

COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA050917)
Report Issued on 6/30/17

INTRODUCTION

On May 9, 2017, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and the IDEA regulations, 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC) with regard to the transportation of a student with a disability residing in the Washoe County School District (WCSD). The Parent alleged that WCSD failed to provide transportation to the student as identified in the Individualized Education Program (IEP) thus denying the student access to a free appropriate public education (FAPE), and failed to provide a Prior Written Notice (PWN) regarding the denial of transportation. The Parent's proposed resolution to the Complaint requested that the student be provided transportation from the student's current preschool program (Head Start) to the assigned WCSD school and from the assigned school to home; and requested compensatory services.

The Parent's Complaint and all documentation provided by WCSD in response to the complaint were reviewed and considered in their entirety in this investigation. The Complaint Investigator also received, collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source(s) of the information deemed necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

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

Issue One:

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to implement the transportation in the student's 2016/2017 school year IEP(s) from December 19, 2016¹, including between the student's Head Start program and the WCSD's preschool program.

¹ NDE correspondence to the Parties to this Complaint, dated May 12, 2017, articulated this issue as relating to a December 16, 2016 IEP, the sole IEP at issue is dated December 19, 2016.

Issue Two:

If any failure to provide the transportation in the student's 2016/2017 IEP(s) was a result of the WCSD's proposal or refusal to change the provision of transportation to the student, whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to provide the Parent with a PWN.

FINDINGS OF FACT

General

1. The student, born January 28, 2014, was determined eligible for IDEA Part C Nevada Early Intervention Services based on a 50 percent delay in communication. (NEIS Confidential Evaluation Report)
2. An Individual Family Service Plan was developed and implemented for the student beginning in 2016 and the student was subsequently referred to WCSD for Child Find. (WCSD Special Education Services Evaluation Summary/Psychoeducational Report)
3. WCSD conducted an eligibility meeting and IEP Team meeting, with the Parent's written consent, on December 19, 2016. (Written Consent to Conduct Eligibility Meeting and Initial IEP Meeting on Same Day)
4. The student was found to be eligible as a student with a disability pursuant to the IDEA and NAC, Chapter 388, under the category of Developmental Delay, with services to begin at the student's third birthday, January 28, 2017. (IEP)
5. The student's December 19, 2016 IEP indicated the student's eligibility under the category of developmental delay and the finding that "[The student] is a preschool aged child demonstrating delays in receptive/expressive language, cognitive and social/emotional skills." "[The student]" would benefit from a preschool program that provides a developmentally appropriate curriculum and per models to support communication and social skill development." (IEP)
6. The IEP indicated specially designed instruction would be provided through 26 hours per week of a developmentally appropriate curriculum in the general education setting, with related services of 180 minutes per month of speech/language services in the general education setting and transportation of 10 hours/week in the "community" setting. The "community" setting was selected from a drop down menu utilized in the electronic program WCSD used to create the IEP and is typically utilized to denote transportation from home to school and back. (IEP, Response of the WCSD)

7. The IEP identifies the student's zoned district elementary school which is the school to which the student was assigned and contains no reference to the Head Start program. The preschool program at the student's assigned elementary school is a full day program for 26 hours per week. (IEP, Response of the WCSD)
8. The Parent signed the IEP document indicating agreement with the components of the IEP and an understanding that it would implemented after the IEP went into effect. (IEP).
9. The Parent received a PWN proposing evaluation of the student, development of an IEP and implementation of the developed IEP. The PWN provided to the Parent after the development of the IEP does not indicate the IEP Team either considered or rejected the option of the placement of the student in Head Start for a portion of the school day. (PWNs, with handwritten notations indicating #1, #2, and #3).
10. Communication, including a meeting on January 25, 2017, occurred between the Parent and WCSD personnel subsequent to the development of the IEP, but prior to the implementation date of the IEP. While the Parent's Complaint characterized this meeting as an IEP meeting, in the course of the investigation the Parent confirmed the January 25, 2017 meeting was not an IEP meeting. At the January 25, 2017 meeting between the Parent and the WCSD, the participants discussed the Parent's preference that the student continue to attend a half day preschool program at Head Start and attend the assigned elementary school program half day. (Parent Complaint, Response of the Parent, WCSD Email dated May 11, 2017)
11. The student has not attended WCSD. (Parent Complaint).

CONCLUSIONS OF LAW

Issue One:

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to implement the transportation in the student's 2016/2017 school year IEP(s) from December 19, 2016, including between the student's Head Start program and the WCSD's preschool program.

IDEA requires that eligible students be provided a FAPE. 34 C.F.R. 300.101. A student's IEP describes his/her individual needs and sets out the proper placement and services designed to meet those needs and, thus, provide the student a FAPE. *Schaffer v. Weast*, 44 IDELR 150 (U.S. 2005). The requirements of the provision of a FAPE to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education, 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)(g).

The facts at issue in this Complaint establish that the student's Parent was informed of, and participated in, the development of the student's December 19, 2016 IEP. (Finding of Fact (FOF) #8) This is the sole IEP developed for the student. (FOFs #5, #10) The IEP indicates the IEP Team's consensus, including the Parent's, that the student is to receive 26 hours a week of developmentally appropriate instruction in a general education setting, and the related services of speech/language services and transportation. (FOF #6) The IEP makes no reference to, or provision for, the student's continued attendance at Head Start. (FOF #7)

The student's IEP states the student's specially designed instruction will be delivered in the general education setting and identifies the student's zoned elementary school, without any mention of a split between the student's current half-day Head Start placement and half-day placement in the zoned/assigned school. (FOF #7) The PWN provided to the Parent after the development of the IEP does not indicate the IEP Team either considered or rejected the option of the placement of the student in Head Start for a portion of the school day. (FOF #9)

With regard to the related service of transportation, the IEP is vague in articulating how this service would be provided, stating only that 10 hours/week would be provided in the community, without any other reference to the departure and arrival points. (FOF #6) However, the documentation provided in the course of this investigation does not support a conclusion that the related service of transportation in the December 19, 2016 IEP was to be provided between two separate school settings rather than between the student's home and school. (FOFs #6, #9) Thus, Parent's allegation that the student was denied a FAPE when transportation was denied between Head Start and the assigned elementary school in accordance with the student's IEP is unsupported by the documents provided and reviewed in this investigation. The failure of the WCSD to provide the transportation in the student's IEP stemmed from the Parent's failure to present the student to receive the FAPE identified in the IEP, not the WCSD's failure to implement the required transportation.

Therefore, WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, by standing ready to implement the transportation as set out in the student's 2016/2017 school year IEP which required transportation between home and school and not transportation between Head Start and Elementary School.

Issue Two:

If any failure to provide the transportation in the student's 2016/2017 IEP(s) was a result of the WCSD's proposal or refusal to change the provision of transportation to the student, whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to provide the Parent with a PWN.

A PWN is required to be sent a reasonable time before a public agency proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of FAPE. 34 C.F.R. 300.503; NAC §388.300(8). As articulated in the Findings

of Fact, above, the documentation examined in the investigation of this Complaint demonstrates that a PWN was provided to the Parent prior to the implementation of the December 19, 2016 IEP, which included 10 hours/week of transportation and specially designed instruction in a full day preschool program. (FOFs #6, #7, #9) The student's IEP was not subsequently revised. (FOF #10)

The Parent's Complaint alleges that WCSD was required to provide a PWN when the WCSD failed to provide transportation between the student's Head Start program and the WCSD elementary school in accordance with the student's IEP. While the documentation provided and reviewed in the course of the investigation supports the Parent's position that conversations occurred with WCSD regarding the Parent's preference for transportation between Head Start and the assigned elementary school, as discussed previously, WCSD did not refuse/fail to provide the related service of transportation as set out in the December 19, 2016 IEP. (FOFs #6, #10) Therefore no PWN was required to be provided to the Parent in this regard. 34 C.F.R. 300.503; NAC §388.300(8).

Rather, what the documentation demonstrates is that the Parent participated in the IEP development and signed the IEP indicating agreement with its implementation. (FOF #8) Subsequent to that, communication took place in which the Parent expressed a preference for a half-day placement to accommodate the student's continued attendance at the Head Start program; however, the Parent did not express a disagreement that the student's full day placement in the preschool program at the elementary school in the December 19, 2016 IEP would not provide the student a FAPE. (FOFs #10) That said, WCSD staff, while ostensibly maintaining the position that the IEP offered the student a FAPE, complicated communications by appearing to express some agreement that such an arrangement would be possible. Moving forward, to the extent that the root of Parent's preference for the student to continue enrollment in Head Start concurrent with attendance in WCSD's preschool program stems from a belief that this would be the appropriate placement for the student, the Parent may request an IEP Team meeting to consider the revision of the December 19, 2016 IEP.

The WCSD did not fail to provide the transportation in the student's December 19, 2016 IEP; therefore, no PWN was required in the absence of a proposal or refusal to change the transportation in the student's IEP.