

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA052022)  
Report Issued on July 14, 2022**

**INTRODUCTION**

On May 20, 2022, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent dated May 19, 2022 alleging violations by Washoe County School District (WCSD) in a student's special education program. The allegations in the Complaint were that WCSD failed to identify a school for the student to attend and receive the services in the student's Individualized Education Program (IEP), including direct services and related services, thereby denying the student a Free Appropriate Public Education. In support of this allegation, the Parent alleged that WCSD informed the Parent that there was not a classroom available for the student and, therefore, not a school the student could attend to receive a Free Appropriate Public Education. The Parent also alleged that WCSD did not provide a Prior Written Notice on this denial of services. The Parent's proposed resolution was for WCSD to create a classroom; assign the student to a school; and make up all missed services through compensatory education.

While the State Complaint met the minimum filing requirements in the IDEA and Nevada special education law and regulations (34 C.F.R. §300.153; NAC §388.318), it did not include the specific date WCSD allegedly failed to implement the student's IEP and the determined placement in the 2021/2022 school year. Therefore, Nevada Department of Education (NDE) requested the Parent provide that additional information at the commencement of the investigation. The Parent promptly responded clarifying that the date of the alleged noncompliance was April 1, 2022, and provided documentation in support of the allegation from a teacher in WCSD on that date.

During the course of the investigation, after reviewing the documentation provided by WCSD regarding the student's withdrawal from WCSD prior to the end of the first semester of the 2021/2022 school year and authorization for the student to attend the student's zoned school in March 2022, NDE provided the Parent an opportunity to respond to the provided documentation. (June 28, 2022 Email Correspondence) The Parent did timely respond. (July 5, 2022 Email Correspondence)

In the May 31, 2022 issue letter to WCSD, 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 June 20, 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 dispute the allegations of noncompliance in the Complaint in their entirety and specifically referenced the well-organized documents relevant to that denial.

The State Complaint; additional information provided by the Parent; and WCSD's response, 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

As clarified by the Parent after the filing of the State Complaint, the allegations in the Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process to the date of the Complaint, May 19, 2022, raise the following issues for investigation:

### Issue One:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student's IEP from April 1, 2022 to May 19, 2022.

### Issue Two:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the Parent a Prior Written Notice on WCSD's April 1, 2022 refusal to provide the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student's IEP.

## FINDINGS OF FACT

### General

1. The student is a student with a disability of preschool age. The student's last IEP in effect in WCSD was an October 29, 2020 IEP. At that time, the student's specially designed instruction was specialized instruction in pre-academic skills, with the location of services in a special education class with no percentage of time in the regular education environment. (The development/revision of the student's IEP was not at issue in this Complaint.) (November 4, 2020 IEP, Complaint)
2. The first day for students in WCSD in the 2021/2022 school year was August 9, 2021 and the last day of school for students was June 7, 2022. The first semester of the 2021/2022 school year ended on December 16, 2021. (2021/2022 WCSD Balanced Calendar)
3. 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)
4. During the 2021/2022 school year, the student was enrolled and withdrawn from WCSD various times prior to the relevant time period of this Complaint:
  - a. The Parent enrolled the student in WCSD for the 2021/2022 school year and the student attended the Early Childhood Special Education Pre-K Program<sup>1</sup> at the student's zoned school on the first day of school, August 9, 2021. After attending the zoned school for five

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<sup>1</sup> The term "preschool" will be used throughout this Report rather than the student's specific Pre-K program in the 2021/2022 school year to ensure no personal characteristics/information is released to make it possible to identify the student with reasonable certainty. 34 C.F.R. §300.32.

school days, the Parent withdrew the student and enrolled the student in a virtual school in WCSD.

- b. The student did not, however, attend the virtual school or any school in WCSD until November 15, 2021, when the Parent enrolled the student again at the zoned school.
  - c. On December 8, 2021, after approximately 15 school days, the Parent again withdrew the student from school, notifying WCSD that the Parent did not want the student to attend school at that time.
  - d. After the Parent withdrew the student on December 8, 2021, it is uncontested that the Parent did not enroll the student again at any time for the duration of the 2021/2022 school year. (Student Enrollment History, Student Period Attendance Detail, November 4, 2020 Prior Written Notice, 2021/2022 WCSD Balanced Calendar, WCSD and Parent Responses)
5. On March 23, 2022, the Parent contacted WCSD inquiring about a variance for the student to attend the early childhood program at a specific out-of-zone school at which the Parent reportedly worked, rather than the student's zoned school the student previously attended. (March 23-25, 2022 WCSD E-mail Correspondence, Student Enrollment History, Student Period Attendance Detail)
  6. In WCSD, determinations regarding variance requests are made by the responsible Area Superintendent. On March 25, 2022, the Area Superintendent for the out-of-zone school informed the Parent that the requested out-of-zone school was at capacity and not an option. On that same day, the Area Superintendent from the zoned school indicated she would reach out to the Parent and encourage the Parent to enroll the student at the zoned school. (WCSD Response, March 23-25, 2022 WCSD E-mail Correspondence)
  7. On March 30, 2022, the principal of the student's zoned school contacted the Area Superintendent's Office and informed the Office that the Parent of this student, who was in the school's preschool program for about two weeks that school year, would like to come back to the program, but the program was full. The principal informed the Area Superintendent's Office that the school would be happy to go one student over ratio to bring back the named student for the remainder of the year. That same day, the Area Superintendent's Office authorized the principal to enroll the student for the remainder of the year. (March 30, 2022 WCSD Email Correspondence)
  8. On March 31, 2022, a teacher in WCSD's preschool program at the zoned school contacted the Area Superintendent's Office and the principal of the student's zoned school and indicated that the student's Parent was worried about enrolling the student in a class that was full and only had one paraprofessional and the Parent wanted to know if there were any other preschool programs that had an opening. (March 31, 2022 WCSD Email Correspondence)
  9. On March 31, 2022, the Area Superintendent's Office responded to the teacher's March 30, 2022 email communication thanking the teacher for "sharing the parent's concerns. At this time, we do not have any open spots" in the student's preschool program. (March 31, 2022 WCSD Email Correspondence)
  10. On April 1, 2022, the teacher in WCSD's preschool program at the zoned school contacted the Parent and informed the Parent that the Area Superintendent's Office had informed the teacher that there were "no open spots" in any of the preschool programs at any school. (April 1, 2022 WCSD Email Correspondence)

11. The student was not enrolled in WCSD from March 23, 2022, the first contact by the Parent inquiring about the availability of a variance for the student to attend the early childhood program at a school other than the student's zoned school or on or after April 1, 2022 to the end of the 2021/2022 school year. In response to NDE's June 28, 2022 request for additional information in the course of the investigation regarding the enrollment of the student, the Parent confirmed that she did not attempt to reenroll the student since it would have been futile, based on the information from the teacher that there were no open spots available at any school. (Review of the Record, July 5, 2022 Parent Response)
12. On November 4, 2020, WCSD provided the Parent a Prior Written Notice on the implementation of the student's October 29, 2020 IEP, including the student's placement in a special education class 100 percent of the time, upon the student's enrollment at the school site. On April 30, 2021, after withdrawal of the student, WCSD again provided the Parent a Prior Written Notice that the student's IEP would be implemented upon enrollment in a WCSD school. (November 4, 2020 and April 30, 2021 Prior Written Notices)
13. During the relevant time period of this State Complaint, on or near in time to April 1, 2022, WCSD did not provide the Parent a Prior Written Notice on a proposal/refusal to initiate or change the placement of the student or the provision of a Free Appropriate Public Education to the student. (Review of the Record)

## CONCLUSIONS OF LAW

### Issue One:

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student's IEP from April 1, 2022 to May 19, 2022.

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). Further, in accordance with the IDEA and NAC, Chapter 388, WCSD is required to make special education and related services "available" to each student in accordance with the student's IEP. 34 C.F.R. §§ 300.101, 300.323(c); NAC §388.281(6)(e).

The student is a student with a disability of preschool age. The student's last IEP in effect in WCSD was an October 29, 2020 IEP. At that time, the student's specially designed instruction was specialized instruction in pre-academic skills, with the location of services in a special education class with no percentage of time in the regular education environment. (Finding of Fact (FOF) #1)

The student was enrolled in WCSD and withdrawn by the Parent twice in the 2021/2022 school year prior to the relevant time period of this Complaint. After the student's second withdrawal on December 8, 2021, it is uncontested that the Parent did not enroll the student again at any time for the duration of the 2021/2022 school year. (FOF #4)

The Parent did, however, contact WCSD on March 23, 2022 inquiring about a variance for the student to attend the early childhood program at a specific out-of-zone school, rather than the student's zoned school the student previously attended. (FOF #5) The designated Area Superintendent responsible for variance

requests involving the requested school informed the Parent that the out-of-zone school was at capacity and was not an option. On that same day, the Area Superintendent from the zoned school indicated she would reach out to the Parent and encourage the Parent to enroll the student at the zoned school. (FOF #6)

After that initial inquiry regarding obtaining a variance for the student to attend an out-of-zone school, it appears that the Parent corresponded only with the student's former teacher at the student's zoned school regarding the availability of placements in the preschool program at both the student's zoned school and out-of-zone schools, rather than the WCSD personnel responsible for the admission of students. Based on what appears to be a miscommunication/misunderstanding between the teacher and WCSD personnel responsible for the admission of enrolled students, or the teacher and the Parent, the email correspondence relied upon by the Parent as the basis of this Complaint from the teacher to the Parent on April 1, 2022 did not accurately reflect the availability of a placement at the student's zoned school. (FOFs #8, #9, #10, #11)

It is correct that the preschool program at the student's zoned school the student previously attended was at capacity at the time of the Parent's initial inquiries to WCSD regarding the availability of a variance to attend an out-of-zone school. (FOF #5) However on March 30, 2022, as a result of the Parent's inquiries, the principal at the student's zoned school received authorization pursuant to NAC §388.150 (4)<sup>2</sup> to admit the student to the preschool program for the remainder of the year. (FOF #7)

While the Parent may have preferred the student attend an alternative preschool program in WCSD other than the student's zoned school the student previously attended, WCSD did have a placement available for the student on April 1, 2022 at the zoned preschool program in accordance with the IDEA and NAC, Chapter 388, had the Parent enrolled the student. (FOFs #5, #6, #8, #9) 34 C.F.R. §§300.101, 300.323(c); NAC §388.281(6)(e). The enrollment of the student in WCSD and the initiation of admission proceedings would have resolved the apparent misunderstanding/miscommunication that occurred in this case and would have resulted in the student's attendance at the preschool program at the student's zoned school for the remainder of the 2021/2022 school year. It is indeed unfortunate that did not occur, but that does not change the outcome of this Complaint investigation.

*Therefore, WCSD complied with the IDEA and NAC, Chapter 388, and provided the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student's IEP from April 1, 2022 to May 19, 2022, had the student enrolled in WCSD.*

## **Issue Two**

Whether WCSD complied with the IDEA and NAC, Chapter 388, and provided the Parent a Prior Written Notice on WCSD's April 1, 2022 refusal to provide the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student's IEP.

In accordance with the IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student.

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<sup>2</sup> NAC §388.150 (4): The maximum number of cases per teacher in a unit may be increased by 10 percent, or at least one pupil, without the approval of the NDE.

The purpose of a Prior Written Notice is to inform parents of an agency's final action<sup>3</sup> on a proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education to a student. As discussed previously, the April 1, 2022 communication from the teacher to the Parent regarding the availability of a placement for the student not yet enrolled did not represent WCSD's final action or decision with regard to the placement of the student or the provision of a Free Appropriate Public Education to the student. (FOFs #6, #8, #9, #10) Since this April 1, 2022 communication relied upon by the Parent was not WCSD's proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education to a student, no Prior Written Notice was required.

Given the Parent's March 23, 2022 request to place the student in an out-of-zone preschool program preceded the April 1, 2022 communication at issue in this Complaint, it has been determined that for purposes of thoroughness and to, hopefully, avoid future controversy, the nature of this request will also be addressed relative to the Prior Written Notice requirements in the IDEA and NRS/NAC, Chapter 388.

The Parent's March 23, 2022 request to WCSD, and repeated thereafter, was related to obtaining an administrative variance for the student, who was not enrolled in WCSD at the time, to attend the same placement option at a preschool program in a different location than the previously attended zoned school. (FOFs #1, #4, #5, #8) NDE does not have jurisdiction through the State Complaint process over a local educational agency's local zoning or variance determinations.

NDE does, however, have jurisdiction through the State Complaint process with regard to compliance with the IDEA and NRS/NAC regarding the initiation or change of a placement of a student. Relevant to this discussion, it is important to note that there is a legal distinction between the educational placement of a student and the location of school/classroom in which the student's IEP will be implemented:

“Based on Supreme Court case law, Congress's express intent in the statute, the agency's implementing regulations, and sister circuits' decisions, we hold that "educational placement" means the general educational program of the student. More specifically we conclude that under the IDEA a change in educational placement relates to whether the student is moved from one type of program -- i.e., regular class -- to another type -- i.e., home instruction. A change in the educational placement can also result when there is a significant change in the student's program even if the student remains in the same setting ...” *N.D et al., v. State of Hawaii Department of Education*, 600 F.3d 1104, 54 IDELR 111 (9th Cir. 2010).

“Historically, we have referred to "placement" as points along the continuum of placement options available for a child with a disability and "location" as the physical surrounding, such as the

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<sup>3</sup> *Letter to Helmuth*, 16 IDELR 550 (OSEP January 20, 1990). Given this letter is not publicly available, this policy guidance set forth in a letter from the United States Department of Education, Office of Special Education Programs is provided in context: “The purpose of the written notice required under EHA-B is to inform parents of an agency's final action on a proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a FAPE to a particular child. In general, such notice must be given to parents a reasonable time before the agency implements that action, but after the agency's decision on the proposal or refusal has been made. 34 CFR § 300.504(a). The provisions at 34 CFR § 300.505(a)(2) and (a)(4)---requiring the notice to include a description of the agency's action and the options the agency considered or rejected, as well as other factors relevant to the agency's proposal or refusal---clarify that written notice under EHA-B is notice of a public agency's final decision on a proposal or refusal. Following the receipt of the prior written notice, and before the agency's action would be implemented on the proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a FAPE to a child, a parent or a public educational agency has the right to request an impartial due process hearing "on any of the matters described in 34 CFR § 300.504(a)(1) and (2)." 34 CFR § 300.506(a). Thus, the written notice that constitutes the basis for a parent's hearing request must include the agency's final action, or decision, on the proposal or refusal.”

classroom, in which a child with a disability receives special education and related services. Public agencies are strongly encouraged to place a child with a disability in the school and classroom the child would attend if the child did not have a disability. However, a public agency may have two or more equally appropriate locations that meet the child's special education and related services needs and school administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.” *Letter to Trigg*, 50 IDELR 48 (OSEP November 30 2007).<sup>4</sup> See same at *Federal Register* / Vol. 71, No. 156 / Monday, August 14, 2006 / Rules and Regulations, Page 46588.

None of the communications between WCSD and the Parent regarding the administrative variance were with regard to changing the educational placement of the student from 100% of the time in a special education class to another placement option on the continuum of alternative placements or changing the student’s educational program in effect at the time of the student’s withdrawal from WCSD. 34 C.F.R. §300.503(a); NAC §388.300(8). All of the referenced communications regarding admission to an out-of-zone preschool program in advance of the enrollment of the student were with regard to the availability of an administrative variance to assign the student to a particular school, a location, once enrolled. As such, WCSD was not required to provide the Parent a Prior Written Notice in response to the Parent’s inquiries/requests regarding the availability of a variance for the student to attend an early childhood program at an out-of-zone school.

*Therefore, WCSD complied with the IDEA and NAC, Chapter 388, given WCSD was not required to provide the Parent a Prior Written Notice in the absence of a refusal on April 1, 2022 to provide the student a Free Appropriate Public Education, specifically with regard to the availability of a placement to implement the student’s IEP.*

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<sup>4</sup> This policy letter is publicly available at: <https://sites.ed.gov/idea/policy-guidance/>