

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA080416)**

Report Issued on October 3, 2016

## **INTRODUCTION**

On August 4, 2016, the Nevada Superintendent of Public Instruction received a Complaint from Parents<sup>1</sup> alleging violations in the special education program of a student with a disability enrolled in the Washoe County School District (WCSD). The Parent alleged 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 (NRS) and the Nevada Administrative Code (NAC), specifically with regard to the issuance of a Prior Written Notice upon the WCSD's refusal to restore the communication accommodation for medical emergencies at the April 6, 2016 IEP meeting; parent participation in the development of the student's health and safety plan; and the implementation of the student's IEPs as follows: providing the accommodation of enlarged worksheets in the April 19, 2016 IEP; providing specially designed instruction to access the General Education curriculum with regard to engaging in classroom activities rather than being isolated with an aide and nurse; providing the opportunity to use the regular school bus for field trips with peers; providing a communication device in October 2015 to use the restroom; and providing a quarterly Report Card in June 2016.

The Parents were informed at the commencement of the process that allegations presented without supporting facts as required by the IDEA and the NAC, Chapter 388, and allegations of violations that occurred more than one year prior to the filing of the Complaint were not accepted for investigation. The Parents were also notified that the Nevada Department of Education (NDE) did not have jurisdiction in the Complaint process over local staff communication policies and an alleged violation regarding a Medicaid questionnaire and the Parents were referred to the appropriate offices.

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 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 ISSUES**

The allegations in the Complaint, further clarified during the investigation, raise the following issues in the 2015/2016 school year:

**Issue One: Whether the WCSD failed to provide the Parents with a timely Prior Written Notice with the required content upon its refusal at the April 6, 2016 IEP**

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<sup>1</sup> Some of the cited communications in this Report were with one Parent. The term 'Parents' will be used throughout this Report.

meeting to restore the communication accommodation in the student's IEP regarding the student's medical emergencies.

**Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect for the 2015/2016 school year with regard to:**

- a) Providing the accommodation of enlarged worksheets in the April 19, 2016 IEP;
- b) Providing specially designed instruction to access the General Education curriculum, specifically engaging in classroom activities rather than being isolated with a nurse and aide;
- c) Providing the opportunity to use the school bus for field trips with peers during extracurricular activities;
- d) Providing a communication device in October 2015 to request to use the restroom; and
- e) Providing a quarterly Report Card in June 2016.

**Issue Three: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to developing the student's health and safety plan without the Parents' participation.**

## **FINDINGS OF FACT (FOF)**

### **General**

1. The student had the following IEPs in effect in the 2015/2016 school year: a March 24, 2015 IEP; a May 11, 2015 IEP (partial revision only); and an October 7, 2015 Annual IEP with IEP revisions on April 6, 2016 and June 8, 2016. (2015/2016 IEPs)
2. The 2015/2016 school year was 180 days and ended on June 9, 2016. (School Calendar)
3. The student had 45 absences in both the AM and the PM and 61 absences for a half of a day or longer in the AM or PM in the 2015/2016 school year. (Student Period Attendance Detail)

### **Prior Written Notice – April 6, 2016 IEP Meeting**

4. The WCSD issued a Prior Written Notice on April 7, 2016 to implement the student's IEP revised on April 6, 2016. The Prior Written Notice did not include a date the IEP would be implemented, but the April 6, 2016 IEP provided that IEP services would begin on April 6, 2016. The WCSD did not provide any information on the date the Parents received the Prior Written Notice or on the actual IEP implementation date. The Parents participated in the April 6, 2016 IEP meeting and signed in agreement with the components of the IEP and their understanding that its provisions would be implemented as soon as possible after the IEP went into effect. (April 7, 2016 Prior Written Notice, April 6, 2016 IEP)

5. The content of the April 7, 2016 Prior Written Notice relevant to this issue was as follows: The proposal was to implement the IEP developed for the student on April 6, 2016; the reason for the action being proposed was revision of the IEP held on April 6, 2016. "Not Applicable" is noted for other options considered and "None" is noted for factors relevant to the proposal. (April 7, 2016 Prior Written Notice)
6. At the April 6, 2016 IEP meeting, the IEP Team refused to include the communication protocol requested by the Parents to call the Parents upon the student having a seizure, other emergencies or the occurrence of questions or concerns. This communication accommodation had been included in the student's May 11, 2015 IEP. The April 6, 2016 IEP did include: See Nurse Report and Health Plan and refer to most recent Health Care Plan in the student's IEP in the list of the student's accommodations. The student's Health Care Plan provided that the student's mother would be contacted via school administrator or designee by cell phone or land line within two minutes of the onset of a seizure. (April 6, 2016 IEP, May 4, 2016 Health Care Plan, May 11, 2015 IEP)
7. On April 19, 2016, the Parents contacted the WCSD and requested a written refusal and explanation of the WCSD's refusal of the Parents' proposed action to include the requirement to call the Parents at the onset of any seizure in the student's IEP. On May 4, 2016, the School Principal responded to the Parents' second request that she was working on it and would let the Parents know. (Review of Documents, April 19, 2016 Email from the Parents to the WCSD)
8. On June 11, 2016, the WCSD provided the requested Prior Written Notice dated June 10, 2016 to the Parents. The Prior Written Notice included the content that the WCSD refused the action that the Parents requested; that is, the following wording to be put in the IEP: "mom will be called by any staff with any questions, concerns, or emergencies." The description of the refused change was that "the team considered parent request, but is refusing to put this wording in the IEP. The team/staff will follow what is outlined in the current health care plan." This latter phrase is repeated in the content areas of "this action is being proposed or refused because of" and "the following options were considered" and "the action proposed or refused above is based on the following evaluation procedures, assessment records or reports." (Response of Parents, June 10, 2016 Prior Written Notice)

## **Implementation**

### **Enlarged Worksheet**

9. The student's April 6, 2016 IEP has the Supplementary Aid/Service<sup>2</sup> of providing enlarged worksheets/books at the student's instructional level. The frequency of services was during instructional time and the location of the service was in the General Education setting. (April 6, 2016 IEP)
10. When the Parent observed the classroom, she observed items in the classroom were not enlarged. The date of the observation is unknown. (Parent Interview)

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<sup>2</sup> The student had a number of modifications, accommodations or support for student or personnel, all of these Supplementary Aids and Services will be called "accommodation(s)" in this Report.

11. The Complaint Investigation Team requested documentation of the provision of the accommodation of enlarged worksheets in the student's IEP and the WCSD did not provide documentation that this accommodation was implemented during instructional time in the General Education setting. (NDE Issue Letter, WCSD Response)

### **Engage in Classroom Activities**

12. The student's 2015/2016 IEPs provides that the student will spend 98% of the school day in the regular education environment. The student also had an IEP goal that the student, given opportunities for interaction, would participate effectively in a range of conversations and collaborations with adults and peers and, in the April 6, 2016 IEP, a goal that, given exposure to common core curriculum, the student will increase the ability to participate in class by using augmentative alternative communication. (2015/2016 IEPs)
13. The student's 2015/2016 IEPs provide School Nurse services as a related service for six hours a day in the General Education setting, adult support for learning, and adult supervision for safety during the instructional day as accommodations. When the Parent observed the classroom, the student was in the corner, reportedly with the student's School Nurse and aide, not participating in class and the rest of the class was working on sight words. (2015/2016 IEPs, Parent Interview)
14. The only specially designed instruction in the student's IEPs for the 2015/2016 school year was small group English Language Arts/Math instruction to support the General Education curriculum for 45 minutes a week in the General Education setting. (March 24, 2015, October 7, 2015, and April 6, 2016 IEPs)
15. The student has an Inclusion Matrix dated February 4, 2016 that is a school day schedule for the student. No documentation was provided by the WCSD on the fidelity of staff to the schedule. The Inclusion Matrix specifically includes participation with other students in the areas of specially designed instruction in the student's IEP, such as peer collaboration in math centers and vocabulary whole group discussion as well as independent work in activities such as sight words, writing and math activities. The only English Language Art or Math small group activity in the Inclusion Matrix is in Math where the student would choose a small group of peers to join for 15 minutes. (February 4, 2016 Inclusion Matrix)
16. The Complaint Investigation Team requested documentation that the student was provided the student's specially designed instruction in the 2015/2016 school year, specifically regarding opportunities to engage in classroom activities. The WCSD did not provide documentation that the student's specially designed instruction was provided in a small group 45 minutes a week. (NDE Issue Letter, WCSD Response)
17. The student's Report Card for the fourth quarter reflects grades below standard in English Language Arts and Math. It is noted throughout the Report Card that the student's absences impact progress. (Fourth Quarter Report Card)

### **Field Trips**

18. The field trip transportation issue arose in January, February and April 2016 for up to three field trips. The WCSD and the Parent are in agreement that the issue with regard to the student using the regular school bus was due to the WCSD's determination that the student required a seat belt as a safety issue and none of the WCSD's regular school buses had student seat belts. (Complaint, WCSD Response)
19. The concern of the WCSD with regard to the student's field trip transportation on the regular school bus was the ability to control the seizures and emergency procedures on the regular school bus; even if the student was accompanied by the student's assigned School Nurse and aide. The WCSD offered to transport the student on field trips on one of the specialized buses with seat belts. The Parent declined and drove the student to the field trips. (WCSD Response, Emails on Upcoming Field Trips, School Nurse Documentation, Parent interview)
20. The student does not use either regular or specialized school transportation provided by the WCSD. The student's Parents have declined specialized transportation and transport the student to and from school. The student's October 7, 2015 and April 6, 2016 IEPs do not include transportation as a related service or as an accommodation to be provided in extracurricular and nonacademic settings. (October 7, 2015 IEP, April 6, 2016 IEPs, WCSD Response)

### **Communication Device – October 2015**

21. The incident regarding the use of a communication device occurred prior to October 2, 2015. The Parent met with the Principal to discuss that the student's communication device used to convey the need to use the restroom had been taken away. (Complaint)
22. The student's May 11, 2015, October 7, 2015, and April 6, 2016 IEPs include the IEP Team's determination that the student required Assistive Technology Devices and Services and that this need was addressed in the student's IEP. (2015/2016 IEPs)
23. The May 11, 2015 IEP provides no Assistive Technology as Special Education, a related service or accommodation to the student. The student is provided with an Assistive Technology Service as a related service in the April 6, 2016 and October 7, 2015 IEPs; however, it is only consultative for two hours per year in the General Education setting. In response to an inquiry from the Complaint Investigation Team regarding documentation of the provided Assistive Technology Devices/Services, the WCSD noted the references to devices in the student's April 6, 2016 IEP in the Present Levels of Academic Achievement and Functional Performance and an annual goal. (2015/2016 IEPs, WCSD Response)
24. The student's October 7, 2015 and April 6, 2016 IEPs include an annual goal on self-help skills with a benchmark that, given full physical and direct verbal prompts, the student will indicate the need to use restroom by pointing to a picture or communication button. This annual goal and benchmark or other specific mention of the communication button for use of the restroom was not in the IEP in effect at the commencement of the 2015/2016 school year. However, the student's communication goal in the IEP in effect at the commencement of the school year did include a benchmark that the student would initiate use of an aided communication system such as a pragmatically-organized dynamic display (PODD) and attempt to communicate something. (2015/2016 IEPs)

25. The Complaint Investigation Team requested documentation of the provision of a communication device for the student to request the restroom in October 2015 and the WCSD did not provide documentation that the communication devices referenced in the student's IEPs were provided. (NDE Issue Letter, Review of Documents)

#### **June 2016 Quarterly Report Card**

26. The method for reporting the student's progress toward meeting the annual goals in the student's April 6, 2016 IEP is the use of a Specialized Progress Report and the District Report Card. The projected frequency of reports is quarterly. (April 6, 2016 IEP)
27. After several communications with the Principal initiated by the Parent requesting the June 2016 quarterly Report Card, the Principal delivered the student's Report Card to the Parents at their residence on June 13, 2016. (Complaint, Email Communications between the WCSD and the Parents)

#### **Parent Participation – Health and Safety Plan**

28. Based on the additional information in the Parents' response to this Complaint investigation, the referenced health and safety plan was the Health Care Plan after the October 7, 2015 IEP was in effect. (Parents' Response, 2015/2016 IEPs, Physician Orders)
29. The student's October 7, 2015, April 6, 2016, and June 8, 2016 IEPs all include as accommodations: "See Nurse Report and Health Plan" for specifically listed medical concerns in the locations of the General Education and Special Education settings with the frequency of during the school day; and, a separate accommodation, "Refer to most recent health care plan" in the Special Education setting with the frequency of during school hours. The Prior Written Notices for the implementation of the student's October 7, 2015 and the June 8, 2016 IEPs and the corrected Prior Written Notice for the April 6, 2016 IEPs all refer to the communication protocol. The WCSD did not provide any additional documentation that the IEP Team discussed the Health Care Plan in its entirety. (October 7, 2015, April 6, 2016, and June 8, 2016 IEPs)
30. The Parents requested at least one IEP meeting to discuss the student's emergency seizure plan, among other topics. The WCSD did affirmatively respond to this request that other IEP Team members would be contacted on their availability. A meeting did take place on February 11, 2016 with the Parent, the Principal and two School Nurses from the School Health Services staff; however, it was not an IEP meeting. (January 29, 2016 Email from Parents to WCSD, Emails between the Parents and the WCSD on the Meeting, Meeting Notices)
31. The Parents did participate in the development of the student's Health Care Plan throughout the 2015/2016 school year, including attending multiple meetings with the Principal, Director of Student Health Services, School Nurse, and other WCSD personnel. Communication with the Parents after the student had a seizure was discussed by the student's IEP Team and the IEP Team may also have discussed the Physician's orders for the student being placed in the IEP. (Emails between WCSD and the Parents, June 10, 2016 Prior Written Notice)

32. The WCSD's procedures for the Development and Implementation of Student Health Care Plans describe the process by which the WCSD develops and implements individualized student Health Care Plans. It is the School Nurse at the assigned school who is responsible for the development, implementation and revision of student Health Care Plans. Input for each Health Care Plan will be based on information the School Nurse obtains from a multidisciplinary health team that may include the parent/guardian. (WCSD - Development and Implementation of Student Health Care Plans)
33. The WCSD responded affirmatively that the student's Health and Safety Plan was determined by the student's IEP Team based on the input of the Team members, including the School Nurse, and referenced the Health Care Plan Procedures as documentation of that process. However, the Complaint Investigation Team determined that the WCSD procedures do not support the WCSD's position that the Health Care Plan incorporated by reference in the student's IEPs was discussed and determined by the student's IEP Team. (Parents' Response, Emails between WCSD and the Parents, May 19, 2016 Internal WCSD Email, School Nurse Documentation, NDE Issue Letter, Request for Additional Information, WCSD - Development and Implementation of Student Health Care Plans, 2015/2016 IEPs)

## CONCLUSION OF LAW

### **Issue One: Whether the WCSD failed to provide the Parents with a timely Prior Written Notice with the required content upon its refusal at the April 6, 2016 IEP meeting to restore the communication accommodation in the student's IEP regarding the student's medical emergencies.**

In accordance with the IDEA, 34 C.F.R. §300.503, and NAC §388.300, 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 (FAPE) to the student. In relevant part, a Prior Written Notice has the following mandatory content: a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal. (34 C.F.R. §300.503(b))

In this case, the Parents do not dispute the receipt of the Prior Written Notice upon the revision of the student's IEP on April 6, 2016, but rather whether the Prior Written Notice was provided a reasonable time before the implementation of the IEP and had the required content, specifically the consideration of the Parents' request to include the communication protocol for emergencies in the student's IEP and the reasons the IEP Team rejected this proposal.

A Prior Written Notice serves an important purpose:

"We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to

supplement placement, if any." (*Union School District v. B. Smith*, 15 F.3d 1519; 20 IDELR 987, 990 (9th Cir. 1994))

## Timing

The WCSD issued a Prior Written Notice on April 7, 2016 to implement the student's IEP revised on April 6, 2016. The Prior Written Notice did not include a date the IEP would be implemented, but the April 6, 2016 IEP provided that it was to be implemented on April 6, 2016. The WCSD did not provide any information to the contrary on the implementation date or on the date the Prior Written Notice was actually provided to the Parents. (FOF #4)

The Parents did sign agreement with the components of the IEP and their understanding that its provisions would be implemented as soon as possible after the IEP goes into effect. (FOF #4) Does the Parents' agreement with the student's IEP vitiate the Prior Written Notice requirements in the IDEA, 34 C.F.R. §300.503, and the NAC §388.300? No. "If, during an IEP meeting, the team, including the parent, agrees to a change in the, child's services, the public agency must provide written notice in accordance with 34 CFR §300.503. Providing such notice following an IEP Team meeting where such a change is proposed — or refused — allows the parent time to fully consider the change and determine if he/she has additional suggestions, concerns, questions, and so forth." (*Letter to Lieberman*, 52 IDELR 18 (OSEP, August 15, 2008))<sup>3</sup>

Neither the IDEA nor the NAC, Chapter 388, provide a specific timeline for the issuance of a Prior Written Notice: "We do not believe that it is necessary to substitute a specific timeline to clarify what is meant by the requirement that the notice be provided within a reasonable period of time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child....prior written notice is provided in a wide variety of circumstances for which any one timeline would be too rigid and, in many cases, might prove unworkable." (Discussion of the IDEA regulations: Vol. 71, Fed. Reg. pg. 46691 (August 14, 2006))

However, it is clear that the Prior Written Notice was required to be provided to the Parents a reasonable period **before** the implementation of the public agency's proposed or refused initiation/change (34 C.F.R. 300.503). In this case, even without consideration of the corrected June 11, 2016 Prior Written Notice more than two months after the implementation of the student's IEP, the April 7, 2016 Prior Written Notice was untimely since the student's IEP was implemented the day prior to the issuance of the Prior Written Notice. (FOF #4)

## Content

At the April 6, 2016 IEP meeting, the student's IEP Team refused to include the communication accommodation requested by the Parents with regard to calling the Parents upon the student having a seizure, other emergencies or the occurrence of questions or concerns. (FOF #6) The April 7, 2016 Prior Written Notice issued by the WCSD included the notation "Not Applicable" for a description of other options that the IEP Team considered and the reasons why those options were rejected; and "None" for a description of other factors that are relevant to the agency's proposal or refusal. (FOF #5)

The WCSD only provided a description of the Parents' requested action and the reasons why this proposed action was rejected in the June 11, 2016 Prior Written Notice after repeated requests of the Parents. (FOFs #7, #8) While the Parents were present at the IEP meeting,

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<sup>3</sup> This policy letter is publically available at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcitrs/all2008.html>



knew the IEP Team rejected their proposal to restore the communication accommodation in the student's IEP (FOF #4), and received a belated corrected Prior Written Notice (FOF #8), this did not diminish the WCSD's obligation under the IDEA and the NAC to provide a Prior Written Notice with the required content a reasonable period of time before the student's IEP was implemented. However, it is a relevant consideration regarding the remedy for this noncompliance.

*Therefore, the WCSD failed to provide the Parents with a timely Prior Written Notice with the required content upon its refusal at the April 6, 2016 IEP meeting to restore the communication accommodation in the student's IEP regarding the student's medical emergencies.*

**Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect for the 2015/2016 school year with regard to:**

- a) Providing the accommodation of enlarged worksheets in the April 6, 2016 IEP;**
- b) Providing specially designed instruction to access the General Education curriculum, specifically engaging in classroom activities rather than being isolated with a nurse and aide;**
- c) Providing the opportunity to use the school bus for field trips with peers during extracurricular activities;**
- d) Providing a communication device in October 2015 to request to use the restroom; and**
- e) Providing a quarterly Report Card in June 2016.**

Pursuant to NAC §388.281(6)(g) and the IDEA, 34 C.F.R. §300.17(d), the WCSD was required to provide the services and instruction deemed necessary for the student by the IEP Team. The WCSD was also required to establish a system of records for the purpose of verifying that each student identified as a student with a disability received services appropriate to the disability pursuant to the NAC §388.215(5)(b).

### **Enlarged Worksheet**

The student's April 6, 2016 IEP had the accommodation of providing enlarged worksheets/books at the student's instructional level during instructional time in the General Education setting. (FOF #9) When the Parent observed the classroom, she observed items in the classroom were not enlarged; however, it is unknown whether this observation was after April 6, 2016. (FOF #10)

The Complaint Investigation Team requested documentation of the implementation of the student's April 2016 IEP with respect to providing the accommodation of enlarged worksheets and the WCSD did not provide documentation that this accommodation was implemented during instructional time in the General Education setting. (FOF #11) In the absence of the documentation required pursuant to NAC §388.215(5) to confirm the WCSD's consistent implementation of this accommodation and the Parent's allegation otherwise, the Complaint Investigation Team determined that the WCSD failed to provide the student the accommodation of providing enlarged worksheets/books at the student's instructional level during instructional time in the General Education setting.

## **Engage in Classroom Activities**

The student's 2015/2016 IEPs provide that the student will spend 98% of the school day in the regular education environment. The student also had an IEP goal that the student, given opportunities for interaction, would participate effectively in a range of conversations and collaborations with adults and peers and, in the April 6, 2016 IEP, a goal that, given exposure to common core curriculum, the student will increase the ability to participate in class by using augmentative alternative communication. (FOF #12) The only specially designed instruction in the student's IEPs for the 2015/2016 school year was small group English Language Arts/Math instruction to support the General Education curriculum for 45 minutes a week in the General Education setting. (FOF #14)

The Complaint Investigation Team requested documentation that the student was provided the student's specially designed instruction in the 2015/2016 school year, specifically regarding opportunities to engage in classroom activities. (FOF #16) The WCSD did provide an Inclusion Matrix for a portion of the school year that represents a school day schedule for the student. While the Inclusion Matrix raises the possibility that, in the area of Math, the WCSD might have implemented the required number of minutes of the small group specially designed instruction in that area from February 4, 2016 on, no documentation was provided by the WCSD on the fidelity of staff to the schedule. (FOF #15)

When the Parent observed the classroom, the student was in the corner not participating in class and the rest of the class was working on sight words. (FOF #13) Given the specially designed instruction in the student's IEP in small group English Language Arts/Math instruction was only for 45 minutes a week, this observation was not determinative on this issue. However, in the absence of the documentation required pursuant to NAC §388.215(5) to confirm the WCSD's consistent implementation of the required specially designed instruction (FOF #16) throughout the school year and the Parent's allegation otherwise, the Complaint Investigation Team determined that the WCSD failed to provide the required student's specially designed instruction in a small group 45 minutes a week.

## **Field Trips**

The field trip transportation issue arose in January, February and April 2016 for up to three field trips. The WCSD and the Parent are in agreement that the issue with regard to the student using the regular school bus was due to the WCSD's determination that the student required a seat belt as a safety issue and none of the WCSD's regular school buses had student seat belts. (FOFs #18, #19)

The student does not use either regular or specialized transportation provided by WCSD. The student's Parents have declined specialized transportation and transport the student to and from school. As such, the student's October 7, 2015 and April 6, 2016 IEPs do not include transportation as a related service or any accommodations for transportation to be provided in extracurricular and nonacademic settings. (FOF #20) The WCSD did offer to transport the student on the field trips in a specialized bus with seat belts. The Parent declined the offer and drove the student to the field trips. (FOF #19) In the absence of a provision in the student's IEP regarding the student's transportation to and from school and/or school activities, the Complaint Investigation Team determined the WCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's IEPs in effect for the 2015/2016 school year relative to the use of the regular school bus for field trips with peers.

## **Communication Device – October 2015**

In accordance with the NAC §388.284(1)(d), a student's IEP must include a statement of the Assistive Technology Devices and Services necessary for the student to be able to receive a FAPE. Such services may be provided as Special Education; related services; or supplementary aids and services. (See also 34 C.F.R. §300.105) This statement of the Assistive Technology Devices and Services in the student's IEP is an important requirement because the student's entitlement to a FAPE under the IDEA would include the provision of Assistive Technology Devices and Services in accordance with the student's IEP. (34 C.F.R. §300.17)

An Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability (34 C.F.R. §300.5). The student's May 11, 2015, October 7, 2015, and April 6, 2016 IEPs include the IEP Team's determination that the student required Assistive Technology Devices and Services and that this need was addressed in the student's IEP. (FOF #22)

All of the student's IEPs in effect in the 2015/2016 school year include references to the student's use of aided communication devices in the student's Present Levels of Academic Achievement and Functional Performance and annual goals. (FOF #24) The student's October 7, 2015 and April 6, 2016 IEPs even specifically include reference to the use of a picture or communication button to indicate the need to use restroom in one of the student's annual goals and an Assistive Technology Service as a related service, specifically consultative services two hours per year. (FOFs #23, #24) However, while the aided communication devices referenced in all of the student's 2015/2016 IEPs meet the definition of an Assistive Technology Device pursuant to the IDEA, 34 C.F.R. §300.5, the student is not provided any aided communication devices as Special Education, a related service or as an accommodation as required by NAC §388.284(1)(d). (FOF #32)

Although the annual goal and benchmark or other specific mention of the communication button for use of the restroom was not in the IEPs in effect at the commencement of the 2015/2016 school year when the incident occurred (FOF #21), the Complaint Investigation Team determined that the references to the use of aided communication devices in those IEPs (FOFs #23, #24) was sufficient to establish the student's right of access to a communication device to communicate this need. Given the absence of the required documentation pursuant to the NAC §388.215(5)(b) of the WCSD's provision of the accommodation of a communication device for the student to request the restroom in October 2015 (FOF #25) and the absence of a clear delineation of the communication devices required to be provided to the student pursuant to NAC §388.284(1)(d), the Complaint Investigation Team determined that the WCSD failed to provide the student a communication device to communicate the need to use the restroom in October 2015 as required by the student's IEPs.

## **June 2016 Quarterly Report Card**

The 2015/2026 school year ended on June 9, 2016. (FOF #2) The method for reporting the student's progress toward meeting the annual goals in the student's April 6, 2016 IEP is the use of Specialized Progress Report and the District Report Card. The projected frequency of reports is quarterly. (FOF #26) The Report Card at issue in this Complaint is the fourth quarter Report Card. While the Parents did initiate several communications with the Principal requesting the Report Card, the Parents received the student's Report Card on June 13, 2016, four calendar

days after the end of the school year. (FOF #27) As such, the Complaint Investigation Team determined the WCSD did implement the student's IEP with regard to providing a quarterly Report Card in June 2016.

*Therefore, the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to implement the student's IEP with regard to providing the opportunity to use the school bus for field trips with peers during extracurricular activities and a quarterly Report Card in June 2016; but failed to comply with regard to the provision of the accommodation of enlarged worksheets in the April 6, 2016 IEP; the specially designed instruction to access the General Education curriculum, and the provision of a communication device in October 2015 to request to use the restroom.*

**Issue Three: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to developing the student's health and safety plan without the Parents' participation.**

In accordance with the IDEA, 34 C.F.R. §§300.321(a)(1) and 300.501(b)(1), and NAC §§388.281(2)(d) and 388.302(1), the parent of the student with a disability is a member of the student's IEP Team and must be afforded an opportunity to participate in meetings with respect to the provision of a FAPE to the student.

Neither the IDEA nor the NAC, Chapter 388, address the required participants in the development of a Health Care Plan for a student with specialized health care needs or require a student's Health Care Plan to be included in the student's IEP. The WCSD's procedures for the Development and Implementation of Student Health Care Plans describe the process by which the WCSD develops and implements individualized student Health Care Plans. It is the School Nurse at the assigned school who is responsible for the development, implementation and revision of student Health Care Plans. Each Health Care Plan is based on information the School Nurse obtains from a multidisciplinary health team that **may** include the parent/guardian. (FOF #32)

In this case, the student's IEPs in effect incorporated the student's Health Care Plan by reference as several required accommodations to be provided to the student. (FOFs #28, #29) As such, it was the student's IEP Team (34 C.F.R. §300.324(a); NAC §388.281(2)) who was required to consider and determine the content of the Health Care Plan based on the concerns of the Parents, the results of the most recent evaluation of the student; and the health care needs of the student, including Physician orders and the School Nurse's recommendations.<sup>4</sup>

The Complaint Investigation Team noted that the Parents did participate in the development of the student's Health Care Plan throughout the 2015/2016 school year, including attending multiple meetings that were not IEP meetings. (FOFs #30, #31) As discussed in Issue One, the student's IEP Team did discuss the communication protocol with the Parents after the student had a seizure and there is some documentation that the IEP Team may also have discussed the Physician orders for the student being placed in the IEP. (FOF #31)

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<sup>4</sup> It is important to note that the NDE is not asserting a requirement that students' Health Care Plans are required to be included in all students' IEPs or that the WCSD's local procedures for the development and implementation of Health Care Plans are inconsistent with the IDEA or the NAC, Chapter 388, for all students. This conclusion is based solely on the facts of this case, specifically the incorporation by reference of the students' Health Care Plan as accommodations in the student's IEP.

The WCSD responded affirmatively to an inquiry from the Complaint Investigation Team that the student's Health and Safety Plan was determined by the student's IEP Team based on the input of the IEP Team members, including the School Nurse, and referenced the Health Care Plan Procedures as documentation of that process. (FOF #33) Contrarily, the Complaint Investigation Team determined that the WCSD procedures establish the School Nurse is the sole individual responsible for the development and revision of Health Care Plans and the participation of parents is not required. No other documentation was provided to confirm the student's IEP Team, including the Parents, considered and developed the IEP content of the accommodations of the incorporated Health Care Plan in its entirety. (FOF #33)

*Therefore, the WCSD failed to comply with the IDEA and the NAC, Chapter 388, with respect to developing the student's health and safety plan without the Parents' participation in that the student's IEP Team, including the Parent, did not develop, review and revise the student' IEP with regard to the student's Health Care Plan incorporated by reference as accommodations to be provided to the student.*

## **ORDER FOR CORRECTIVE ACTION**

The WCSD is required to take corrective action to address the violations found in this Complaint investigation, specifically the failure to provide the Parents with a timely Prior Written Notice with the required content; to implement the accommodation of enlarged worksheets, the specially designed instruction to access the General Education curriculum, and a communication device in October 2015 to request to use the restroom; and the failure of the IEP Team, including the Parent, to develop the student's Health Care Plan incorporated into the student's IEP.

### **Directed Action Plan**

1. The WCSD must provide the Compensatory Education of 15 hours of tutoring to the student in the areas of English Language Arts and Math, the areas of specially designed instruction that the student received grades below standard (FOFs #14, #17). Due to the IEP requirement of small group instruction in these areas, other students in the student's class may be included in a small group for this tutoring so long as the incidental benefit to these students without disabilities is in accordance with the IDEA, 34 C.F.R. §300.208, on the permissive use of funds. The tutoring may be provided by school personnel and must take place after school or during days students are not in attendance at school. Any worksheets/books used in the tutoring must be provided in enlarged print for the student, if that requirement is still in effect in the student's current IEP. The Compensatory Education must be provided to the student no later than the end of the 2016/2017 school year. The amount, content and/or timeline for the delivery of the Compensatory Education may be changed if the WCSD and the Parents agree in writing to the change and provide the agreement to the NDE prior to the third quarter of the 2016/2017 school year.

The calculation of the Compensatory Education time was based on the failure of the WCSD to provide 45 minutes a week of small group instruction in the General Education classroom during the equivalent of approximately 20 weeks of school that the student was in attendance at school in the 2015/2016 school year. (FOFs #1, #14)

The WCSD must provide documentation to the NDE of the delivery of the Compensatory Education to the student within 15 days of its completion.

2. Unless the WCSD and the Parents agree in writing to do otherwise and provide that agreement to the NDE, the WCSD must convene the student's IEP Team to include the Assistive Technology Devices and Services determined necessary for the student by the IEP Team as Special Education, related services and/or accommodations in the student's IEP. In addition, if the student's current IEP includes the incorporation of the student's Health Care Plan, the IEP Team must discuss the Health Care Plan and determine the content unless the IEP Team determines the student's IEP should be revised in this regard. If, at the IEP meeting, the WCSD IEP Team members and the Parents do not agree on the contents of the IEP with regard to these two matters, the WCSD must timely issue a Prior Written Notice to the Parents with the required content of the proposals or refusals of the WCSD.

## **Training**

Within 30 days of the receipt of this Report, the WCSD must arrange for, and complete, a meeting, individually and or collectively, of all of the General Education teachers in the student's school responsible for implementing the student's IEP, to put into place a system of records to document the provision of each accommodation and specially designed instruction in the student's IEP. The IEP in effect at the time of the meeting, along with a description of the system of records set up for its implementation must be submitted to the NDE within 15 days of the meeting.

At this meeting or no later than 60 days from the receipt of this Report, the WCSD must conduct a training with at least the Principal and other representative of the school who attends IEP meetings, any other individual at the school responsible for the issuance of Prior Written Notices, and the student's General Education and Regular Education teacher(s) on:

- The contents of a Prior Written Notice, specifically with regard to the actions requested by a Parent and refused by the WCSD and the timing for the issuance of Prior Written Notices.
- The need to include all determined Special Education, related services and/or accommodations in a student's IEP with a clear delineation of the service, the frequency of the service and the location of the service.
- The need for a student's IEP Team to make determinations on the content of any external plans for the student incorporated by reference in a student's IEP.

The WCSD must provide a method for the WCSD to determine that the participants have mastered the contents of the training. Documentation of that mastery and the completion of the training must be submitted to the NDE within 15 school days after the training.