

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL122308)**

INTRODUCTION

On 12/23/08, the Nevada Superintendent of Public Instruction received a complaint dated 12/16/08 from a parent alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine the allegations that the CCSD: 1) did not implement the student's individualized educational program (IEP) and behavior intervention support plan (BIP); 2) did not provide IEP Goal Pages or specialized progress reports; 3) did not consider all of the student's disabilities during the manifestation determination review (MDR); and 4) did not consider the parent's input before making the manifestation determination.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of the documents and interviews with the parent, advocate and CCSD staff, raised the following issues under the jurisdiction of the Nevada Department of Education (NDE):

ISSUE 1: Whether CCSD complied with state requirements to implement the student's 9/5/08 IEP with regard to the:

- a. Anger management goal
- b. Reports of the student's progress
- c. 9/5/08 BIP

ISSUE 2: Whether CCSD complied with state and federal requirements with regard to the requirements for ensuring parent participation in manifestation determinations.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parent
- Advocate
- Assistant principal
- Special education facilitator
- Special education teacher
- Special education teacher of record (TOR)
- Core algebra and math teacher (math teacher)
- Dean of Students (dean)

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. 9/5/08 IEP
2. 9/5/08 BIP (BIP)
3. Meeting notices for 12/10/08 MDR and 12/10/08 IEP
4. 12/10/08 IEP
5. 12/10/08 MDR Summary (MDR Summary)
6. Special education facilitator's handwritten notes of 12/10/08 MDR
7. 12/12/08 letter to parents from principal
8. Dean's Summary (Dean's Report) of incidents leading to 12/10/08 MDR

9. Student's status record dated 3/3/08-1/21/09
10. Student status log kept by special education teacher 9/5/08-12/3/08
11. Student participation record for second quarter
12. Teachers' notes and emails for 2008/2009 school year
13. Student progress reports and grades for 2008/2009 school year
14. Student report cards for 2008/2009 school year
15. Student's attendance records for the 2008/2009 school year
16. School calendar for the 2008/2009 school year
17. Counselor's chronology from 8/21/08–11/25/08
18. TOR's memo of 1/21/09

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- Office of Special Education Programs (OSEP) "Questions and Answers on Discipline Procedures" (January 2007)

FINDINGS OF FACT

This investigation involved a high school student who was eligible for special education as a student with specific learning disabilities. A review of documents, as well as interviews with the parent, advocate, special education facilitator, special education teacher, assistant principal, TOR, math teacher and dean revealed the following facts.

The student's annual IEP was developed on 9/5/08. The student was placed in a regular class and special education class (e.g., resource) combination. Fifty percent of the classroom time was in the regular education environment. The IEP included an anger management goal stating that the student "will identify things that anger or frustrate him, achieving a criteria of 80% as measured by observation and documentation as implemented by Special Education and General Education Teacher." There was no description of the type of documentation to be used for measurement.

The TOR reported that the anger management goal had been carried over from the previous school and included in the IEP to see if it was necessary to keep as part of the student's IEP once school was underway. The TOR, special education teacher and the math teacher verbally reported that the student, from the beginning of the school year, was always able to identify what made the student angry or frustrated as demonstrated by the ability to tell teachers and friends in the class what caused those feelings whenever they occurred. These reports to the investigator were confirmed in several teachers' notes and e-mails. In addition, the student's IEP Goals Page dated 11/7/08 stated that the student had made progress towards the anger management goal. The TOR reported that the anger management goal was kept in the IEP to see if the student continued to successfully identify the feelings of anger and frustration. The staff did not keep a specific written document that tallied the number of times the student was angered or frustrated.

The 9/5/08 IEP stated that the method for reporting the student's progress toward meeting annual goals would be reported quarterly using an IEP Goals Page and specialized progress reports. The assistant principal reported that the first quarter of the 2008/2009 school year ended at 10/27/08. Specialized progress reports dated 9/29/08 and 11/26/08 and the 11/7/08 IEP Goals Page reported the student's progress for the first quarter. The assistant principal and the TOR stated that the progress reports and 11/7/08 Goals page were sent home.

The 9/5/08 IEP also included a BIP. The following three target behaviors were included in the BIP: "1) talking out/disrupting during class; 2) making threats towards others (staff and peers); and 3) truancy (tardies and absences)." The BIP also described the proactive, positive reinforcement strategies to be

used with the student: “1) verbally praise the student for raising hand and waiting; 2) check for comprehension of directions and instructions throughout the class period; 3) repeat directions and instructions as needed to ensure that the student understands expectations; 4) re-direct student as soon as student begins to demonstrate inappropriate behaviors; 5) try to privately discuss behavior and academic issues with student; 6) monitor student attendance through a daily attendance check; 7) provide student with frequent positive attention using a 3:1 ratio of positive to negative comments; and 8) provide instructions verbally.” The BIP also required that: “1) the student be allowed to be seated near the source of instruction and away from distractions and 2) a quiet area in the classroom would be provided where the student could complete assignments without distraction from peers.”

In addition, the BIP required that, when the student’s behavior was inappropriate, the reactive strategies to follow were to: “1) use a calm, even tone when confronting the student; 2) allow student access to the TOR, the special education facilitator, dean or academic counselor when frustration becomes overwhelming; 3) if student requests to leave, allow student to go to one of the staff members listed in #2; 4) after cooling down, consult with student to discuss the situation and how to respond appropriately; and 5) contact parent when significant behaviors occur.”

The special education teacher, the TOR and the math teacher verbally reported that all of the proactive and reactive strategies were employed with the student as required. The special education teacher reported that in her classes, the student recorded the student’s behavior daily in a Participation Record. The Participation Record indicated whether the student was on time, prepared for class, respectful of the students and staff, and followed directions. In addition the special education teacher kept a student status log detailing the student’s target behaviors and her responses to them. The math teacher reported that she did not have specific documentation of the implementation of the behavior plan though she reported she did implement it. The gym teacher reported that the student was generally not a problem in his class and that he did keep a log of the few interventions he had to make with the student. Other teachers reported that they did not experience behavior problems with the student. The special education teacher reported that the student sat close to the source of instruction in her class. There was no report from the other teachers that the student sat close to the source of instruction or that the student was provided a quiet place to work, away from the distraction of the other students. The progress reports of all the teachers indicated that the student did demonstrate some of the target behaviors to a lesser or greater degree.

The BIP required monitoring of the student’s progress as follows. “1) Attendance data will be collected daily through the dean’s office; 2) TOR will consult with the student’s teachers quarterly (and more frequently if needed) about progress toward behavior management; 3) The BIP will be modified and adjusted as needed based to promote the student’s success in the classroom using input from staff, parents, and student.”

With respect to monitoring the effectiveness of the BIP, attendance records recorded the student’s attendance on a daily basis. The TOR reported that she met with all of the student’s teachers every two or three weeks on a formal basis, and more often on an informal basis, to ensure the BIP was implemented and to determine if any additional assistance was needed. There is no official record detailing the meetings with the student’s teachers though there are references in e-mails to informal conversations with teachers regarding the student’s behavior. The BIP required that it “be reviewed quarterly and revised as needed based on the student’s progress... .” The TOR reported that the BIP was reviewed on 10/2/08 and again on approximately 11/7/08. There were no revisions suggested or requested by the parent or by the teachers.

On 12/5/08, the student was referred to the Dean’s office for creating a campus disturbance, verbal altercation, insubordination/disrespect, and the student was recommended for suspension. Meeting notices dated 12/8/08 were sent to the parents informing them of a 12/10/08 meeting to conduct a MDR and propose a disciplinary change of placement.

The advocate reported that during the MDR, she and the parent asked the MDR committee to review a two-page outside evaluation report which indicated that the student had diagnoses of learning disabilities, attention deficient hyperactivity disorder, oppositional defiant disorder, conduct disorder and poor impulse control.

The report had not previously been made available to the district. The advocate stated that the district staff refused to look at or consider the report. The assistant principal, the TOR, the special education facilitator and the special education teacher reported that the special education facilitator read the entire report to the MDR committee after the TOR and the special education facilitator read the report to themselves at the meeting. The MDR Summary, completed as part of the MDR, included a description of the contents of the report.

Notes taken by the special education facilitator at the MDR and IEP meetings on 12/10/08, as well as statements from the advocate, parent, assistant principal and special education teacher, all of whom were participants in the MDR, indicate that the advocate and parent were present and participated in the meetings. The parent and advocate report that they were denied meaningful participation in the MDR because they believed the decision at the MDR had been predetermined by district staff without the parent's input.

The advocate reported that she observed the special education facilitator typing up a predetermined decision of the MDR committee prior to the official beginning of the MDR on 12/10/08. The special education facilitator reported that she was not working on the student's MDR, but was preparing paperwork for another student when the advocate observed her typing a form prior to the MDR. The special education facilitator stated that she waited to fill in the determination of manifestation after the decision was made at the MDR. The TOR, special education facilitator, special education teacher, math teacher and assistant principal, all of whom were participants in the MDR, stated that there had not been a previous meeting to discuss the manifestation determination and that no decision had been made prior to the MDR.

The TOR, special education facilitator, special education teacher, math teacher and assistant principal reported that following the reading and discussion of the report submitted by the parent, the MDR committee, including the advocate and parent, reviewed the Dean's Report which summarized what had happened during the 12/5/08 incident. The MDR committee then discussed the criteria involved in determining whether the behavior of the student was a manifestation of the disability. All district members of the MDR committee determined that the student's behavior was not a manifestation of the disability, a decision with which both the parent and advocate disagreed. The decision of the MDR committee stating that the behavior was not a manifestation of the student's disability was handwritten on the MDR Summary. The MDR committee recommended suspension for the student. The parent did not sign the MDR Summary which was the report of the MDR committee.

District staff and the advocate reported that the parent was provided a copy of the MDR Summary and a copy of the procedural safeguards at the end of the 12/10/08 IEP meeting. No prior written notice (PWN) was provided to the parent regarding the decision of the MDR committee to make a disciplinary removal.

On 1/13/09 the student was arrested and subsequently sent to a juvenile court facility. The advocate reported that it is expected the student will be in the juvenile court facility for up to six months. The parents officially withdrew the student from school on 2/2/09.

CONCLUSIONS OF LAW AND REASONS

ISSUE 1: Whether CCSD complied with state requirements to implement the student's 9/5/08 IEP with regard to the:

- a. Anger management goal
- b. Reports of the student's progress
- c. 9/5/08 BIP

State regulations at NAC §388.281(6)(g) state that the school district shall "Provide the services and instruction deemed necessary for the pupil by the [IEP] committee."

This complaint concerned allegations that the district did not implement the student's anger management goal, did not provide reports of the student's progress in accordance with the IEP provisions, and did not implement the 9/5/08 BIP.

a. Anger Management Goal

The student had an annual anger management goal in the 9/5/08 IEP that stated the student would "identify things that anger or frustrate him achieving a criteria of 80% as measured by observation and documentation as implemented by Special Education and General Education Teacher."

Interviews with district staff members, as well as a review of the 9/5/08 IEP Goals page show that the student was making progress towards the anger management goal. There was documentation in emails and teacher notes, as well as in verbal reports by district staff that the student was always able to identify things which caused anger or frustration and had actually exceeded the goal because the student was able to identify the causes 100% of the time. Although there was no specific document that tallied the number of the student's responses to anger and frustration there was also no requirement for any specific type of documentation. The e-mails and teacher notes providing documentation of the progress of the student towards the anger management goal and this progress was confirmed by verbal reports of the district staff. This information documented that the anger management goal was implemented.

Therefore, the investigation team concluded that the CCSD complied with state regulations when implementing the student's IEP with regard to the anger management goal.

b. Reports of the student's progress

The 9/5/08 IEP required that the student receive quarterly IEP goal pages and specialized progress reports. Two sets of first-quarter progress reports as well as an IEP Goals Page were sent home to the parent.

Therefore, the investigation team concluded that the CCSD complied with state regulations when implementing the student's IEP with regard to providing reports of the student's progress.

c. 9/5/08 BIP

The student had a BIP that required the staff to seat the student near the source of instruction, provide quiet places for the student to work free of distraction, use both proactive and reactive strategies with the student and monitor the progress of the student through daily attendance records, consultation with the student's teachers and revision if needed with input from the staff, parents or student. The BIP also required a quarterly review and revision as necessary.

While some of the district staff provided documentation and verbal reports that the BIP provisions were implemented, there was insufficient documentation for the investigation team to determine that all the proactive and reactive strategies were used throughout the day.

In addition, while some teachers reported that there was no need to implement the behavior plan in their class, the progress reports of all the teachers indicated that the student did demonstrate one or more of the target behaviors in each of the classes, which would have necessitated the implementation of the BIP. There was no documentation or reports that the student was seated near the source of instruction or provided with a quiet place to work free of distraction with the exception of the report of the special education teacher. The student's progress was monitored through daily attendance records, consultation with the student's teachers and reviews of the student's progress at least quarterly.

The district was obligated to implement all aspects of the BIP in all the student's classrooms and, while it implemented some of the aspects of the BIP in some of the classrooms, the investigation team determined that the district did not implement all of the aspects of the BIP as required. Specifically the district did not implement each of the reactive and proactive strategies and did not provide seating for the student as required.

Therefore, the investigation team concluded that the CCSD did not comply with state regulations when implementing the student's 9/5/08 IEP.

ISSUE 2: Whether CCSD complied with state and federal requirements with regard to the requirements for ensuring parent participation in manifestation determinations.

This complaint concerned allegations that the parent was not provided an opportunity to participate in the manifestation determination. Specific allegations were made that the district did not consider a report provided by the parent to the MDR committee and did not consider the parent's input before making the manifestation determination. In addition, the parent expressed disagreement with the outcome of the manifestation determination.

Parent participation in manifestation determinations is ensured, in part, through providing for participation in the meeting, considering information provided by the parents, and providing written notice of determinations made without the consensus of the parent.

State regulations at NAC §388.265(3)(a)(1) and (b) state that "The public agency, the parent, the relevant members of the committee and any other qualified personnel appointed by the public agency to meet with the relevant members of the committee shall: (a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation: (1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil; ..." and "(b) Determine whether the behavior of the pupil was a manifestation of the disability of the pupil."

OSEP in its Questions and Answers on Discipline (2007), F-2, clarified that "If the parents of a child with a disability, the LEA, and the relevant members of the child's IEP Team cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the public agency must make the determination and provide the parent with prior written notice pursuant to 34 CFR §300.503."

Federal regulations at 34 CFR §300.503(a)(1) state that written notice "must be given to the parents of a child with a disability a reasonable time before the public agency —(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child."

In this case, the MDR committee, which included the parent as a participant, was required to consider all information relevant to the student's behavior including the report supplied by the parent. While there

were conflicting reports about whether the MDR committee considered the report submitted by the parent, the investigation team determined through a review of the documents (MDR Summary and the notes of the special education facilitator) that the MDR committee had reviewed and considered the contents of the report.

There were also conflicting reports about whether district members of the MDR made their decision about the manifestation determination prior to the MDR and without the input of the parent. The investigation team concluded, based on interviews, a review of the MDR Summary and a review of the special education facilitator's notes, that no decision had been made by the MDR committee prior to the MDR and that the parent had the opportunity to participate and give input prior to the final decision.

The parent and advocate disagreed with the district's decision that the student's behavior was not a manifestation of the disability. The district was required to provide the parent with a PWN when the MDR committee failed to reach consensus or agreement on whether the student's behavior was a manifestation of the disability as clarified by OSEP. The district did not provide the parent with a PWN following the disagreement with respect to whether the behavior was a manifestation of the disability.

The district met its obligation to consider and review relevant information supplied by the parent of the student and to consider the parent's input prior to the decision of the MDR committee. However, the district did not meet its obligation to provide the required PWN when there was not agreement or consensus on the manifestation determination.

Therefore, the investigation team concluded that the CCSD did comply with state regulations when conducting a manifestation determination with regard to reviewing relevant information provided by the parents, specifically an outside evaluation report and considering parent input.

However, the CCSD did not comply with federal requirements to provide written notice to the parent when the MDR committee failed to reach consensus or agreement on whether the behavior was a manifestation of the student's disability.

ORDER FOR CORRECTIVE ACTION

The CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not implement the student's BIP and did not provide PWN to the parents when the MDR committee failed to reach consensus or agreement on whether the behavior was a manifestation of the disability.

Directed Action

The investigation team recognizes that the student is currently enrolled in a juvenile detention facility and officially withdrawn from the school. However, the district is ordered to notify the parent of his right to appeal the decision of the MDR that the behavior was not a manifestation of the student's disability because this decision will have impact on the student once the parent wishes to re-enroll the student in the district. The notification must be provided within 30 days of receipt of this report. Documentation of compliance with this order must be provided to the NDE within 30 days of completion.

Professional Development/Training

Within 30 days of receipt of this report, the CCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must include professional development for relevant CCSD administrators and staff regarding:

1. Federal regulations for providing a PWN when members of the MDR fail to reach consensus or agreement on whether the behavior was a manifestation of the disability.

2. Procedures for implementation of BIPs, including documentation of the implementation.

The CAP must be approved by the NDE prior to implementation. Following implementation of the approved activities, documentation of district corrective actions must be provided to the NDE within 30 days of completion.