

**COMPLAINT INVESTIGATION
LYON COUNTY SCHOOL DISTRICT
(#LY110618)**

Report Issued on January 3, 2019

INTRODUCTION

On November 6, 2018 the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; the IDEA regulations, 34 C.F.R. Part 300; Chapter 388 of the Nevada Revised Statutes; and the Nevada Administrative Code (NAC). The Parent alleged that the Lyon County School District (LCSD) failed to provide American Sign Language (ASL) interpretation services to a student on dates when the student's ASL interpreter was absent. The Parent's proposed resolution to the Complaint requested that the student receive compensatory services and, if the ASL interpreter absences persisted, be transferred to another school district with more consistent services. LCSD provided a Response to the Parent's Complaint conceding a lack of services on all but one of the dates alleged in the Complaint.

The Parent's Complaint as well as LCSD's response to the Complaint and all documentation provided by LCSD were reviewed and considered in their entirety in this investigation. The Findings of Fact cite the source(s) of the information deemed necessary to resolve the issue in this Complaint.

COMPLAINT ISSUE

The allegations in the Complaint that are under the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint process raise the following issue for investigation:

Issue:

Whether LCSD complied with the requirements of the IDEA and the NAC, Chapter 388, by providing ASL interpretation services to the student on August 30, 2018 – September 7, 2018; September 27, 2018 – September 28, 2018; and, October 11, 2018 when the student's assigned ASL interpreter was absent.

FINDINGS OF FACT

1. The student is eligible for special education services pursuant to IDEA and NAC, Chapter 388, under the category of Hearing Impairment/Deaf. (11/14/2017 Individualized Education Program (IEP))
2. The student is enrolled in an Elementary School in the LCSD and is attending third grade in the 2018-19 School Year. (11/14/2017 IEP; Student Period Attendance Detail generated 11/14/2018. (Student Attendance Detail))
3. Student attends school from 8:35 a.m. to 3:15 p.m., daily. (Student Schedule) Student is assigned to have an ASL interpreter available schoolwide throughout the school day – six and one quarter hours per day. (11/14/2017 IEP)
4. The student is placed primarily in the general education setting with the ASL interpreter and with additional supports and services as provided for in the student's IEP. (11/14/2018 IEP; Student Schedule; Math and Science Schedule). The student's schedule identifies 40 minutes of "specials"¹ three days per week; 90 minutes of mathematics per day, with 60 minutes per week of math services in the general education setting; 150 minutes of reading/writing per day, with 90 minutes of writing and reading services; 30 minutes per day of science; 35 minutes per day for lunch; 30 minutes per day of recess and 15 minutes per day for clean/home. (Student Schedule, Math and Science Schedule).
5. The Student's IEP contains measurable annual goals in the areas of mathematics skills, functional communication skills, reading readiness skills and social skills. (11/14/2017)
6. Student did not have an assigned ASL interpreter available on the following days: August 30, August 31, September 4, September 5, September 6, September 7, September 27, and September 28, 2018. (11/6/2018 Special Education State Complaint (Parent Complaint); 11/29/2018 LCSD Response to State Complaint (11/29/2018 LCSD Response))
7. LCSD provided a substitute ASL interpreter to interpret for the student on October 11, 2018 at the student's assigned school, and the student was not in school on this date. (11/29/2018 LCSD Response; 10/11/2018 email from LCSD Special Services Director to Parent (10/11/2018 Email); Student Attendance Detail)
8. LCSD concedes that on eight school days no ASL interpreter was provided for the student and reports the hiring of an additional educational interpreter to address needed substitutions. (11/29/2017 LCSD Response; 12/7/2018 LCSD Email)

¹ "Specials" commonly refers to general education classes outside of the classroom, such as physical education, art or music, and is taken as such in the context of the reviewed schedule.

9. LCSD engaged in communication with the Deaf Centers of Nevada relating to the situation at issue in this State Complaint and indicated in responding to the Complaint that staff from the Deaf Centers of Nevada concurred in the approach of providing tutoring services to the student, outside of the regular school day, in compensation for the days of missed ASL interpretation services. Thereafter, in responding to the State Complaint, LCSD proposed addressing the missed days of ASL interpretation services through the hiring of an additional educational interpreter to provide substitute services when needed and by providing compensatory education services to the student. LCSD proposed compensatory services, outside of the regular school hours, in the amount of five hours of deaf education services with a teacher of the deaf and interpreter and six hours of academic tutoring in reading and language arts, to be completed by March 29, 2019. (11/29/2017 LCSD Response; 12/7/2018 LCSD Email)

CONCLUSIONS OF LAW

Issue:

Whether LCSD complied with the requirements of the IDEA and the NAC, Chapter 388, by providing ASL interpretation services to the student on August 30, 2018 – September 7, 2018; September 27, 2018 – September 28, 2018; and, October 11, 2018 when the student's assigned ASL interpreter was absent.

A student's IEP describes his/her individual needs and sets out the proper placement and services designed to meet those needs and, thus, provide the student a FAPE. *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005). Once an IEP is developed for a student, the public agency must implement the student's IEP with all of its required components. 34 C.F.R. 300.323; NAC §388.281.

The facts underlying this State Complaint indicate that the student is a student with an IEP, who, for all dates relevant to this Complaint, was in third grade. (Findings of Fact (FOFs) #1, #2). The student's IEP provides an ASL interpreter be with them² in each setting throughout the school day, for a total of six and one quarter hours per day. (FOF #2) An interpreter was not provided for the student on August 30, August 31, September 4, September 5, September 6, September 7, September 27, and September 28, 2018. (FOF #4)

Parent's State Complaint further alleges that no ASL interpreter was provided on October 11, 2018; however, documents reviewed credibly establish that a substitute ASL interpreter was available for the student on that date, but the student did not attend school. (FOF #5)

² The student is referred to with the gender-neutral pronouns 'they,' 'them' and 'their' to maintain confidentiality.

Thus, the uncontested facts at issue in this State Complaint establish that on each of the dates in question with the exception of October 11, 2018, the student was not provided with the required ASL interpretation services throughout the school day. This amounts to eight school days, or 50 school hours, without interpretation services. More specifically, with regards to core curriculum, this amounts to 12 hours of math instruction and 20 hours of reading/writing. (FOFs #4, #6, #7, #8)

Therefore, LCSD failed to comply with the requirements of the IDEA and the NAC, Chapter 388, by failing to provide ASL interpretation services to the student on August 30, August 31, September 4, September 5, September 6, September 7; September 27; and, September 28, 2018 when the student's assigned ASL interpreter was absent.

ORDER OF CORRECTIVE ACTION

IDEA regulations provide that when in the course of investigating a State Complaint a State Educational Agency (SEA), such as NDE, finds instances of denial of appropriate services to a student with a disability, the SEA may order appropriate corrective action, including, but not limited to, compensatory services. 34 C.F.R. 300.151(b); NAC 388.318(7).

Courts with controlling authority in Nevada have held that compensatory education – or educational services above and beyond what are normally due to a student with an IEP – may be ordered when a student is denied appropriate services. Courts have further held that a student with disabilities is entitled to only so much compensatory education time as is required to provide him/her with an appropriate education. *Parents of Student W. v. Puyallup Sch. Dist.*, 21 IDELR 723 (9th Cir. 1994). This approach for determining compensatory education is considered 'qualitative' in nature, rather than strictly 'quantitative' and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services and in light of actual circumstances.

The NRS §385.175(6), requires that in instances where noncompliance is determined, the NDE request a plan of corrective action from the board of trustees of a school district detailing a plan to correct the identified noncompliance, including a timeline for the execution of the proposed plan. In providing its Response to this Complaint, LCSD has provided a proposed plan of corrective action which has been duly considered in the development of this Report and Corrective Action. Thus, no further proposed Corrective Action Plan (CAP) need be submitted to NDE.

In this instance, and consistent with controlling authority, the eight school days of missed ASL interpretation are noted, and factors including the age/grade of the student, the student's daily schedule, the measurable goals contained in the student's IEP, and the quantifiable loss of minutes of service to the student resulting from the lack of an ASL interpreter have been considered, as well as LCSD's communication with the Deaf

Centers of Nevada. Furthermore, the Parent's requested remedy and LCSD's proposed remedy were considered in arriving at the following Corrective Action Plan.

Directed Action – Compensatory Education Services

Unless agreed to otherwise in writing by the LCSD and the Parent, LCSD must provide the following compensatory education to the student, outside of the regular school day, to be completed no later than April 30, 2019. Whether the LCSD or an outside party provides the compensatory education on behalf of the LCSD is the determination of the LCSD. Documentation of the completion of the ordered compensatory education (or to any alternative agreed to by the LCSD and the Parent) must be provided to the NDE within 14 days of its completion:

1. A total of five hours of deaf education services with a teacher of the deaf and ASL interpreter; and
2. A total of eight hours of academic tutoring, comprised of six hours of reading and language arts and two hours of mathematics skills with an ASL interpreter.

These compensatory education service minutes are based on the number of school days on which an ASL interpreter was not provided, along with consideration of the student's IEP goals, school schedule, age and the school calendar.

Directed Action – Systemic

LCSD must comply with the following systemic directed action:

1. Provide documentation to the NDE by no later than January 17, 2019 of the hire of an additional educational interpreter which was reported in LCSD's 11/29/2018 Response to the State Complaint, including confirmation that the individual remains in this position; or,
2. In the alternative, if the previously hired person does not remain in this position, LCSD must hire an additional ASL interpreter to cover needed substitutions by no later than 45 days from the date of issuance of this Report. Documentation of the completion of this ordered alternative action must be provided to NDE within 14 days of its completion.