

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA071309)**

INTRODUCTION

On 7/13/09, the Nevada Superintendent of Public Instruction received a letter from parents of a special education student asking to add new information and allegations to a complaint already under investigation (#WA062409) by the Nevada Department of Education (NDE). The parents requested that if the additional issues raised were not accepted as amendments to the #WA062409 complaint, they be accepted as a new complaint.

The United States Department of Education's discussion of the Individuals with Disabilities Education Act (IDEA) regulations on the amendment of a complaint states "if the additional information a parent submits is on the same or related incident, it would be part of the amended complaint. If the information submitted...is on a different or unrelated incident generally, the new information would be treated as a separate complaint." (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46603). The NDE, upon reviewing the issues already accepted in WA062409, determined that the additional information submitted was on different or unrelated issues and therefore comprised a new complaint.

The parents were notified of the decision that the additional information and allegations would be accepted as a new complaint regarding allegations of violations in the special education program of a student with disabilities attending Washoe County School District (WCSD). An investigation team was appointed to examine allegations that the WCSD: 1) failed to provide a proper prior written notice (PWN) within a reasonable period of time with regard to its refusal to implement Appendix A in the 10/16/08 IEP and 2) failed to provide the parents with a complete copy of a 2/5/09 revised individualized educational program (IEP) despite numerous requests by the parents for a complete copy.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the NDE:

- Issue 1: Whether WCSD complied with state requirements to notify the parents within a reasonable time before its refusal to implement Appendix A.
- Issue 2: Whether WCSD complied with federal requirements to provide a complete copy of the IEP, with the amendments incorporated, to the parents in response to their request — specifically with regard to the 2/5/09 revised IEP.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parents
- Area administrator
- Case manager
- Program consultant
- Principal
- Autism consultant

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- 5/18/08 annual IEP
- 10/16/08 revised IEP (10/16/08 IEP)

- "Appendix A"
- 2/5/09 revised IEP (2/5/09 IEP)
- Emails from parents to district dated 2/11/09, 2/13/09, 2/17/09, 2/25/09 and 3/15/09
- Emails from district to parent dated 2/17/09, 2/26/09 and 3/16/09
- Prior Written Notices (PWNs) dated 2/18/09 and 3/11/09

The investigation team also reviewed the following authorities:

- Nevada Administrative Code (NAC), Chapter 388
- IDEA Regulations, 34 CFR Part 300, including discussion of the regulations in Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46603.

FINDINGS OF FACT

This investigation involved a middle school student with autism eligible for special education who attended WCSD during the 2008/2009 school year. A review of documents, as well as interviews with the parents, area administrator, autism consultant, program consultant, principal and case manager revealed the following facts.

During the 2008/2009 school year, the student had a 5/18/08 annual IEP in effect. There were two revisions to the annual IEP, one dated 10/16/08 and one dated 2/5/09.

Appendix A

At the 10/16/08 IEP revision meeting, the parents submitted a statement to the IEP committee identified by the district as "Appendix A". Appendix A was a one-page statement prepared by the parents and began "Please include the following in [student's] IEP". The parents requested that Appendix A be attached to the 10/16/08 IEP. Appendix A was included with the 10/16/08 revised IEP when the parents received a copy of the IEP in early November 2008. The parents, the case manager and the autism consultant reported that the 10/16/08 revised IEP included a new goal that was developed to respond to Appendix A.

The principal and case manager reported that although Appendix A was included with the 10/16/08 IEP it was only because the parents had requested its inclusion and its presence was not an indication that the 10/16/08 IEP committee had agreed to implement it in its entirety. The parents reported that they believed the 10/16/08 IEP committee had agreed to implement Appendix A in its entirety and signed in agreement with the 10/16/08 revised IEP based on this perception.

At the end of the 2/5/09 IEP revision meeting, one of the parents had a conversation about Appendix A with the program consultant, the principal, the autism consultant and the area administrator. The parent reported that when the program consultant informed the area administrator that Appendix A was in the student's 10/16/08 revised IEP, the area administrator stated that it would need to be removed. The autism consultant reported that the area administrator stated that Appendix A could be referenced as the parents' educational concerns in the 2/5/09 revised IEP and that implementation could be discussed at a future IEP meeting. The area administrator reported that while she was present at the 2/5/09 revised IEP meeting, she did not recall any specific conversations about a future meeting or about the inclusion or implementation of Appendix A as part of the IEP.

The parents did not sign the 2/5/09 revised IEP and stated that it was because they were concerned about what the district intended to do about Appendix A. The parents then began a series of written requests for a complete copy of the revised IEP to determine, among other things, whether Appendix A was still included (see discussion of "Complete Copy of 2/5/09 revised IEP" in the next section).

On 3/11/09 the district issued a Prior Written Notice (PWN) which stated that the district refused to implement "Appendix A dated 10/16/08 because it [Appendix A] had not been provided to the IEP team

in a timely manner and that the IEP team needed time to review all aspects of the document". The 3/11/09 PWN also stated that: 1) consideration of other options was not applicable; 2) consideration of evaluation procedures, assessment, records or reports was not applicable and 3) as a relevant factor to the refusal, Appendix A would be discussed and reviewed by the IEP team at the annual meeting on 4/6/09. The 3/11/09 PWN included a statement regarding parental procedural safeguards and how the parents could obtain a copy of them and the name of a person to contact if they wanted help in understanding the content.

The program consultant reported that she knew the PWN was issued late but she thought it was better to issue it "late than never".

Complete Copy of 2/5/09 revised IEP

The 2/5/09 revised IEP provided to the parents consisted of: 1) the cover page; 2) the page discussing "Method for Reporting Progress, Special Education Services and Supplementary Aids and Services"; 3) the page discussing "Related Services and Participation in Statewide and/or District-Wide Assessments" and 4) the page discussing "Extended School Year, Placement and IEP Implementation".

In a 2/11/09 email to the case manager, the parents asked the case manager "to send home a complete copy of the IEP that incorporates ...those couple [of changes] from Thursday [2/5/09] last week?" In a 2/13/09 email to the case manager, the parents asked "did you mail a complete copy of the new IEP with ... the couple [of] other revisions from last week [2/5/09]?" In a 2/17/09 email to the case manager the parents asked "...can I get the copy of the IEP with the changes then, too?" In a 2/25/09 email to the case manager, the parents said "...we still don't have a complete copy of the latest IEP revision. The copy of the IEP you gave [us] last Wednesday was missing several pages. Could you please send home a complete copy with all the pages for us to look at before we sign. We want to make sure we have everything".

In response to the parents' 2/25/09 email request for the complete copy of the 2/5/09 revised IEP, the program consultant, in a 2/26/09 email to the parents stated "we added a few revisions to the IEP, the pages we gave you are the only required pages as they are the only ones that have changed. Everything else is still in the IEP".

In a 3/15/09 email to the program consultant, the parents stated "Following our last IEP we were provided with only a few pages of the IEP document. We subsequently requested a copy of the entire document... Please provide us with a copy of the entire most recent IEP as soon as possible". The parents reported to the complaint investigation team that they were requesting one complete copy of the IEP in effect after the 2/5/09 IEP meeting, i.e. a copy that incorporated the items for all the IEPs because they were not clear what was in the student's current IEP given that there had been two revisions of it, and when they had compared the 5/18/08 annual IEP with the 10/16/08 revised IEP there were inconsistencies.

On 3/16/09, the case manager provided the parents with separate copies of the 5/18/08 annual IEP, the 10/16/08 revised IEP and the 2/5/09 revised IEP.

The area coordinator and case manager reported to the investigation team that there was not a complete copy of the annual IEP, with the revisions or amendments made at the 10/16/08 and 2/5/09 revised IEP meetings, compiled into one complete IEP.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether WCSD complied with state requirements to notify the parents, within a reasonable time before any proposals or refusals with respect to Appendix A.

This complaint concerned an allegation that the district did not provide the parents with a proper PWN within a reasonable period of time with regard to its refusal to include Appendix A in the student's 2/5/09 revised IEP.

State regulations at NAC §388.300(7) state that "a public agency shall notify the parents of a pupil with a disability...within a reasonable time before any proposed or refused action regarding the: (a) Placement of the pupil; (b) Identification or evaluation of any special educational needs of the pupil; or (c) Provision of a free appropriate public education to the public".

State regulations at NAC §388.300(9) state that the PWN must include: "(a) A description of the action proposed or refused by the public agency; (b) The reasons for the proposal or refusal; (c) A description of other options the public agency considered and the reasons why those options were rejected; (d) A description of each evaluation procedure, assessment, record or report upon which the action is based; (e) A description of the factors which are relevant to the public agency's proposal or refusal; (f) A statement that the parents have rights in the matter and, ...the means by which a statement of parental rights can be obtained; and (g) Sources for parents to contact to obtain assistance in understanding the provisions of state and federal law relating to special education".

In this case, there were conflicting beliefs as to whether the inclusion of Appendix A in the 10/16/08 IEP represented an agreement to implement Appendix A or whether its inclusion was for solely for the purposes of showing that the parents had made the requests outlined in Appendix A. There was insufficient documentation for the complaint investigation team to make a conclusive determination as to the intent of the inclusion of Appendix A at the 10/16/08 IEP revision meeting.

Although there were conflicting reports about whether Appendix A was intended to be implemented as part of the 10/16/08 IEP, reports do consistently confirm that on 2/5/09, it was clear to district personnel that the district did not intend to implement the information outlined in Appendix A. On 3/11/09, approximately five weeks after the IEP revision meeting, the district issued a PWN refusing to implement Appendix A. The district conceded, and the investigation team agreed, that the PWN was not issued within a reasonable time before the district's refused action to implement Appendix A as part of the 2/5/09 revised IEP.

Therefore, the investigation team concluded that WCSD did not comply with state requirements to notify the parents, within a reasonable time, before its refusal to implement Appendix A.

Issue 2: Whether WCSD complied with federal requirements to provide a complete copy of the IEP with the amendments incorporated to the parents in response to their request specifically with regard to the 2/5/09 revised IEP meeting.

This complaint concerned an allegation that the district failed to provide the parents with a complete copy of the 2/5/09 revised IEP despite a number of requests from the parents for a complete copy.

Federal regulations at 34 CFR §300.324(a)(6) state that "...Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated."

In this case, the student had a 5/18/08 annual IEP. The 5/18/08 annual IEP was revised on 10/16/08 and on 2/5/09. Following the completion of the 2/5/09 revised IEP, the parents requested a complete copy of the student's revised IEP on five separate occasions. The district provided the parents with separate copies of the 5/18/08 IEP, the 10/16/08 revised IEP and the 2/5/09 revised IEP. The district was obligated to provide the parents with a revised copy of the student's 5/18/08 annual IEP, with all the amendments

from the 10/16/08 revised IEP and the 2/5/09 revised IEP incorporated, following the parents' request for such a copy and failed to do so.

Therefore, the investigation team concluded that WCSD did not comply with federal regulations when it failed to provide a revised copy of the IEP with the amendments incorporated.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not: 1) issue the PWN of refusal to implement Appendix A within a reasonable time; nor 2) provide a revised copy of the IEP with the amendments incorporated upon the request of the parents.

Professional Development and Training

Within 30 days of receipt of this report, WCSD must develop and submit to the NDE a proposed Corrective Action Plan (CAP). The proposed CAP must:

1. Include a plan to review and revise, as necessary, district policies, procedures and forms with regard to:
 - a. The provision of PWNs within a reasonable time before any refused action.
 - b. The provision of revised copies of annual IEPs with amendments incorporated when requested by parents.
2. Provide professional development for teachers and administrators at the school site on the requirements for:
 - a. Providing PWNs within a reasonable time
 - b. Providing revised copies of annual IEPs, with amendments incorporated, when requested by parents.

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.