional provided to the Student was under the Classroom Teacher's supervision and direction. (FOFs #13–#15)

The complaint investigation team concluded from the facts investigated that the adult support the Paraprofessional provided to the Student was in accordance with the IEPs. (FOF numbers 14–15)

Therefore, the complaint investigation team concluded that the LCSD complied with federal and state regulations to implement the Student's IEPs with respect to the allegations raised by the Parent in the complaint.