

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA051817)**

Report Issued on July 7, 2017

On May 18, 2017, the Nevada Superintendent of Public Instruction received a Complaint from a Parent, filed on behalf of both Parents,¹ alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., 34 C.F.R. Part 300; and Chapter 388 of the Nevada Revised Statutes and the Nevada Administrative Code (NAC) with regard to the May 31, 2016 eligibility determination of a student with a disability enrolled in the Washoe County School District (WCSD) in the 2015/2016 school year. The Parents alleged that during the May 31, 2016 eligibility team meeting, without having sufficient information to make the determination, the WCSD informed the Parents that the only eligibility category available for the student to receive special education was the eligibility category of autism. The Parents alleged that based on the medical diagnosis of apraxia of speech showing significant language delay that the student could have been found eligible under the condition of health impairment at that time.

The Parents also requested that the student's May 31, 2016 IEP be expunged. The Nevada Department of Education (NDE) informed the Parents that the NDE does not have the authority to expunge a student's education records through the State Complaint process, but that there was a local process for a parent who believes that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading. The Parents were referred to WCSD for information on how to request an amendment of information in the student's education records.

All documents submitted by the Parents and the WCSD relevant to the issues in the Complaint were reviewed 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 of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUE

The allegations in the Complaint, as further clarified during the investigation, that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issue for investigation:

¹ The term Parents will be used throughout.

Issue:

Whether the WCSD complied with the IDEA and NAC, Chapter 388, when determining the student's special education eligibility on May 31, 2016, specifically did the Eligibility Team:

- a. Draw upon information from a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and
- b. Ensure that information was carefully considered with regard to the eligibility determination that the student was a student with autism rather than a student with health impairment due to apraxia of speech.

FINDINGS OF FACT**General**

1. The student was initially found eligible and enrolled as a student with a disability in the WCSD in 2013 under the category of developmental delay. The student did attend school in the WCSD in the 2015/2016 school year, but did not register or attend the WCSD in the 2016/2017 school year. (Complaint, May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report, Student Attendance Period Detail, Complaint)
2. The student was diagnosed with autism between two and three years of age by two physicians. At the time of the WCSD's initial evaluation of the student in 2013 to determine if the student was a student with a disability, the Childhood Autism Rating Scale was administered to the student and the results indicated minimal to no symptoms of autism spectrum disorder. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report, June 13, 2013 Evaluation Summary/Psychoeducational Report)
3. The speech and language results in the WCSD's June 13, 2013 Evaluation Summary/Psychoeducational Report did not provide a diagnosis of apraxia of speech. The speech-language pathologist's findings were that the student's speech articulation, expressive functional vocabulary and pretend play skills were less than what would be expected for the student's age. (June 13, 2013 Evaluation Summary/Psychoeducational Report, October 26, 2012 Speech and Language Evaluation)
4. The student was evaluated on September 28, 2013 by a private speech-language pathologist at the request of the student's Parents. Citing the student's diagnosis of autism, the evaluator concluded the student also presented with signs and symptoms of childhood apraxia of speech that confirmed a diagnosis of apraxia. With regard to the student's speech and language skills, the evaluator indicated that the student presented with strengths in the areas of receptive language and moderate delays in expressive language and speech. The evaluator made a recommendation based on the speech and language assessment of speech therapy three times a week for 50 minutes one to one and indicated the evaluator would provide therapy techniques to the student's family. The evaluator did not make a recommendation on the student's eligibility as a student with a disability or a recommendation for a medical/health assessment. (September 28, 2013 Speech and Language Evaluation)

5. Prior to the May 31, 2016 eligibility determination, the WCSD evaluated the student using the following procedures:
 - a. A review of previous assessments and school records on April 18, 2016;
 - b. Parents' input on April 10, 2016, including the student's diagnosis of apraxia of speech, and the student's input on May 24, 2016;
 - c. Teacher reports, recommendations, and observation on May 23, 2016;
 - d. Classroom observation on May 20, 2016;
 - e. Assessment of performance in the current educational setting on May 20, 2016;
 - f. Assessment of health on May 17, 2016;
 - g. Assessment of cognitive abilities on May 24, 2016;
 - h. Assessment of academic achievement on May 24, 2016;
 - i. Assessment of social and emotional condition on March 16, 2016;
 - j. Assessment of gross/fine motor skills on April 16, 2016;
 - k. Assessment of adaptive skills on March 16, 2016;
 - l. Autism Assessments on May 23, 2016; and
 - m. Assessment of language/communication skills on May 11, 2016. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report, Determination of Scope of Evaluation and Need for Additional Data)
6. In the Parent Interview and information for the scope of the May 2016 reevaluation, the Parents' response to the question regarding what other data or information should be considered for the purpose of completing the reevaluation included that the student was diagnosed with apraxia of speech and that talking with other children is a challenge for the student. The May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report included the Parents' input of the diagnosis of apraxia of speech and the student's difficulty with talking with other children. (April 10, 2016 Parent/Guardian Interview & Information for Scope of Reevaluation)
7. The March 16, 2016 assessment of the student's social and emotional condition identified the following social concerns of the student:
 - a. Has difficulty and becomes overwhelmed in a large group;
 - b. Doesn't initiate conversations with peers or others;
 - c. Displays little or no reciprocal social communication;
 - d. Seems indifferent to other people's attention;
 - e. Seems unwilling or reluctant to get others to interact;
 - f. Has difficulty playing with other children;
 - g. Has difficulty understanding jokes or slang expression;
 - h. Needs an excessive amount of reassurance if things are changed or go wrong;
 - i. Does certain things repetitively, ritualistically;
 - j. Displays ritualistic or compulsive behaviors; and
 - k. Is sensitive to loud noises in certain environments. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report)
8. On May 8, 2016, the student's Parents provided updated health information to the WCSD and indicated there were no current health concerns; no current medication; and the student had not had any health-related changes in the last three years. The May 17, 2016 health assessment by the school nurse included the student's health, developmental, and social history of note and found that the student had no history of significant injuries, illnesses, or accidents that would likely impede educational progress or a history of prior medications that may impact present academic performance or

behavior. The school nurse described the student's general health as good and indicated that no recommendations, referrals, or follow-up were needed. It was noted that there had been no changes in health since the student's prior evaluation in June 2013 when the school nurse indicated the student was followed by an endocrinologist for physical growth and has eczema and otherwise had not had any other significant medical problems or accidents/injuries. In the June 13, 2013 evaluation, the school nurse noted that socially the student had some perseverative behaviors and according to the mother the student had significant sensory issues. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report, June 13, 2013 Evaluation Summary/Psychoeducational Report, June 13, 2013 and May 17, 2016 School Nurse Special Education Health Assessments, Parent Three Year Update of Student Health, Development and Social History)

9. The May 11, 2016 Speech and Language Assessment by the WCSD speech-language pathologist noted that the student had been receiving speech and language services since initially qualifying for special education services; had language skills below the same age peers; did not advocate for needs or wants; and needed prompting to use words to express thoughts and ideas. The student also had difficulty attending to information long enough to follow a direction, understand concepts or recall details in a story. The student's overall language standard score was 79 with 85 being the norm, with receptive language at 73 and expressive language at 88. With regard to this discrepancy, the speech-language pathologist indicated that the higher expressive language skills indicate that the student has the vocabulary and skills to use language and demonstrates an understanding that is not represented by the student's ability to answer questions and follow directions. The student was not diagnosed with apraxia of speech. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report, Clinical Evaluation of Language Fundamentals Record Form, May 31, 2016 IEP)
10. On May 23, 2016, the Gilliam Autism Rating Scale was completed by the student's Parents and the student's teacher. The Rating Scale included performance data on the student's restricted/repetitive behaviors; social interaction; social communication; emotional responses; cognitive style and maladaptive speech. Based on the responses of the student's teacher, the student's autism index was 75, which is at the 5th percentile. This score indicates that the probability of the student having an autism spectrum disorder is very likely and the student may require substantial support. Based on the responses of the Parents, the student's autism index was 81, which is at the 10th percentile. This score also indicates that the probability of the student having an autism disorder is very likely and the student may require substantial support. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report)
11. The student's educational history included in the May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report provided the student's prior eligibilities and evaluations. The history included the student's diagnosis of autism prior to being seen by the WCSD Child Find; the completion of an autism rating scale which came up with minimal to no evidence of autism in June 2013; and that the student had an additional diagnosis of apraxia. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report)
12. The student's Multidisciplinary Psychoeducational Team Report, included the student's educational history; Parent input; student input; teacher input; classroom observations; assessment of instruction in the current educational setting; health assessment; assessment of cognitive abilities; assessment of academic achievement; assessment of social and emotional condition assessment of gross/fine motor skills; assessment of

adaptive skills; assessment of autism; speech and language assessment; and other factors. The Team Report determined that the student demonstrated unusual verbal and nonverbal communication and social skills, with repetitive activities and stereotyped movements, resistance to changes in the environment or daily routine, and responded to sensory experiences in an unusual manner. (May 31, 2016 Multidisciplinary Psycho-Educational Team Report)

13. The Multidisciplinary Psycho-educational Team Report included a recommendation that the student appeared to meet the special education eligibility criteria under autism spectrum disorder, but noted that determinations of eligibility must be made by the student's eligibility team. The Team's recommendation was to convene an Eligibility Team meeting to determine whether the student qualifies for special education and related services, without mention of a specific eligibility category, and included some programmatic recommendations. (May 31, 2016 Multidisciplinary Psycho-Evaluation Team Report)
14. The student's Eligibility Team convened on May 31, 2016 and was comprised of the school psychologist who conducted assessments included in the Multidisciplinary Psycho-Educational Team Report and signed the Report; the student's special education teacher who completed the Autism Rating Scale and provided teacher input included in the Team Report; a regular classroom teacher; the speech and language specialist who conducted assessments included in the Team Report; and the Parents who provided parental input in the assessment of the student and participated in the health and autism assessments. The student's Eligibility Team applied the criteria for students with an autism spectrum disorder and determined the student was eligible for special education under the category of autism. All of the Eligibility Team members, including the speech and language specialist and the Parents agreed with the eligibility determination. Subsequent to the Eligibility Team meeting, the Parents indicated that they agreed with the determination of eligibility based on misinformation that the student had to be under the eligibility category of autism to continue to receive services. (Statement of Eligibility-Eligibility Team Report Autism, Complaint, March 22, 2017 and other Parents Emails)
15. The WCSD responded to this Complaint that the student's Eligibility Team did not consider the category of health impairment at the May 31, 2016 Eligibility Team meeting. (Statement of Eligibility-Eligibility Team Report Autism, WCSD Response)
16. Commencing February 2017, the student's Parents requested the WCSD change the student's May 31, 2016 eligibility category from autism to health impairment due to the student's apraxia of speech. The WCSD offered to reevaluate the student and reconvene the student's Eligibility Team to review the student's eligibility and consider the Parent's concerns. The WCSD and the student's Parents continued to communicate on this request subsequent to the filing of the Complaint. (Email Communications between the WCSD and the Parents, March 17, 2017, April 10, 2017 Prior Written Notice)

CONCLUSIONS OF LAW

Introduction

In accordance with the IDEA, 34 C.F.R. §300.306(a)(1), and NAC §388.387 et seq., it is a group of qualified professionals and the parent(s) of the student who determine whether a student is a student with a disability and the educational needs of the student. The determination of whether a student is a student with a disability is twofold: whether the student has one of the specific categories of disability in the IDEA, 34 C.F.R. §300.8, and NAC §§388.093 and 388.387 et seq. and who, by reason thereof, needs special education and related services. As such, neither a determination of a disability by a single individual nor a determination that a student has a disability by itself is sufficient for a student to qualify as a student with a disability under the IDEA and the NAC, Chapter 388.

Deferring to the United States Department of Education's interpretation, the Ninth Circuit Court of Appeals² determined that ". . . [c]onsidering a child's condition under only one possible category of disability, *when more than one might apply*, elevates a myopic concern with the child's specific classification over determining the child's actual educational needs. See *Heather S. v. Wisconsin*, 125 F.3d 1045, 1055 (7th Cir. 1997) The IDEA concerns itself not with labels, but with whether a student is receiving a free and appropriate education. . . . Accordingly, we hold that a "child with a disability" may seek to qualify for special education benefits under more than one of the categories listed in 20 U.S.C. § 1401(3)(A)(i)". (Italics added for emphasis. *E.M. v. Pajaro Valley School District*, 758 F.3d 1162, 63 IDELR 211 (9th Cir. 2014), Cert. Denied 14-604; 115 LRP 129 (U.S.S.C. 2015)).

Relevant to this Complaint, the student was evaluated on September 28, 2013 by a private speech-language pathologist who concluded that in addition to the student's diagnosis of autism, the student presented with signs and symptoms of childhood apraxia of speech that confirmed a diagnosis of apraxia. (Finding of Fact (FOF) #4) Apraxia of speech is not a category of disability under the IDEA, 34 C.F.R. §300.8, and the NAC §388.093. Therefore, a student with apraxia would need to qualify as a child with a disability under one of the specific eligibility categories under the IDEA and NAC, Chapter 388. At issue in this Complaint is whether the student's Eligibility Team carefully considered the evaluation information from a variety of sources in its May 31, 2016 eligibility determination that the student was a student with autism rather than a student with health impairment due to apraxia of speech.

Variety of Sources

In accordance with the IDEA, 34 C.F.R. §300.306(c), and NAC §388.340(5)(a), in interpreting evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student, each public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior that may assist in determining whether the student is a student with a disability and the educational needs of the student.

² The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

In this case, prior to the May 31, 2016 eligibility determination, the WCSD evaluated the student using the following procedures:

- a. A review of previous assessments and school records on April 18, 2016;
- b. Parents' input on April 10, 2016, including the student's diagnosis of apraxia of speech, and the student's input on May 24, 2016;
- c. Teacher reports, recommendations, and observation on May 23, 2016;
- d. Classroom observation on May 20, 2016;
- e. Assessment of performance in the current educational setting on May 20, 2016;
- f. Assessment of health on May 17, 2016;
- g. Assessment of cognitive abilities on May 24, 2016;
- h. Assessment of academic achievement on May 24, 2016;
- i. Assessment of social and emotional condition on March 16, 2016;
- j. Assessment of gross/fine motor skills on April 16, 2016;
- k. Assessment of adaptive skills on March 16, 2016;
- l. Autism assessments on May 23, 2016; and
- m. Assessment of language/communication skills on May 11, 2016. (FOF #5)

The evaluation data on the student, included the required aptitude and achievement tests of the student's cognitive abilities and academic achievement (FOF #5(g) and (h)); Parents' input (FOFs #5(b), #8, #10), and teacher recommendations (FOF #5(c)), as well as information about the student's physical condition (FOF #5(f)), social or cultural background (FOF #5(i)), and adaptive behavior (FOF #5(k)). Given the administration of these assessments to, or on behalf of, the student, the resultant evaluation data met the requirements under the IDEA, 34 C.F.R. §300.306(c), and NAC §388.340(5)(a) to enable the Eligibility Team to draw from information from a variety of sources in the interpretation of evaluation data for the purpose of determining if a student is a student with a disability and the educational needs of the student. However, given the specifically required evaluations with regard to the eligibility of a student with autism pursuant to NAC §388.387 and a student with a health impairment, other than an orthopedic impairment, pursuant to NAC §388.402, it is necessary to determine whether the evaluation data required by these sections were also available to the student's Eligibility Team.

Autism

In accordance with NAC §388.028, autism means a spectrum disorder which significantly affects the verbal and nonverbal communication and social skills of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine and responding to sensory experiences in an unusual manner; is usually apparent before the age of 3 years; and adversely affects the educational performance of a pupil causing significant delays or irregular patterns in learning, or both. . . ."

With regard to the determination of the eligibility of a student with autism under NAC §388.387, the evaluation of the student must include the assessment of the student's:

- a. Health and medical status;
- b. Developmental history, including, without limitation, the rate and sequence of development and a clear statement of strengths and weaknesses;
- c. Cognitive abilities;
- d. Social and emotional condition in multiple settings;
- e. Academic achievement;
- f. Adaptive skills; and
- g. Speech, language and other communication skills. (NAC §388.387(3)(a))

In addition to the required variety of sources of the aptitude and achievement tests of the student's cognitive abilities and academic achievement (FOF #5(g) and (h)); information about the student's physical condition (FOF #5(f)); social or cultural background (FOF #5(i)); and adaptive behavior (FOF #5(k)), the evaluation procedures and required considerations in the determination of the eligibility of the student included the following additional data relevant to the required evaluations under NAC §388.387:

- A May 17, 2016 health assessment evaluation by the school nurse that included a developmental history and updated health information from the student's Parents. The school nurse determined that the student had no history of significant injuries, illnesses, or accidents that would likely impede educational progress or a history of prior medications that may impact present academic performance or behavior and described student's general health as good. The Parents' updated health information consistently indicated there were no current health concerns and no current medication (FOF #8);
- The assessment of the student's social and emotional condition resulted in social concerns of the student, including displaying little or no reciprocal social communication doing certain things repetitively, ritualistically; displaying ritualistic or compulsive behaviors; and a sensitivity to loud noises in certain environment (FOFs #5(i), #7);
- The assessment of the student's language/communication skills by the speech-language pathologist (FOFs #5(m), #9);
- The Gilliam Autism Rating Scale completed by the student's Parents and the student's teacher that included performance data on restricted/repetitive behaviors; social interaction; social communication; emotional responses; cognitive style and maladaptive speech that resulted in a determination that the probability of the student having an autism disorder is very likely and the student may require substantial support (FOF #10); and
- The review of previous assessments and school records, including the student's prior eligibilities and evaluations, a diagnosis of autism by two physicians prior to the initial referral of the student to the WCSD; and the completion of an autism rating scale in June 2013 with minimal to no evidence of autism (FOF #11).

Upon consideration of the information from a variety of sources of evaluation data and the conduct of the additional required evaluations to determine the eligibility of a student with autism under NAC §388.387, the Eligibility Team did have the required evaluation data to determine the student was eligible for special education under the category of autism.

Health Impairment

Pursuant to the NAC §388.046: "Health impairment" means an impairment that limits the strength, vitality or alertness of the pupil, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which: 1. Is caused by chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, childhood disintegrative disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, Rett's disorder, sickle-cell anemia and Tourette syndrome; and 2. Adversely affects the educational performance of the pupil."

With regard to the determination of the eligibility of a student with a health impairment, other than an orthopedic impairment, under NAC §388.402, the evaluation of the student must include an assessment of the health of the student; and an analysis of the ability of the student to perform in a regular classroom and may include an assessment of the student's

developmental history; cognitive abilities; social and emotional condition; academic achievement; and language and motor skills.

Pursuant to NAC §388.402, the evaluation of the student included a May 17, 2016 health assessment by the school nurse and updated health information from the student's Parents on May 8, 2016. (FOF #8) As previously discussed, the student was also evaluated in the permissive areas of assessment of the student's developmental history; cognitive abilities; social and emotional condition; academic achievement; language skills and gross and fine motor skills. (FOF #5) As such, the WCSD conducted all required and permissive evaluations to enable the Eligibility Team to make a determination that the student had a health impairment, other than an orthopedic impairment, under NAC §388.402.

Careful Consideration

In response to this Complaint, the WCSD and the Parents provided the detailed May 31, 2016 Multidisciplinary Psycho-Educational Team Report; copies of some of the assessments conducted; and documentation of the determination of eligibility. The following members of the student's May 31, 2016 Eligibility Team also participated in the assessment of the student: the school psychologist; the student's special education teacher; the speech and language specialist; and the Parents who provided parental input and participated in the health and autism assessments. (FOFs #6, #8, #10, #12 #14)

In accordance with the IDEA, 34 C.F.R. §300.306(c)(ii), and the NAC §388.340(5)(b), in interpreting the evaluation data for the purpose of determining the student was a student with a disability and the educational needs of the student, the Eligibility Team was required not only to draw upon information from a variety of sources, but to carefully consider the information.

Autism

The May 31, 2016 Statement of Eligibility/Eligibility Team Report documents the Eligibility Team's consideration and application of the criteria for students with an autism spectrum disorder set forth in NAC §388.028 and the determination that the student was eligible for special education under the category of autism. At the time of the eligibility determination, all of the Eligibility Team members, including the speech and language specialist and the Parents, agreed with the eligibility determination of autism. Based on this Statement of Eligibility and the assessment results previously discussed relevant to the eligibility of a student with autism pursuant to NAC §§388.028 and 388.387, the WCSD followed the procedures under the IDEA and the NAC in the May 31, 2016 eligibility determination when the Eligibility Team drew upon information from a variety of sources and documented the careful consideration of the information in the determination of the eligibility of the student as a student with autism. (FOF #14)

The Complaint Investigation Team did note that commencing February 2017, the Parents indicated that they only agreed with the determination of eligibility based on misinformation that the student had to be under the eligibility category of autism to continue to receive services and proposed the category of health impairment as the appropriate category of disability. (FOFs #14, #16) However, even if the student may also be eligible under another eligibility category, that does not undermine the Eligibility Team's careful consideration of the

variety of sources of information in its May 31, 2016 determination that the student was a student with autism.

Health Impairment

At the time of the May 31, 2016 Eligibility Team meeting, the May 17, 2016 health assessment by the school nurse and updated health information from the student's Parents on May 8, 2016 indicated the student's health was good and there were no health concerns. The school nurse concluded that the student had no history of significant injuries, illnesses, or accidents that would likely impede educational progress or a history of prior medications that may impact present academic performance or behavior and indicated that no recommendations, referrals or follow up were needed. (FOF #8)

Citing, rather than disputing, the student's diagnosis of autism, the private speech-language pathologist who assessed the student's speech and language skills concluded the student *also* presented with signs and symptoms of childhood apraxia of speech that confirmed a diagnosis of apraxia. The evaluator did not make a recommendation on the student's eligibility as a student with a disability due to the diagnosis of apraxia of speech. (FOF #4) (It should be noted that even if the evaluator had made a recommendation on the category of disability, pursuant to the IDEA, 34 C.F.R. §300.306(a)(1), and NAC §388.387 et seq., it is a group of qualified professionals and the parent(s) of the student, not a single individual, who determine whether a student is a student with a disability and the educational needs of the student.)

The May 31, 2016 Multidisciplinary Team Report documented consideration of this private speech-language assessment and diagnosis of apraxia of speech as well as the WCSD's 2013 and 2016 speech-language assessments that did not diagnose apraxia of speech. (FOFs #3, #5, #6, #9, #11) However, the student's Eligibility Team did not consider the category of health impairment at the May 31, 2016 Eligibility Team meeting based on the private evaluator's diagnosis of apraxia of speech. (FOF #15) Should they have?

At the time of the May 31, 2016 eligibility determination of the student, the evaluation data available from the required variety of sources (FOFs #4, #6, #8, #9) did not raise a suggestion/suspicion that the student may have a health impairment that limited the student's strength, vitality or alertness as required by NAC §388.046. As such, this is not the "myopic concern" contemplated by the Ninth Circuit Court of Appeals when an Eligibility Team considered only one possible category of disability, when more than one might apply. (*E.M. v. Pajaro Valley School District*, 758 F.3d 1162, 63 IDELR 211 (9th Cir. 2014), Cert. Denied 14-604; 115 LRP 129 (U.S.S.C. 2015))

"The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data." (34 IDELR 264 (OSEP 2000))³ In this case, in interpreting the evaluation data for the purpose of determining if the student was a student with a disability pursuant to the IDEA, 34 C.F.R. §300.306(c) and NAC §388.340(5), the WCSD complied with the IDEA and the NAC in making the eligibility

³ This Policy Memorandum is publically available at: www2.ed.gov/policy/speced/guid/idea/letters/2000-3/osep0020.71700safeguards.3q2001.doc

determination and its failure to consider whether the student had a health impairment was reasonably supported by the data.

However, this conclusion through the State Complaint process neither precludes the student's Eligibility Team's prospective review of the student's category of disability nor the Parents' and/or WCSD's access to appropriate dispute resolution procedures (consistent with any time limitations under the IDEA and the NAC, Chapter 388) to resolve any disagreement regarding the appropriateness of the May 31, 2016 eligibility determination. (Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pg. 46601 (August 14, 2006))

Therefore, the WCSD complied with the IDEA and NAC, Chapter 388, when determining the student's special education eligibility on May 31, 2016, specifically the Eligibility Team drew upon information from a variety of sources including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior and ensured the evaluation information was carefully considered with regard to the eligibility determination that the student was a student with autism rather than a student with health impairment due to apraxia of speech.