

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA010322)
Report Issued on March 4, 2022**

INTRODUCTION

On January 3, 2022, the Nevada Superintendent of Public Instruction received a State Complaint dated December 31, 2021 from a Parent alleging violations by Washoe County School District (WCSD) in a student's special education program.¹

The allegations in the Complaint were that WCSD: a. Failed to implement the student's June 1, 2021 Individualized Education Program (IEP) with regard to: the provision of 2021 Extended School Year (ESY) services, specifically 71.5 hours of outside intensive Applied Behavior Analysis (ABA) interventions services from a Board Certified Behavior Analyst (BCBA) to support the student's behavior, academic and communication needs over the summer break; the administration of the PEAK² assessment as part of the ABA intervention to better assess the student's academic levels; the provision of an interpreter during ESY; and the provision of the related service of transportation to a "Signing Santa" "deaf event" in December 2021; b. Failed to include the communication goals for ESY services agreed upon by the IEP Team at the student's June 1, 2021 IEP Team meeting in the student's IEP; c. Denied parental participation by making a unilateral decision on June 26, 2021 outside the IEP process with regard to not paying for the agreed-upon PEAK assessment and provision of an interpreter during ESY; requiring the parents to pay for the agreed-upon ESY services and seek reimbursement; and limiting the ESY services to services provided prior to August 1, 2021, effectively reducing the agreed-upon number of hours of ESY services; and d. Failed to provide the Parent a Prior Written Notice upon refusing to correct the unilateral denial of ESY services in response to the Parent's requests on June 29, 2021, July 8, 2021, August 30, 2021, and October 13, 2021.

The Parent's proposed resolutions were to require WCSD to: conduct the PEAK assessment of the student with a qualified examiner (The Parent later modified this proposed resolution.); provide the 71.5 hours of intensive ABA interventions through a BCBA, as agreed to, including an interpreter; and an appropriate amount of compensatory education to address the student's needs as a result of the absence of ESY services and for all the time following.

The State Complaint also included allegations of possible retaliation for the Parent's advocacy for the student and WCSD's failure to plan and communicate appropriately with the Parent with regard to the provision of disability events. Nevada Department of Education (NDE) does not have jurisdiction to investigate allegations of a local educational agency's retaliation, discrimination, or other civil rights violations under Section 504 of the Rehabilitation Act of 1973 (Section 504) or Title II of the Americans with Disabilities Act of 1990 (ADA). NDE also does not have jurisdiction to investigate local matters/policies through the state complaint process that are unrelated to the IDEA or NRS/NAC, Chapter

¹ As noted, the NDE received the State Complaint on January 3, 2022; however, in the absence of documentation otherwise it was determined that WCSD was not forwarded a copy of the intended complaint at the same time it was filed with NDE. NDE notified the Parent that NDE did not have jurisdiction over the intended complaint on that basis. Upon being provided USPS documentation otherwise, NDE accepted jurisdiction and maintained the original timeline based upon the January 3, 2022 filing date.

² PEAK (Promoting Emergence of Advanced Knowledge).

388. Accordingly, these additional allegations were found to be outside the jurisdiction of the special education state complaint process and beyond the scope of this investigation. The Parent and WCSD were notified that these claims would not be investigated as a result of that determination and the Parent was referred to alternative resources.

In the January 19, 2022 issue letter to WCSD, NDE requested additional documents and information in order to investigate the State Complaint. WCSD was notified in that same correspondence that if WCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; and specifically reference the documentation provided to NDE that factually supported the denial and that a failure to do so by February 8, 2022 or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. WCSD did timely respond and dispute the allegations of noncompliance in the Complaint in their entirety.

The State Complaint, including all attachments; the Parent's additional written and electronic input, including referenced relevant portions of an electronic recording of the IEP meeting; WCSD's denial of all claims, included cited legal authority and all documents submitted by WCSD in response to the issues in the Complaint were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

COMPLAINT ISSUES

The allegations in the Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raise the following issues for investigation:

Issue One:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and implemented the student's IEP(s) in effect, with regard to providing the student:

- a. The 2021 ESY services, specifically 71.5 hours of outside intensive ABA interventions services from a BCBA to support the student's behavior, academic and communication needs over the summer break; the administration of the PEAK assessment as part of the ABA intervention to assess the student's academic levels; and an interpreter during ESY; and
- b. The related service of transportation to a "Signing Santa" "deaf event" in December 2021.

Issue Two:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and included a statement of the IEP Team's agreed-upon communication goals for ESY services in the student's June 1, 2021 IEP.

Issue Three:

Whether WCSD complied with the requirements of the IDEA and NAC, Chapter 388, with regard to the participation of the Parent in WCSD's June 26, 2021³ decision after the June 1,

³ WCSD's Prior Written Notice was dated June 27, 2021, but the transmittal email was on June 26, 2021.

2021 IEP Team meeting to change the special education and related services in the student's IEP, specifically:

- a. The administration of the PEAK assessment;
- b. The provision of an interpreter during ESY;
- c. Requiring the parents to pay for the agreed upon ESY services and seek reimbursement; and
- d. Limiting the 71.5 hours of ESY services to services provided prior to August 1, 2021.

Issue Four:

Whether WCSD complied with the IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice a reasonable time before the public agency refused to provide the student the ESY services in the student's IEP(s) in response to the Parent's June 29, 2021, July 8, 2021, August 30, 2021, and October 13, 2021 requests regarding the ESY services.

FINDINGS OF FACT

General

1. The student is enrolled in WCSD and is eligible for special education under multiple eligibility categories. At the time of the student's June 1, 2021 IEP, the student was placed in a self-contained classroom with a modified curriculum that included daily life skills. The student had a behavior support plan with a one-to-one aide to reduce the likelihood of challenging behavior. (June 1, 2021, August 8, 2021 IEPs)
2. During the time periods at issue in this Complaint, prior to and during the ESY period, the student had June 1, 2021 and August 8, 2021 IEPs in effect. The student's June 1, 2021 IEP was an annual IEP following a three-year reevaluation. The student's prior annual IEP was a March 31, 2021 annual IEP. (Student's IEPs)

ESY Services

3. ESY services in WCSD for school year 2020/2021 commenced June 21, 2021 and ended on July 16, 2021. The first day of school for students in the 2021/2022 school year was August 9, 2021 and the first day for teachers was August 3, 2021. (2021/2022 Balanced Calendar)
4. At the June 1, 2021 IEP Meeting, the student's IEP Team agreed the student required ESY services. (June 1, 2021 IEP)
5. The student's June 1, 2021 IEP provided:
 - a. A social and/or emotional goal for ESY services: Given the schoolwide setting, student will utilize coping strategies and complete academic tasks in 80% of the opportunities in four out of five trials as measured by observation of school staff within one year of this IEP. (This goal was also one of the student's goals during the regular school year.)
 - b. The special education service for ESY of specially designed instruction in social and/or behavioral skills in the priority educational need area of social or emotional behavior from June 22, 2021 – July 16, 2021 (subject to school board calendar). The frequency of the

services was 330 minutes weekly and the location⁴ of the services was the special education class. (June 1, 2021 IEP)

- c. There were no related services for the ESY program.
 - d. The student's IEP did include the related service of direct sign language interpreter services for communication skills for 1,605 minutes weekly in the location of the special education class. However, the beginning date for this related service was August 1, 2021. (The student's March 31, 2021 annual IEP did not include sign language interpreting services during either the regular school year or ESY.)
 - e. There were the following supplementary aids and services in the location of the special education class for the time period June 1, 2021 – July 31, 2021: Consultation with a BBCA for 240 minutes monthly and one-to-one adult support for social or emotional behavior for 750 minutes weekly. There were also several accommodations regarding BBCA conducting staff training at the commencement of the school year and an accommodation for the period of June 1, 2021 to May 31, 2022 to coordinate with BBCA to complete a training online for the one-to-one aide for 40 hours annually. ABA therapy was not designated in the student's IEP. (June 1, 2021 IEP)
6. At the June 1, 2021 IEP Team meeting, the student's IEP Team considered:
- a. The Parent's request for consideration of non-district options for ESY services, specifically ABA, as an alternative to the in-district offer of the provision of ESY services. The in-district offer for ESY services to the student was to receive the ESY services in the same educational program with life skills⁵ the student was attending in the 2020/2021 school year with a one-to-one aide. (June 1, 2021 IEP Team Meeting Notes and Audio Recording)
 - b. The Parent's request for the addition of communication and other goals in addition to the social/emotional behavior goal in the IEP, since more goals might be worked on in the non-district option during ESY.
 - c. The Parent's request for the conduct of the PEAK assessment and interpreter services in the non-district option. With regard to the provision of an interpreter by WCSD, there was discussion that it would depend on the placement since the placement might provide an interpreter as part of the program and the Peak Assessment could be discussed with the provider. (June 1, 2021 IEP Team Meeting Recording)
7. With regard to the Parent's request for non-district services, the IEP Team agreed that the in-district option of ESY in the special education class for 330 minutes a week with the goal of social/emotional would be included in the student's IEP, but that:
- a. External non-district options would be looked at and they would go from there;
 - b. WCSD would match and pay for the 71.5 hours of ESY designated in the student's IEP in an outside ESY option with the freedom to focus on certain areas with outside resources;
 - c. The ABA therapy goals could be established outside IEP process. A general statement would be included in the student's IEP in the present levels with regard to outside services and that the services would support the student's behavior, academic and communication needs over the summer break;

⁴ Although not included in the student's June 1, 2021 IEP, the specific school for the student's ESY services was identified at the June 1, 2021 IEP meeting. (June 1, 2021 IEP Team Meeting Recording)

⁵ Upon considering the student's language and communication needs at the June 1, 2021 IEP Team including the following relevant determination: With regard to the preferences of the parent concerning the best feasible services, placement and content of the student's IEP, the parents were in agreement that the student requires an engaging curriculum that addresses the student's language level and communication limitations and that the designated life skills program best meets the student's academic needs. (June 1, 2021 IEP)

- d. The Parent would be provided some information on non-district providers and the next step would be a Prior Written Notice once they had a plan regarding the non-district option, with dollar amounts to be negotiated;
 - e. The manner of payment for the non-district option and a different time period for the completion of the non-district ESY services ESY were not discussed. (June 1, 2021 IEP Team Meeting Notes and Audio Recording)
8. A statement was included in the student's IEP in the Present Levels of Academic Achievement and Functional Performance that: The student's IEP Team believed the student would benefit from 71.5 hours of outside services to support the student's behavior, academic and communication needs over the summer break. (June 1, 2021 IEP)
9. The Parent and her advocate were active participants in the student's June 1, 2021 IEP Team meeting and the Parent does not dispute the ability to participate at the meeting. As a general matter, Parent is actively engaged and participates in the provision of special education and related services to the student. (Complaint, June 1, 2021 IEP Team Meeting Recording, Review of the Record)
10. The Parent believes that the student's IEP Team determined at the June 1, 2021 IEP meeting that WCSD's ESY program was not sufficient to meet the student's needs; that the student needed an outside BCBA company who could provide intensive ABA interventions; and that the June 1, 2021 IEP included 71.5 hours of intensive ABA interventions through a private provider, with a commitment of additional services and goals. (Complaint)
11. WCSD provided a Prior Written Notice to the Parent on June 4, 2021 proposing to implement the June 1, 2021 IEP. Relevant to this Complaint:
 - a. "Interpreter services were added to []⁶ IEP beginning August 1, 2021 as it was determined that [] needs language supports throughout [] day to access a modified curriculum and interact meaningfully with [] academic and language peers."
 - b. "The team also discussed possible ESY services using an outside provider. The parent will look at outside options and notify the school." (June 4, 2021 Prior Written Notice)
12. The Parent obtained a non-district quote for ABA therapy and submitted it to WCSD. The Quote for Individualized Educational and Developmental Services totaled \$10,450.00 that included 53.5 hours of direct therapy for the student totaling \$6,025.00; 16.5 hours of intake activities including treatment planning and parent meeting; and 16.5 hours of treatment planning, therapy supervision and report writing. (The ABA services were to be provided by a BCBA, technician, or BCBA assistant or trainee and the rates varied accordingly. The BCBA was to provide 13.5 hours of the direct therapy.) The Quote did not include the cost of a sign language interpreter with the assumption that WCSD would locate and provide interpretive services or, upon request, the provider could provide another quote that the services, including locating and contracting with a sign language interpreter. (June 16, 2021 Outside Provider Quote)
13. Based upon the Parent's request for alternative ESY programming and the outside services' Quote provided by the Parent, WCSD responded with a Prior Written Notice on June 27, 2021 on the provision of reimbursement for ESY programming that set forth the following relevant content:
 - a. After the IEP Team discussed the needs of student and eligibility for ESY services, the Parent did not believe the ESY programming offered by the Team would meet the behavioral needs of the student.

⁶ [] denotes deleted personally identifiable information.

- b. Regarding the provision of a Free Appropriate Public Education, WCSD indicated that the Parent's requested specialized programming, including intense ABA therapy in lieu of the district ESY and, while these services were not an extension of IEP programming during the school year, in an effort to work collaboratively with the family WCSD would reimburse the family:
 - i. At a maximum of \$7,200.00 for direct services provided to the student, or by August 1, 2021, whichever comes first, but would not reimburse the Parent for the assessments and consultation time with the family or provide an interpreter for use during the services.
 - c. WCSD's transmittal email correspondence of the Prior Written Notice affirmatively stated that while the WCSD's ESY programming would confer a Free Appropriate Public Education to the student and was aligned to the student's goals and objectives, WCSD was willing to consider the Parent's proposal for a non-district option for ESY services. (June 26, 2021 WCSD Email Correspondence to Parent, June 27, 2021 Prior Written Notice)
14. The student was listed as enrolled in the in-district ESY placement in an identified location to commence June 21, 2021 and end July 16, 2021. The student did not attend ESY in-district or receive ESY services in the non-district option. (Student Enrollment History, Response, October 29, 2021 Email Correspondence)
15. Subsequent to the issuance of WCSD's June 27, 2021 Prior Written Notice in response to the Parent's request for payment for the outside provider's provision of ESY services, the Parent contacted WCSD on June 29, 2021, July 8, 2021, August 30, 2021, and October 13, 2021 with regard to the provision of the ESY services by an outside provider. The communications were as follows:
- a. June 29, 2021: The Parent responded to WCSD's Prior Written Notice and summary of WCSD's response to the Parent's proposal for a non-district option for ESY services: "That is not what we discussed and is not what the IEP team agreed to for ESY."
 - b. July 8, 2021: The Parent detailed her perception of the June 1, 2021 IEP Team determinations and WCSD's position, and described her disagreement with WCSD's Prior Written Notice and WCSD's response to the Parent's proposal for a non-district option for ESY services, specifically: the stipulations, including the deadline of August 1, 2021, a refusal to provide interpreter services, and that an "untenable reimbursement model" makes it impossible for the student to receive the ESY services in the student's IEP.
 - c. August 30, 2021: In a meeting agenda for the August 30, 2021 IEP Team meeting, the Parent provided proposed revisions and comments to a draft IEP. The comment identified for purposes of this Complaint was "ESY-Did not receive 71.5 hours, received 0 hours. Updates?"
 - d. October 13, 2021: The Parent indicated she had mentioned to WCSD personnel several weeks prior that the student did not receive the 71.5 hours of outside services that were in the student's IEP and asked whether the individual had looked into that and inquired what she could do about the student missing all those hours, short of filing a complaint with the State. The Parent emailed WCSD again on October 28, 2021 and referred to the October 13, 2021 email and the agenda comment for the August 30, 2021 IEP Team meeting that the student had not received the 71.5 hours of ESY services in the student's IEP for 2020/2021 and the Parent would like to discuss that with the appropriate parties.
 - e. WCSD responded to the Parent's October 28, 2021 Email Correspondence by requesting the Parent send the invoice to WCSD and it would be evaluated upon receipt. The Parent responded that there was no invoice "because no one would respond to me" and the student did not receive any ESY services, public or private. (IEP Meeting Agenda for August 30,

2021, June 29, 2021, July 8, 2021, October 13, 2021, October 28-30, 2021 Email Correspondence)

16. On September 1, 2021, WCSD issued a Prior Written Notice after the August 30, 2021 revision of the student's IEP to implement the revised IEP. The Prior Written Notice included the refusal to modify the ESY goal from social/emotional to functional communication as requested by the Parent for ESY 2020/2021 because the 2020/2021 ESY period had passed. (September 1, 2021 Prior Written Notice)

Communication and "Deaf Events"

17. Upon considering the student's language and communication needs at the June 1, 2021 IEP Team meeting, the IEP Team included the following relevant determination:
 - a. With regard to the availability to the student of adult models with the student's impairment and who use the student's primary communication mode, the IEP Team's determination included that the student could be invited to join "deaf events" that occur throughout the year once they result following the pandemic restrictions (i.e., Signing Santa, Deaf Field Day, etc....). (June 1, 2021 IEP)
18. In response to the question in the student's June 1, 2021 IEP whether the student required transportation services as a related service, the response was "No" and no transportation was provided as a related service. This determination is consistent with the student's March 31, 2021 annual IEP and was not revised by the August 30, 2021 revision IEP. (Student's IEPs)
19. On Friday, December 10, 2021, WCSD notified the Parent of a "Signing Santa" event the following Wednesday and indicated the deadline to request transportation had passed, but if the Parent wanted to transport the student to attend the event to let WCSD know. (December 10, 2021 Email Correspondence)
20. The Parent acknowledged the invitation and indicated that the student's sibling could transport the student to the event, but due to road conditions on the day of the event, the student did not attend the event. (December 10, 2021 Email correspondence, Response)

CONCLUSIONS OF LAW

Issue One:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and implemented the student's IEP(s) in effect, with regard to providing the student:

- a. The 2021 ESY services, specifically 71.5 hours of outside intensive ABA interventions services from a BCBA to support the student's behavior, academic and communication needs over the summer break; the administration of the PEAK assessment as part of the ABA intervention to assess the student's academic levels; and an interpreter during ESY; and
- b. The related service of transportation to a "Signing Santa" "deaf event" in December 2021.

Implementation of the Student's IEP

The student's June 1, 2021 IEP was in effect with regard to the provision of 2020/2021 ESY services to the student and an August 8, 2021 IEP was in effect with regard to the issue of transportation in December 2021. (Finding of Fact (FOF) #2)

ESY Services

IEPs are binding under the IDEA and a school is obligated to provide services "in conformity with" the student's IEP. *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007); 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e).

Courts have found that in addition to setting out a student's needs, the IEP serves as a communication tool through the mechanism of parental participation, which includes not just the parents participating in the development/revision of their child's IEP, but also allows parents to monitor and enforce the services that an IEP Team has decided are appropriate to provide to the student. "The IEP is a 'formal, written offer [that] creates a clear record that will do much to eliminate troublesome factual disputes... about when placements were offered, what placements were offered, and what additional education assistance was offered to supplement a placement, if any.'" *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 117 LRP 21748 (9th Cir. 2017), (internal citations omitted).

At the heart of this case is a fundamental misperception with regard to what transpired at the June 1, 2021 IEP meeting. The Parent believes that the student's IEP Team determined at the June 1, 2021 that WCSD's ESY program was not sufficient to meet the student's needs; that the student needed an outside BCBA company who could provide intensive ABA interventions; and that the June 1, 2021 IEP included 71.5 hours of intensive ABA interventions through a private provider with a commitment of additional services and goals. (FOF #10) That is not the case.

There is an important distinction between the discussions between the WCSD members of the IEP Team and the Parent regarding the Parent's request for a non-district alternative to ESY and the content of the June 1, 2021 IEP. It is the student's final IEP, not the discussions that preceded it, that is the "formal, written" "binding" offer to provide the student a Free Appropriate Public Education. In relevant part, the student's June 1, 2021 IEP provided:

- a. A determination that the student required ESY services;
- b. The ESY goal of social or emotional behavior;
- c. Specially designed instruction in social and/or behavioral skills with the frequency of 330 minutes weekly; and the location of the services in the special education class;
- d. A statement in the Present Levels of Academic Achievement and Functional Performance in the student's IEP that: The student's IEP Team believed the student would benefit⁷ from 71.5 hours of outside services to support the student's behavior, academic and communication needs over the summer break;
- e. The related service of direct sign language interpreter services for communication skills for 1,605 minutes weekly in the location of the special education class with the beginning date for this new related service of August 1, 2021, *after* the time period of the ESY program;
- f. Supplementary aids and services in the location of the special education class for the time period June 1, 2021 – July 31, 2021 regarding consultation, staff training, both coordinated with and

⁷ Given the varied interpretation of events in this case, it is noted that the fact that the student's IEP Team believed the student *would benefit* from the alternative services does not equate to a determination that the IEP Team determined the alternative service was *required* in order to provide the student meaningful educational benefit. *Board of Education of the Hendrick Hudson Central School District, Westchester County, Et. Al v. Rowley*, 458 U.S. 176 (1982); *Andrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017); *Department of Education, State of Hawaii v. Katherine D.*, 727 F.2d 809 (9th Cir. 1985); *Gregory K. v. Longview School District*, 811 F.2d 1307 (9th Cir. 1987).

provided by a BBCA. Neither direct services to the student from a BCBA nor ABA therapy were in the student's IEP. (FOF #5)

The discussion between the WCSD IEP Team members and the Parent regarding the Parent's proposed non-district alternative to ESY (FOF #6) at the June 1, 2021 IEP meeting, in relevant part, included that:

- a. External non-district options would be looked at and they would go from there;
- b. WCSD would match and pay for the 71.5 hours of ESY designated in the student's IEP in an outside summer option with the freedom to focus on certain areas with outside resources;
- c. The ABA therapy goals could be established outside the IEP process;
- d. The Parent's request for the conduct of the PEAK assessment and interpreter services in the non-district option would depend on the placement since the placement might provide an interpreter as part of the program and the Peak Assessment could be discussed with the provider;
- e. The Parent would be provided some information on non-district providers and the next step would be a Prior Written Notice once they had a plan regarding the non-district option, with dollar amounts to be negotiated;
- f. The manner of payment for the non-district option and time period for the completion of the non-district ESY services were not discussed. (FOF #7)

On June 4, 2021, WCSD issued a Prior Written Notice to the Parent proposing to implement the student's June 1, 2021 IEP. The Prior Written Notice also memorialized the discussion of the IEP Team of "possible" ESY services using an outside provider and that the Parent would look at outside options and notify the school. (FOF #11)

Notwithstanding WCSD's issuance of the June 27, 2021 Prior Written Notice in response to the Parent's alternative proposal for non-district ABA services, WCSD never withdrew its June 4, 2021 proposal of in-district ESY services in the June 1, 2021 IEP. On the contrary, WCSD re-asserted WCSD's position that WCSD's ESY programming would confer a Free Appropriate Public Education to the student in the June 27, 2021 Prior Written Notice. (FOFs #6(a), #11, #13)

In accordance with the IDEA and NAC, Chapter 388, WCSD was required to make special education and related services "available" to a student in accordance with the student's IEP. 34 C.F.R. §300.323(c); NAC §388.281(6)(e). This same standard is applied with regard to ESY services; that is, a public agency must ensure that ESY services are available and those services must also be provided in accordance with a student's IEP. 34 C.F.R. §300.106; NAC §388.284(5). In this case, it is the ESY services in the student's June 1, 2021 IEP setting forth the in-district option that is controlling, not the discussed non-district alternative to ESY as alleged in this Complaint. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 117 LRP 21748 (9th Cir. 2017).

WCSD did enroll the student in WCSD's ESY program and identified the specific school (FOFs 5, #14) and the student had the right to attend the in-district ESY program set forth in the student's June 1, 2021 IEP. Given the Parent requested a non-district alternative of ABA therapy to the ESY services in the student's June 1, 2021 IEP, WCSD, in an effort to be collaborative, also made a second, non-district, ESY option available to the student. (FOF #13)

This is a difficult case. The IEP Team agreed that the student required ESY services and yet the student did not attend either the in-district ESY program, in which the student was enrolled, or the non-district ESY

alternative requested by the student's Parent. (FOF #14) That is indeed unfortunate. However, even though the Parent preferred an alternative non-district option,⁸ was not satisfied with, and rejected, WCSD's proposal to implement the Parent's non-district option; and elected not to present the student at the in-district ESY program, WCSD did meet its obligation under the IDEA and NAC, Chapter 388 by making the ESY services in the student's June 1, 2021 IEP available to the student.

Therefore, WCSD complied with the IDEA and NAC, Chapter 388, and made available the ESY services in the student's June 1, 2021 IEP. The student's June 1, 2021 IEP did not include: outside intensive ABA interventions services from a BCBA to support the student's behavior, academic and communication needs over the summer break; the administration of the PEAK assessment as part of the ABA intervention to assess the student's academic levels; or an interpreter during ESY.

Transportation to "Deaf Event"

Upon considering the student's language and communication needs at the June 1, 2021 IEP Team meeting, the IEP Team determined that, with regard to the availability to the student of adult models with the student's impairment who use the student's primary communication mode, the student "could be invited" to join "deaf events" that occur throughout the year (i.e., Signing Santa, Deaf Field Day, etc....). (FOF #17)

Transportation is required in both the IDEA and NAC as a related service as is "required to assist a child with a disability to benefit from special education". 34 C.F.R. §300.34(a) and (c)(16); NAC §388.101. In this case, the student's IEP Team determined in the student's June 1, 2021 IEP that the student did not require transportation as a related service and transportation was not identified as a related service. That determination was not revised by the August 30, 2021 IEP in effect during the December 2021 referenced "deaf event". (FOF #18)

The student was invited to a "Signing Santa" event in advance of the December 10, 2021 event. The Parent was informed that if she wanted to transport the student to attend the event to let WCSD know. The Parent acknowledged the invitation and indicated that the student's sibling could transport the student to the event, but due to road conditions on the day of the event, the student did not attend the event. (FOFs #19, #20)

Therefore, in the absence of transportation as a related service in the student's IEP in effect, WCSD complied with the IDEA and NAC, Chapter 388, IEP with regard to transportation to a "Signing Santa" "deaf event" in December 2021.

Issue Two:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and included a statement of the IEP Team's agreed-upon communication goals for ESY services in the student's June 1, 2021 IEP.

In accordance with the IDEA, 34 C.F.R. §300.320(2), and NAC §388.284(1)(b), an IEP means a written statement for each student with a disability that is developed, reviewed, and revised in an IEP Team meeting and is required to include a statement of the measurable annual goals, including academic and functional goals, related to meeting the needs of the student that result from the disability of the student. In this case,

⁸ This determination with regard to WCSD's implementation of the agreed-upon ESY program in the student's June 1, 2021 IEP does not limit the Parent's and/or WCSD's access to alternative appropriate dispute resolution procedures to resolve any disagreement regarding whether the ESY program set forth in the student's June 1, 2021 IEP provided the student a Free Appropriate Public Education.

as discussed previously, the student's IEP Team only included a social or emotional behavior goal in the priority educational need area of on-task behavioral skills (social or emotional behavior). (FOF #5)

While the student's IEP Team did not agree to the addition of a communication goal for ESY services, the Team did discuss the inclusion of a general statement in the student's IEP in the present levels with regard to outside services and that the services would support the student's behavior, academic and communication needs over the summer break. The IEP did include a statement that: The student's IEP Team believed the student would benefit from 71.5 hours of outside services to support the student's behavior, academic and communication needs over the summer break. (FOFs #7, #8) This statement of belief reflects the only agreement of the IEP Team with regard to communication and other goals for ESY services, in addition to the agreed-upon social or emotional goal in the student's June 1, 2021 IEP.

Therefore, in the absence of an agreed-upon communication goal for ESY, WCSD complied with the IDEA and NAC, Chapter 388 and included a statement of the IEP Team's only agreed-upon social or emotional behavior goal for ESY services in the student's June 1, 2021 IEP.

Issue Three:

Whether WCSD complied with the requirements of the IDEA and NAC, Chapter 388, with regard to the participation of the Parent in WCSD's June 26, 2021 decision after the June 1, 2021 IEP Team meeting to change the special education and related services in the student's IEP, specifically:

- a. The administration of the PEAK assessment;
- b. The provision of an interpreter during ESY;
- c. Requiring the parents to pay for the agreed upon ESY services and seek reimbursement; and
- d. Limiting the 71.5 hours of ESY services to services provided prior to August 1, 2021.

Pursuant to the IDEA, 34 C.F.R. §§300.501(b), 300.322(a)(2), and NAC §388.302(1), the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of a Free Appropriate Public Education to the child. The Parent does not allege a denial of the opportunity to participate at the June 1, 2021 IEP Team meeting and, in fact, the Parent and the advocate were active participants in the meeting. (As a general matter, it is acknowledged that the Parent is actively engaged and participates in the provision of special education and related services to the student.) (FOF #9)

This Complaint is about WCSD's proposal/refusal set forth in the June 27, 2021 Prior Written Notice in response to the Parent's submission of the quote for ABA therapy from a private provider.

On June 17, 2021, the Parent submitted a Quote for Individualized Educational and Developmental Services to WCSD totaling \$10,450.00 that included 53.5 hours of direct therapy (with 13.5 hours by the BCBA) for the student totaling \$6,025.00; 16.5 hours of intake activities including treatment planning and parent meeting; and 16.5 hours of treatment planning, therapy supervision and report writing. The Quote did not include the cost of a sign language interpreter with the assumption that WCSD would locate and provide interpretive services or, upon request, the provider could provide another quote for those services, including locating and contracting with a sign language interpreter. (FOF #12)

In response, WCSD issued a second Prior Written Notice on June 27, 2021, responding to the Parent's request for alternative specialized ESY programming of ABA therapy with an outside provider, as set forth in the private provider's quote for services. WCSD's proposal/refusal essentially countered the Parent's proposal for payment for the private ABA therapy services by proposing reimbursement at a maximum of

\$7,200.00 for direct services provided to the student, or by August 1, 2021⁹, whichever comes first; and refusing to reimburse the Parent for the assessments and consultation time with the family or to provide an interpreter for use during the services. (FOF #13)

While WCSD's proposal/refusal to the Parent's proposal set forth in the June 27, 2021 Prior Written Notice was unsatisfactory to the Parent, the Parent's June 17, 2021 proposal and WCSD's counter proposal/refusal was a result of the agreement to look at a non-district option as discussed at the student's June 1, 2021 IEP meeting, including negotiating the dollar amounts. As such, the collaborative discussion/negotiation between WCSD and the Parent was consistent with the discussion at the IEP Team meeting regarding the possibility of ESY services with a private provider. (FOF #7)

Importantly, as discussed previously, the student's special education and related services in the student's June 1, 2021 IEP did not include the content at issue with regard to the administration of the PEAK assessment or the provision of an interpreter during ESY, either in-district or in a non-district option. With regard to the possibility of services using an outside provider, the student's June 1, 2021 IEP also did not include the method of payment for any provided non-district ESY services or the time period for the provision of non-district ESY services beyond the designated end date for ESY services in the location of the student's special education class. WCSD's June 27, 2021 proposal/refusal with regard to the Parent's requested alternative non-district ESY services did not, as alleged, unilaterally change the special education and related services in the student's June 1, 2021 IEP after the June 1, 2021 IEP Team meeting. The Parent had the opportunity to participate in the IEP Team's determination of the special education and related services for the 2020/2021 ESY services in the student's IEP at the June 1, 2021 IEP Team meeting.

Therefore, WCSD complied with the requirements of the IDEA and NAC, Chapter 388, with regard to the participation of the Parent at the June 1, 2021 IEP Team meeting on the provision of the special education and related services for ESY in the student's IEP which, notwithstanding discussions/negotiations thereafter consistent with the discussions at the IEP Team meeting, remained unchanged.

Issue Four:

Whether WCSD complied with the IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice a reasonable time before the public agency refused to provide the student the ESY services in the student's IEP(s) in response to the Parent's June 29, 2021, July 8, 2021, August 30, 2021, and October 13, 2021 requests regarding the ESY services.

In accordance with the IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student. A Prior Written Notice serves an important purpose: "We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement placement, if any." *Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994).

⁹ As a point of reference, the first day of school for students in the 2021/2022 school year was August 9, 2021 and the first day for teachers was August 3, 2021. (FOF #3)

The student's June 1, 2021 IEP provided the student ESY services would commence on June 21, 2021. (FOF #3) In accordance with the IDEA, 34 C.F.R. §300.503, and NAC §388.300, WCSD was required to provide the Parents a written notice a reasonable time before the public agency proposed or refused to initiate or change the provision of a Free Appropriate Public Education to the student. 34 C.F.R. §300.503(b), NAC §388.300(10). WCSD did timely issue a Prior Written Notice after the June 1, 2021 IEP Team meeting proposing to implement the student's June 1, 2021 IEP and documenting the IEP Team's agreement that the student would benefit from 71.5 hours of outside services to support the student's behavior, academic and communication needs over the summer break. (FOF #11)

In addition to the June 1, 2021 Prior Written Notice, WCSD issued two additional Prior Written Notices relating to the provision of 2020/2021 ESY services to the student: on June 27, 2021, proposing/refusing to take action with regard to the Parent's request and quote for non-district ABA therapy as an alternative to the ESY services in the student's June 1, 2021 IEP; and, after the August 30, 2021 IEP Team meeting, upon refusing to revise the ESY goal for the prior lapsed ESY period. (FOFs #11, #13, #16)

It is the Parent's position that WCSD should have also issued Prior Written Notices in response to referenced communications to WCSD regarding ESY services on June 29, 2021, July 8, 2021, August 30, 2021, and October 13, 2021. However, not every parental communication and/or request requires a local educational agency to respond with a Prior Written Notice. As cited above, Prior Written Notices are required whenever the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student.

In this case, the referenced communications are determined to be characterizations of prior IEP Team determinations/positions and requests for updates and further discussion. (FOF #15) As such, these communications were not Parental proposals to initiate or change the student's determined 2020/2021 ESY services that required WCSD to issue a Prior Written Notice. WCSD met its obligation under the IDEA and NAC, Chapter 388, by issuing Prior Written Notices on June 4, 2021, June 27, 2021 and September 1, 2021 with regard to the provision of 2020/2021 ESY services to the student.

Therefore, in the absence of a requirement to do so, WCSD complied with the IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice a reasonable time before the public agency proposed/refused to initiate or change the student's 2020/2021 ESY services.