

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL020711)**

Report Issued on 4/8/11

INTRODUCTION

On 2/7/11, the Nevada Superintendent of Public Instruction received a complaint dated 2/5/11 from an attorney on behalf of a mother and her son, who had been parentally-placed in a non-profit private school (Private School). The complaint alleged violations of the student's special education program with respect to Clark County School District (CCSD)'s obligation to provide services to the student. An investigation team was appointed to examine the allegations that the CCSD failed to meet its responsibility to provide and implement an Individualized Educational Program (IEP) and Services Plan for the student specifically with respect to providing speech/language therapy (SLT), occupational therapy (OT) and applied behavioral analysis (ABA) services.

Prior to the filing of the complaint on 2/5/11, the attorney, on 1/19/11, submitted a request for a complaint to be investigated with respect to the same allegations as listed above. The attorney and parent were informed by the Nevada Department of Education (NDE) that there are requirements to follow in order for a state special education complaint to be accepted for investigation by the NDE, that these requirements could be found in the Nevada Administrative Code (NAC) §388.318(3), and that a model form was available to assist individuals in filing a complaint that includes all required content. The 1/19/11 request did not meet the requirements of NAC §388.318(3). Subsequently, the attorney filed the 2/5/11 complaint.

COMPLAINT ISSUES

The allegation articulated in the complaint, and further clarified by interviews and a review of documents, raised the following issue under the jurisdiction of the NDE for the time period 10/20/10—2/7/11:

Issue: Whether the CCSD complied with federal and state requirements to implement the student's Services Plan, specifically with respect to providing SLT, OT, and ABA services.

PERSONS PROVIDING INFORMATION

The investigation team interviewed the following people:

- Parent
- CCSD compliance monitor
- Speech therapist who would implement the Services Plan (speech therapist)
- Occupational therapist who would implement the Services Plan (occupational therapist)
- Speech therapist involved in the Services Plan development
- Occupational therapist involved in the Services Plan development
- LEA representative involved in the Services Plan development
- Special education teacher involved in the Services Plan development
- Special education facilitator involved in the Services Plan development
- CCSD Director of Wraparound Services
- CCSD Special Education Director for Area 4

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- 10/20/10 Draft IEP

- 10/20/10 Draft Services Plan
- 10/25/10 IEP
- 10/25/10 Services Plan
- 10/25/10 Prior Written Notice (PWN)
- Student Status Record 8/25/09–11/4/10
- CCSD e-mails 1/14/11–1/20/11
- Student enrollment information
- CCSD 2010/2011 school calendar
- *CCSD Special Education Procedures Manual*
- *CCSD Technical Support Document for Private/Home School Services for Students with Disabilities*
- *CCSD Autism Spectrum Disorder Short Term Supplementary Support Intensive Intervention Services Protocol (Intervention Services Protocol)*
- 11/23/10 Amended Due Process Complaint
- 12/21/10 Decision by Hearing Officer to Dismiss Due Process Request

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
- Federal Register, Vol. 71, No. 156, Monday, August 14, 2006, p. 46691

FINDINGS OF FACT

This investigation involved an elementary school student with autism who was parentally-placed in a Private School located in Clark County. A review of documents and interviews revealed the facts set forth below.

The CCSD consulted with representatives of parentally-placed private school students in order to determine the services that would be made available to such students. It is CCSD policy to develop an IEP for parentally-placed students so that an IEP is in place if and when the student returns to the CCSD. In addition, it is CCSD policy to develop a Services Plan for parentally-placed students following the development of the IEP. Some CCSD staff refer to the IEP and Services Plan for parentally-placed students as an IEP although the IEP and Services Plan are two separate documents and have separate requirements for development and implementation under both state and federal law. The complaint investigation team's jurisdiction in this case was to investigate the requirements of the CCSD to implement the Services Plan alone, as the student was parentally-placed and entitled to services under the Services Plan only. Therefore, this complaint report focused solely on facts related to the Services Plan and its implementation. It is also important to note that the CCSD refers to their Services Plan as a Service Plan. The complaint investigation team used the term Services Plan throughout this report in order to be consistent with the term used by the IDEA and the NAC.

The student was parentally-placed in the Private School in September 2009. There had been no Services Plan developed prior to the Services Plan discussed below.

A 10/20/10 meeting was held at which a 10/20/10 Draft Services Plan (Draft Services Plan) was developed. The Draft Services Plan included SLT for 60 minutes/week, OT for 60 minutes/month, and ABA home services (ABA services) for 15 hours/week. The ABA services were included by the special education teacher at the request of the parent and her advocate. The CCSD participants indicated to the parent and the advocate that they would have to check with other CCSD staff to determine if ABA services could be included in a Services Plan for a parentally-placed student.

After consulting with CCSD staff with knowledge concerning CCSD's policies with regard to the provision of ABA services for parentally-placed students, a 10/25/10 follow-up meeting was scheduled to complete the student's Services Plan. At the 10/25/10 meeting, the Services Plan was completed. The Services Plan provided the related services of SLT for 60 minutes/week and OT for 60 minutes/month. The Services Plan did not include a provision for ABA services for the student. CCSD's Intervention Services Protocol makes clear the process that must be undergone in order for ABA services to be determined as necessary and available for a CCSD student. The process itself requires a student to be enrolled in the CCSD full time and to be receiving services through an IEP (i.e., not a Services Plan).

The parent and her advocate were present at the 10/25/10 meeting at which the Services Plan was completed. Although the parent did not indicate in writing her agreement or disagreement with the Services Plan, she did verbally indicate her disagreement with the absence of the provision for ABA services in the Services Plan.

Following the completion of the Services Plan, the district issued a PWN to the parent which stated that the CCSD proposed to implement the Services Plan and was refusing to provide ABA Services to the student.

The parent filed a request for due process on 10/27/10, two school days following the completion of the Services Plan. The due process request stated that the CCSD failed to provide the services listed on the Draft Services Plan. The CCSD did not proceed to implement the Services Plan pending the outcome of the due process proceedings. The hearing officer dismissed the due process request on 12/21/10 for lack of jurisdiction. The order for dismissal was received by the CCSD on 12/28/10.

CCSD schools were closed for winter break, from 12/20/10–1/2/11. On 1/3/11 the CCSD resumed classes. The speech therapist contacted the parent on 1/19/11 to set up SLT services for the student. The parent indicated that she was unaware of the outcome of the due process hearing and did not want to proceed with any services until knowing its outcome. The occupational therapist was told of the parent's decision by the speech therapist and therefore did not contact the parent to schedule OT services. Later in the day on 1/19/11, following up on the conversation the speech therapist had with the parent, the compliance officer spoke with the parent and told her she needed to speak with her attorney about the outcome of the due process hearing. The CCSD determined that it would wait to hear from the parent after she spoke with her attorney. The CCSD did not receive any notification from the parent that she had contacted the attorney following the 1/19/11 conversations nor did the parent request that the services in the Services Plan be provided. The next notification to the CCSD from the parent was the receipt of a copy of this complaint on 2/7/11.

There were eleven school days after school resumed before the speech therapist contacted the parent to schedule the SLT services for the student. There were twelve school days between 1/19/11 and 2/7/10, the date a copy of the complaint was received by the CCSD.

CONCLUSIONS OF LAW AND REASONS

Issue: Whether the CCSD complied with federal and state requirements to implement the student's Services Plan, specifically with respect to providing SLT, OT and ABA services.

This complaint concerned allegations that the CCSD was obligated to provide the student with SLT, OT and ABA services under the student's Draft Services Plan as developed on 10/20/10 and that CCSD failed to provide those services.

Federal regulations at 34 C.F.R. §§300.137 and 300.138 state that students with disabilities who are

parentally-placed by their parents in private schools must be provided with an opportunity, consistent with their number and location in the state, to participate in the programs of special education and related services funded under IDEA, Part B (34 C.F.R. §§300.130-300.144). However, this opportunity does not afford any parentally-placed private school student with a disability with an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Federal regulations at 34 C.F.R. § 300.134 state that "... To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children..."

Federal regulations at 34 C.F.R. §300.138(b) state "...Each parentally-placed private school child with a disability who has been designated to receive services...must have a services plan that describes the specific special education and related services that the LEA will provide to the children in light of the services that the LEA has determined...it will make available to parentally-placed private school children with disabilities".

Federal regulations at 34 C.F.R. §300.137(b)(2) state "The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities".

Federal regulations at 34 C.F.R. §300.503(a)(1) and (2) 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; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child". The United States Department of Education's discussion in the IDEA regulations with regard to what constitutes a "reasonable time before" for the issuance of a PWN is instructive: "[PWN] is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable".

State regulations at NAC §388.306(11) state that "...the pupil must remain in the pupil's current placement until completion of any administrative or judicial proceedings".

In this case, the student's Services Plan was first drafted on 10/20/10 and was finalized on 10/25/10. The CCSD was obligated to provide only the services that were listed on the Services Plan, specifically SLT and OT. The CCSD had the authority to make the final decision with respect to the services to be provided to parentally-placed students. The CCSD engaged in the consultation process with representatives of parentally-placed private school students as required under IDEA, and subsequently determined the types of services that would be available to such students. ABA services are not a part of this offering, as made clear through the Intervention Services Protocol.

The student's Services Plan did not provide for the provision of any ABA services for the student and therefore the CCSD was not required to provide them. The CCSD was, however, required to provide SLT and OT. A determination must be made, then, of whether the delay of 11 and 12 school days respectively was reasonable: first, following the receipt of the Hearing Officer's decision and the end of the "stay put" provision; and second, following contact with the CCSD speech therapist and compliance monitor.

There is no timeline in the IDEA or the NAC for the implementation of services in Services Plans after their development. In this case the parent was notified of the intent of the CCSD to implement the Services Plan with a PWN dated 10/25/10.

PWNs are required to be issued within a reasonable period of time prior to implementation. In this case, there were a variety of circumstances that affected the implementation of the Services Plan following the

issuance of the PWN: 1) the filing for Due Process and the associated stay put; 2) the parent's disagreement with the Services Plan; 3) the parent's decision to wait until speaking with her attorney before agreeing to schedule services for the student; 4) the subsequent lack of notification from the parent that she had contacted her attorney and 5) lack of any request from the parent to implement the Services Plan. All these circumstances resulted in the delay of the provision of the SLT and the OT services to the student.

In light of these circumstances, the complaint investigation team determined that in this case, the delays of 11 and 12 school days in implementing the Services Plan up to the filing of this complaint were in fact reasonable.

Therefore, the investigation team concluded that CCSD complied with federal and state requirements to implement the student's Services Plan with respect to providing SLT, OT and ABA services.