

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA052610)**

INTRODUCTION

On 5/26/10, the Nevada Superintendent of Public Instruction received a complaint dated 5/25/10 from parents alleging violations in the special education program of a student with disabilities attending school in the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that: 1) the occupational therapy (OT) referral on the student's 4/30/09 individualized educational program (IEP) was not completed until 5/17/10, beyond the anniversary of the 4/30/09 IEP; 2) the assistive technology (AT) referral was not completed within the 45 day period as required by law, beyond the date of the 4/30/09 IEP; 3) the regular and special education teachers did not use the AT tools required by the 4/30/09 IEP, specifically a word processor and word prediction software (Co-Writer) and an electronic planner as required by the subsequent IEPs and 4) WCSD did not complete the student's annual IEP prior to the annual review date.

Some of the allegations occurred outside of the jurisdiction of the NDE to investigate because they had occurred more than a year prior to the date of the complaint. The NDE has authority to investigate complaints that have been filed not more than one year after the date on which the alleged violation(s) have occurred (NAC 388.318((1)(b))). The parent and district were notified of this accordingly in correspondence dated 6/11/10.

Under the provisions of 34 CFR §300.152(b) which permits the extension of the 60 day timeline for the completion of a complaint investigation report due to exceptional circumstances, the Nevada Department of Education (NDE) extended the timeline for the completion of the complaint investigation due to the unavailability during the summer months of the WCSD personnel who were needed to access necessary documents and with whom interviews were necessary. The parents and the district were notified of this extension in letters dated July 7, 2010.

COMPLAINT ISSUES

The allegations articulated in the complaint raised the following issues under the jurisdiction of the NDE for the time period 5/25/09—5/25/10:

- Issue One: Whether WCSD complied with state and federal requirements to implement the student's IEP(s) specifically with respect to:
- a. The OT referral
 - b. The AT referral
 - c. The provision of a portable keyboard or other word processing device, a Co-Writer and electronic planner (AT tools) with the required frequency and duration
- Issue Two: Whether WCSD complied with state and federal requirements to review the student's IEP at least annually.

PERSONS INTERVIEWED

The investigation team reviewed information from the following people:

1. The student's parents
2. WCSD Area Administrator for Special Education (area administrator)
3. Special education case manager/resource room teacher (resource teacher)
4. Regular education teacher
5. AT Consultant

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. 4/30/09 initial IEP
2. 12/8/09 IEP revision
3. 11/3/09 IEP revision
4. 5/6/10 annual IEP
5. 6/1/10 IEP revision
6. 8/27/10 IEP revision
7. Meeting notice dated 4/28/10 for 5/6/10 annual IEP
8. Prior Written Notice (PWN) to implement 5/6/10 annual IEP
9. Meeting notice dated 5/18/10 to review the student's IEP
10. PWN dated 5/7/10 for proposed OT evaluation
11. OT Referral dated 5/10/10
12. 5/17/10 Occupational Therapy Report (OT Report)
13. AT Fast Track Referral Form (AT referral form) dated 4/30/09
14. AT Contact Record from 8/17/09 through 6/3/10
15. AT Implementation Plan dated 9/24/09
16. 11/17/09 email from Jill Olson to Carol Bergin
17. 10/28/09 email from Justin Kolbe to Carol Bergin
18. AT Audio Book Order Form dated 12/3/09
19. Meeting notes dated 12/8/09
20. AT Equipment Check out Forms dated 9/24/09 to 12/11/09
21. AT Team Annual Inventory dated 6/8/10
22. WCSD school calendars for 2008/2009 and 2009/2010
23. Student's attendance records
24. Student progress reports for first, second and third quarters of the 2009/2010 school year
25. Student's Sixth Grade Progress Report
26. 1/28/10 Notes (to/from parents)
27. WCSD OT and APE Referral Procedure
28. WCSD Special Education Services Assistive Technology Team Procedures
29. WCSD Fast Track Referral Program Description
30. WCSD Fast Track Procedure
31. WCSD Assistive Technology Referral Sheet
32. WCSD Assistive Technology Case Management Procedure
33. WCSD Assistive Technology Training and Field Testing Procedure
34. WCSD Assistive Technology Follow-Up Procedure
35. WCSD Assistive Technology Team Follow-up Notice Form
36. WCSD Assistive Technology Team Feedback Request Form

37. WCSD Assistive Technology Team Field Test Report—Written Expression/Handwriting Form
38. WCSD Assistive Technology Team Field Test Report— Reading Form
39. Notes of 8/27/10 phone conference with AT consultant, parents and school staff

The investigation team also reviewed the following authorities:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 C.F.R. Part 300
- U.S. Department of Education, Office of Special Education Programs (OSEP) Federal Register / Vol. 64, No. 48 / Friday, March 12, 1999 / Rules and Regulations

FINDINGS OF FACT

This investigation involved a sixth grade elementary school student identified as a special education student with a specific learning disability. A review of documents, as well as information provided by the parents, the area administrator, the AT consultant and the resource teacher revealed the following facts.

The student's initial IEP was developed on 4/30/09. There were 16 school days between the 4/30/09 IEP and 5/26/09, the first date the NDE had jurisdiction to investigate this complaint. There were two revisions to the 4/30/09 IEP, one dated 11/3/09 and the other dated 12/8/09. However, the next annual IEP following the 4/30/09 IEP was held on 5/6/10 (5/6/10 IEP). The district conceded that the 5/6/10 annual IEP was not reviewed and revised within the time frame required by the law (i.e., at least annually).

The 2008/2009 school year ended on 6/3/09. The 2009/2010 school year began on 8/31/09.

The 4/30/09 IEP and the 12/8/09 IEP revision stated that the student would have an OT referral. There were no dates specified for when the referral would be made. The student was referred to OT on 5/13/10. The school district conceded that the OT referral did not take place within a reasonable period of time following the development of the student's IEP. The OT evaluation report recommended a continuation of the AT services the student was receiving and did not recommend any specific OT services for the student.

The 4/30/09 IEP stated that the student would have a referral for AT. There were no dates specified for when the referral would be made or completed. An AT referral form was filled out on 4/30/09 and received by the AT department on 8/17/10. That same day, the AT consultant notified the school staff that the AT referral was incomplete and additional information was needed. The missing information was received on 9/16/10 and the AT referral was deemed complete, thereby enabling the AT consultant to develop an AT Implementation Plan. Between the 4/30/09 IEP meeting in which the AT referral was determined necessary and the referral on 9/16/10, approximately six weeks of school elapsed, plus the summer months when school was on break.

The 4/30/09 IEP had a short-term objective stating that the student "will produce and submit legible written assignments with the aid of a portable keyboard or other word processing device...". There were no supplementary aids or services specifying the use of a portable keyboard or other word processing device in the 4/30/09 IEP.

The 11/3/09 IEP revision stated that the student would have the use of word prediction software “for assignments as needed” on the school campus. The 12/8/09 IEP required that the student have the use of word prediction software “for assignments as needed” on the school campus and at home. The 5/6/10 IEP stated that the student would have the use of an electronic planner “for assignments as needed” on the school campus and at home.

The school district affirmed that the AT tools were available in the school and at home when required. The district asserted that these tools were made available to the student, but that the student chose not to use them. No criteria existed in the IEP to ensure that the teachers knew when an AT device should be used (i.e., when it was “necessary”).

The regular education teacher and the resource teacher allowed the student to use the AT tools when he chose to. The student rarely chose to use the AT tools. The parents did not dispute that the AT tools were available in the school and at home as required. The parents believed that the teachers should have ensured that the AT tools were used by the student to complete all his school assignments and that the student should not have been permitted to make the choice of whether or not to use them.

The student received a B- in Reading, Language Arts and Spelling for 2009/2010. He received a C+ in Math, A C- in Science and a C in Social studies.

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether WCSD complied with state and federal requirements to implement the student’s IEP(s) specifically with respect to:

- a. The OT referral
- b. The AT referral
- c. The provision of a portable keyboard or other word processing device, a Co-Writer and electronic planner (AT tools) with the required frequency and duration

State regulations at NAC §388.281(6)(g) require that the district will “provide the services and instruction deemed necessary for the pupil by the committee;...”.

State regulations at NAC §388.281(e) require that the district “Implement each program as soon as possible after it is developed;”.

State regulations at NAC §388.284(g) state that for specific special education, supplementary aids and services and related services, the IEPs shall include the “anticipated frequency, location and duration of such modifications and services”.

In its discussion of the timing of the implementation of IEPs, OSEP stated that with very limited exceptions, IEPs should be implemented without undue delay following IEP meetings. OSEP further stated that it may be appropriate to have a short delay (when the IEP meetings occur at the end of the school year or during the summer, and the IEP team determines that the child does not need special education and related services until the next school year begins); or (2) when there are circumstances that require a short delay in the provision of services (e.g., finding a qualified service provider, or making transportation arrangements for the child). Further, OSEP stated “if there is a pattern...of not making services available within a reasonable period of time

(e.g., within a week or two following the meetings..), this could raise a question as to whether the district is in compliance...". (Federal Register/Vol. 64, No. 48/ Friday, March 12, 1999)

a. The OT Referral

This complaint concerned an allegation that the OT referral on the student's 4/30/09 IEP was not completed for more than one year.

In this case, two of the student's IEPs — the 4/30/09 IEP and the 12/3/09 IEP— required that the district complete an OT referral for the student but no date was specified. The student was referred for an OT assessment on 5/13/10. The district conceded that the district did not complete the OT referral as soon as possible.

Therefore, the investigation team concluded that WCSD failed to comply with federal and state requirements with regard to implementing the OT referral in the IEPs.

b. The AT Referral

This complaint concerned an allegation that the AT referral was not completed within 45 days from the date of the 4/30/09 IEP.

In this case, the 4/30/09 IEP stated that the student would have a referral for AT but no date was specified. A complete AT referral was submitted to the AT department and processed on 9/16/10.

The district was obligated to implement the requirement for an AT referral as soon as possible. There was a period of approximately six weeks of school, plus almost three months of summer break between the time the AT referral was deemed necessary and the time it was completed. No exceptional circumstances existed to delay the completion of the AT referral. No justification was offered for why the AT referral was not completed by the end of the 2009-2010 school year. The school staff did mobilize to process the referral prior to the start of the 2010-2011 school year (on 8/17/10)—however, another month elapsed between the time they learned the referral was incomplete and the time they completed the referral to the AT department.

While there are exceptions that permit a short delay in implementing IEPs, those exceptions did not apply with respect to this AT referral, and consequently constituted an unreasonable delay in implementing the requirement for an AT referral, particularly taking into account the fact that the district had had the obligation to implement the student's IEP beginning on 4/30/09. The district was obligated to complete the AT referral as soon as possible and failed to do so.

Therefore, the investigation team concluded that WCSD failed to comply with state requirements with regard to the AT referral in the 4/30/09 IEP.

c. Assistive Technology

This complaint concerned an allegation that the regular and special education teachers did not use the AT tools required by the student's IEPs, specifically a word processor as required by the 4/30/09 IEP, and a Co-Writer and an electronic planner as required by subsequent IEPs.

In this case, there was no dispute that the AT tools were available for use in the classroom, or at home. The dispute was with regard to the frequency and duration with which the student should have used the word processor, the Co-Writer and the electronic planner. The teachers thought the student had to use them only when he wanted to (which was infrequently), and was not for any specific period of time. The parents believed he should use them daily in the classrooms for the completion of his school assignments.

The district's use of the frequency "for assignments as needed" provides insufficient specificity to know when the accommodation *is* actually needed. Accordingly, the level of the agency's commitment of resources was not clear to the parents and other IEP members.

The district was required to state how the AT devices would be used in a manner that was clear to all who are involved in both the development and implementation of the IEP and failed to do so.

Therefore, the investigation team concluded that WCSD failed to comply with state requirements with regard to the provision of AT tools consistent with the required frequency and duration.

Issue Two: Whether WCSD complied with state and federal requirements to review the student's IEP at least annually.

This complaint concerned an allegation that WCSD did not complete the student's annual IEP prior to the annual review date.

State regulations at NAC §388.281(13)(c) require that the district will "Review the program at least annually and revise it as necessary".

In this case, the student's initial IEP was developed on 4/30/09. The next annual IEP was developed on 5/6/10. The district conceded that it had failed to review the IEP at least annually.

Therefore, the investigation team concluded that WCSD failed to comply with state and federal requirements to review the student's IEP at least annually.

ORDER FOR CORRECTIVE ACTION

WCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the district did not implement the student's IEPs with respect to: 1) providing an OT referral within a reasonable period of time; 2) providing the AT referral within a reasonable period of time and 3) providing the frequencies and duration of supplementary aids and services in a manner that was clear to all who were involved in both the development and implementation of the IEPs. Finally, the district did not review the IEP at least annually.

Directed Action

Within 30 days of receipt of this report, the district must reconvene an IEP meeting and, unless the parents and district agree otherwise, review and revise the "frequency" and "duration" of any AT supplementary aids and services so that the frequency and duration are clear to all who are involved in both the development and implementation of the IEP. The district must submit

written documentation to the NDE within 30 days following the IEP meeting to demonstrate compliance with this directed action.

Professional Development/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 and procedures with regard to: 1) implementing IEPs with respect to providing referrals, including the required date for the completion of the referrals, as recommended by the IEP committee; 2) providing the frequencies and duration of supplementary aids and services in a manner that is clear to all who are involved in both the development and implementation of the IEPs and 3) reviewing IEPs at least annually.
2. Provide professional development for teachers and administrators at the school site on the requirements for: 1) implementing IEPs with respect to providing referrals, including the required date for the completion of the referrals, as recommended by the IEP committee; 2) providing the frequencies and duration of supplementary aids and services in a manner that is clear to all who are involved in both the development and implementation of the IEPs and 3) reviewing IEPs at least annually.

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.