

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA052813)**

Report Issued on 8/23/13

INTRODUCTION

On 5/28/13, the Nevada Superintendent of Public Instruction received a Complaint dated 5/28/13 from a parent (Parent or Complainant) alleging violations in the special education program of a student with disabilities attending the Washoe County School District (WCSD). The Parent alleged that the WCSD did not ensure that: 1) an individual who could interpret the instructional implications of the Social Skills Improvement System (SSIS) evaluation results was a member of the 5/21/13 IEP meeting; 2) that any interpretation of an assessment of social and emotional condition be made by a psychologist or another certified or licensed mental health profession and 3) did not provide accurate notice indicating who would be in attendance at an IEP meeting, specifically with regard to the attendance of a program specialist.

COMPLAINT ISSUE

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

- Issue One:** **Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to a qualified individual who could interpret the instructional implications of the SSIS evaluation results being a member of the IEP Team on May 21, 2013?**
- Issue Two:** **Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the meeting notice for the May 21, 2013 IEP meeting, specifically with regard to the attendance of a program specialist as indicated on the notice?**

PERSONS PROVIDING INFORMATION

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

- Complainant
- Special Education Area Administrator
- Special Education Administrator
- Autism Consultant
- Speech/Language Specialist (S/L Specialist)

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. Complaint
2. SSIS Report
3. Recording of 5/21/13 IEP meeting (Recording)
4. Recording of 5/28/13 IEP meeting (5/28/13 Recording)
5. Meeting Notices for 5/14/13 and 5/21/13 IEP meetings dated 5/7/13 and 5/16/13 respectively
6. List of attendees at 5/21/13 IEP meeting
7. Emails dated 5/17/13, 5/20/13, 5/24/13 and 5/25/13
8. 4/23/13, 5/21/13 and 5/28/13 draft IEPs
9. 6/3/13 Annual IEP

FINDINGS OF FACT (FOF)

1. Four meetings were held to develop the student's 6/3/13 Annual IEP. The dates of those meetings were 5/14/13, 5/21/13, 5/28/13 and 6/3/13. (6/3/13 Annual IEP)
2. A 5/16/13 Meeting Notice was sent to the Parents for the 5/21/13 IEP meeting. (Parent or Parents is used interchangeably throughout for ease of reading.) The 5/16/13 Meeting Notice included the following invited attendees by position, with names included for the three last attendees:
 - a. Administrator/Designee
 - b. Special Education teacher
 - c. Regular Education teacher
 - d. S/L Specialist
 - e. Program Specialist
 - f. WCSD Legal Counsel
 - g. Special Education Area Administrator
 - h. Facilitator(5/16/13 Meeting Notice)
3. The following people signed the 5/21/13 draft IEP by designated position as having attended the 5/21/13 IEP meeting:
 - a. Parents
 - b. Student
 - c. LEA Representative
 - d. Special Education teacher
 - e. Regular Education teacher
 - f. S/L Specialist
 - g. Special Education Area Administrator
 - h. WCSD Legal Counsel
 - i. Facilitator(5/21/13 IEP)
4. The Complainant believed that a program specialist was not present at the 5/21/13 IEP meeting. (Complaint)
5. The designation of Program Specialist on the WCSD's IEP meeting notice form represents the presence of a district staff member with specialized expertise and knowledge about a specific program, not a WCSD position. (Special Education Administrator)
6. The Special Education Area Administrator present at the 5/21/13 IEP meeting oversees the Autism Program and the Comprehensive Life Skills program for the WCSD. (Special Education Area Administrator, Special Education Administrator)
7. The S/L Specialist present at the 5/21/13 IEP meeting has specialized expertise and knowledge about speech and language including pragmatic speech and language skills. (Special Education Administrator, Special Education Area Administrator, S/L Specialist)
8. Various social/emotional/behavioral assessments were conducted prior to the student's annual IEP meeting. These assessments included the SSIS. (6/3/13 Annual IEP)
9. Both the Autism Consultant and the S/L Specialist were qualified to administer the SSIS. (Autism Consultant, S/L Specialist)
10. The Autism Consultant administered the SSIS. The SSIS consisted of rating scales completed by five people and analyzed in groups of three. One of the Parents, the Special Education teacher and the student

comprised Rater Group 1 and the other Parent, the Biology teacher and the student comprised Rater Group 2. (Autism Consultant, S/L Specialist)

11. The evaluation results for the SSIS were reported in two computerized reports. Each computerized report constituted the evaluation results of one Rater Group. Taken together, these results constituted the SSIS Report. (SSIS Report, Autism Consultant, S/L Specialist)
12. Within the SSIS Report was a section entitled “Social Skill Intervention Planning Guide”. The Social Skills Intervention Planning Guide included guidelines for interventions based on the student’s strengths and weaknesses (SSIS Report, S/L Specialist, Autism Consultant)
13. The Autism Consultant provided a copy of the entire SSIS Report to the student’s IEP Team, including the Parents, on 4/4/13. The SSIS Report was discussed and reviewed with the Parents and other team members at a 4/23/13 IEP meeting and at a 4/24/13 Behavior Management Meeting, at which the S/L Specialist, the Special Education teacher and at least one of the Parents was present. (Autism Consultant, 4/23/13 draft IEP, 5/24/13 Email)
14. There is no dispute that the Autism Consultant was qualified to interpret the instructional implications of the SSIS.
15. In addition to being present at the 4/23/13 and 4/24/13 meetings when the SSIS Report was discussed, the S/L Specialist reviewed the SSIS prior to its administration to the student, independently reviewed the SSIS Report after it was administered to the student and reviewed it again at and after a 5/16/13 meeting with the Autism Consultant. (Autism Consultant, S/L Specialist)
16. At the 5/16/13 meeting the Autism Consultant and the S/L Specialist discussed the SSIS Report, including the SSIS Intervention Guide, reviewed the student’s current Speech and Language goal and prioritized and drafted objectives based on the SSIS Report which the S/L Specialist entered into the draft 5/21/13 IEP as their draft suggestions. (S/L Specialist, Autism Consultant, 5/20/13 Email)
17. The Autism Consultant attended the first of the four meetings to develop the student’s annual IEP on 5/14/13. Prior to the 5/14/13 IEP meeting, the Autism Consultant prepared a draft Present Levels of Academic Achievement and Functional Performance (PLOP) based on the evaluation results in the SSIS Report for the IEP Team’s consideration for inclusion in the student’s annual IEP. The Autism Consultant’s draft PLOP was her summary of the SSIS Report. The PLOP included sections cut and pasted from the SSIS Report and some narrative summarizing the results reported in the SSIS Report. The draft PLOP was not discussed at the 5/14/21 IEP meeting. (Autism Consultant, 5/24/13 and 5/25/13 Emails)
18. The Autism Consultant gave the Special Education teacher what she thought was her complete draft PLOP to provide to the IEP Team for its consideration at the 5/21/14 IEP meeting because she was unable to attend that meeting. (Autism Consultant, S/L Specialist, 5/24/13 Email)
19. The Special Education teacher emailed the draft PLOP the Autism Consultant had given him to the Parents and included it in the 5/21/13 draft IEP. (5/17/13 Email, Recording)
20. Based on the SSIS Report, the S/L Specialist presented information at the 5/21/13 IEP meeting regarding the student’s social and communication proficiency and the implications of that information for the student’s Speech and Language goal and objectives. (S/L Specialist, Recording)
21. At the 5/21/13 IEP meeting, the Parents asked if information from Rater Group 2 was included in the draft PLOP. It was not reflected in the draft IEP, and the WCSD personnel present at the 5/21/13 IEP meeting were unable to explain why the draft PLOP was missing this information. (Recording)

22. Following the 5/21/13 IEP meeting the S/L Specialist informed the Autism Consultant about the questions concerning the lack of information about Rater Group 2 in the draft PLOP. The Autism Consultant reviewed the draft PLOP in the 5/21/13 IEP draft and discovered that she inadvertently had not provided all of the pages of her draft PLOP to the Special Education teacher, specifically the pages summarizing the Rater Group 2 results, and notified the IEP Team. (Autism Consultant, 5/24/13 Email)
23. The Autism Consultant believes it is important for the individual drafting an IEP PLOP to be at the IEP meeting and available for discussion in person. She expressed discomfort to the Parent with shifting the responsibility for interpreting her draft PLOP onto others. (5/25/13 Email)
24. The Autism Consultant provided and discussed her entire draft PLOP at the 5/28/13 IEP meeting. (Autism Consultant, S/L Specialist, 5/24/13 Email, 5/28/13 IEP Recording)

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to a qualified individual who could interpret the instructional implications of the SSIS evaluation results being a member of the IEP Team on May 21, 2013?

In accordance with the IDEA, 34 C.F.R. §300.321(a)(5), an individual who can interpret the instructional implications of evaluation results is a mandatory member of a student's IEP Team. This individual may also serve in another capacity as one of the other mandatory Team members of the district. The NAC §388.281(2)(e) further provides that the individual must be familiar with the tests and other assessments performed on or by the pupil and their results. Taken together, these two provisions establish not only the mandatory presence of this IEP Team member at each IEP meeting, but the requisite qualifications of familiarity with the assessments and ability to interpret the instructional implications. There are no other qualifications in the IDEA and the NAC for this Team member.

Various assessments were conducted prior to the student's annual IEP meeting. These assessments included the SSIS (FOF #8), the only assessment at issue in this Complaint. As a preliminary matter, it is important to note that this issue is not about the conduct of the SSIS evaluation and the associated requirements under the NAC regarding the credentials required to administer or interpret an assessment pursuant to NAC §§388.330 to 388.440, but rather whether an individual was present at the 5/21/13 IEP meeting who was familiar with the SSIS and its results and could interpret its instructional implications.

This mandatory member of the Team is not required to be the individual who administered the assessment and in fact "[A]n individual who is qualified to conduct a particular assessment does not necessarily have the skills or knowledge to assist the IEP Team in determining the special education, related services, and other supports that are necessary in order for the child to receive FAPE." (Vol. 71 Fed Reg. pg. 46670 (August 14, 2006))

In this case, the Autism Consultant administered the SSIS to assess the student's social/emotional/behavioral functioning and was qualified to both administer and interpret the instructional implications of the SSIS. (FOF #s 8, 9, 10, and 14) The evaluation results for the SSIS were reported in two computerized reports reflecting the evaluation results of two Rater Groups. Taken together, these results constituted the SSIS Report. (FOF #s 10 - 11) The SSIS Report also included guidelines for interventions based on the student's strengths and weaknesses. (FOF #12)

The Autism Consultant provided a copy of the entire SSIS Report to the Parents and other members of the student's IEP Team and the Report was discussed, at minimum, at two meetings regarding the student prior to the 5/21/13 IEP meeting. At least one of the Parents was present at each meeting. (FOF #13) The Autism Consultant did attend the first of the meetings to develop the student's annual IEP on 5/14/13, but was unavailable to attend the 5/21/13 IEP meeting. (FOF #s 17 and 18)

In the absence of the Autism Consultant at the 5/21/13 IEP meeting, was any other member of the Team present who was familiar with the SSIS evaluation and its results and able to interpret its instructional implications with regard to the student? The S/L Specialist was present at the 5/21/13 IEP meeting; reviewed the SSIS prior to its administration to the student; was qualified to administer the assessment; received a copy of the SSIS Report; and independently reviewed the SSIS Report, including the SSIS Social Skills Intervention Planning Guide, to further familiarize herself with the Report after its administration to the student. The S/L Specialist was also present at multiple meetings when the SSIS Report was discussed. (FOF #s 3, 9, 13, and 15)

In addition to these qualifications of the S/L Specialist, the S/L Specialist and the Autism Consultant met prior to the 5/21/13 IEP meeting to review the SSIS Report, including the Social Skills Intervention Planning Guide, and to discuss its application to the student's IEP. At this meeting, the Autism Consultant and the S/L Specialist jointly prepared the draft objectives based on the SSIS Report that were in the draft 5/21/13 IEP. (FOF #16) Therefore, the S/L Specialist was not only familiar with the SSIS, but also understood the results of the assessment of the student and their educational significance relative to the development of the student's IEP.

The S/L Specialist demonstrated those requisite qualifications at the 5/21/13 IEP meeting in the presentation of information based on the SSIS Report regarding the student's social and communication proficiency and implications of that information for the student's Speech and Language goal and objectives. (FOF #20) Based on the foregoing, it is the determination of the complaint investigation team that the S/L Specialist who was present at the 5/21/13 IEP meeting was familiar with the SSIS evaluation and its results and able to interpret its instructional implications for the IEP Team as required by the IDEA, 34 C.F.R. §300.321(a)(5), and the NAC §388.281(2)(e).

However, the issue of noncompliance raised by the Complainant is not regarding the SSIS Report itself, but rather the absence of data from the Report in the draft PLOP prepared by the Autism Consultant that no member of the IEP Team present at the 5/21/13 IEP meeting could explain. (FOF #s 21 - 22) To ensure there are no lingering doubts regarding the above determination, this concern needs to be disposed of as well. Does the inability of the S/L Specialist or other member of the IEP Team to respond to the question about the Autism Consultant's draft PLOP change the above conclusion?

In this case, in anticipation of the 5/14/13 meeting, the Autism Consultant prepared a draft PLOP summarizing the evaluation results from the SSIS Report for the IEP Team's consideration for inclusion in the student's annual IEP. The Autism Consultant's draft PLOP included sections from the SSIS Report and some narrative summarizing the reported evaluation results. (FOF #17) When the SSIS Report was not discussed at the 5/14/13 meeting, the Consultant gave a copy of her draft PLOP to the Special Education teacher to provide to the Team for its consideration at the 5/21/14 IEP meeting. (FOF #18) However, the Autism Consultant inadvertently did not provide all of the pages of her draft PLOP to the Special Education teacher. (FOF #22) This incomplete draft PLOP was sent to the Parent and incorporated into the 5/21/13 draft IEP. (FOF #19) It is that draft PLOP that is at the center of this controversy.

A draft IEP prepared by other than the entire IEP Team does not meet the requirement that a student's IEP must be developed by the IEP Team, including participation of the parent. (34 C.F.R. §§300.321 and 300.324; NAC §388.284) It is well established that IEP Team members are permitted to bring a draft IEP, or components of an IEP, that represent their preliminary thoughts to an IEP meeting for consideration by the entire Team. However, such a document may be used solely for the purposes of discussion and development of the student's IEP. (25 IDELR 1208 (OSEP 1996); 16 IDELR 503 (OSEP 1990))

In accordance with the IDEA, 34 C.F.R. §300.321(a)(5), and the NAC §388.281(2)(e), it is the interpretation of the instructional implications of the evaluation results that is the required task for the mandatory member of a student's IEP Team. In this case, it is the interpretation of the instructional implications of the SSIS Report itself.

The draft PLOP was merely the Autism Consultant's preliminary thoughts on a component of the IEP for consideration by the IEP Team. (FOF #14) As such, while the draft PLOP was taken from the SSIS Report, it was not the SSIS Report. The inability of members of the IEP Team to explain why certain results were not included in one Team member's draft PLOP does not change the conclusion above that the requisite member of the IEP Team was present at the 5/21/2013 IEP meeting to interpret the instructional implications of the SSIS Report. While the Autism Consultant may have wanted to be the individual available for the discussion of the draft PLOP she prepared in advance of the meeting (FOF #23) the law does not require it.

Upon the controversy arising at the IEP meeting, the IEP Team could have rejected the draft PLOP from one Team member and proceeded with the development of the PLOP in the student's IEP. (25 IDELR 1208 (OSEP 1996); 16 IDELR 503 (OSEP 1990)) Members of the IEP Team had a copy of the SSIS Report and the Team could have relied on the S/L Specialist's familiarity with the SSIS and its results and her ability to interpret the instructional implications. The IEP Team opted to postpone the discussion, which was their prerogative. The Autism Consultant provided her entire draft PLOP to the IEP Team at the 5/28/13 IEP meeting and was available to answer questions about the SSIS Report and the draft PLOP at the 5/28/13 IEP meeting and a subsequent 5/29/13 Behavior Management Meeting. (FOF #24)

Therefore, it is the determination of the complaint investigation team that the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to a qualified individual who was familiar with the SSIS and its results and could interpret the instructional implications of the SSIS Report being a member of the IEP Team on May 21, 2013.

Issue Two: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the meeting notice for the May 21, 2013 IEP meeting, specifically with regard to the attendance of a program specialist as indicated on the notice?

In accordance with the IDEA, 34 C.F.R. §300.322(a), the WCSD was required to provide a notice to the Parents in advance of the IEP meeting to ensure the Parents were present at the meeting or afforded an opportunity to participate. The notice was required to indicate who would be in attendance. (34 C.F.R. §300.322(b)) While the notice under the IDEA can either be oral, written, or both (17 IDELR 1105 (OSEP, 1991)), the NAC §388.281(8) requires a written notice, including a "list of the persons who will attend the meeting."

In this case, the WCSD provided a written meeting notice to the Parents on 5/16/13 for the 5/21/13 IEP meeting that did include a list of persons who would attend the meeting, including a "Program Specialist". (FOF #2) (While the notice indicated who was invited to attend, since the IDEA and the NAC require the notice to include who will be in attendance, for purposes of this Complaint, the list is presumed to be the list of who would be in attendance. (34 C.F.R. §300.322(b)); NAC, §388.281(8))¹

The Complainant believed that a program specialist was not present at the 5/21/13 IEP meeting. (FOF #4) While no member of the IEP Team confirmed their attendance in that role by signature on the 5/21/13 draft IEP (FOF #3), that alone is not definitive.

The designation of Program Specialist on the WCSD's IEP meeting notice represents the presence of a district staff member with specialized expertise and knowledge about a specific program, not a WCSD position. (FOF #5) The Special Education Area Administrator and the S/L Specialist present at the 5/21/13 IEP meeting had specialized expertise and knowledge that met this designation as a program specialist. (FOF #s 6 and 7) As such, the complaint investigation team determined that IEP Team members in attendance at the 5/21/13 IEP

¹ It was noted that while the Complaint included a comment regarding the number of days prior to the meeting the notice was provided, it was not raised as an issue. Further, there is no specific time period for this meeting notice. It must be early enough to ensure the parents are present at the IEP meeting and, in this case, the Parents were present. (Vol. 71 Fed. Reg. pp. 46677 – 46678 (August 14, 2006))

meeting who also served in another capacity met the standard of a program specialist and, therefore, a program specialist did attend the 5/21/13 IEP meeting consistent with the notice to the Parents.

Therefore, the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to the meeting notice for the May 21, 2013 IEP meeting, specifically with regard to the attendance of a program specialist as indicated on the notice.