

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA032013)**

Report Issued on 5/31/13

INTRODUCTION

On 3/20/13, the Nevada Superintendent of Public Instruction received a Complaint from a parent (Parent or Complainant) alleging violations in the special education program of a student with a disability attending the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD: 1) failed to allow the Parent to inspect and review the student's Assistive Technology (AT) records prior to individualized educational program (IEP) meetings scheduled for 3/5/13 and 3/19/13 and 2) failed to ensure the establishment of a system of records for the purpose of verifying that the student was receiving services appropriate to the student's disability as defined in the IEP, including ensuring that the records accurately verified that requisite services were being provided and that records were not fabricated at a later date.

The Parent also stated that: 1) the documents that were provided did little to prove that the student had been receiving AT services during the previous years; 2) many entries did not seem directly relevant to AT services and 3) he received an "alleged log" covering the time period of the first record request in response to the second record request that he hadn't received previously.

Subsequent to the filing of this Complaint, the Complainant requested the consideration of additional evidence related to a pending administrative hearing under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 C.F.R. Part 99. Both the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC) permit the extension of the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC §388.318(5)(a)) The Nevada Department of Education (NDE) determined that the foregoing was an exceptional circumstance warranting an extension. Therefore, the NDE extended the timeline in this Complaint to await the issuance of the FERPA administrative hearing decision.

The FERPA administrative hearing involved the same parties to this Complaint and, while under the jurisdiction of the FERPA law and regulations, involved the AT Contact Record at issue in this Complaint. The hearing was conducted by an independent hearing officer appointed by the WCSD. The hearing officer's administrative hearing decision was rendered after the conduct of an evidentiary hearing under the FERPA, with testimony taken under oath. (FERPA Recording and the FERPA Decision) Upon the complaint investigation team's review of the May 9, 2013 FERPA Decision, notice was taken of those Findings of Fact and Conclusions of Law in the FERPA Decision relevant to the issues in this Complaint under the IDEA and the NAC, and they were adopted as binding administrative findings and conclusions in this complaint investigation.

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 WCSD complied with the IDEA and the NAC, Chapter 388, with regard to permitting the Parents to inspect and review education records without unnecessary delay and before the 3/5/13 and 3/19/13 IEP meetings, specifically with regard to the

provision of the AT Contact Record in response to the Parent's 2/25/13 and 3/12/13 requests for the student's AT education records.

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to the establishment of a system of records for the purpose of verifying that the student was receiving AT services appropriate to the student's disability between 3/20/12 – 3/20/13.

PERSONS PROVIDING INFORMATION

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

- Parents
- WCSD Area Administrator, Student Support Services (Area Administrator)
- WCSD AT Consultant (AT Consultant)

DOCUMENTS AND RECORDING REVIEWED

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

1. Parent Complaint
2. Additional Parent input on 4/23/13
3. 1/9/12 IEP
4. 12/17/12 IEP
5. 3/5/13 IEP
6. 3/19/13 IEP
7. 2/28/13 AT Consult Meeting Notes (2/28/13 AT Summary)
8. 3/15/13 AT Consult Meeting Notes (3/15/13 AT Summary)
9. 5/9/12 Sign in sheet for AT training
10. AT Contact Record from 3/1/11-3/15/13 (AT Contact Record)
11. 4/22/13 Email from AT Consultant to Parent
12. 2012/2013 Academic Calendar (Calendar)
13. Recording of FERPA Hearing (FERPA Recording)
14. 5/09/13 FERPA Decision (FERPA Decision)

FINDINGS OF FACT (FOF)

General FOFs

- 1) The student is a ninth grade student eligible for special education as a student with autism. (12/17/12 IEP)
- 2) The 1/9/12 IEP and the 12/17/12 IEP required the related service of AT consultative services (variously referred to as AT Consult, AT services, AT consultations, AT education records), 15 minutes a quarter on the school campus. There was no further specification of what AT Consult would consist of or specific reporting requirements for the AT Consult. (1/9/12 IEP, 12/17/12 IEP)
- 3) IEP meetings were scheduled and conducted for the student on 3/5/13 and 3/19/13. (3/5/13 and 3/19/13 IEPs)

Access to the AT Contact Record

- 4) On 2/25/13 the Parent requested all records pertaining to the student's AT consultations from 12/18/12 to 2/25/13. (FERPA Decision – FOF #1)
- 5) There were 5 business/school days after the receipt of the request for records and before the scheduled March 5, 2013 IEP meeting. (Parent Complaint and Calendar)
- 6) The Parent was provided access to the student's education records pertaining to the AT services prior to the March 5, 2013 IEP meeting. (FERPA Decision – FOF #2)
- 7) In the access to records prior to the March 5, 2013 IEP meeting, the Parent was provided a five-page document dated February 28, 2013 summarizing the student's AT services for the requested time period. The Parent was not provided the AT Contact Record for the time period of the requested records at that time. (Parent Complaint, FERPA Decision – FOF #s 2, 3 and 5)
- 8) On March 12, 2013, the Parent made a second request for the records of the AT services provided to the student for an expanded date range of February 2011 through March 12, 2013. (FERPA Decision – FOF #4)
- 9) There were 4 business/school days after the receipt of the second request for records and before the scheduled March 19, 2013 IEP meeting. (Calendar)
- 10) The Parent was provided access to the student's AT education records prior to the March 19, 2013 IEP meeting. (Parent Complaint) On March 18, 2013, the Parents were given a second copy of the AT education records that were previously provided along with a two page AT Contact Record and "numerous other documents" in response to their March 12, 2013 record request. (FERPA Decision – FOF #5)
- 11) The AT Contact Record was compiled and written by the AT Consultant between March 15, 2013 and March 18, 2013. The AT Consultant had not updated the AT Contact Record in some time resulting in the need to compile activities from March 2011 through March 2013. (FERPA Decision – FOF #14)
- 12) The Parent believed the AT Contact Record was false as a copy was not provided at the time of the first records request, and when he did receive a copy, there were several "written-over" dates and arrows between the dates. (FERPA Decision-Conclusions of Law)
- 13) The Parent was given a true copy of the original AT Contact Record that is in the student's AT file. (FERPA Decision-Conclusions of Law)

System of Records

- 14) With the exception of an AT training on 5/9/12, which stated it went from 2:25-3:15, the 2/28/13 AT Summary did not include a beginning and ending time for each AT Consult. (2/28/13 AT Summary, AT Consultant)
- 15) One of the documents provided pursuant to the Parent's 3/12/13 request to inspect and review records was a 3/15/13 AT Summary. The AT Summary included a discussion of: a) AT services in general b) Summary of previous AT services provided to the student; c) Current needs and concerns discussed at the 3/5/13 IEP meeting at which the AT was present to discuss needs and concerns; d) Information

pertaining to audiobooks and which could be accessed through specific AT programs; e) additional AT concerns; and f) Actions and the persons who would follow up with regard to concerns raised at the 3/5/13 IEP meeting. There was no indication in the 3/15/13 AT Summary of the duration of any of the AT Consults. (3/15/13 AT Summary, AT Consultant)

16) The AT Contact Record listed dates and briefly described AT consult services provided for the student, but did not include the beginning and ending times of each consultation. (AT Contact Record)

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to permitting the Parents to inspect and review education records without unnecessary delay and before the 3/5/13 and 3/19/13 IEP meetings, specifically with regard to the provision of the AT Contact Record in response to the Parent's 2/25/13 and 3/12/13 requests for the student's AT education records.

The NAC §388.287(1) requires parents of a student with a disability be allowed to inspect and review any educational records relating to their child which are collected, maintained, or used by a public agency. The public agency must comply with such request without unnecessary delay and in any event: (a) before an IEP meeting or any hearing relating to the identification, evaluation or placement of the pupil or the provision of a free appropriate public education; and (b) not later than 45 days after the request has been made. (See also 34 C.F.R. §300.613)

In this case, the Parent requested specific education records for the student on two occasions:

- On February 25, 2013, the Parent requested all records pertaining to the student's AT Consult from 12/18/12 to 2/25/13. (FOF #4)
- On March 12, 2013, the Parent made a second request for the records of the AT services provided to the student from 2/ 2011 through 3/12/13. (FOF #8)

IEP meetings for the student were scheduled and conducted on March 5, 2013 and March 19, 2013. (FOF #3) There were 5 business/school days after the receipt of the request for records and before the scheduled March 5, 2013 IEP meeting and 4 business/school days after the receipt of the second request for records and before the scheduled March 19, 2013 IEP meeting. (FOF #s 5 and 9) Notwithstanding the Parent's requests for access to the student's records not more than five school/business days before the scheduled IEP meetings, the WCSD did provide the Parent access to the student's records prior to each of the meetings. (FOF #s 6 and 10)

Therefore, with regard to the Parent being allowed to inspect and review the student's AT education records without unnecessary delay and before the student's IEP meeting, the WCSD complied with the timeline for access in the NAC §388.287(1) and the IDEA, 34 C.F.R. §300.613. However, the crux of the Parent's Complaint is not with regard to the timeline for the access to the student's AT education records, but rather with regard to access to complete education records, specifically the AT Contact Record that covered the period of the first record request.¹

¹ While the Parent also believed the AT Contact Record was false as a copy was not provided at the time of the first records request, that issue was within the jurisdiction of the FERPA administrative hearing officer and the hearing officer did determine that the Parent was given a true copy of the original AT Contact Record in the student's AT file. (FOF #s 12 - 13)

In response to the first record request, the Parent was provided a five-page document dated February 28, 2013 summarizing the student's AT services for the requested time period. The Parents were not provided the AT Contact Record for the time period of the requested records prior to the March 5, 2013 IEP meeting. (FOF #7) In response to the second record request, the Parents were given another copy of the AT education records previously provided along with a two page AT Contact Record. (FOF #10) The AT Contact Record included activities from March 2011 to March 2013. However, it was compiled and written between March 15, 2013 and March 18, 2013 because the AT Consultant had not updated the AT Contact Record in some time. (FOF #11) As such, the AT Contact Record provided subsequent to the second record request was not in existence at the time of the first record request.

Under the IDEA, 34 C.F.R. §300.611, "education records" means the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (the regulations implementing the FERPA). It is a longstanding interpretation of the office responsible for implementing FERPA, the Family Policy Compliance Office (FPCO) that, under FERPA, if specific documents do not exist as education records at the time of a parent's request that there is no obligation for the agency to create or re-create an education record in response to a parent's request. (9 FAB 14; 105 LRP 25813 (FPCO, 2005) 14 FAB 28; 111 LRP 36923; (FPCO, 2011) 15 FAB 34; 112 LRP 38456 (FPCO, 2012); See also <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/parents.html> FERPA General Guidance for Parents) Therefore, for purposes of access to education records under the IDEA, the WCSD was not required to create or recreate the AT Contact Record upon the Parent's request to access the education records of the student. The WCSD opted to provide the Parents rights in excess of the IDEA and the NAC when it created the AT Contact Record subsequent to the second record request, and that is certainly their prerogative. (FOF #11) (See discussion under Issue Two with regard to the distinct requirement for a system of records verifying that the student was receiving AT services.)

Therefore, the WCSD complied with federal and state requirements to permit the Parents to inspect and review the student's requested education records collected, maintained, or used by the WCSD before the IEP meetings and without unnecessary delay specifically with respect to the AT Contact Record.

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to the establishment of a system of records for the purpose of verifying that the student was receiving AT services appropriate to the student's disability between 3/20/12–3/20/13.

The NAC §388.215(5) requires a school district to take measures to ensure every resident student with a disability is served in the manner appropriate to the unique needs of the student. These measures are required to include the establishment of a system of records for the purpose of verifying that each student with a disability is receiving services appropriate to the student's disability. Pertinent to this Complaint, this requirement for a system of records does not mandate a particular system of verification, just that the system of records will verify that the student is receiving appropriate services.

In this case, the student's 1/9/12 IEP and 12/17/12 IEP required the related service of AT consultative services 15 minutes a quarter on the school campus. There was no further specification regarding the AT Consult or specific reporting requirements for the AT Consult. (FOF #2) Based on the documentation provided by the WCSD for the period of time covered by this Complaint, the WCSD's system of records verifying the provision of the AT Consult to the student consisted of the 2/28/13 and 3/15/13 AT Summaries and the AT Contact Record. (FOF #s 14 – 16)

While the WCSD's documentation did provide a record of the provision of the AT Consult, it did not verify the provision of the service in all regards consistent with the student's IEP. (FOF #s 2 and 14-16)

Specifically, with the exception of an AT training on 5/9/12, the 2/28/13 AT Summary did not include a beginning and ending time for each AT Consult. (FOF #14) There was also no indication in the 3/15/13 AT Summary of the duration of any of the AT Consults. (FOF #15) Similarly, the AT Contact Record listed dates and briefly described AT Consult services provided for the student, but did not include the beginning and ending times of each consultation. (FOF #16)

As determined in a related Complaint, #WA022513, issued on this same day, the provision of AT Consult services during the applicable time period of that Complaint was verifiable through alternative sources, but that is not what is required under the NAC. Pursuant to NAC §388.215(5), the WCSD was required to maintain a system of records for the purpose of verifying the student received services appropriate to the student's disability and failed to do so with regard to documentation of the frequency of the AT Consult services.

Therefore, WCSD did not comply with the IDEA and the NAC, Chapter 388, with regard to the establishment of a system of records for the purpose of verifying that the student was receiving AT services appropriate to the student's disability between 3/20/12 – 3/20/13.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective action to address the violations found in this complaint investigation, specifically with regard to the establishment of a system of records for the purpose of verifying that, in this case, the student received AT services appropriate to the student's disability.

Professional Development/Training

Within 30 days of the receipt of this report, the WCSD must develop and submit to the NDE a proposed Correction Action Plan (CAP) to establish or revise written policies and procedures with regard to the WCSD's system of records to verify that each student with a disability is receiving services appropriate to the student's disability. Further the CAP must include the plan to train appropriate personnel in the WCSD who are responsible for implementing IEPs about the requirements to record each student with a disability's receipt of appropriate services.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 30 days, and in any case, by September 30, 2013 and a report must be submitted to the NDE to document its implementation.