

NEVADA DISABILITY ADVOCACY & LAW CENTER

Nevada's Federally-Mandated Protection and Advocacy System for Individuals with Disabilities

July 16, 2008

VIA FACSIMILE & U.S. MAIL

Ms. Wendy Whipple, Part C Coordinator
Office of Disability Services, IDEA Part C Office
3427 Goni Road, Suite #108
Carson City, NV 89706
Fax No. (775) 684-3486

RE: Administrative Complaint¹ Alleging Systemic Violations Of The Individuals With Disabilities Education Improvement Act And Nevada State Policy On Behalf Of All Infants And Toddlers Eligible For But Have Not Received Early Intervention Services Specified In Individualized Family Services Plans (IFSPs) In A Timely Manner.

Dear Ms. Whipple:

Nevada Disability Advocacy & Law Center (NDALC) hereby files this Administrative Complaint—on behalf of all children determined eligible for early intervention services under IDEA Part C and for whom IFSPs have been developed but services have yet to be initiated—against the Department of Health and Human Services, Bureau of Early Intervention Services, for violations of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 U.S.C. 1400 *et seq.*

NDALC requests that the IDEA Part C office conduct a thorough investigation into the following violations of Federal law and State policy:

Violation of 34 CFR 303.340(c): *Lead agency responsibility.* The lead agency shall ensure that an IFSP is developed and **implemented** for each eligible child.... (emphasis added)

¹ See 34 CFR 303.511 authorizing organizations to file State Administrative Complaints.

✓ **MAIN OFFICE**

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Violation of 34 CFR 303.342(e): Parental consent. The early intervention services to which parental consent is obtained **must** be provided. (emphasis added)

Violation of 34 CFR 303.344(f)(1): Dates; duration of services. The IFSP must include [t]he projected dates for initiation of the [specific early intervention services necessary to meet the unique needs of the child and the family] **as soon as possible** after the IFSP meeting.... (emphasis added) In Nevada, “as soon as possible” means initiation of designated early intervention services within 30 days.

Violation of 34 CFR 303.403(a): General. Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses,...the provision of appropriate early intervention services to the child and the child’s family. (emphasis added)

Violation of 34 CFR 303.403(b)(3) and (4): Content of notice. The notice must be in sufficient detail to inform the parents about (3) **All procedural safeguards** that are available under §§ 303.401-303.460 of this part; and (4) **The State complaint procedures** under §§ 303.510-303.512, including a description of how to file a complaint and the timelines under those procedures. (emphasis added)

Facts In Support Of Administrative Complaint

NDALC submits the following facts in support of this Administrative Complaint regarding the denial of timely initiation of early intervention services to eligible children and families with IFSPs:

According to a June 11, 2008 Nevada Early Intervention Services (NEIS) letter to welcoming families, NEIS has failed to initiate early intervention services for 197 eligible children and families with IFSPs. NEIS estimated the wait for early intervention services to be three to four months. Further, NEIS failed to notify children and families of Procedural Safeguards or to explain procedures for filing a State Complaint as required by 34 CFR 303.403(b).

Data obtained from the July 10, 2008 meeting of the Interagency Coordinating Council (ICC) presents a far graver situation. As of June 25, 2008, 600 infants and toddlers statewide awaited some or all of the early intervention services delineated in their IFSPs. The number of children waiting over 30 days for some or all of the services listed in their IFSPs was 502. Wait time ranged from 33 days to 289 days with an average of 64 days, all in violation of IDEA Part C.

A breakdown of wait time by region revealed that infants and toddlers waiting more than 30 days in Southern Nevada was 406; in Northwestern Nevada was 87; and in Northeast Nevada was 9.

A breakdown of the types of services children have yet to receive included the following:

Special Instruction:	349
Speech Therapy:	128
Occupational Therapy:	60

Physical Therapy:	37
Intensive Behavior Services:	36
Audiology:	13
Nutrition:	12
Family Counseling:	2
Medical:	2

Corrective Actions Requested To Address This Systemic Noncompliance

NDALC specifically requests the following corrective actions:

1. That all early intervention services on every IFSP for eligible children and families currently not receiving services be initiated immediately in accordance with the frequency and intensity specified in the original IFSPs;
2. That every IFSP for eligible children and families currently not receiving services be timely reviewed and the precise number of days past the deadline for initiating services be determined as of the date of this Complaint;
3. That each eligible family currently not receiving services be timely informed in writing of the lead agency’s specific violations of IDEA Regulations and State Policy and the number of days for which the agency has been in noncompliance with the IFSP as of the date of this complaint;
4. That each eligible family currently not receiving services be timely informed in writing—in plain language and in the native language where appropriate—the meaning of the “compensatory services” due the individual child and family;
5. That each eligible family currently not receiving services be timely provided a written plan for providing compensatory services to the individual child and family—consistent with the specifications of the original IFSP for services not provided from the date of the original IFSP—and provided in addition to those specified in the current IFSP;
6. That reassessment of the status and the needs of every eligible child and family currently not receiving services be conducted within 30 days of the initiation of service where any IFSP is in excess of 6 months past the origination date at the time of the filing of this complaint and no services have been provided;
7. That a review of the IFSP for every child and family currently not receiving services be conducted within 30 days of the initiation of services to determine whether service specifications are appropriate or whether modifications are warranted;
8. That each eligible family currently not receiving services be provided with the Procedural Safeguards which should have been provided on or before the letter of June 11, 2008, as required by IDEA Part C;

9. That each eligible family currently not receiving services be notified specifically of the procedures required to request reimbursement of costs for services obtained privately by families during the period in which services should have been provided;

10. That documentation of every IFSP initiated and appropriate corresponding written compensatory service plan developed for the children and families currently not receiving service be provided to NDALC within 30 days of completion, with redactions as appropriate.

Should you have any questions regarding this Administrative Complaint, please do not hesitate to contact me at (775) 333-7878.

Sincerely,

Ruth E. Miller
Rights Attorney

Enclosures: June 11, 2008 EIS letter to parents

cc: Michael J. Willden, Director
Department of Health and Human Services