

**COMPLAINT INVESTIGATION  
LYON COUNTY SCHOOL DISTRICT  
(#LY102912)**

**Report Issued on 12/28/12**

**INTRODUCTION**

On 10/29/12, the Nevada Department of Education (NDE) received a complaint dated 10/27/12 from a parent alleging violations in the special education program of a student with disabilities attending the Lyon County School District (LCSD). A complaint investigation team was appointed to examine allegations that: 1) the LCSD did not follow the student's behavior plan (BIP) on 10/5/12 and 10/18/12 because the parents weren't called, or were called late, when the student's behavior didn't de-escalate within 15 minutes and 2) the LCSD did not indicate on the student's report card that there had been modifications of grading for the student on completed work only.

On 11/5/12, the NDE received a second complaint from the parent dated 11/2/12 alleging that the LCSD did not follow the student's BIP on 11/2/12 because it did not call the parent when the student's behavior did not de-escalate within 15 minutes, and the student did not receive an alternative recess as a consequence of the student breaking a school rule. Because the allegations in this complaint were related to the allegations in the complaint received on 10/29/12, the original complaint was amended to include an investigation of the allegations received on 11/5/12. The timeline for the investigation was extended by five days, representing the time between the receipt of the first complaint and the second complaint in order to provide the LCSD with a fair amount of time to provide additional documentation to the complaint investigation team.

**COMPLAINT ISSUE**

The allegations articulated in the amended complaint (hereafter, complaint), and further clarified by 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, with regard to:

- a. Following the requirement of the BIP to call the parents if the student could not "recover" within 15 minutes of an incident of the student's verbal or physical aggression, specifically on 10/5/12, 10/18/12 and 11/2/12
- b. Following the requirement of the BIP to provide the student with an alternative recess as a consequence of the student's behavior on 11/2/12
- c. Indicating modifications of the student's grading on the report card

**PERSONS PROVIDING INFORMATION**

The investigation team reviewed information received from the following people:

- Parent
- Special education teacher

- Principal
- Dean
- Instructional aide (aide)

## **DOCUMENTS REVIEWED**

The documents reviewed by the complaint investigation team included the following:

- 5/11/12 Positive Behavior Support Plan (BIP)
- 9/5/12 IEP (IEP)
- Daily notes for 10/5/12, 10/18/12 and 11/2/12
- Student's first quarter report card

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 LCSD 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.

The student had a BIP in effect during the time period of the complaint. The BIP was included in the IEP and addressed behavior problems of physical and verbal aggression. The BIP included the following consequences if a school rule were broken:

- 1). The parents would be called if the student didn't "recover within fifteen minutes"
- 2). The student would not be able to participate in a regular recess with peers and instead would be provided with an alternative recess (i.e. a recess in a classroom or outside without interacting with other students) or computer time.

The BIP stated that the consequences when the student "follows through with threatening behaviors, then school disciplinary policies will be used. Call parents if can't recover within 15 minutes". There was no provision for alternative recess or computer time for this escalated misconduct.

In all instances where the BIP stated the parents would be called if the student didn't recover within 15 minutes, there was no statement indicating that the parent would be called within a specific period of time.

The student broke the school rules on 10/5/12, 10/18/12 and on 11/2/12. The student had a daily log that included a report of behavioral incidents. It was sent home at the end of each school day. The daily log included a report on each of the incidents at issue in this complaint and which are described below.

### **Incident on 10/5/12**

At 9:00am, the student kneed a student during horseplay and pushed the aide away in the regular education classroom. The aide took the student to the office to speak with the principal

at approximately 9:05am. The student calmed down prior to arriving at the principal's office no later than 9:10am. The student remained in the office while the student and the principal had a discussion and the student remained calm during that discussion. At 9:20am the student returned to the regular classroom.

At 9:45am, a student reported that the student had looked over the stall in the bathroom and "bothered" them. The aide brought the student to the special education classroom immediately after hearing this and arrived within 15 minutes of the incident. Prior to arriving at the special education classroom, the student became calm and did not demonstrate any further physical or verbal aggression. The student returned to the regular education classroom at 10:35am following a conversation with the special education teacher and engaging in some other activities in her classroom.

The parent was not called about these incidents.

### **Incident on 10/18/12**

At 11:00am the student made threats to the aide and was otherwise disruptive in the regular education classroom and the bathroom. The student was taken to the special education classroom at approximately 11:05am in response to the verbal aggression and disruptive conduct because of this behavior and arrived no later than 11:10am. The student had calmed down by the time the special education classroom had been reached, displayed no additional aggressive behavior and apologized for the previous behavior in the regular education classroom.

The teacher called the parent, as a courtesy, to inform her of the incident at 11:35am.

### **Incident on 11/2/12**

At 9:15am the student grabbed another student and subsequently pushed the aide. The aide took the student to the special education classroom at 9:17am. The student was verbally aggressive until approximately 9:25am when the student calmed down. The student then engaged in a calm conversation with the special education teacher and the aide. The student returned to the regular classroom at 9:35am.

As a consequence of breaking the school rules, the student was given a choice as to which regular recess would be given up. The student chose the lunch recess. The aide provided the student with an alternative recess on that day although she failed to report it on the daily log. Three staff members, the principal, the dean and the aide confirmed that an alternative recess was provided outside, with the student playing on the student's own, accompanied by the aide.

The parent was not called about the incident.

### **Report Card**

The student's IEP stated, as a modification, the student will be "graded on work completed/percentage correct". There was no other statement in the IEP that discussed grading or any statement that discussed how the grading would be reported on the report card.

The report card was on a form provided for all students. The form included a standard statement that read “\*Asterisk after letter grade indicates course content and/or grading system has been modified”. The regular education teacher had forgotten to place an asterisk next to the student’s grades and did so after it was brought to her attention that the asterisk was missing.

## **CONCLUSIONS OF LAW AND REASONS**

Issue: Whether the LCSD complied with federal and state regulations to implement the student’s IEP, with regard to:

- a. Following the requirement of the BIP to call the parents if the student could not “recover” within 15 minutes of an incident of verbal or physical aggression, specifically on 10/5/12, 10/18/12 and 11/2/12
- b. Following the requirement of the BIP to provide the student with an alternative recess as a consequence of the student’s behavior on 11/2/12
- c. Indicating modifications of the student’s grading on the report card

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. Implementing parental notification requirements of the BIP**

This complaint concerned allegations that the LCSD did not call the parents when the student failure to “recover” within 15 minutes during incidents on 10/5/12, 10/18/12 and 11/2/12 as required by the student’s BIP.

In this case, the BIP required that, if a school rule were broken as a consequence of verbal or physical aggression, the parents would be called if the student couldn’t “recover” within 15 minutes. It should be noted that there was no requirement to call the parent **within a specific period of time** following any such incident.

On each of the dates in question, 10/5/12, 10/18/12 and 11/2/12, the student did recover within 15 minutes. While the time in the special education classroom or the principal’s office may have been more than 15 minutes, that time was not because the student hadn’t “recovered” but because the student was talking with the school staff or otherwise engaged in activities after recovering from the incident. There was no requirement to call the parents about any of these incidents at any time. As a courtesy, although she wasn’t required to, the special education teacher called the parents after the 10/18/12 incident.

*Therefore, the complaint investigation team determined that the LCSD complied with federal and state regulations with respect to implementing the BIP, specifically the parental notification requirement on 10/5/12, 10/18/12 and 11/2/12.*

### **b. Providing an alternative recess to the student on 11/2/12**

This complaint concerned an allegation that the student did not receive an alternative recess as required by the BIP, when lunch recess was taken away from the student.

In this case, the BIP stated that if the student failed to follow the school rules, the student would

be provided with an alternative recess or computer time. On 11/2/12 the student failed to follow the school rules because of behaviors. The consequence was that the student had to forgo the regular lunch recess. The aide failed to note the provision of the alternate recess in the daily log. The complaint investigation team concluded from information provided by three school staff members that the student was provided an alternative recess outside, on the student's own, with the aide.

*Therefore, the complaint investigation team determined that the LCSD complied with federal and state regulations with respect to implementing the BIP, specifically with regard to the provision of an alternative recess on 11/2/12.*

**c. Modifications of grading on report card**

This complaint concerned an allegation that the LCSD did not indicate with an asterisk that modifications had been made for grading on the first quarter report card.

In this case, the only provision of the student's IEP that referenced grading was the modification that the student be graded on completed work only. This complaint did not allege a failure of the LCSD to implement this modification. There was nothing in the IEP that required the report card to include an asterisk indicating that there had been a modification.

*Therefore, the complaint investigation team determined that the LCSD implemented the student's IEP in accordance with federal and state law with respect to this issue.*