

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA011520)
Report Issued on March 6, 2020**

INTRODUCTION

On January 15, 2020, the Nevada Superintendent of Public Instruction received a Complaint from a Grandparent alleging a violation by the Washoe County School District (WCSD) in a student's special education program. The allegation in the Complaint was that the student had an Individualized Education Program (IEP); was qualified for transportation; and the WCSD failed to provide the transportation starting in October 2019 in violation of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC), Chapter 388. (It is undisputed that the student's Grandparent is the Parent for this student with regard to the WCSD's provision of special education to the student and will be referred to as the student's Parent in this Report.)

In the January 21, 2020 issue letter to the WCSD, the Nevada Department of Education (NDE) requested additional documents and information in order to investigate the State Complaint. The documents and information were required to be received by the NDE no later than February 5, 2020 in order to timely investigate the Complaint. The WCSD was notified in that same correspondence that if the WCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the allegations and specified content relevant to that denial and that a failure to do so by February 5, 2020 or an extended timeline authorized by the NDE, would be considered a concession of noncompliance for purposes of this State Complaint. While the WCSD timely provided its Response, the WCSD did not expressly deny the allegation of noncompliance as directed in the notice. The WCSD did respond that the student's IEP did not provide for transportation as a related service and did provide the requested documentation. Upon consideration of the totality of the WCSD's response, the NDE determined that the WCSD did implicitly deny the allegation.

The Parent's State Complaint, including all attachments, and the documents submitted by the WCSD were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the information determined necessary to resolve the issue in this Complaint.

COMPLAINT ISSUE

The allegations in the Complaint that were under the jurisdiction of the NDE to investigate through the special education complaint process raised the following issue for investigation¹:

Issue:

¹ The student's Parent has pursued the student's eligibility for transportation under programs other than those authorized under the IDEA and the NAC, Chapter 388. (Finding of Fact (FOF) #5) However, the other named programs are outside the scope of this State Complaint process.

Whether the WCSD complied with the IDEA and NAC with regard to implementing the transportation in the student's IEP(s) in effect in the 2019/2020 school year commencing October 2019 to January 10, 2020.

FINDINGS OF FACT (FOF)

1. The student was determined to be eligible as a student with a disability on June 25, 2019 as a student with a speech and language impairment. The student was of preschool age. (June 25, 2019 IEP, WCSD Response)
2. The student's initial June 25, 2019 IEP was the only IEP in effect during the time period of this Complaint. (June 25, 2019 IEP)
3. The student's June 25, 2019 IEP provided the specially designed instruction of speech/language at a frequency of 120 minutes monthly (30 minutes a week), with the location of services in special education. The student's IEP Team expressly considered whether the student required transportation as a related service and determined that transportation was not required. Consistently, the student's IEP did not include transportation as a related service and the explanation for the absence of this related service, or any other related service, was "[N]one needed at this time." (June 25, 2019 IEP)
4. The student's Parent participated in the development of the student's IEP and signed in agreement with the components of the IEP. (June 25, 2019 IEP)
5. The student's Parent has pursued the student's eligibility for transportation from school to day care under several programs and, on the date the Complaint was filed, no long-term solution had been reached to provide the student the requested transportation. (State Complaint)

CONCLUSIONS OF LAW

Issue:

Whether the WCSD complied with the IDEA and NAC with regard to implementing the transportation in the student's IEP(s) in effect in the 2019/2020 school year commencing October 2019 to January 10, 2020.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with an IEP. 34 C.F.R. §§300.17(d) and 300.101; NAC §388.281(6)(e). Transportation is included in both the IDEA and the 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.

The fact that a student is of preschool age does not change the requirements of the IDEA and the NAC, Chapter 388. 34 C.F.R. §300.17(c). If the student's IEP Team determines that transportation is required to assist the preschool student to benefit from special education, and includes transportation as a related service on the student's IEP, the local educational agency would be responsible for providing the transportation to and from the setting where the special education and related services are provided. (Office of Special Education Programs (OSEP), *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, November 1, 2009, Question F-1, 53 IDELR 268)²

In this case, the student's IEP in effect during the time period of this Complaint provided only the specially designed instruction of speech/language for 30 minutes a week. The student's IEP Team expressly considered whether the student required transportation as a related service and determined that transportation was not required (FOFs #1 - #3) The student's Parent participated in the development of the student's IEP and signed in agreement as a member of the IEP Team to the components of the IEP. (FOF #4) Given the absence of transportation as a related service in the student's IEP, neither the IDEA nor the NAC, Chapter 388, required the WCSD to provide it to the student during the time period of this Complaint.

Therefore, the WCSD complied with the IDEA and NAC with regard to the allegation of the failure to provide transportation in the student's IEP(s) in effect in the 2019/2020 school year commencing October 2019 to January 10, 2020.³

² This OSEP policy memorandum is available publicly at: https://sites.ed.gov/idea/files/OMB_08-0101_Transportation-11-4-09_FINAL.pdf

³ This conclusion does not preclude the Parent from requesting an IEP revision earlier than the annual review date to review services in the Student's IEP, nor does it preclude the Parent from engaging in other conflict resolution mechanisms, such as IEP facilitation, mediation, or a due process hearing, if the Parent believes transportation is a related service required in order for the student to benefit from special education. In addition, the Report does not preclude the Parent from pursuing remedies available under the other cited programs (FOF #5) outside the IDEA and NAC, Chapter 388.