

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA011723)  
Report Issued on March 17, 2023**

**INTRODUCTION**

On January 17, 2023, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent alleging violations by Washoe County School District (WCSD) in a student's special education program. The allegation in the Complaint was that WCSD failed to implement the student's Individualized Education Program (IEP) in effect in the 2022/2023 school year with regard to the provision of direct speech/language services during the absence of the assigned speech teacher from the time the speech teacher went on leave, a period of at least four weeks or more. The Parent indicated that a precise date was not known because the school did not notify the Parent of the disruption of services and refused to inform the Parent of the time period the student had been without speech/language services. The Parent's proposed resolution was for WCSD to notify parents immediately of any disruption of IEP services and an immediate discussion of a plan of compensatory services be discussed with the Parent.

**COMPLAINT ISSUE**

The allegation in the Complaint that is under the jurisdiction of NDE to investigate through the special education complaint process raised the following issue for investigation through January 12, 2023, the date of the State Complaint:

**Issue:**

Whether WCSD complied with the IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2022/2023 school year, specifically with regard to implementing the minutes of direct speech/language services during the absence of the speech/language service provider commencing on or before October 11, 2022.

In the January 24, 2023 issue letter to WCSD, Nevada Department of Education (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; reference to the provided documentation that factually supported the denial; and that a failure to do so by February 10, 2023, 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 conceded the sole issue that the student's IEP was not implemented as written with regard to the provision of the direct speech/language minutes.

The State Complaint and WCSD's response 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.

## FINDINGS OF FACT

1. The student is eligible as a student with as disability with hearing impairment/deafness and was enrolled in WCSD for the 2022/2023 school year. The first day of school in the 2022/2023 school year was August 15, 2022. (2022/2023 Balanced School Calendar, February 18, 2022 IEP)
2. During the relevant time period of the Complaint, the student had a February 18, 2022 IEP in effect. The student's priority educational needs were in the areas of self-advocacy skills and communication skills and three of the five annual goals in the student's IEP were in the area of communication. The student did not require Extended School Year Services. The Parent agreed with the components of the IEP. (February 18, 2022 IEP)
3. The student's February 18, 2022 IEP included 180 minutes monthly of direct speech/language service in the location of the special education class from August 1, 2022 to February 17, 2023 to address the student's priority educational need of communication skills. The IEP did not require the direct speech/language services to be provided to the student one-to-one. (February 18, 2022 IEP)
4. The school the student attended only had one speech/language pathologist assigned to the school. On approximately August 30, 2022, the speech/language pathologist requested medical leave for a period of two weeks, and thereafter continued to incrementally extend the leave period. Another speech/language pathologist was not assigned to implement the student's IEP during the speech/language pathologist's absence. (WCSD Response, Student Service Log Report)
5. Commencing November 2, 2022, the following direct speech/language services were provided or made available to the student:
  - a. In the month of November 2022, a total of 90 minutes were provided to the student and on two occasions, the student and speech/language pathologist were available, but there was a schedule conflict with the teacher and the student missed 60 minutes of services:

November 2, 2022 - 30 minutes in a group of two students was made available to the student, but the student was 'unavailable' due to a scheduling conflict with the regulation teacher; November 3, 2022 - 30 minutes in a group of two students; November 9, 2022 - 30 minutes in a group of two students; November 17, 2022 - 30 minutes in a group of one; November 22, 2023 - 30 minutes in a group of three students was made available to the student, but the student was 'unavailable' in that the teacher requested the students stay in the room for a Thanksgiving day project.
  - b. In the month of December 2022, a total of 120 minutes were provided to the student:

December 6, 2022 - 40 minutes in a group of four; December 13, 2022 - 40 minutes in a group of four; and December 20, 2022 - 40 minutes in a group of four.
  - c. In the month of January 2023, a total of 160 minutes were provided to the student:

January 10, 2023 - 40 minutes in a group of three; and, after the relevant time period of this Complaint, 40 minutes in a group of two or three on January 17, 2023 January 24, 2023 and January 31, 2023. (Student Service Log Report)
6. On November 4, 2022, WCSD notified the Parent that school districts across the county were experiencing a shortage in speech/language pathologists and that WCSD was no exception. The Parent was notified that there was no speech/language pathologist for the student and the student

would be offered compensatory education for the minutes of speech/language services in the student's IEP missed due to the staff shortage. (WCSD November 4, 2022 Letter to Parents)

7. On November 21, 2022, WCSD again notified the Parent that WCSD would provide compensatory speech/language services for service minutes missed due to the absence of the speech/language pathologist during the 2022/2023 school year, should the family opt for the services. No specific offer of minutes of service was included in either this or the November 4, 2022 notice, but the Parent was notified that once a speech/language pathologist was assigned to the school another notice would be sent to the Parent outlining the services owed and the options for delivery of the compensatory services. (November 4, 2022 Letter to Parent, November 21, 2022 Nevada Parental Prior Notice – Proposed Meeting Arrangement)
8. On January 30, 2023, after this State Complaint was filed, WCSD provided the Parent a compensatory education letter offered 360 minutes of compensatory speech/language services accumulated from the first semester of the 2022/2023 school year (reportedly prorated for Fall and Winter break). The hours were required to be completed no later than August 1, 2023. WCSD requested the Parent respond by February 15, 2023 indicating whether the Parent was interested in compensatory services and provided the opportunity to select whether the Parent wanted the services to be provided during Spring break; before and/or after school; or during school hours. Prior to the issuance of this Report, neither documentation of the Parent's agreement to this offer of compensatory services nor a withdrawal of this Complaint was provided to NDE. (January 30, 2023 WCSD Compensatory Services Letter, Review of the Record)
9. There was no data available on the progress, if any, the student made toward meeting the student's communication goals during the absence of the services of a speech/language pathologist during the relevant time period. (October 26, 2022 Student Progress Report)

## CONCLUSIONS OF LAW

IEPs are binding under the IDEA and a school is obligated to provide services "in conformity with" students' IEPs. 34 C.F.R. §§300.17(d), 300.101; *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. <sup>1</sup> 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007); *Schaffer v. Weast*, 546 U.S. 49 (U.S. 2005).

In this case, there was a single IEP in effect during the time period of this Complaint, the student's February 18, 2022 IEP. (Finding of Fact (FOF) #2) The student's IEP Team, including the student's Parent, determined that one of the student's two priority educational needs was in the area of communication skills and that the student required 180 minutes monthly of the related service of direct speech/language services to address that educational need. (FOFs #2, #3)

As indicated in the introduction, WCSD conceded the sole issue in this Complaint that the student's IEP was not implemented as written with regard to the provision of the direct speech/language minutes in the student's IEP, commencing on or about August 30, 2022. Thereafter, based on that concession and the documentation provided in the course of this investigation, it is determined that the student did not receive direct speech/language services from a speech/language pathologist from that date until November 2022. (FOFs #4, #5)

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<sup>1</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

WCSD's reported reason for the failure to implement the student's IEP was that, like other school districts across the country, WCSD was experiencing a shortage in speech/language pathologists and the only speech/language pathologist assigned to the school the student attended went on medical leave. (FOFs #4, #6) However, neither the IDEA nor NRS/NAC, Chapter 388, provide this exception to the right of students to be provided services "in conformity with" the students' IEPs in order to receive a Free Appropriate Public Education. 34 C.F.R. §§300.17(d), 300.101.

*Therefore, WCSD failed to comply with the IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2022/2023 school year, specifically with regard to implementing the minutes of direct speech/language services from September 1, 2022 to November 2022.*

## **CORRECTIVE ACTION**

As set forth above, WCSD failed to implement the student's IEP with regard to the provision of monthly speech/language services in September and October 2022. This failure to provide the IEP Team's determined necessary services addressing three of the student's five annual goals (FOF #2) is a material failure to implement the student's IEP and a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b); *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007). Based on the unique facts of this case regarding the incremental medical leave of the assigned speech/language pathologist and the absence of any documentation that this is a systemic issue in WCSD, NDE has determined that a remedy for the appropriate future provision of services for all students with disabilities is not required in this case. 34 C.F.R. §300.151(b).

While, of course, the commencement of the student's speech/language services during the course of this investigation is a positive occurrence and mitigated the continued educational effect on the student of the failure to provide the required services, it does not diminish the prior material failure to implement the student's IEP and need for a corrective action. Therefore, in accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from WCSD within 20 WCSD business days of the receipt of this Report on the student-specific directed actions below. The CAP must include the timeline for each action to enable the completion of the actions as soon as possible, but no later than November 1, 2023.

### **I. Compensatory Education**

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. *Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W.* 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. In this case, given the absence of any services for two months in one of the student's two areas of priority educational needs and the absence of data of progress, if any, the student made on the student's communication goals (FOF #9), it is determined that a day-for-day compensation for time missed is appropriate. *Parents of Student W.*

WCSD is commended for proactively offering compensatory services to the Parent (FOFs #6, #7, #8) and this compensatory service offer was considered in NDE's determination of the corrective action appropriate to meet the student's needs resulting from the failure to timely implement the student's IEP. There were two full months, September 2022 and October 2022, that the student did not receive the required 180

minutes a month of speech/language services. Upon the commencement of services in November and December 2022, even considering the questionable availability of services on two occasions caused by an apparent absence of a coordination of services, the student only received 150 minutes and 120 minutes respectively of speech and language services, rather than the required 180 minutes a month. (FOF #5) Therefore, the calculation of compensatory speech/language services set forth below includes not only the 360 minutes from the two months of missed services, but an additional 90 minutes of missed services for November and December 2022.<sup>2</sup>

**Unless otherwise agreed to in writing by WCSD and the Parent**, the CAP must provide

1. Compensatory speech/language services for 450 minutes (7.5 hours).
2. This compensatory education/service must be in addition to the services in the student's IEP<sup>3</sup> and must be provided during school breaks or Extended School Year (FOF #2) or before or after school. At WCSD's discretion, all or part of the compensatory education/services may be provided by a qualified private provider.
3. WCSD must consult with the student's Parent(s) on the appropriate means to provide this ordered compensatory education/service to meet the student's educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education/services plan.

## **II. Monitor Implementation**

While the relevant time period of this Complaint ended on January 12, 2023, the date the State Complaint was filed, it is of concern that, based on the reduced minutes of speech/language services provided the student in the months of November and December 2022 (included in the calculation of compensatory minutes above) and the continuation of reduced minutes in January 2023 (FOF #5), there is a likelihood that this practice may continue for the duration of this school year. Therefore, the CAP must also include procedures to monitor and ensure the student's receipt of the number of minutes in the student's IEP until the end of the 2022/2023 school year and WCSD's plan to remedy the 20 minutes missed for the month of January and any other minutes missed in February and March up to the issuance of this Report.

The CAP must be approved by NDE prior to implementation and documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

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<sup>2</sup> Given the Fall break in November 2022 was for three days and the Winter break in December 2022 was five days and the student's IEP was written on service minutes monthly, rather than weekly, the Investigation Team did not adopt WCSD's proration of services for these two months.

<sup>3</sup> It is recognized that, given the date of the student's IEP in effect during the relevant period of the Complaint, that the student's IEP will have been reviewed and revised by the date of this Report.