

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA033022)  
Report Issued on May 26, 2022**

**INTRODUCTION**

On March 30, 2022, the Nevada Superintendent of Public Instruction received a State Complaint dated March 25, 2022 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 the student was eligible for services on the student's third birthday in March 2022<sup>1</sup> and WCSD failed to provide the student a Free Appropriate Public Education due to a failure to identify a school for the student and implement the student's agreed upon March 2022 initial Individualized Education Program (IEP) on the basis that the IEP was on "pause." The Parent's proposed resolution was to provide the student compensatory education and create a classroom and assign the student the help and services agreed upon in the March 2022 IEP.

In the April 1, 2022 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 April 26, 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 provide the requested documents and information. In WCSD's response, WCSD conceded it did not comply with the requirements of the IDEA and NAC, Chapter 388, until April 14, 2022 with regard to the implementation of the student's March 2022 initial IEP and determined placement. WCSD provided an explanation of the cause of the two-week delay and agreed with the Parent's proposed resolution.

The State Complaint, including the attachment; information provided by the Parent in the interview conducted; and WCSD's responses, including 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 allegation in the Complaint that is under the jurisdiction of NDE to investigate through the special education complaint process raises the following issue for investigation:

**Issue:**

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the student a Free Appropriate Public Education, specifically with regard to the implementation of the services in the student's March 2022 initial IEP and determined placement.

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<sup>1</sup> Dates related to the student's birthdate or other personal characteristics/information that would make it possible to identify the child with reasonable certainty have been deleted. 34 C.F.R. §300.32. The use of [ ] in this Report also denotes the deletion of personally identifiable information.

## **FINDINGS OF FACT**

### **General**

1. The student participated in the IDEA Part C Early Intervention Program for Infants and Toddlers with Disabilities administered by the Nevada Department of Health and Human Services (DHHS) prior to being enrolled in WCSD. (Student's Individualized Family Service Plan (IFSP))
2. DHHS invited WCSD Child Find to the transition plan meeting on December 7, 2021; however, a WCSD Child Find representative did not participate in the transition meeting. At the transition meeting, DHHS indicated that WCSD forms would be obtained to send to Child Find to help get the student scheduled for evaluation. DHHS also sent WCSD Child Find the Prior Written Notice signed at the transition meeting. (DHHS Transition Plan, December 7, 2021 IFSP Review)
3. A follow-up transition meeting took place on January 28, 2022 and a WCSD Child Find representative(s) did participate in this transition planning meeting with DHHS and, at that time, the transition planning team completed a student intake form for the WCSD preschool program. (DHHS Transition Plan, WCSD Response)
4. WCSD provided the Parent a request for evaluation on February 24, 2022 and the Parent signed consent for the evaluation on the same day. (Consent for Evaluation)
5. In March 2022, prior to the student's third birthday, WCSD determined the student to be eligible as a student with a disability under the category of developmentally delayed. On that same day, the student's initial IEP was developed and the student's Parent provided consent for the initial provision of special education services. (March 2022 Statement of Eligibility, IEP, Parent Consent for the Initial Provision of Special Education)
6. WCSD provided a Prior Written Notice to the Parent on the proposal to provide the student a Free Appropriate Public Education on the same day the student was determined to be eligible as a student with a disability and the student's initial IEP was developed and placement determined. The Prior Written Notice included WCSD's proposed action and explanation:  
WCSD has developed an IEP for the student and intends to implement the IEP within 10 school days. The student has been found eligible for special education services and the Parent signed the consent for the initial provision of services. (March 2022 Prior Written Notice)
7. The student's priority educational needs are in the areas of pre-academic skills, social skills, and communication skills. During the time period at issue in this Complaint, the student's March 2022 IEP provided the following commencing March 3, 2022 in the location of the special education class: specially designed instruction of specialized instruction in pre-academics and social skills for 1,460 minutes weekly; the related service of direct speech/language 160 minutes monthly; transportation as a related service; an accommodation during transitions; and the supplementary aid and service of support for assistive technology for curriculum and learning 120 minutes weekly when giving directions and during classroom activities/routines. The student's placement was 100 percent in the special education environment in a self-contained program. The student's IEP Team determined that the student did not require extended school year services. (March 2022 IEP)

### **Free Appropriate Public Education**

8. At the time of the student's IEP Team meeting, WCSD did not have a placement available in the preschool/early childhood program. "Once [ ] is registered at the school this IEP will be implemented." The student turned three years of age in March 2022, four school days after the IEP meeting and students were in attendance in WCSD's schools on that day. (WCSD Initial IEP Notes, WCSD 2021-2022 Balanced Calendar, March 2022 IEP, Complaint, IFSP)
9. On March 31, 2022, WCSD issued a letter to "Dear Parent" explaining that:

"Across the country school districts are experiencing a shortage of qualified personnel. Washoe County School District (WCSD) is no exception. The WCSD is experiencing a shortage of teachers, specifically early childhood special education teachers. At this time, there are no openings in an early childhood classroom for your child. As such, your child will be offered compensatory education for the minutes in your child's Individualized Education Plan (IEP) that were missed due to the staff shortage. The compensatory services will take place once we have staff hired and in place. If the IEP for your child has related services, arrangements can be made to provide those services through the zoned school or a telehealth platform." (March 31, 2022 WCSD "Dear Parent" Letter)
10. The WCSD early childhood program is conducted on Mondays, Tuesdays, Thursdays, and Fridays (totaling 25 hours per week, or 6.25 hours a day). (March 2022 IEP, WCSD Response)
11. WCSD notified the student's Parent on Monday, April 11, 2022 that the student could begin attending WCSD's early childhood program on Thursday, April 14, 2022. However, WCSD did not implement the student's related service of transportation on the school days that followed on April 14, 2022, April 15, 2022 and April 19, 2022, and the student did not attend school on those days. The student began attending the WCSD preschool program on April 21, 2022. During the time period from the date<sup>2</sup> the student turned three years of age and April 14, 2022, there were 16 school days when students were in attendance in WCSD. While awaiting WCSD's arrangement of transportation services, the student missed an additional three school days from April 14, 2022 to April 21, 2022. (WCSD Student Enrollment History, May 16, 2022 Parent Interview, WCSD Response State Complaint, WCSD 2021-2022 Balanced Calendar)
12. WCSD provided an April 14, 2022 Prior Written Notice to the Parent on the proposal to provide the student a Free Appropriate Public Education through compensatory services for the specially designed instruction outlined in the student's March 2022 IEP. The explanation indicated: "Currently, as is the case nationwide, there is a significant shortage of qualified teachers within the WCSD. As a result, at this time, there are limited early childhood special education placement options within the district. The district is working to open new programs with teachers and [ ] will be immediately placed into the program once a program is opened. With the delay in placement, the district is prepared to offer compensatory services to the student to help minimize the gap in services. Upon placement of the student, the district will provide the parent a formal compensatory services letter with options for the parent so that services can be made up." (April 14, 2022 Prior Written Notice)
13. On April 20, 2022, WCSD issued another Prior Written Notice to the Parent on WCSD's proposal to provide the student a Free Appropriate Public Education through specific compensatory services.

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<sup>2</sup> The date of the student's third birthday on various documents provided in the course of the investigation, including the student's IEP and IFSP was stated as one day later than the date provided in the State Complaint and the WCSD Response and compensatory service letter. The earlier date is adopted in this investigation as the accurate date.

WCSD provided an explanation in the Prior Written Notice of the number of school days from the student's third birthday through April 14, 2022.<sup>3</sup> WCSD's calculation of the number of school days the student's IEP was not implemented excluded the school days when WCSD was on Spring break after the student turned three years of age. In addition, WCSD excluded the 10 school days set forth in the Prior Written Notice as the date WCSD intended to implement the student's IEP (six of those school days represented the day the student turned three years of age to the end of the 10-school day period) and referenced the accompanying letter with the specifics of the compensatory services owed: 160 minutes of speech and language and 3,285 minutes (55 hours) of pre-k academics in specially designed instruction. "These services will be provided by WCSD staff in collaboration with the parent." (April 20, 2022 Prior Written Notice)

14. The April 20, 2022 letter to the Parent accompanying the Prior Written Notice offered the compensatory services: 160 minutes of speech and language and 3,285 minutes (55 hours) of pre-academic skills (specially designed instruction). The compensatory minutes were calculated through April 19, 2022, the first full day of instruction, and are required to be completed by April 20, 2024. The letter requested the Parent indicate how the Parent was interested in receiving the compensatory services: virtually; summer break (excluding Extended School Year (ESY); winter break: Fall break; or hybrid (virtually and in-person). The letter also provided a place for the Parent to indicate whether they wished their child to receive the compensatory services; or did not wish to receive the compensatory services. (April 20, 2022 Letter to Parent)
15. On May 3, 2022, the student's Parent contacted WCSD by email correspondence and indicated that the Parent would like the student to go to summer school to make up for the missed time and inquired how to go about that. As of May 16, 2022, the Parent had not returned the signed compensatory services letter and informed the investigator in the course of an interview that same day that the Parent wanted WCSD to provide an additional one-and-one-half weeks of compensatory services for the time period from April 14, 2022 to April 25, 2022 due to WCSD's failure to provide the student the required transportation. The Parent contacted WCSD that same day and requested additional compensatory services for this stated reason. (May 3, 2022 Email Correspondence, WCSD Response, May 16, 2022 Phone Interview with Parent)
16. On May 19, 2022, WCSD responded to the Parent acknowledging the student missed three additional school days when the WCSD was unable to provide transportation to the student and provided an amended compensatory services offer with an additional three days of compensatory services. As of May 24, 2022, the student's Parent had not accepted WCSD's original or amended offer of compensatory services. (April 20, 2022 Parent Acceptance Letter, WCSD Response, Parent's Response)
17. For the 2021/2022 school year, WCSD had 22 Early Childhood Special Education Developmental Pre-K Program Sites; 18 Early Childhood Special Education Inclusive/Integration Pre-K Program Sites; and 14 Early Childhood Special Education Strategies Pre-K Program Sites. (WCSD 2021/2022 Staff Directory)

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<sup>3</sup> The date of April 15, 2022 (through April 14, 2022) in this document is inconsistent with the majority of other documents provided in the course of this investigation that the WCSD pre-school program was available on April 14, 2022.

## CONCLUSIONS OF LAW

### Issue:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the student a Free Appropriate Public Education, specifically with regard to the implementation of the student's March 2022 initial IEP and determined placement.

IDEA Part C includes a number of requirements regarding the transition of a toddler with disabilities sufficiently in advance of the toddler's third birthday to ensure a smooth transition to preschool or other programs, as appropriate. If the toddler may be eligible for preschool services under IDEA Part B, these IDEA Part C requirements include an advance notice to the local educational agency in the area in which the toddler resides and, not fewer than 90 days prior to the toddler turning three years of age, the conduct of a transition conference with the lead agency, the family, and the local educational agency to discuss services. 34 C.F.R. §303.209. While these responsibilities under IDEA Part C are those of the lead agency, DHHS, there are corresponding requirements regarding transition that involve the local educational agency for the area in which the toddler resides, including the local educational agency's participation in the transition planning conferences arranged by DHHS. NAC §388.281(1); 34 C.F.R. §§300.124, 300.321(f), 300.800 et seq.

These transition requirements are essential to ensure a local educational agency makes a Free Appropriate Public Education available to all IDEA Part B eligible children with disabilities, upon turning three years of age:

“The determination of whether a toddler with a disability is “potentially eligible” for services under part B of the Act is critical under both parts C and B of the Act. It is the first step in ensuring a smooth transition for that toddler and family to services under part B of the Act. When the LEA receives notice from the lead agency or an EIS provider that a specific toddler with a disability who has been receiving services under part C of the Act may be eligible for services under part B of the Act, the LEA must treat this as a referral and provide parents with the procedural safeguards notice under 34 CFR 300.504(a)(1) and determine if an evaluation for eligibility must be conducted under part B of the Act.” *Federal Register* / Vol. 76, No. 188 / Wednesday, September 28, 2011, pg. 60174.

When planning this student's transition from IDEA Part C, DHHS determined the student was potentially eligible for IDEA Part B and scheduled a transition planning conference to be conducted on December 7, 2021 and invited WCSD Child Find. (Finding of Fact (FOF) #2) WCSD did not participate in the December 7, 2021 transition plan meeting; however, DHHS sent WCSD Child Find the Prior Written Notice signed at the meeting. A WCSD Child Find representative(s) did participate in a follow-up transition planning meeting with DHHS on January 28, 2022 and a student intake form for the WCSD preschool program was completed during the meeting. (FOFs #2, #3)

In March 2022, prior to the student's third birthday, WCSD evaluated the student; determined the student was eligible as a student with a disability under the category of developmentally delayed; and the student's IEP Team developed the student's initial IEP. (FOFs #4, #5) As such, upon turning three, WCSD was required to admit the student with a disability to WCSD's early childhood program and implement the student's IEP. NRS §388.435; NAC §388.281(1); 20 U.S.C. §1419.

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). As indicated in the introduction, WCSD conceded this issue by acknowledging it failed to comply with the IDEA and NAC, Chapter 388, with regard to the implementation of the student's March 2022 initial IEP and determined placement until a program was made available on April 14, 2022 and, as later conceded, the student's related service of transportation was made available, three school days thereafter. (FOFs #8, #9, #11, #16) As such, from the date the student turned three years of age and the first day of attendance on April 21, 2022, the student missed 19 school days. (FOF #11)

The reason for WCSD's failure to implement the student's IEP on the student's third birthday was due to a shortage of early childhood special education teachers and the absence of any openings in an early childhood classroom at the time the student turned three years of age. (FOFs #8, #9, #12) However, neither the IDEA nor NRS/NAC, Chapter 388, provide these exceptions to the right of the student to have been admitted to WCSD's early childhood program with the student's IEP implemented by the student's third birthday. NRS §388.435; NAC §388.281(1); 20 U.S.C. §1419. On the contrary, the transition requirements discussed above, implemented in advance of the student turning three (FOFs# 2, #3), were designed to ensure WCSD had sufficient notice so that the student would have a smooth transition from the IDEA Part C Early Intervention Program for Infants and Toddlers with Disabilities to the WCSD's IDEA Part B program.

*Therefore, WCSD failed to comply with the IDEA and NAC, Chapter 388, and provide the student a Free Appropriate Public Education, specifically with regard to the implementation of the student's March 2022 initial IEP and determined placement from the date the student turned three years of age until April 14, 2022.*

## **CORRECTIVE ACTION**

### **Student-Specific Remedy**

As previously discussed, during the course of this investigation, the student was admitted to the WCSD pre-school program and the student's IEP and placement are now being implemented. However, WCSD's failure to implement the student's March 2022 IEP and placement from the date the student turned three years of age, and school was in session, to the date of admission and implementation of the student's IEP and placement constitutes a material failure to implement the student's IEP. (FOF #11) *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007). As such a student-specific remedy is required.

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.

The Parents and WCSD are commended for working together and attempting to reach an agreement on a compensatory services remedy during the course of the investigation to meet the student's priority

educational needs. (FOFs #13 - #16) WCSD's compensatory service offers and the Parent's responses were 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 and placement.<sup>4</sup>

WCSD and the Parent are encouraged to continue to work together throughout this corrective action process. 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.

In this case, given the age of the student and the absence of the required "smooth and effective transition" for the student from IDEA Part C to IDEA Part B, preschool program (34 C.F.R. §§300.124(a), 300.321(f)), it is determined that a day-for-day compensation for time missed is appropriate. *Parents of Student W*. Therefore, **unless otherwise agreed to in writing by WCSD and the Parent**<sup>5</sup>, the CAP must provide for the following student-specific directed actions and provide the timelines for each to enable the completion of all of the actions as soon as possible, but no later than April 14, 2024<sup>6</sup>: 160 minutes of speech language services and 6935 minutes (116 hours) of pre-academic skills (specially designed instruction).<sup>7</sup>

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<sup>4</sup>WCSD's compensatory services offer for the time period in which the student's IEP and placement were not being implemented included a reduction in service minutes for the 10-school day time period set forth in the March 2022 Prior Written Notice for implementation of the student's IEP. (FOF #13) This 10-school day time period extended past the student's third birthday, the date when the student was required to be admitted to WCSD's early childhood program with the student's IEP implemented. NRS §388.435; NAC §388.281(1); 20 U.S.C. §1419. Therefore, NDE did not adopt the WCSD's calculation of any school days of the 10-school day notice period on or after the student turned three years of age.

<sup>5</sup>This exception includes if WCSD and the Parent did agree in writing to WCSD's compensatory services offer prior to the issuance of the Report and failed to provide NDE a copy of this signed agreement. This corrective action order supersedes such prior agreement, if in existence, unless WCSD and the Parent agree otherwise after the issuance of the Report.

<sup>6</sup> As part of its general supervisory responsibilities, a State Education Agency is required to ensure that when it identifies noncompliance with the IDEA requirements by a local educational agency, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. 34 C.F.R. § 300.600(e). In this case, the Parent's concerns with WCSD's compensatory services offer were only with regard to the amount of compensatory services, not the timeline for the completion. Given WCSD and the Parents believe this is the appropriate timeline to meet the needs of the student, NDE has determined the April 14, 2024 timeline is appropriate in this case.

"The one-year timeline for the correction of noncompliance in 34 CFR § 300.600(e) is not intended to limit an SEA's authority or flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the SEA has found that the public agency has failed to provide appropriate services to a child or group of children with disabilities. We recognize that in some circumstances providing the remedy ordered in the SEA's complaint decision could take more than one year to complete (e.g., the SEA orders an action, such as compensatory services, the provision of which, will extend beyond one year; the corrective action timeline is extended because the parent or adult student fails to take action that is essential to implementation of the SEA's decision; the parties mutually agree to extend the timeline for implementation)." *Letter to Zirkel*, 68 IDELR 142 (OSEP August 22, 2016). This letter is publicly available at: <https://sites.ed.gov/idea/idea-files/policy-letter-august-22-2016-to-perry-zirkel/>

<sup>7</sup> This calculation is based on the 1460 minutes a week of specially designed instruction in the student's IEP during this time period, or 365 minutes a day in the 4-day school week multiplied by 19 school days from when the student turned three years of age to the student's first day of attendance and WCSD's implementation of the student's IEP and placement. The total of 115.58 hours of missed minutes of specially designed instruction was rounded to 116 hours. (FOFs #7, #10, #11)

This compensatory education/service must be in addition to the services in the student's IEP and must be provided during school breaks 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.

### **Systemic Remedy**

In addition to the student-specific remedy of compensatory services, given the nature of this noncompliance; the recently closed State Complaint, #WA032222, with the same finding; and the possibility of reoccurrence in the future, NDE has determined that a systemic remedy is required to address the appropriate future provision of services for all children with disabilities. 34 C.F.R. §300.151.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from WCSD within 16 WCSD business days of the receipt of this Report.<sup>8</sup> The CAP must be approved by NDE prior to implementation and include:

1. The identification of all students referred to WCSD and determined to be a student with a disability under IDEA Part B and NAC, Chapter 388, prior to, or upon turning three years of age, from the commencement to the end of the 2021/2022 school year whose IEP and placement in WCSD were not timely implemented in accordance with the students' IEPs; the determination of the time period from the date each student turned three years of age, and school was in session, to the date of admission and implementation of the student's IEP and placement; and WCSD's proposed and/or implemented voluntary corrective action, to address the needs of each student as a result of the failure to provide appropriate services from the date each student turned three years of age.

2. Upon receiving notice from DHHS that a toddler with a disability who resides in WCSD may be eligible for preschool services under IDEA Part B upon reaching the age of eligibility for services. 34 C.F.R. §303.209, WCSD's plan, including procedures, to treat this advance notice as a referral; provide parents with the procedural safeguards notice under 34 CFR 300.504(a)(1); and determine if an evaluation for eligibility must be conducted under IDEA Part B and NAC, Chapter 388. *Federal Register* / Vol. 76, No. 188 / Wednesday, September 28, 2011, pg. 60174.

3. WCSD's plan to avoid the reoccurrence of the violation identified in this State Complaint in subsequent school years, including procedures to anticipate the number of potentially eligible and eligible students with disabilities who will turn three prior to or during the school year and the corresponding procedures to ensure a sufficient number of licensed certified teachers and classrooms for WCSD early childhood programs. (FOF #8, #9, #11, #17) At WCSD's discretion, this plan may include the use of other public and private providers to ensure every eligible student with a disability's IEP will be implemented by the student's third birthday in WCSD's early childhood program. NRS §388.435; NAC §388.281(1); 20 U.S.C. §1419.

Documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

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<sup>8</sup> Given this systemic remedy was recently ordered in another State Complaint, #WA032222, with the same finding, as appropriate, WCSD may submit the same systemic CAP for both State Complaints if it meets all of these components.