

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA060117)**

Report Issued on July 31, 2017

INTRODUCTION

On June 1, 2017, the Nevada Superintendent of Public Instruction received a Complaint dated May 31, 2017 from an individual and a named organization¹ regarding the provision of a free appropriate public education to a student placed for non-educational reasons in an out-of-state private treatment facility under a physician's order due to medical necessity. The Complainant alleged violations of the obligations of the Washoe County School District (WCSD) to convene the student's Individualized Education Program (IEP) Team to ensure a free appropriate public education was provided to the student after the expiration of the annual IEP developed by the student's IEP Team in the WCSD. The Complainant's proposed resolution was to reimburse the facility for implementing the student's IEP for each school day.

The Complainant also raised an allegation in the Complaint regarding the WCSD's failure to implement its local procedures and comply with NRS §392.050 regarding school attendance. The Complainant was informed that while the Nevada Department of Education (NDE) has jurisdiction through its special education complaint process to investigate complaints alleging a violation of the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC) for special education programs, the NDE did not have jurisdiction over allegations regarding a school district's compliance with their local procedures or allegations of non-compliance with regard to NRS §392.050. The Complainant was referred to the WCSD for information regarding the applicable procedures if the Complainant wanted to pursue these allegations. The Complainant also alleged that the cited violation with regard to the named student in this Complaint was a systemic Complaint. While an alleged systemic violation is within the NDE's jurisdiction, the Complaint did not include the facts on which the statement of noncompliance was based as required by the IDEA, 34 C.F.R. §300.153(b)(2) and (4)(iv). Therefore, the Complainant was informed that the allegation that the violation was a systemic violation was not accepted for investigation.

Since the Complainant was not the parent of the named student, the Complainant was notified that in order for NDE to release any personally identifiable information to the Complainant, including the Complaint Investigation Report, the NDE must receive parental consent authorizing disclosure of such information to the Complainant. (34 C.F.R. §300.622, NAC §388.289) The student's Parent, as defined by the IDEA, 34 C.F.R. §300.030, and NAC §388.071, subsequently provided the required consent to the NDE.

All documents and arguments submitted by the Complainant and the WCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. The Complaint

¹ The Complaint was signed by the Complainant only in an individual capacity and the Complaint was investigated in that manner.

Investigation Team 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:

Issue:

Whether WCSD complied with federal and state requirements with regard to a student who is a legal resident of WCSD and was placed at an out-of-state psychiatric treatment facility for non-educational reasons on February 17, 2017, specifically with regard to the WCSD's obligation to convene the student's IEP Team and revise the student's IEP; and provide the student a free appropriate public education (FAPE) during the student's long-term placement in the facility.

FINDINGS OF FACT

General

1. The student's guardian, acknowledged as the Parent by the Complainant and the WCSD, resides in the WCSD. (IEP, 2005 Order of Custody and Support, Response of the Complainant)
2. The student is a Ward of the Court as a child who committed delinquent acts. The Juvenile Court in the Family Division of the Second Judicial District Court of the State of Nevada in and for the County of Washoe has exclusive jurisdiction over the student pursuant to the Juvenile Court Act. Relevant to this Complaint, the Nevada District Court ordered the student to be placed at an out-of-state mental health facility, hereinafter "Youth Center", and successfully complete the Youth Center program, including, any and all aftercare. The Court will conduct a review hearing after the student's release from the Youth Center to discuss the student's specific aftercare needs and the transition plan for the student. Notwithstanding the student's status as a Ward of the Court, the Court did not change the previously established status of the student's guardian/Parent in this Order. (Master's Recommendation Order after Hearing - In the Family Division of the Second Judicial District Court of the State of Nevada in and for the County of Washoe. Accepted and Approved by the District Judge on March 7, 2016 (hereinafter, "Court Order"), Response of the WCSD)
3. While members of the psychiatric team and probation office at the Nevada Juvenile Correctional Center made the placement recommendation regarding the student to the Family Division of the Nevada District Court, the WCSD was not involved in the development of a recommendation to the Court on the student's placement in the Youth

Center or the educational component of the student's treatment plan. (Court Order, May 2, 2017 WCSD Letter, Response of the Complainant, Response of the WCSD, Proposed Youth Center Contract)

4. The out-of-state Youth Center is a private for-profit psychiatric residential facility qualified to provide behavioral health and educational services to children and adolescents. The student was admitted to the Youth Center on February 17, 2017 and enrolled in the facility's for-profit school on that same day. (May 2, 2017 WCSD Letter, Response of the Complainant, Proposed Youth Center Contract)
5. The student is a student with a disability and during the relevant time period of this Complaint had a WCSD May 27, 2016 IEP in effect through May 27, 2017. The last day of the WCSD 2016/2017 school year was June 9, 2017. (IEP, WCSD 2016/2017 School Calendar)
6. The student's "end date" in the WCSD is documented as February 17, 2017 with the "end status" explanation as "W2d": out-of-state withdrawal to the Youth Center. (Student's Enrollment History)
7. Except for a time period from October 13, 2016 to October 30, 2016, the student was enrolled in the WCSD in the 2016/2017 school year until the recorded "end date" of February 17, 2017. This enrollment included the time period when the student was placed in a Nevada Juvenile Correctional Center and the WCSD administered the educational program at the facility. The Complainant asserts that a request was made for the student to re-enroll in the WCSD subsequent to the student's recorded withdrawal; however, no documentation was provided in the course of the investigation of any request to re-enroll the student in the WCSD by an authorized individual. (Student Enrollment History, Response of the WCSD, Response of the Complainant)
8. During the relevant time period of this Complaint, the student's Parent neither notified the WCSD of the student's withdrawal and placement out-of-state or the intended return of the student to the WCSD and re-enrollment; nor requested an IEP meeting to review and revise the student's IEP close in time to or any time after the student was admitted to the Youth Center. The WCSD also did not receive any communication from Washoe County Juvenile Services or the Nevada District Court during the time period of this Complaint regarding the student's return to and re-enrollment in the WCSD and/or review and revision of the student's IEP. The WCSD was first informed of the student's February 17, 2017 enrollment in the Youth Center, by the Youth Center itself. (Review of Records, Response of the WCSD, Youth Center Correspondence)
9. On February 23, 2017, the Youth Center requested the student's records from the WCSD citing confidentiality law authorizing the disclosure of records without parental consent to school officials with legitimate educational interests and other schools to which a student is transferring. (Youth Center-Request for School Records)
10. On March 31, 2017, the Youth Center contacted the WCSD informing the WCSD of the student's admission to the Youth Center on February 17, 2017 for non-educational reasons due to meeting medical necessity under a physician's order. In bold italics the communication indicated: ***Please Do Not Dis-enroll this Student from Your Membership.*** The Youth Center informed the WCSD that the Center operated an academic program accredited by the state of location; would like to work with the district in meeting the

student's educational needs simultaneous to receiving treatment; and had started to implement the student's IEP. The Youth Center noted that the IEP was coming up for review in May and indicated it would like the student's IEP Team to be convened to amend the student's IEP. The Youth Center did not request the WCSD provide educational services to the student during the student's admission at the Youth Center, but indicated the Youth Center wanted to work out a fiscal service agreement with the WCSD for the Youth Center's provision of education to the student. (March 31, 2017 Youth Center Notice of Admission)

11. The student's placement at the Youth Center is a long-term placement of an estimated nine months. No date of return to the State of Nevada or the WCSD is known. (Complaint, Response of the Complainant)
12. The WCSD responded to the Youth Center's March 31, 2017 notice that the WCSD would provide the student's education records, but as a parentally placed private school student the WCSD had no obligation to fund or provide services at that time. However, upon the student's re-enrollment in the WCSD, the WCSD indicated that all IEP services would resume as indicated in the student's IEP and a FAPE would be provided to the student. (April 7, 2017 WCSD Correspondence)
13. On April 28, 2017, the Complainant, on behalf of the Youth Center, contacted the WCSD indicating that they had not heard from WCSD regarding convening an IEP Team meeting for the student and informed WCSD that in the meantime the Youth Center would implement the student's IEP and intended to receive payment for doing so. Thereafter, the WCSD and the Complainant corresponded on this matter regularly prior to the filing of this Complaint. The WCSD consistently declined to either convene the student's IEP Team or fund the services at the Youth Center school given the student was a parentally placed student in a private school and/or that the student was not placed by the WCSD in the hospital placement. The Complainant consistently asserted that this was not a parentally placed private school student, but rather a student admitted under physician's order for meeting medical necessity for a diagnosed medical/mental condition; whose attendance was excused due to this condition; and who required the implementation of the student's IEP in the hospital setting. No documentation was provided in the course of the investigation that the student's attendance in the WCSD was excused due to this condition. (April 28, 2017 Complainant Email, Multiple Emails between the Complainant and WCSD, Review of the Record)
14. The Youth Center provided copies and invoices to WCSD and attendance documentation for the Youth Center's provision of education to the student from the date the student enrolled in the Youth Center school through June 2017. (Youth Center Invoices and Attendance Data, Youth Center Education IEP Goal Document)
15. In the course of the investigation, the Complainant asserted that Medicaid does not reimburse the Youth Center for educational services and provided a copy of the February 2017 Medicaid Service Manual. In response to an inquiry from the Complaint Investigation Team, the Washoe County Juvenile Probation Officer named in the Court Order informed the NDE that Medicaid does pay for the judicial placement of juveniles, which includes an educational component.² The educational component is part of the placed juveniles' treatment plan as well and is discussed, taken into consideration, and

² February 2017 Medicaid Service Manual, Section 403.81 provided by the Complainant refers to reimbursement for "psycho-educational services."

often reviewed in the monthly treatment reports. The NDE contacted the Parent to obtain consent to acquire information from Washoe County Juvenile Services regarding the student's placement at the Youth Center and the student's treatment plan; however, the Parent did not respond to the NDE's communications. (July 10, 2017 Email Senior Probation Officer - Washoe County Juvenile Services, Complaint and Response of the Complainant, Emails between WCSD and the Complainant Regarding Medicaid)

16. Pursuant to NRS, Chapter 394, the NDE does license private schools; however, the licensing of private schools is limited to in-state schools. The out-of-state Youth Center School is not licensed by the NDE. (NDE Website: Nevada Private Schools, NDE 2016-2017 Private School Directory, March 31, 2017 Youth Center Notice of Admission)

CONCLUSION OF LAW

FAPE

It is residence that creates the duty to provide FAPE under the IDEA. (34 C.F.R. §§300.101, 300.111) "Residence is not the location of the school or facility in the State where the child has been placed. As traditionally interpreted by the Department, a child is a resident of the State in which (1) the parent or guardian legally resides, or (2) the child is a ward of the State." (*Letter to Covall*, 48 IDELR 106 (OSEP, December 22, 2006)³ Nevada law and regulation regarding residence are consistent with the interpretation of the United States Department of Education. In order to effectuate the local educational agencies' reciprocal responsibility to the residents within their local jurisdiction, the NAC §388.215 allocates the responsibility to the public agency for the jurisdiction in which the child resides and requires specific measures to identify, evaluate and serve children with disabilities. In this case, the student is a Ward of the Nevada District Court (Finding of Fact (FOF) #2) and the student's Parent resides within the WCSD. (FOFs #1, #2)

Given the diverse laws and regulations that govern the placement of a student who is a resident of the State of Nevada and placed in a medical facility and the divergent legal positions of the Complainant and the WCSD (FOFs #12, #13), it is helpful to first describe the laws that do not apply to the facts in this case:

- Pursuant to the IDEA, Part B applies to public agencies within the State involved in the education of students with disabilities, including State and local juvenile correctional facilities. (20 U.S.C. §1412, 34 C.F.R §300.2(b)(1)(iv)) Relevant to this Complaint, the student was placed by the Nevada District Court in a medical treatment facility, not a juvenile correctional facility. (FOF #2) Therefore, this requirement is not applicable to the facts of the case.
- Pursuant to the IDEA and the NAC, students with disabilities who are placed by their parents in private schools must be provided with an opportunity, consistent with their number and location in the state, to participate in the programs of special education and

³ The Office of Special Education Programs, United States Department of Education. This policy letter is publically available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/all2006.html>

related services funded under IDEA, Part B (34 C.F.R. §§300.130-300.144). However, this opportunity provides equitable participation only and does not afford any parentally placed private school student who has a disability with an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. (34 C.F.R. §§300.137 - 300.138)⁴ The term "parentally placed private school children with disabilities" is defined as "...children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in §300.13 or secondary school in §300.36. . . ." (34 C.F.R. §300.130)

In this case, the student was not placed in the Youth Center by the student's Parent, but rather by the Nevada District Court who exercised its exclusive jurisdiction over the student.⁵ (FOF #2) Therefore, the student was not parentally placed in a private school and the provisions of law relating to parentally placed students in the IDEA and the NAC, Chapter 388, do not apply. (Furthermore, the private school is a for-profit school and would not qualify under the definitions of an elementary school in 34 C.F.R. §300.13 or a secondary school in 34 C.F.R. §300.36 that include the limitation of nonprofit status.)

- Pursuant to the IDEA, 34 C.F.R. §§300.2(c), 300.145 et seq., and NAC §388.282, each public agency in the State is responsible for ensuring that the rights and protections under the IDEA, Part B, are given to children with disabilities referred to or placed in private schools and facilities by that public agency as a means of providing special education and related services. "Public agency" is defined under the IDEA as including the State Educational Agency, a Local Educational Agency, Educational Service Agency, nonprofit charter school that is not otherwise included as a Local or Educational Service Agency and any ". . . other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. §300.33 See also NAC §388.092) In this case, the student was placed by the Nevada District Court, not by the WCSD or any other Nevada public agency as a means of providing special education and related services. (FOFs #2, #3, #10) Therefore, the WCSD is not responsible for the provision of FAPE for the student's placement or referral to the Youth Center facility/school by that public agency.
- The Youth Center's private school is located out-of-state and is not licensed by the NDE pursuant to NRS, Chapter 394. (FOFs #4, #10, #16) Although NRS Chapters 387 and 394 are not within the scope of this investigation, the Complaint Investigation Team notes that NRS §387.1225, regarding reimbursement to a hospital or other facility that provides residential treatment to children and operates a private school, requires a school to be licensed pursuant to NRS, Chapter 394, and the Youth Center school is not.

In accordance with the IDEA, 34 C.F.R. §300.101, a FAPE must be available to all children residing in the State. Pertinent to this case: "Children with disabilities enrolled in public schools . . . are entitled to a FAPE and must receive the full range of services under Part B of the IDEA."

⁴ This obligation applies to parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located and it is the local educational agency in which the school is located that is responsible for ensuring equitable participation. (34 C.F.R. §300.132)

⁵ See NRS, Title 5, Chapters 62B and 62E.

*(Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, 111 LRP 32532 (April 1, 2011 OSEP))*⁶

The provision of FAPE to an enrolled student would include instruction in hospitals to meet the needs of the student with a disability for special education and related services.⁷ (34 C.F.R. §§300.39 and 300.115(b); NAC §§388.115, 388.245(2)(b)) Therefore, if the student was enrolled in the WCSD from February 17, 2017 to May 31, 2017 and 'residing' in a hospital, the student would be entitled to the provision of FAPE by the WCSD. It is the student's IEP Team who would decide the student's need for special education and related services in that setting. In this case, the student was placed in the Youth Center, which is a psychiatric residential facility qualified to provide behavioral health and educational services to children and adolescents. (FOF #4) While the Complainant characterized the Youth Center as a hospital setting, given the discussion below regarding the student's withdrawal from WCSD, it is not necessary to discuss the nature of the Youth Center as a hospital in order to resolve this Complaint. (FOF #13)

No evidence was received in the course of the investigation that the student's Parent had been in contact with the WCSD since the student's placement at the Youth Center and enrollment in the Youth Center's school. During the relevant time period of this Complaint, the student's Parent neither notified the WCSD of the student's withdrawal and placement out-of-state or the intended return of the student to the WCSD and re-enrollment nor requested an IEP meeting to review and revise the student's IEP close in time to or any time after the student was admitted to the Youth Center. The WCSD also did not receive any communication from Washoe County Juvenile Services or the Nevada District Court during the time period of this Complaint regarding the student's return to and re-enrollment in the WCSD and/or review and revision of the student's IEP. In fact, the WCSD was first informed of the student's enrollment in the Youth Center by the Youth Center itself. (FOF #8)

NAC, Chapter 387, governs the enrollment and attendance of students in Nevada public schools. While compliance with NRS, Chapter 387, is not within the scope of the investigation, the standards of law regarding enrollment are relevant to the determination whether the student was enrolled in the WCSD and entitled to the provision of a FAPE. No documentation was provided in the course of this investigation that the student was excused from attendance due to the student's diagnosed medical/mental condition as asserted by the Complainant. (FOF #13)

With some exceptions not relevant to this case, a student remains enrolled in the public school until the student is transferred from the school. If a student enrolls in another school, the effective date of withdrawal⁸ is the day immediately after the last day that the student attended class. (NAC §387.200(2) and (3)) NAC §387.215 establishes the required recordation of the reason for the withdrawal of a student, with NAC §387.215(2)(d) as the reason of a student

⁶ This memorandum supersedes a previous memorandum and is publically available at: <http://idea.ed.gov/explore/view/p-old/,root,dynamic,QaCorner,1,..html> The public placement of a student in a private school/facility was previously discussed.

⁷ For example, children with disabilities residing in nursing homes who are publically placed by a non-educational State or local agency, such as a child welfare, social service, or other similar State agency, whether for educational or treatment reasons and their parents have the same rights under the IDEA as other students with disabilities. The United States Department of Education has indicated that, in that case, the school district in the placing State where the parent resides is responsible for ensuring that FAPE is provided to the child, including if the nursing home is located in a school district in a different State. To make FAPE available, the responsible agency must ensure an appropriate IEP is developed and implemented for the student. (*Dear Colleague Letter on Children with Disabilities Residing in Nursing Homes*, 67 IDELR 245 (OSEP, April 26, 2016)) This memorandum is publically available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/dcl-children-in-nursing-homes-04-28-2016.pdf>

⁸ NAC §387.117: "Withdrawal" means the removal of a pupil from the instructional program of a school before the completion of the program so that the pupil is no longer considered enrolled at that school.

who will receive educational services from a source other than the school district, specifically the withdrawal of the student to transfer and enroll in a school in another state. In this case, the student's "end date" in the WCSD is documented as February 17, 2017 with the "end status" explanation as "W2d": an out-of-state withdrawal to the Youth Center (FOF #6).

Therefore, in accordance with Nevada law and regulation, the student was not enrolled in the WCSD during the relevant time period of this Complaint and, given the assertion of the attempt to re-enroll the student, the Complainant does not contest that fact. (FOF #7) The student's placement at the Youth Center is until the student successfully completes the Youth Center program, including any and all aftercare. It is a long-term placement of an estimated nine months with no known date of return to the State of Nevada or the WCSD. (FOFs #2, #11)

Given the student was not enrolled in the WCSD during the period of withdrawal at issue in this Complaint, the WCSD was not responsible for the provision of FAPE to the withdrawn student as of February 17, 2017. As such, the WCSD was also not required to ensure the student's IEP Team reviewed the student's May 27, 2016 IEP periodically, but not less than annually. (34 C.F.R. §300.324(b), NAC §388,281(6)(a))

Based on the Parent's residence and the Nevada District Court's conduct of a review hearing after the student's release from the Youth Center to discuss the student's specific aftercare needs and the transition plan, the student may return to the State of Nevada and re-enroll in the WCSD sometime after the issuance of this Report. (FOF#2) As WCSD noted (FOF #12), upon the student's re-enrollment in the WCSD in accordance with the IDEA and Nevada law, the WCSD would be responsible for making FAPE available to this resident student with a disability, assuming the student's continued eligibility:

"Further, once a child with a disability re-enrolls in the public school, the local educational agency (LEA) has an obligation to convene an IEP meeting and develop an appropriate IEP for the child. 34 CFR § 300.324(b). A reevaluation may be necessary if the LEA "determines that the educational and related services needs ... of the child warrant a reevaluation or the child's parent or teacher requests a reevaluation" or it has been more than three years since the last evaluation. 34 CFR § 300.303(a)." (*Letter to Goldman*, 53 IDELR 97 (March 26, 2009, OSEP))⁹

Therefore, given the student was no longer enrolled in the WCSD as of February 17, 2017, the WCSD was not required to comply with federal and state requirements with regard to convening the student's IEP Team and revising the student's IEP; and providing the student a FAPE during the student's long-term placement in the Youth Center by the Nevada District Court and the student's enrollment in the Youth Center School.

⁹ This policy letter is publically available at:
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/all2009.html>