

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL052411)**

Report Issued on 10/10/11

INTRODUCTION

On 5/24/11, the Nevada Superintendent of Public Instruction received a complaint dated 5/23/11 from parents alleging a violation in the special education program of a student with disabilities attending the Clark County School District (CCSD). An investigation team was appointed to examine allegations that at the Post Vocational Program (Post Program) from August 2010–December 2010:

1. No supports were provided and a plan was not followed to assist the student in transitioning to the new placement.
2. The student's program provided no daily interaction with typical peers.
3. The program was not modified to the student's level affecting the implementation of the goals.
4. The student's behavior intervention plan (BIP) was not implemented with regard to allowing the student to sleep during the school day.
5. Medication was not dispensed proactively.
6. Communication instruction was not provided.
7. There was a lack of opportunity to explore vocational skills, training in school-based enterprises and life/community skills.
8. The CCSD did not provide training to the teacher relating to the student's disability to facilitate the transfer into the new placement, and during the time in the classroom the student severely regressed due to the teacher's lack of understanding of the autistic behaviors and her unwillingness to obtain mentoring and support.
9. The individualized educational program (IEP) meetings leading up to the 12/13/10 IEP revision did not have a regular education teacher present.
10. Although the special education teacher stated she had done her due diligence no data were presented to the committee members at the IEP meetings leading up to the 12/13/10 IEP.
11. The 12/13/11 IEP committee did not address speech and language (S/L) requests and assistive technology (AT) requests made by the parents at the IEP meetings leading up to the 12/13/10 IEP.
12. At a 9/16/10 parent-teacher conference the special education teacher told the parents that another placement should be considered for the student.
13. In an email to the parents prior to the IEP meetings leading up to the 12/13/10 IEP the special education teacher stated that her proposal was to return the student to the previous placement.
14. The special education teacher presented an agenda alluding to a change of placement for the student and the appropriateness of the IEP for other program options at one of the IEP meetings leading up to the 12/13/10 IEP.

The parent also alleged violations that occurred outside of the jurisdiction of the Nevada Department of Education (NDE) to investigate because they had occurred more than a year prior to the date of the receipt 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 §388.381(a)(b)).

Under 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 NDE extended the timeline for the completion of the complaint investigation due to the unavailability during the summer months of certain CCSD personnel with whom interviews were necessary to clarify and confirm facts in this case. The parents and the CCSD were notified of the extension in letters dated 7/7/11.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews with the parent, raised the following issues under the jurisdiction of the NDE during the time the student was enrolled in the Post Program.

Issue One: Whether the CCSD complied with federal and state requirements to implement the student's 5/14/10 IEP with respect to:

- a. The transition of the student into the Post Program.
- b. The extent to which the student would participate with non-disabled peers
- c. The provision of supplementary aids and services (accommodations and modifications), including the BIP
- d. The use of AT communication devices with the student
- e. The provision of vocational training in school-based enterprises and life/community skills

Issue Two: Whether the CCSD complied with federal and state requirements to ensure that the teacher had the necessary content knowledge and skills to teach the student in the Post Program.

Issue Three: Whether CCSD complied with federal and state requirements in the development of the 12/13/10 IEP with respect to:

- a. The required members of the IEP committee, specifically a regular education teacher, in the development of the 12/13/10 IEP revision.
- b. The IEP team's review of data from classroom-based assessments and observations.

Issue Four: Whether CCSD complied with federal and state requirements to implement the student's 12/13/10 IEP specifically with regard to conducting assessments in S/L and in AT.

Issue Five: Whether CCSD complied with federal and state requirements to have the placement of the student at the 12/13/10 IEP determined by a group of persons, including the parents and other persons knowledgeable about the pupil, the meaning of the evaluation data, and the placement options.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Parent
- Advocate
- Special education teacher
- Principal
- School nurse
- Transition facilitator
- Area 1 coordinator
- S/L specialist

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- 5/13/10 BIP
- 5/14/10 IEP
- Meeting notices for 10/26/10 IEP meeting
- Teacher prepared agenda for the 10/26/10 IEP meeting
- Autism On-Site Assistance Summary Form
- Data collected by autism itinerant specialist
- Meeting notices for 12/13/10 IEP meeting
- Student status records dated 12/8/09–5/26/11
- Emails from parents and school personnel between 5/24/10–1/31/11
- Special education teacher's log and data sheets dated 9/7/10-11/28/10
- 11/29/10 BIP
- 12/13/10 IEP
- AT Assessment Report dated 1/27/11
- S/L Evaluation Report dated January 2011
- 1/31/11 IEP
- 5/20/11 BIP
- Parents' award of Guardianship
- Special education teacher's Master's degree transcripts
- Special education teacher's CCSD professional development transcripts

The investigation team also reviewed the following authorities:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR 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 nineteen-year old CCSD student eligible for special education under the category of multiple impairments with eligibility under both the category of mental

retardation and the category of autism. A review of documents, as well as interviews with the parent, advocate, special education teacher, principal, school nurse, transition facilitator, area 1 coordinator and S/L specialist revealed the following facts.

The parents are the legal guardians of the student. The student received medications at home to address medical and/or behavior issues. The student received an “adjusted diploma” while enrolled in a self-contained CCSD special education high school classroom in spring 2009 and remained in that program through completion of the 2009/2010 school year. An IEP (IEP) was then developed on 5/14/10, and the student was placed in the Post Program for the 2010/2011 school year. The Post Program was a four-hour program designed to help special education students develop vocational skills. There were other programs at the school campus where the Post Program was located.

The parents signed that they were in agreement with the 5/14/10 IEP. The student attended the Post program from 8/30/10—12/17/10. Prior to, and immediately after, attending the Post Program, the student was placed in a self-contained special education high school program (high school program) taught by a special education high school teacher.

IEP

The 5/14/10 IEP was in effect until a 12/13/10 IEP revision was completed. Specific components of the IEP at issue in this complaint are discussed below.

Discussions took place during the 5/14/10 IEP meeting concerning ways of helping the student make the adjustment from the high school program to the Post Program, however no plan was documented in the IEP requiring formal support to transition the student to the new program.

The Post Program was a self-contained program. In the IEP, the student’s placement was identified as a self-contained program for 100% of the student’s school day. The “Justification for Placement Involving Removal from the Regular Education Environment” included the statement that “The specialized instruction that will be provided will be in the areas of functional academics, daily living, and vocational skills. [Student] requires adult assistance on many tasks throughout the day. [Student] has failed to demonstrate appropriate social and behavioral skills with peers. [Student] will not be in a general education environment. The potential harmful effect is that [Student] may not be successful in the Post Program and [student] will return back to [the] zoned high school”.

The IEP included the following six accommodations and modifications:

1. “Teacher will communicate with parents through a communication notebook.”
2. “Teacher will provide model and physical prompts (hand over hand) before requiring a task.”
3. “Teacher will provide adult assistance while on school campus.”
4. “Teacher will modify curriculum to fit [student’s] needs.”
5. “When frustrated, an adult will prompt [student] to take his Rx (avail in wallet or nurse’s office)”.
6. “Teacher will follow [student’s] BIP”.

The special education teacher communicated with the parents through the use of a daily notebook in which she described what had occurred during the day and answered questions the parents had written in the notebook.

The special education teacher worked on a 1:1 basis with the student on functional signing, sorting and folding activities, signing in at the beginning of class, file folder activities, getting on and off the school bus, navigating the school campus, interacting with the other students, and eating. The student required and received numerous physical prompts to complete these and other activities, as well as modeling and hand over hand support when necessary. Much of the teacher's time with the student was spent providing 1:1 support to address the student's behavioral challenges.

The school in which the Post Program was located had a policy that medication could only be dispensed by the school nurse. The student's medications were kept in the school nurse's office. The special education teacher never felt that the student needed medication in the class. When the student became frustrated or agitated, including exhibiting head banging behavior, the teacher deescalated the student's behavior through the use of calming dialogue with the student and/or by allowing the student to rest or sleep. Because the teacher addressed the student's frustration and agitation through these alternatives, she never took the student to the school nurse for medication.

In light of concerns about the student's behavior, the special education teacher did not take the student off campus to participate in community-based activities. The student did participate in activities on the school campus as a result of the teacher's efforts to replace some of the community-based training elements articulated in the IEP. Subsequent to the student's placement back in the high school in the spring 2011 semester, the CCSD provided community-based training for the student.

The student had a 5/13/10 BIP (BIP) in place when beginning the Post Program. The BIP listed invading personal space (grabbing of wrists/hands, leaning on someone's shoulders/back, standing too close in front of a person), vocalization (yelling, loud noise) and head banging as the targeted behavioral concerns. The BIP suggested providing alternate activities when the student invaded someone's personal space. When the student was yelling or making loud noises an alternative activity was to encourage humming. When the student engaged in head banging, it was suggested that the student be taught to walk away from frustrating situations.

The BIP listed the following food reinforcers to use with the student: goldfish crackers, croutons, pretzels, popcorn, root beer and Sprite. It listed the following activities as reinforcers: stringing beads, listening to a personal CD player of Disney songs, watching movies, playing with flashing toys and looking through animal books on a couch. Neither sleep nor rest were identified as strategies or reinforcers to use with the student in response to his behavior.

The special education teacher used goldfish crackers, popcorn, and pretzels as food reinforcers for the student and allowed the student to listen to a personal CD player and watch movies. The special education teacher also allowed the student to rest or sleep in response to head banging behavior or when the student indicated such a desire.

The special education teacher tracked the student's behavior in a daily log and maintained the data required by the BIP.

On 9/23/11, the special education teacher completed a referral for assistance with the student's behaviors. The student required 1:1 assistance and several prompts to begin any task, to continue a task, and to transition from one task to another. Requests for the student to perform "non-preferred" tasks resulted in inappropriate behaviors. The teacher also specifically requested help developing a new behavior plan as the student's inappropriate behaviors were not responding to the interventions recommended in the BIP, and the student required almost 100% of 1:1 attention from the special education teacher.

An autism consultant was brought into the classroom to observe, collect data, and make recommendations to the teacher to address the student's behaviors. The autism consultant worked with the special education teacher to develop a new 10/26/10 BIP after making observations, collecting data, and completing a report with recommendations for the special education teacher to follow.

The student had a short-term objective as part of a "communication skills" goal that stated "...[student] will (present/point to) a pecs [picture exchange communication] card, or verbally state (I want---) to indicate a need for an item...". The student had an annual goal that stated "...[student] will follow the picture/symbol schedule with little or no adult assistance...". One of the short-term objectives for this goal stated that "...[student] will identify teacher's classroom, when given picture and room number...".

The special education teacher used picture cards showing pictures of some of the foods the student liked to eat for snack. After several prompts, the student was able to point to which food was desired. Other than making food choices, the student did not respond to picture cards by pointing or by vocalizing in response to the cards. The special education teacher attempted to work with the student in using a picture schedule—however the student was unsuccessful on each attempt.

The student's Transition Plan stated that as "post secondary goals" the student "will be trained in hands-on-environment", "will work in a small office/warehouse" and "intends on living in an ILSA". The student's transition plan also stated that the student "will be provided opportunities to participate in the community. Community based instruction (grocery stores, restaurants)."

In addition, the Transition Plan included, under the transition services section, the statement that the student "will be provided instructions in a variety of ways for comprehension and use of a visual if needed. Provide opportunities to learn how to attend to task, focusing and time/schedule management."

Qualifications of the special education teacher

The special education teacher possessed a license to teach in Nevada, with three teaching endorsements. The first, issued in 2007, was for a K-12 Generalist-Mental Retardation endorsement. The second, also issued in 2007, was to serve as a substitute teacher in K-12. The third, issued in 2008, was to teach students ages 3-21 with Autism. She held a Masters of Education in Special Education, which she completed in 2006 with a 3.918 GPA.

While the student was enrolled in the Post Program, the CCSD made several consultants available to the special education teacher to assist her in working with the student. Consultants

included a transition specialist to determine if she could assist the teacher in providing community-based instruction to the student, as well as the autism consultant, who observed the student, consulted with the special education teacher, and helped to develop a new BIP for the student.

In addition, the CCSD provided professional development training for its special education teachers. The special education teacher attended training addressing transition plans on 6/16/2010. She also completed six on-line professional development training modules in the fall of 2010.

12/13/10 IEP

As early as September 2010, the teacher began the process for reconvening an IEP meeting to revise the goals and objectives and review the placement of the student. Several meetings were scheduled and rescheduled at the request of the parents to revise the IEP.

Meetings were held on 10/26/10 and 11/29/10 to revise the IEP. The revision was finalized on 12/13/10. At the request of the parents, an actual physical meeting did not take place on 12/13/10. However, all members who participated in developing the revision did review and sign in agreement with the IEP.

The parents participated in the development of the 12/13/10 IEP through attendance at all scheduled meetings, speaking at the meetings, submitting input via emails, reviewing the final draft of the 12/13/10 IEP and signing in agreement with it. In addition to the parents and their advocate, other members who participated in the development of the 12/13/10 IEP revision (including the placement decision), included the special education teacher, the principal, the transition specialist, the transition facilitator, the dean, and the special education high school teacher. No regular education teacher attended or participated in any part of the development of the 12/13/10 IEP. There was no documentation excusing the participation of a regular education teacher.

The 12/13/10 IEP included present levels of academic achievement and functional performance (present levels). Assessment results based on the behavioral data sheets kept by the special education teacher in the classroom, the daily communication logs kept by the teacher which went between her and the parents, observations of the student in the classroom by the special education teacher, and the data and report from the autism specialist who had observed the student in the classroom and assessed the student (as discussed previously) were available to members of the 12/13/10 IEP committee members, discussed during the development of the 12/13/10 IEP, and summarized in the present levels.

The parents had expressed their concerns about the student's communication skills to school personnel and the members of the IEP committee who participated in the development of the 12/13/10 IEP. The complaint investigation team found no record of any written or oral parental requests for assessments. The 12/13/10 IEP committee members included the related services of assessments in speech/language therapy and assistive technology in the 12/13/10 IEP. The assessments were to be conducted between 1/3/2011 and 2/28/2011 when the student would be in the new placement.

In January 2011, a S/L assessment was conducted and an S/L Evaluation Report completed. The S/L assessment included: 1) a review of existing evaluation data; 2) the results of the "Receptive-Expressive Communication Forms Support Checklist (Communications Checklist) completed in January 2011 by two teaching assistants who worked with the student on a daily basis; and 3) the Functional Communication Profile-Revised (FCP-R), which was filled out by the parents and the high school teacher in January 2011. The results were summarized and interpreted by an S/L specialist.

An AT assessment was conducted in January 2011 and an AT Assessment Report was completed on 1/27/11. The AT assessment included: 1) a review of existing information, 2) a classroom observation in January 2011 of the student, 3) a trial with an iPad, and 4) various applications and discussions with staff who worked with the student. The results were summarized and reported by the AT Technology Lead teacher and the Coordinator of AT.

The special education teacher stated to the parents in a 9/16/10 meeting that she believed the Post Program was not the appropriate self-contained program for the student and re-stated this opinion an email to the parents sent on or about 11/15/2010. The special education teacher prepared an agenda on her own for one of the first meetings held to revise the 12/13/10 IEP and on that agenda listed "change of placement" as one of the agenda items. The parents believed that because of the special education teacher's statements to them, the email and the agenda she prepared, the removal of the student from the Post Program was predetermined.

The placement recommendation in the 12/13/10 IEP was for a self-contained special education high school program (high school program) the student had attended prior to the Post Program. Less restrictive environments were considered and rejected. The 12/13/10 IEP showed that the parents and other participants discussed the placement alternatives. All of the participants in the 12/13/10 IEP, including the parents, agreed that the student's placement would be changed to the high school program beginning in January 2011.

CONCLUSIONS OF LAW AND REASONS

Issue One: Whether CCSD complied with federal and state requirements to implement the student's 5/14/10 IEP (IEP) with respect to:

- a. The transition of the student into the Post Program.
- b. The extent to which the child would participate with non-disabled peers
- c. The provision of supplementary aids and services (accommodations and modifications) including the BIP
- d. The use of AT communication devices with the student
- e. The provision of vocational training in school-based enterprises and life/community skills

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

a. Transitioning the student into the Post Program.

This complaint concerned the allegation that no supports were provided, and the plan was not followed, to assist the student in transitioning into the Post Program.

In this case, although there had been discussions at the IEP meeting of various strategies to help the student make the transition to the Post Program in the fall of 2010, there was no mention in the IEP of any strategies or requirements to provide any specific plan for the transition to the Post Program, and therefore the CCSD had no obligation to implement any transition activities.

Therefore, the investigation team concluded that CCSD complied with state regulations to implement the IEP with respect to the student's transition into the Post Program.

b. The extent to which the student would participate with non-disabled peers

This case concerned an allegation that the student's program provided no daily interaction with typical peers and that it should have provided daily interaction with typical peers.

In this case, the IEP stated that the student should be placed in a self-contained program for 100% of the student's school day. The parents were a part of the IEP committee that made this placement decision and indicated by their signature that they agreed with this decision. The CCSD was required to provide the placement determined by the placement committee and did so.

Therefore, the investigation team concluded that CCSD complied with state regulations with respect to the student's placement in an environment that provided no daily interaction with typical peers.

c. Provision of supplementary aids and services (accommodations and modifications), including the BIP.

This case concerned an allegation that the student's program was not modified to meet his individual needs and that the behavior plan was not implemented, specifically that the proper reinforcers were not used, the teacher did not maintain the proper data, allowed the student to sleep, did not dispense medication as required, and avoided having the student touch her.

In this case, the student's IEP included six accommodations and modifications. The special education teacher provided three of the accommodations and modifications through the use of a communication notebook with the parents, providing modeling and physical prompting, including hand over hand instruction, and by providing adult assistance to the student. The special education teacher provided the fourth accommodation and modification of modifying the curriculum to fit the student's needs through the provision of the supplementary aids and services previously described. There was no need to provide the fifth supplementary aid and service, since the student's frustration level never reached the level for which medication was needed.

The sixth accommodation and modification required that the special education teacher follow the student's BIP. The BIP recommended reinforcers that the special education teacher used with the student, specifically goldfish crackers, pretzels, popcorn and the use of a personal CD player. The BIP required that ABA data be kept and the special education teacher did maintain such ABA data. The BIP listed "invading personal space (grabbing of wrists/hands, leaning on someone's shoulders/back, standing too close in front of a person)" as a targeted behavioral

concern for the student. The special education teacher, per the BIP, provided the student with alternative activities when the student invaded her personal space as required by the BIP. The BIP required that medication be dispensed “as needed” when the student displayed intense head banging. The special education teacher reported being able to calm the student down through the use of dialogue, which negated the need for medicine. However the student was also allowed to rest or sleep in response to the cessation of head banging behavior, which was not addressed as a solution in the BIP.

The CCSD was required to provide the accommodations and modifications and did so with regard to the first five accommodations and modifications, yet did not meet its obligation with regard to the sixth accommodation of following the student’s BIP.

Therefore, the investigation team concluded that CCSD failed to comply with state regulations with respect to providing accommodations and modifications, specifically with regard to implementing the BIP.

d. AT communication devices for student

This complaint concerned an allegation that that student was not provided with AT devices to facilitate communication to and from the student, including a picture exchange communication system.

In this case the student had goals and objectives referencing the use of a picture exchange communication system. The special education teacher used pictures/symbols in her work with the student, specifically using pictures to offer various choices to the student with respect to reinforcers, choice of meals and with respect to wanting to use the bathroom. The special education teacher was required to use a picture exchange communication system and did so.

Therefore, the investigation team concluded that CCSD complied with state regulations to use AT communication devices with the student.

e. Vocational training in school-based enterprises and life/community skills

This complaint concerned an allegation that the student did not have an opportunity to receive training in school-based enterprises or in life/community skills.

In this case the student’s transition plan stated that the student “will be provided opportunities to participate in the community. Community based instruction (grocery stores, restaurants)”. Because of the student’s behavioral challenges, the special education teacher did not provide opportunities for the student to participate in community based instruction. While the special education teacher did provide campus-based activities as an alternative for the student, the CCSD was obligated to provide opportunities for the student to participate in the community and receive community based instruction, and did not do so.

Therefore, the investigation team concluded that the CCSD failed to comply with state regulations to implement the IEP when it did not provide opportunities for the student to participate in community based instruction.

Issue Two: Whether the CCSD complied with federal and state requirements to ensure that the teacher had the necessary content knowledge and skills to teach the student in the Post Program.

This complaint concerned allegations that the special education teacher did not have knowledge of students with autism and that the student severely regressed due to the teacher's lack of understanding of the student's autistic behaviors and her unwillingness to obtain mentoring and support.

State regulations at NAC §388.171(1) state that "a public agency shall appropriately and adequately prepare and train all personnel employed by the public agency...including...special education teachers...to ensure that the personnel have the content knowledge and skills necessary to serve pupils with disabilities."

In this case the CCSD provided a special education teacher with a Masters Degree in Special Education. She was licensed in the state of Nevada to teach special education students, ages K-21, and had endorsements in the areas of mental retardation and autism, the categories that made the student eligible for special education. The CCSD also provided additional training to the teacher through staff development days, online training and the provision of classroom support, including the autism consultant, the transition facilitator, and the transition specialist.

The CCSD was obligated to ensure that the special education teacher had the content knowledge and skills necessary to serve the student and did so.

Therefore, the investigation team concluded that CCSD complied with state regulations to ensure that the student had a teacher who had the necessary content knowledge and skills to teach him while he was enrolled in the Post Program.

Issue Three: Whether CCSD complied with federal and state requirements in the development of the 12/13/10 IEP with respect to:

- a. The required members of the IEP committee, specifically a regular education teacher in the development of the 12/13/10 IEP revision
- b. The IEP team's review of data from existing evaluations, including data from the special education teacher

a. The required members of the IEP committee, specifically a regular education teacher in the development of the 12/13/10 IEP revision.

This complaint concerned allegations that the IEP meetings for the 12/13/10 IEP did not include a regular education teacher.

State regulations at NAC §388.281(2)(b) state that "The individualized educational program for a pupil must be developed, reviewed and revised by a committee which includes at least:...(b) If the pupil participates in a regular educational environment, one regular classroom teacher who teaches the pupil or, if the pupil may participate in a regular educational environment, one regular classroom teacher;"

State regulations at NAC §388.281(4)(b) state that a member of an IEP committee must not be required to attend a meeting if “(b) The parent of the pupil agrees in writing to the absence of the member”.

In this case, while the student did not participate in the regular education environment, there was no evidence that the student might not have prospectively participated in the regular education environment. Therefore a regular education teacher was required to participate in the development of the 12/13/10 IEP. There was no evidence that the regular education teacher was excused from the IEP. Therefore the CCSD was required to have a regular education teacher present during the development of the 12/13/10 IEP and failed to do so.

Therefore, the investigation team concluded that CCSD failed to comply with state regulations when it did not include a regular education teacher in the development of the 12/13/11 IEP.

b. The IEP team’s review of data from classroom-based assessments and observations.

This complaint concerned an allegation that although the special education teacher stated that she had done her due diligence for the 12/13/10 IEP, no data was presented to the IEP committee members at any of the meetings conducted for the development of the 12/13/10 IEP.

State regulations at NAC §388.336(1)(b) state that the IEP committee shall “1. Conduct a review of data from existing evaluations, including, without limitation: ... (b) Current local or state assessments and classroom-based assessments and observations;”.

In this case the IEP committee had copies of the special education teacher’s classroom data and observations as well as the report and classroom observations of the autism consultant. The results of the data were discussed and reviewed by members of the 12/13/10 IEP committee. The CCSD was obligated to include classroom-based assessments and observations and did so.

Therefore, the investigation team concluded that the CCSD complied with state regulations to review data from existing evaluations, specifically classroom-based assessments and observations.

Issue Four: Whether CCSD complied with federal and state requirements to implement the student’s 12/13/10 IEP specifically with regard to conducting assessments in S/L and in AT.

This complaint concerned allegations that the 12/13/10 IEP committee did not address the concerns the parents had regarding communication needs of the student and their desire for S/L and AT assessments.

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

State regulations at NAC §388.370(1) and (2) state that “If the speech, language or other communication skills of a pupil with a disability are assessed the assessment may include: (a) The use of a standardized test of speech, language or other communication skills; (b) An interview of the pupil or of any person having personal knowledge of the pupil; (c) An

observation of the pupil; and (d) The use of information from a parent or teacher of the pupil. 2. Any interpretation of an assessment of speech, language or other communication skills must be made by a speech and language specialist.”

State regulations at NAC §388.284(1)(d) state that an IEP shall include: “(d) A statement of the assistive technology devices and services necessary for the pupil to be able to receive a free appropriate public education”.

In this case, the 12/13/10 IEP included assessments in S/L and AT as related services. The assessments were to be conducted between 1/3/11 and 2/28/11.

The CCSD was required to conduct an S/L assessment and, at its discretion, could include any or all of the following in the assessment: standardized tests, interviews with persons knowledgeable of the student, observations of the student and information from the parents or the teachers. In addition, the S/L assessment had to be interpreted by a S/L specialist. The S/L assessment included a review of existing evaluation data, data presented by the teacher and parent, and checklists submitted by teaching assistants who worked with the student. The S/L specialist interpreted the results in her report.

The CCSD was also required to conduct an AT assessment. There are no federal or state regulations specifying the content of an AT assessment or who should conduct it. An assessment was conducted by the AT specialist which included a review of existing information, classroom observation of the student, a trial of various AT devices with the student and consultation with staff who were knowledgeable of the student. The complaint investigation team concluded that the CCSD met its obligation to conduct an AT assessment.

Therefore, the investigation team concluded that CCSD complied with state regulations to implement the 12/13/10 IEP with regard to conducting assessments in S/L and in AT.

Issue Five: Whether CCSD complied with federal and state requirements to have the placement of the student at the 12/13/10 IEP determined by a group of persons, including the parents and other persons knowledgeable about the pupil, the meaning of the evaluation data and the placement options.

This complaint concerned allegations that the removal of the student from the Post Program was predetermined because the special education teacher recommended an alternative placement for the student in parent-teacher meetings and emails beginning in September 2010 and in an agenda she prepared for the 10/26/10 IEP meeting which alluded to a change of placement and the appropriateness of the IEP for other program options.

State regulations at NAC §388.245(6) state that the placement of a pupil with a disability must be determined “by a group of persons, including, without limitation, the parents of the pupil and other persons who are knowledgeable about the pupil, the meaning of the evaluation data and the placement options...”.

State regulations at NAC §388.302(4)(b) states that for purposes of determining whether parents need to participate in certain meetings regarding a student, “meeting” does not include (b) Preparatory activities ... to develop a proposal...”.

In this case the special education teacher began in early September to schedule an IEP revision because, among other things, she believed the placement was inappropriate for the student. She expressed those concerns in a meeting with the parents and in emails. She included the matter of placement on an Agenda for the 10/26/10 meeting to revise the IEP. There is nothing in the IDEA or NAC that prevents a teacher from coming with proposals and recommendations to an IEP meeting. Nor is there anything in the IDEA or the NAC that prevents a teacher from conducting preparatory activities, such as preparing an agenda, without the participation of the parents or other participants.

The members of the 12/13/10 IEP committee were knowledgeable about the student, knowledgeable about the evaluation data as it was discussed in the present levels and considered the placement options. While the special education teacher had a pre-formed opinion of what was the appropriate placement for the student, all members of the 12/13/10 IEP committee — including the parents — participated in the discussion about the change of placement, and indicated agreement with it. The placement decision was made by a team, including the parents and other persons who were knowledgeable about the student.

Therefore, the investigation team concluded that CCSD complied with state regulations with respect to determining the placement of the student at the 12/13/11 IEP.

ORDER FOR CORRECTIVE ACTION

CCSD is required to take corrective actions to address the violations found in this complaint investigation. Specifically, the CCSD did not implement the student's IEP in the 2010 fall semester when it did not implement the BIP as written, did not provide opportunities for the student to participate in the community (community based instruction), and did not include a regular education teacher in the development of the student's 12/13/10 IEP.

With regard to the community based instruction, the complaint investigation team acknowledges that those services are now being provided by the CCSD. The original IEP required such community based instruction to be provided throughout the school year, yet did not specify the frequency of those services. Accordingly, the complaint investigation team accepts the actions already taken in lieu of requiring compensatory education, since the district was in compliance with the provision of community based instruction for the second half of the 2010-11 school year

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:

1. Include a plan to review and revise as necessary, CCSD policies and procedures with regard to: 1) implementing IEPs with respect to providing community-based instruction to students in transition programs, 2) implementing behavior intervention plans (BIPs) and 3) providing regular education teachers at IEP meetings for students in transition programs when the student is, or may be, involved in the regular education environment.
2. Provide professional development for teachers and administrators at the school site on the requirements for: 1) implementing IEPs with respect to providing

community-based instruction to students in transition programs, 2) implementing behavior intervention plans (BIPs) as written, and 3) providing regular education teachers at IEP meetings for students in transition programs when they are, or may be, involved in the regular education environment.

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