

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA032811)  
Report Issued on 5/26/11**

**INTRODUCTION**

On 3/28/11, the Nevada Superintendent of Public Instruction received a complaint dated 3/28/11 from a parent alleging a violation in the special education program of a student with disabilities attending the Washoe County School District (WCSD). An investigation team was appointed to examine the allegation that the student's 3/11/11 individualized educational program (IEP) did not provide for sufficient reading remediation to increase his reading level so that when he graduated from high school he would be able to go to college or get a job.

**COMPLAINT ISSUES**

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issue under the jurisdiction of the Nevada Department of Education (NDE):

Issue: Whether the WCSD's 3/11/11 IEP determinations with regard to reading comprehension were reasonably supported in light of the student's abilities and needs.

**PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Parent
- Special education teacher

**DOCUMENTS REVIEWED**

The documents reviewed by the investigation team included the following:

- 3/11/11 IEP (IEP)
- Reading assessments dated 9/24/10 and 3/29/11
- Emails between parent and WCSD dated 2/11/11, 2/13/11, 2/25/11, 2/27/11, 2/28/11, 3/21/11 and 3/28/11
- Parent request for inclusion of certain items in student's IEP for 2011/2012

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) Memorandum (2000)
- Bend-Lapine Sch. Dist. v. DW, (152 F.3d 923; 28 IDELR 734 (9th Cir. 1998))

## **FINDINGS OF FACT**

This investigation involved a tenth grade WCSD student eligible for special education with a specific learning disability. A review of documents, as well as interviews with the parent and the special education teacher revealed the following facts.

The IEP included Present Levels of Academic Achievement and Functional Performance (Present Levels). The first Present Level stated that curriculum based measurements (CBM) were conducted on 9/24/10 and on 12/2/10. The results showed that the student scored 26% on 9/24/10 and 66% on 12/2/10 in the area of reading. The effect of these results on the student's involvement and progress in general education was listed as "...these assessments demonstrate a significant increase in [student's] reading comprehension...".

The Present Levels also listed the results as follows: "His reading level according to STAR at the beginning of the year was 2.1. According to the A-Z reading program his comprehension is lower. He is able to decode well, however his comprehension is his area of weakness. He will enter the program at level J, which is equivalent to about a 1.9GE." The effect of these results on the student's involvement and progress in general education was listed as "With his reading comprehension at this level, text book comprehension is going to be difficult. The use of supplemental learning tools, such as, teacher notes, classroom learning activities, and other non-textbook reading, will positively impact [student's] learning. Through enrollment of the Read 180 class, [student] can work towards increasing his reading level from 1.9/2.1 to the 3 grade reading level".

The IEP included two annual goals addressing reading. The first stated that "[Student] will use reading process skills and strategies to build comprehension. (2.0) in 4 out of 5 attempts with 80 [accuracy] by 2/24/2012". Numbers in parentheses in the first annual goal and its associated short-term objectives are references to WCSD core competencies. (The WCSD used an IEP software writing program that did not always insert commas to delineate reading skills. For purposes of clarification, the investigation team inserted the commas in the short-term objectives for the first annual goal).

Short-term objectives supporting the first annual goal were as follows:

1. "[Student] will decode unknown words in text using structural analysis through base words, words, suffixes, prefixes, syllables, and compound words (1.12.3) in 4 out of 5 attempts with 80% [accuracy] by 2/24/2012.
2. [Student] will select, before reading, strategies appropriate to text and purpose, preview text, access prior knowledge, build background knowledge, set purpose for reading, make predictions, determine reading rate and determine text type (2.12.1) for 4 out of 5 consecutive trials with 80% [accuracy] by 2/24/2012.
3. [Student] will select during reading, strategies appropriate to text and purpose, use self-correcting strategies, make, confirm and revise predictions, understand and use key vocabulary, identify main idea and supporting details, make inferences, adjust reading rate, apply knowledge of text type (2.12.2) for 4 out of 5 consecutive trials with 80% [accuracy] by 2/24/12.

4. [Student] will read for at least 30 minutes per day at home. As a part of that reading, he will read aloud for at least 10 minutes per day. for 30 minutes with 100% [accuracy] by 2/24/2010.”

The second annual goal stated that “[Student] will participate in monthly curriculum based measurement assessments, for the purpose of progress monitoring his reading comprehension for 9 month(s) with 100% [accuracy] by 2/25/11”.

The second annual goal had one short-term objective which stated “[Student] will increase his level of reading from his current level of 1.9 (66%) to a level of 2.9 (77%), one year’s growth; at the rate of .11 each month. As measured by CBM and Gates-MacGinitie for 9 month(s) with 100% [accuracy] by 2/25/11”.

English, Directed Study and Math were listed as Specially Designed Instruction. Each was to be provided in the special education setting for 34.5 hours per school quarter. The student’s reading goals were addressed in the English Class.

Supplementary Aids and Services in the 3/11/11 IEP included the following:

1. Provide examples of target work to supplement verbal instruction
2. Extra time, when effort is shown, on assignments
3. Assignments and tests may be modified to assess for understanding
4. Will receive copies of notes, overhead and Power Point
5. May use notes on tests
6. Can read test questions to [student] to help for understanding

The student was in the general education setting 70% of the time.

## **CONCLUSIONS OF LAW AND REASONS**

Issue: Whether the WCSD’s 3/11/11 IEP determinations with regard to reading comprehension were reasonably supported in light of the student’s abilities and needs.

This complaint concerned an allegation that the student’s IEP did not provide for sufficient reading remediation to increase his reading level so that when he graduated from high school he would be able to go to college or get a job.

State regulations at NAC §388.284(1)(a)(2) state that “When developing a pupil’s individualized educational program, the committee shall include: (a) A statement of the pupil’s present levels of academic achievement and functional performance, including, ... (2) ...a description of how the disability of the pupil affects the involvement and progress of the pupil in the general curriculum”.

State regulations at NAC §388.284(b) state the IEP shall include “A statement of the measurable annual goals, including benchmarks or the short-term instructional objections, academic and functional goals related to meeting the needs of the pupil that results from the disability of the pupil. Such goals must enable the pupil to be involved in and make progress in

the general education curriculum and meet the other educational needs of the pupil that result from the disability of the student”.

State regulations at NAC §388.284(c)(1) and (2) state that the IEP shall include “A statement of the specific special education, supplementary aids and services, and related services...to be provided to the pupil...and a statement of the modifications to the regular educational program or support for school personnel that must be provided for the pupil to: (1) Advance appropriately toward attaining the annual goals... (2) Participate and progress in the general education curriculum;”.

A Memorandum to Chief State School Officers (OSEP 34 IDELR 264 (July 2000)) clarifies that when a complaint alleges that a student’s IEP does not offer a free appropriate public education (FAPE), “The SEA [State Education Agency] may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior.”

In Bend-Lapine Sch. Dist. v. DW, (152 F.3d 923; 28 IDELR 734 (9th Cir. 1998)), the parents argued that the student’s goals failed to envision sufficient progress since he would still be behind his peers. The Ninth Circuit Court stated that the intent behind the IDEA was not to equalize educational opportunity.

In this case, the student’s IEP included two Present Levels that addressed reading comprehension. The Present Levels listed the student’s reading grade level as 1.9/2.1. The Present Levels included the types of assessments conducted, the assessment results, a description of the student’s academic and functional achievement and their effect on the student’s involvement and progress in general education.

The district was obligated to include in the IEP, a statement of the present levels, including a description of how the disability of the pupil affects the involvement and progress of the pupil in the general curriculum and did so.

The district was required to include in the IEP a statement of the measurable annual goals, including benchmarks or the short-term instructional objectives, academic and functional goals related to meeting the needs of the pupil that result from the disability of the pupil and did so. The IEP contained two measurable annual goals addressing his reading comprehension that were based on the Present Levels. The annual goals were designed to increase the student’s reading from grade 2.1 to 3.1 within a year. Both measurable annual goals included short-term measurable objectives.

The IEP provided specially designed instruction for the student to assist with his reading goals during English in the special education setting. The IEP also provided Supplementary Aids and Services addressing the student’s reading comprehension with the provision of six modifications or accommodations. The district was required, in the IEP, to include a statement of the specific special education, supplementary aids and services, and related services to be provided to the pupil and a statement of the modifications to the regular educational program or support from school personnel that must be provided for the pupil to: (1) Advance appropriately toward attaining the annual goals and (2) Participate and progress in the general education curriculum and did so.

In this case, the student's reading IEP goals were built on the data in the Present Levels. The data in the Presents Levels showed that the student was reading at a 1.9/2.1 grade reading level. The reading IEP goals were designed to increase the reading level by one year. The specially designed instruction in English class was provided to implement the reading goals and the modifications and accommodations were based on supporting the reading goals for the student.

The WCSD was required to make individualized determinations in the development of the student's IEP to meet the student's needs that resulted from his disability to enable him to be involved in, and make progress in, the general education curriculum and to meet his educational needs in reading that resulted from his disability. In this case the WCSD met its obligations by developing the IEP with respect to reading by following the required procedures, applying the required standards, and reaching determinations that were reasonably supported by the student's needs.

*Therefore, the investigation team concluded that the WCSD's 3/11/11 IEP determinations with regard to reading were reasonably supported in light of the student's abilities and needs.*