

COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA090916)

Report Issued on November 3, 2016

INTRODUCTION

On September 9, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent (hereinafter, Parent or Complainant) of an adult student with a disability alleging violations in the special education program of a student with a disability attending school in the Washoe County School District (WCSD). The Complainant 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 WCSD's failure to get consent from the adult student for reevaluations; consent and participation from the adult student with regard to the Multidisciplinary Psychoeducational Team Report and Eligibility and participation in an exit IEP meeting; and failure to implement the adult student's Individualized Education Program (IEP) with regard to the issuance of a summary of performance upon graduating from high school, the administration of the STAR reading assessment in Spring 2016, transition services, and provided the student the Assistive Technology of a cell phone at no cost.

The Nevada Department of Education (NDE) has jurisdiction through its special education complaint process to investigate complaints alleging a violation of the requirements of the IDEA or the Nevada Administrative Code for special education programs that occurred not more than one year prior to the date that the Complaint is received. (34 C.F.R. §300.153(c); NAC §388.318(1)(b)) The Complainant was informed that that the issues accepted for investigation were limited to allegations of noncompliance that occurred on or after September 9, 2015.

All documents submitted by the Complainant 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.

Unauthorized Practice of Law

As a preliminary matter, the NDE acknowledges the WCSD's assertion that there is no legal basis for an individual other than an attorney or the person whose rights are claimed to be violated under the IDEA to file a Complaint pursuant to the IDEA, 34 C.F.R. §300.151 et seq., and NAC §388.318. While this argument was proffered and rejected by the NDE in a recently issued WCSD Complaint Report with cited authority, the WCSD asserts a lack of understanding as to the authority for another person to file a Complaint pursuant to the IDEA. In its legal argument, the WCSD cites a recent IDEA Hearing Officer's Order of Summary Judgment in the State of Nevada on the absence of the authority of these parents to represent the educational interests of their adult student in a due process hearing pursuant to the IDEA, 34 C.F.R. §300.507, and NAC §388.310. As indicated below the State Complaint process is an

administrative dispute resolution process distinct from an administrative hearing with differing standards on the requisite filing party.

In the hope of providing some additional clarity on this matter, the WCSD is once again directed to the express authority under the IDEA, 34 C.F.R. §§300.151(a)(1) and 300.153, authorizing **an organization or individual** to file a signed written complaint under the procedures described in §§300.151 through 300.152. In response to the inquiry, regarding who can file a State Complaint, the United States Department of Education, Office of Special Education Programs (OSEP), provided this response:

“Answer: Not only a child's parent, but any organization or individual, may file a signed written complaint that includes: (1) a statement that a public agency has violated a requirement of Part B or its implementing regulations; (2) the fact(s) on which the statement is based; and (3) an allegation of a violation that did not occur more than one year prior to the date that the complaint is received. (See SEC. 300.662). **This requirement is different for a due process hearing in which only a parent (or a student exercising rights that have transferred at the age of majority (see SEC. 300.517)) or the public agency may initiate a hearing. (SEC. 300.507(a)).**” (Bolded for emphasis.)¹

Consistently, the NAC §388.318 provides that a person, as the term is defined in NRS §0.039, may file a complaint. NRS §0.039 defines a person as follows: “Except as otherwise expressly provided in a particular statute or required by the context, “person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.”

As in the prior Complaint, the WCSD would like the NDE to take action on the alleged unauthorized practice of law caused by the filing of “legal documents or performing legal analysis for another person.”² The NDE does have jurisdiction, and the responsibility, to determine whether an intended Complaint meets the requirements of the IDEA, 34 C.F.R. 300.153, and the NAC §388.318 and has done so in this case. (See the September 12, 2016 acceptance letter) The Complainant is an individual/person and authorized to file a Complaint pursuant to the IDEA, 34 C.F.R. 300.153, and the NAC §388.318. The NDE does not have the jurisdiction to determine whether an individual is involved in the unauthorized practice of law. The WCSD and the Complainant are directed to the Nevada State Bar for additional information on complaints regarding the authorized practice of law.³ Unless the law changes in regard to the filing party for a State Complaint, the WCSD is informed that any argument regarding the unauthorized practice of law in the future will be summarily rejected by the NDE with reference to this Report.

¹ See *Memorandum to Chief State School Officers*, 34 IDELR 264 (OSEP, July 17, 2000) Note that the sections cited for Complaints were renumbered in the 2006 regulations. This memorandum is publically available at: www2.ed.gov/policy/speced/guid/idea/letters/2000-3/osep0020.71700safeguards.3q2001.doc See Complaint Report #WA072516 for the additional procedures the NDE must take when an individual other the child's parent files a student specific Complaint to ensure confidentiality. The adult student submitted the Power of Attorney at issue as proof of the Complainant to act on the student's behalf. The NDE obtained the adult student's consent to release personally identifiable information in this case since the Complainant cited the Power of Attorney as questionable authority in this Complaint.

² The IDEA, 34 C.F.R. §300.512(a) defers to State law with regard to whether parties have the right to be represented by non-attorneys at due process hearings and NAC §388.310(1) limits representation in a due process hearing by counsel. Neither the IDEA nor the NAC, Chapter 388, provide a right of representation in the State Complaint system, but only provide the authority to an individual or organization to file a Complaint.

³ <https://www.nvbar.org/lawyerreferral/unauthorized-practice-of-law/>

COMPLAINT ISSUES

The allegations in the Complaint that are under the jurisdiction of the NDE to investigate through the special education complaint process raise the following issues for investigation on or after September 9, 2015:

Issue One:

Whether the WCSD complied with the IDEA and the NAC, Chapter 388 with respect to parental consent, specifically:

- a. Obtaining consent from the 18 year old student prior to conducting a reevaluation requiring the student's consent after September 9, 2015, including the conduct of the Functional Behavior Analysis in Spring 2016.**
- b. Obtaining the student's acknowledgment of the receipt of the Multidisciplinary Psychoeducational Team Report on September 15, 2015; and obtaining the student's consent to the Eligibility Team Report.**

Issue Two:

Whether the WCSD provided a meeting notice to the student of the WCSD's proposed exit IEP meeting.

Issue Three:

Whether the WCSD provided the student with a summary of the student's academic achievement and functional performance upon the termination of the student's eligibility, specifically the student's graduation from high school with a standard diploma.

Issue Four:

Whether the WCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2015/2016 IEP commencing September 9, 2015 with regard to:

- a) Assistive Technology, specifically a recent Assistive Technology assessment before graduation; a comprehensive list of the student's current Assistive Technology equipment and services; and the provision of the required cell phone at no cost to the student.**
- b) Transition Services, specifically working with the student on developing a resume, master application and portfolio in the Fall of 2015,**
- c) Administering the STAR reading assessment in the Spring of 2016.**

FINDINGS OF FACT (FOF)

General

1. The student informed the NDE that the student fully understood and agreed with the Complaint that was submitted by the student's Parent regarding the student's enrollment in the WCSD. (September 26, 2016 Letter to NDE, Parent and Student Interview)
2. While there was an IEP meeting on November 17, 2015 to revise the student's IEP and a number of attempts to convene other IEP meetings, including an IEP Facilitation, the only IEP in effect after September 9, 2016 was the August 20, 2015 annual IEP. The IEP review date was February 2, 2016 and the anticipated duration of services was February 2, 2016. (August 20, 2015 IEP)
3. After the expiration of the services in the August 20, 2015 IEP, the WCSD and the Complainant were parties to a due process hearing with Due Process Complaints filed on April 29, 2016 and June 7, 2016 by the adult student's parents, The expiration of the duration of services in the student's August 20, 2016 IEP was not an issue in this Complaint. During the course of the hearing, the parties agreed to a change to the August 20, 2016 IEP only with regard to some content not at issue in this Complaint. (IEP, Hearing Officer's April 25, 2016 Email to the Parties, Hearing Officer's Stay Put Order)
4. The student graduated from the WCSD and obtained a standard diploma on June 9, 2016. (Complaint, Transcript, WCSD calendar)

Age of Majority and Power of Attorney

5. The student turned 18 years of age on July 23, 2015. The WCSD and the Complainant agree that the rights under the IDEA and the NAC, Chapter 388, transferred to the adult student upon reaching the age of majority. The student has not been determined judicially to be incompetent and neither party alleges that the student is incompetent. (Power of Attorney, Complaint and Response)
6. After the transfer of educational rights to the student on July 23, 2015, the student signed a "Limited Durable Power of Attorney for the Purpose of Making Decision Related to Educational Advocacy" (hereinafter, Power of Attorney) on July 27, 2015. The Power of Attorney was prepared by an attorney in the State of Nevada and the student's signature was notarized. There were no school days between when the student turned 18 and the granting of the Power of Attorney to the student's parents. (School Calendar, Power of Attorney)
7. The Power of Attorney authorizes the student's parents to act as the student's agent and power of attorney for all purposes related to the student's educational advocacy. The Scope of the Power of Attorney granted by the student provides: "I grant to each Agent authority to make any decision relating to my education or educational advocacy which I would otherwise be able to make if I were present. . . I intend that the authority granted to my Agent to be broadly and liberally construed, so that my Agent can access all relevant information and communicate with any person and take any action, legal or otherwise, that relates or is relevant to my education." (July 27, 2015 Power of Attorney)

8. The student retained the right to terminate the Power of Attorney by written instrument: “This Power of Attorney shall not be terminated except by written instrument signed and dated by me and provided to the educational institution in which I am enrolled or in which I have expressed an interest.” The WCSD did not inform the adult student at any time during the student’s enrollment in the WCSD that the Power of Attorney would not be accepted for matters requiring the student’s participation or consent. (July 27, 2015 Power of Attorney, Parent and Student Interview)

Consent

9. The WCSD obtained consent for the reevaluation of the student from the student’s Parent on May 20, 2015. (May 20, 2015 Parent Consent)
10. As part of the reevaluation of the student, the members of the student’s eligibility/IEP Team reviewed the available information in May 2015 to determine the scope of the evaluation and the need for additional data. (May 19 – 20, 2015 Determination of Scope of Evaluation & Need for Additional Data)
11. Some of the assessment procedures based on the May 20, 2015 Parent consent were conducted in August and September 2015, after the student turned 18. However, only one assessment procedure, the assessment of performance in the current educational setting⁴, was dated after September 9, 2015, the time period of this Complaint. The assessment of performance was conducted through a review of the existing data of the Nevada High School Proficiency Exam; the ACT High School Report; the student’s Fall and Spring 2015 semester grades; the assessment of health; the Star Reading Assessment; reported progress toward IEP goals; and progress monitoring data. The only test administered to the student in the assessment of performance was the WIAT-III that was conducted prior to September 9, 2015. (September 9, 2015 Multidisciplinary Psychoeducational Team Report)
12. There was an anomaly in that the date of the assessment of performance in the current educational setting was September 14, 2015. This date is after the date of the Multidisciplinary Psychoeducational Team Report, but prior to the date the student’s Parent and the School Psychologist signed the Report. In response to a question from the Complaint Investigation Team, the WCSD clarified that the September 14, 2015 date reflected the school psychologist’s finalization of the grade check between September 9, 2015 and September 14, 2015. (September 9, 2015 Multidisciplinary Psychoeducational Team Report, WCSD Response)
13. The student’s parent signed in the Parent Signature block on the Multidisciplinary Psychoeducational Team Report on September 15, 2015. The signature acknowledges: “I have reviewed this report and received a copy. I understand that I can submit a written response or propose changes to this report. I have been notified that I may request to review the information used as the basis for this report.” There is no student signature. (September 9, 2015 Multidisciplinary Psychoeducational Team Report)
14. The Statement of Eligibility, Eligibility Team Report, is dated September 15, 2015. The Signature block is entitled “Eligibility Team Members” and includes the Parent’s

⁴ The assessment of performance in the current educational setting is reflected in the content: Assessment of Instruction in Current Educational Setting” in the Multidisciplinary Psychoeducational Team Report. (WCSD Response)

signature, not the student's. The form includes acknowledgement, by the mark of an "x", that the parents have been provided a copy of the report and any other documentation relating to the determination of the student's eligibility. The WCSD did not obtain consent from the adult student or the student's Parent for the determination of continued eligibility on September 15, 2015. (September 15, 2015 Statement of Eligibility, Eligibility Team Report)

15. The only other reevaluation of the student during the time period of this Complaint was a Functional Behavioral Assessment. The WCSD obtained consent for the conduct of a Functional Behavioral Assessment from the student's Parent on December 18, 2015. The precise date of the Functional Behavioral Assessment is unknown. (December 18, 2015 Parent Consent, March 14, 2016 Prior Written Notice)

Exit IEP Meeting

16. While there were email communications between the WCSD and the Complainant regarding availability for an exit IEP meeting, no meeting notice was issued to the Complainant or adult student and no IEP meeting was held. (May 11, 2016 Email from WCSD to the Complainant, WCSD Response, Complaint)
17. Regarding the exit IEP, the Complainant informed the WCSD on May 10, 2016 that the student's independent Neuropsychological Assessment as well as the WCSD's September 2015 Multidisciplinary Psychoeducational Team Report were acceptable documents from which a college could determine the student's accommodations. Further the Complainant informed the WCSD that the IDEA does not require an exit IEP and requested that the IEP Team not reconvene. (May 10, 2016 Parent Email to WCSD)

Summary of Performance

18. The WCSD did issue a fourth quarter Progress Report on June 15, 2016 on the student's mastery of the Measureable Annual Goals with comments for each goal. The June 15, 2016 Progress Report acknowledges the student's graduation, but does not include any recommendations regarding the student's post-secondary goals. (April 6, 2016 and June 15, 2016 Progress Reports)

Implementation

Assistive Technology and Transition Services

19. The student's August 20, 2015 IEP provided Transition Services that included, in relevant part:
 - a. The following Related Services: Before graduating high school, the student will be given a recent Assistive Technology evaluation and the student's IEP will contain a comprehensive list of the student's current Assistive Technology equipment and services; and the school will continue to provide the student with Assistive Technology devices to increase independence and organizational skills necessary for post-secondary success. (The term "recent" was not clarified in the student's IEP.)
 - b. In the Fall of 2015, WCSD Transition Services and the school will work with the student to develop a resume, master application, and portfolio. (IEP)

20. The Complainant requested an Independent Educational Evaluation in Assistive Technology by Easter Seals sometime prior to October 13, 2015 and it was expected to be completed in December 2015. The WCSD provided the Complainant information on obtaining the requested Assistive Technology assessment by Easter Seals. The WCSD acknowledged in this letter and the October 13, 2015 Prior Written Notice that the conduct of the Independent Educational Evaluation would depend on Easter Seals' availability to assess the student. The WCSD followed up on the conduct of the Assistive Technology Assessment on January 26, 2016 and not thereafter. No report or invoice for the Independent Educational Evaluation was received by the WCSD and the WCSD assumed the assessment was not conducted on that basis. (October 13, 2016 WCSD Letter to the Parent, WCSD Response, October 19, 2015 Prior Written Notice, WCSD Status Record for November 17, 2015, January 26, 2016 WCSD Email to the Parent, Review of Documents)
21. The WCSD relied upon the attempt to provide the Independent Educational Evaluation by Easter Seals in December 2015 to demonstrate compliance with the requirement in the student's IEP to conduct an Assistive Technology assessment before graduation. (WCSD Response, Review of Documents)
22. The student's August 20, 2015 IEP included the following description of the student's Assistive Technology Devices: Student will consistently continue use of Assistive Technology supports outlined in the document titled "Assistive Technology Tracker in the Classroom" to include cell phone to record assignments, phone to access read-aloud resources, and music device (phone - only during independent work and not at volume which disrupts other students). The IEP also references the use of Assistive Technology Devices in Supplementary Aids and Services. (IEP)
23. The Assistive Technology Tracker in the Classroom for the 2015/2016 school year lists devices in two locations: a list of the tools to be used and data collection chart. The tools to be used are: writing rubric, laptop, readout loud/phone, music device, drop box/active inspire and electronic planer/phone. The devices in the data collection are: laptop, cell phone, head phone and phone. In the WCSD's response, the WCSD indicated the student was provided a laptop, iPod, calculator, graphic organizer, laptop with text to speech and external mouse, accessible print for reading materials (i.e. bookshare), links to online reading materials and headphones to cancel out districting noise. (WCSD Response, Assistive Technology Tracker)
24. The student's August 20, 2015 IEP includes the Related Service of Assistive Technology – consultative twice yearly for 20 minutes at 10 minutes per quarter in the General Education Setting. No further description of this service is provided in the student's IEP. There was no evidence provided in the course of the investigation that any of the IEP meetings being considered and/or convened prior to the student's graduation from high school were for the purpose of providing a comprehensive list of Assistive Technology Devices and Services. (IEP)
25. The WCSD did not provide a cell phone to the student and relied upon the student's personal cell phone for the implementation of the student's IEP goals and objectives involving this device. There was no agreement between the WCSD and the Complainant or adult student regarding the use of the student's personal property at no charge. The cell phone was at the cost of the Parent. The Complainant did not request

reimbursement for the cost of the student's cell phone as a remedy in this Complaint. (October 19, 2016 Prior Written Notice, WCSD Response, Complaint)

26. The WCSD provided documentation on the implementation of the Assistive Technology of the student's cell phone in the 2015/2016 school data. The data provided documented that three of the seven teachers implemented the Assistive Technology of the cell phone in the Classroom in the first semester and one of six teachers did so in the second semester. (First and Second Semester Assistive Technology Trackers)

Transition

27. The student was enrolled in a Transition Support class, Student Success/Transition Support, throughout the 2015/2016 school year. The WCSD responded that during this class, students are provided instruction in transitional activities such as resume building, completing job applications, and completing other post-secondary activities. The Complaint Investigation Team requested documentation of the instruction in the Fall of 2015 that evidences work with the student on developing a resume, master application and portfolio. The teacher for the class confirmed the class did "work on some stuff", including resumes and how to fill out applications. The student's resume was reportedly sent home with the student at graduation. No documentation was provided on the provision of these services, the date of the services, or the involvement of both the WCSD Transition Services and the school. (Student Schedule, WCSD Response)
28. The WCSD did provide a document entitled "60 Second Me" with two paragraphs filled out by the student that identified the student, the school attended, participation in job training, the industry in which the student had an interest, and the student's personal strengths. The documentation also included a Career Exploration Worksheet filled out by the student in November 2015. (60 Second Me, Career Exploration Worksheet)

Star Assessment

29. The Supplementary Aids and Services in the student's IEP included: an internet based reading assessment during the Student Success/Transition Support class from February 2, 2015 to February 2, 2016 at midterms; end of semesters; and beginning of school years. The student's Supplementary Aids and Services also included an internet based math assessment, but the administration of this assessment was not an issue in this Complaint. (IEP)
30. The WCSD confirmed the internet based reading assessment in the student's IEP was intended to be the STAR Assessment. The student was administered the STAR Reading test on October 12, 2015, December 17, 2015, and March 17, 2016. (Student Diagnostic Report, WCSD Response)
31. WCSD's grading periods for the 2015/2016 school year ended October 9, 2015, December 17, 2015, March 18, 2016 and June 9, 2016. Spring break was March 21, 2016 to April 1, 2016. (WCSD 2015-2016 Calendar)

CONCLUSION OF LAW

Age of Majority and Power of Attorney

Pursuant to the IDEA, 34 C.F.R. §300.520, and NAC §388.195, with some exceptions not applicable in this case, any right accorded to a parent of a student with a disability by the IDEA or NAC, Chapter 388, transfers to the student when the student attains the age of 18 years. The student turned 18 years of age on July 23, 2015.⁵ The WCSD and the Complainant agree that the rights under the IDEA and the NAC, Chapter 388, transferred to the adult student upon reaching the age of majority. (FOF #5)

After the transfer of educational rights to the student on July 23, 2015, the student signed a Power of Attorney. The Power of Attorney was prepared by an attorney in the State of Nevada and the student's signature was notarized. (FOF #6) The Scope of the Power of Attorney granted by the student provides: "I grant to each Agent authority to make any decision relating to my education or educational advocacy which I would otherwise be able to make if I were present. . . I intend that the authority granted to my Agent to be broadly and liberally construed, so that my Agent can access all relevant information and communicate with any person and take any action, legal or otherwise, that relates or is relevant to my education." (FOF #7) The student retained the right to terminate the Power of Attorney by written instrument. (FOF #8)

In the discussion of the transfer of rights in the 2006 IDEA regulations, the United States Department of Education deferred to State law on matters such as the granting of a power of attorney:

"Whether parents may retain the ability to make educational decisions for a child who has reached the age of majority and who can provide informed consent is a matter of State laws regarding competency. That is, the child may be able to grant the parent a power of attorney or similar grant of authority to act on the child's behalf under applicable State law. We believe that the rights accorded individuals at the age of majority, beyond those addressed in the regulation, are properly matters for States to control." (Vol. 71 Fed. Reg. pg. 46713 (August 14, 2006))

In this case, the student has not been judicially determined incompetent and neither party alleges that the student is incompetent (FOF #5); therefore, the student's competency to grant a Power of Attorney is not at issue. Neither the NRS nor the NAC, Chapter 388, address the granting of the Power of Attorney by an adult student after the transfer of rights.

However, there are extensive provisions under the Power of Attorney (Uniform Act) in NRS, Chapter §162A.200 et seq., including protection under NRS §162A.360(2) for a person that, in good faith, accepts an acknowledged power of attorney. It is important to note that neither party alleges the Power of Attorney is invalid. The crux of the allegation in this Complaint is that if the Complainant was unable to represent the educational interests of the adult student in the previously referred to due process hearing, then the WCSD improperly relied upon the adult student's granted Power of Attorney in the Complainant's exercise of the adult student's rights in the provision of educational services to the student.

As explained in detail in the introduction to this Complaint, there are distinctions between the State Complaint process and the due process hearing process. The Order of Summary Judgement addressed the absence of the authority of the parents to **represent** the educational

⁵ Any reference to "parent" in this Report with regard to the exercise of a right under the IDEA or the NAC, Chapter 388, after the transfer of rights to the student on July 23, 2015 means the adult student.

interests of their adult student in a due process hearing pursuant to the IDEA, 34 C.F.R. §300.507, and NAC §388.310 (that limits representation in a due process hearing by counsel). The Power of Attorney proffered by the adult student's parents to the WCSD after the transfer of rights to the student **grants authority** to the parents to act as the student's agent to make decisions relating to the student's education which the student would otherwise be able to make if present.

As such, the underlying premise in Issue One and Two, that the WCSD improperly relied on the student's grant of authority to the parents to act as the student's agent in the Power of Attorney, is unfounded.

Issue One:

Whether the WCSD complied with the IDEA and the NAC, Chapter 388 with respect to parent consent, specifically:

- a. Obtaining consent from the 18 year old student prior to conducting a reevaluation requiring the student's consent after September 9, 2015, including the conduct of the Functional Behavior Analysis in Spring 2016.**
- b. Obtaining the student's acknowledgment of the receipt of the Multidisciplinary Psychoeducational Team Report on September 15, 2015; and obtaining the student's consent to the Eligibility Team Report.**

Consent

Pursuant to the IDEA, 34 C.F.R. §300.300(c), and NAC §388.300(1), the WCSD was required to obtain informed written parental consent before conducting additional assessments in the student's reevaluation. However, parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation. (34 C.F.R. §300.300(d)(1)(i); NAC §300.300(6))

The WCSD obtained the Parent's consent for the reevaluation of the student on May 20, 2015, prior to the transfer of rights to the student. (FOFs #5, #9) There was only one assessment procedure during this reevaluation (FOF #11) that was dated after the transfer of rights to the student and after September 9, 2015, the time period of this Complaint. In the course of the investigation, the Complaint Investigation Team determined that the activity that occurred after the transfer of rights constituted the review of existing data (FOF #12) and was not subject to consent pursuant to the IDEA, 34 C.F.R. §300.300(d)(1)(i) and NAC §300.300(6). Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388, in obtaining consent on May 20, 2015 for the conduct of the reevaluation of the student.

The WCSD obtained consent from the student's Parent on December 18, 2015 to conduct a subsequent reevaluation, a Functional Behavioral Assessment. (FOF #15) In accordance with the IDEA, 34 C.F.R. §300.520(a)(1)(ii) and NAC §388.195(1), the right of consent had transferred to the adult student for the conduct of this assessment since the student reached the age of majority on July 23, 2016. (FOF #5) In reliance on the Power of Attorney granted by the adult student to the student's parents, the WCSD obtained the student's consent as required by

the IDEA and the NAC, Chapter 388 for the conduct of the Functional Behavioral Assessment from the student's agent.

In accordance with the IDEA, 34 C.F.R. §300.306(a)(2), upon the completion of the administration of assessments and other evaluation measures, the public agency must provide a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent. In this case, the WCSD provided the adult student's Parent a copy of the Multidisciplinary Psychoeducational Team Report and other documentation relating to the determination of the student's eligibility on September 15, 2015, after the transfer of rights to the student. (FOFs #13, #14) In reliance on the Power of Attorney granted by the adult student to the student's parents, the WCSD permissibly provided a copy of the evaluation report and the documentation of the determination of eligibility to the adult student through the student's agent.

Pursuant to the IDEA, 34 C.F.R. §300.300, and NAC §388.300, informed written consent must be obtained from the parents of the student before conducting an initial evaluation, before conducting additional assessments in a reevaluation, and before special education and related services are initially provided to a student with a disability. Neither the IDEA nor the NAC, Chapter 388, required the WCSD to obtain consent from the adult student or the student's agent for the determination of the student's continued eligibility on September 15, 2015.

Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388 with respect to parent consent, specifically obtaining consent from the adult student through the student's agent prior to conducting the only assessment requiring consent after September 9, 2015, the conduct of the Functional Behavior Analysis; and providing the adult student the Multidisciplinary Psychoeducational Team Report and Eligibility Report on September 15, 2015 through the student's agent. The adult student's consent was not required for the determination of continued eligibility.

Issue Two:

Whether the WCSD provided a meeting notice to the student of the WCSD's proposed exit IEP meeting.

In accordance with the NAC §388.281(8)(b), the public agency must provide the parents of a student written notice of the purpose, date, time and location of the IEP meeting. (See also 34 C.F.R. §300.322(a)(1)) Neither the IDEA nor the NAC, Chapter 388, require an exit IEP meeting before the termination of a student's eligibility prior to graduation with a regular high school diploma.⁶ In this case, while there were email communications between the WCSD and the Complainant regarding availability for an exit IEP meeting, no meeting notice was issued to the Complainant or adult student. (FOF #16) The Complainant requested the exit IEP meeting not be held and it was not. (FOFs #16, #17) The Complainant asserts in the Complaint, that the WCSD failed to ask the adult student if the student wanted an exit IEP meeting. Since the adult student's agent was authorized to make decisions relating to the student's education, the WCSD was justified in relying on the communications of the agent with regard to the conduct of an exit IEP meeting and no written notice was required to be provided since the IEP meeting was not scheduled.

⁶ It was noted that the draft WCSD Special Education Procedures Manual, October 22, 2015, section 7.5.9. does require an exit IEP. It does not appear that this draft Manual was finalized.

Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388, in that no meeting notice was required to be provided to the student for the exit IEP meeting that was not scheduled.

Issue Three:

Whether the WCSD provided the student with a summary of the student's academic achievement and functional performance upon the termination of the student's eligibility, specifically the student's graduation from high school with a standard diploma.

In accordance with the IDEA, 34 C.F.R. §300.305(e)(3), and NAC §388.340(8), for a student whose eligibility is terminated due to graduation from secondary school with a regular diploma, the public agency must provide the student with a summary of the student's academic achievement and functional performance, which must include recommendations on how to assist the student in meeting the student's postsecondary goals.

In response to a question on what information is required and what information would be helpful to include in the summary of performance (SOP), the United States Department of Education, OSEP, responded: "The SOP must include recommendations on how to assist the child in meeting his or her postsecondary goals. The IDEA does not otherwise specify the information that must be included in the SOP; rather, State and local officials have the flexibility to determine the appropriate content to be included in a child's SOP, based on the child's individual needs and postsecondary goals."⁷

Therefore, the WCSD had some flexibility with regard to the content of the summary of the student's academic achievement and functional performance and recommendations on how to assist the student in meeting the student's postsecondary goals, but it had to be done. In this case, the WCSD never provided the adult student or the student's agent a document that was clearly intended to be a summary of the student's academic achievement and functional performance or provided recommendations on how to assist the student in meeting the student's postsecondary goals.

The WCSD did issue a fourth quarter Progress Report on June 15, 2016 on the student's mastery of the Measureable Annual Goals with comments for each goal. The June 15, 2016 Progress Report acknowledges the student's graduation, but does not include any recommendations regarding the student's post-secondary goals. (FOFs #4, #18) Given the flexibility of the information to be included in the summary of performance, the content of the fourth quarter Progress Report may provide, at least in part, a summary of the student's academic and functional performance. However, given the mandatory inclusion of recommendations on how to assist the student in meeting the student's postsecondary goals, the Complaint Investigation Team determined the WCSD failed to provide the student the required summary of performance.

Therefore, the WCSD failed to comply with the IDEA and the NAC, Chapter 388, to provide the student with a summary of the student's academic achievement and functional performance upon the termination of the student's eligibility, specifically the student's graduation from high school with a standard diploma.

⁷ *Questions and Answers on Secondary Transition* (OSEP, 2011). This memorandum is publically available at: <http://idea.ed.gov/explore/view/pl.root.dynamic.QaCorner,10>,

Issue Four:

Whether the WCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2015/2016 IEP commencing September 9, 2015 with regard to:

- a) Assistive Technology, specifically a recent Assistive Technology assessment before graduation; a comprehensive list of the student's current Assistive Technology equipment and services; and the provision of the required cell phone at no cost to the student.**
- b) Transition Services, specifically working with the student on developing a resume, master application and portfolio in the Fall of 2015.**
- c) Administering the STAR reading assessment in the Spring of 2016.**

The requirements of the provision of a free appropriate public education to students with disabilities under the IDEA and the NAC, Chapter 388, necessitate that special education and related services are provided in conformity with an IEP. (NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101) The WCSD was 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).

The student's IEP at issue in this Complaint was the August 20, 2015 IEP. While the duration of all services was only to February 2, 2016, the Complainant and the WCSD are in agreement that, with a minor change, this is the IEP in effect through the end of the 2015/2016 school year. The expiration of the duration of services in the August 20, 2015 IEP is not at issue in this Complaint. (FOFs #2, #3)

Assistive Technology

The student's August 20, 2015 IEP provided the Transition Service that before graduating high school, the student would be given a recent Assistive Technology evaluation and the student's IEP would contain a comprehensive list of the student's current Assistive Technology equipment and services. The term "recent" was not quantified. (FOF #19) The Complainant requested an Independent Educational Evaluation in Assistive Technology sometime prior to October 13, 2015 and it was expected to be completed in December 2015. (FOF #20) The WCSD did provide the Complainant information on obtaining the requested Assistive Technology assessment by Easter Seals, but indicated that the conduct of the Independent Educational Evaluation would depend on the evaluator's availability to assess the student. The WCSD followed up on the conduct of the Assistive Technology assessment on January 26, 2016 and not thereafter and later concluded the assessment was not conducted. (FOFs #20, #21)

The WCSD relied upon their attempt to provide the Independent Educational Evaluation to demonstrate compliance with the requirement in the student's IEP to conduct an Assistive Technology assessment before graduation. (FOF #21) However, the assessment was not conducted and the WCSD remained responsible for the implementation of the student's IEP requiring a recent Assistive Technology evaluation before the student graduated high school. Therefore, the WCSD failed to implement the student's IEP in this regard.

List

The student's August 20, 2015 IEP provided the Transition Service that before graduating high school, the student's IEP would contain a comprehensive list of the student's current Assistive Technology equipment and services. (FOF #19) The only description of the student's Assistive Technology Service was the inclusion of the Related Service of Assistive Technology – consultative twice yearly for 20 minutes 10 minutes per quarter in the General Education Setting. (FOF #24)

The student's August 20, 2015 IEP did include a description of a noninclusive list of the student's Assistive Technology Devices and incorporated by reference the Assistive Technology supports outlined in the "Assistive Technology Tracker in the Classroom". (FOF #22) The Complaint Investigation Team determined that based on the WCSD's response to an inquiry regarding the list of Assistive Technology Devices, that the student's IEP and the incorporated Assistive Technology Tracker in the Classroom (FOFs #22, #23) did provide some of the Assistive Technology Devices used by the student, but not all of the Devices.

The Complaint Investigation Team recognizes that there were multiple attempts to reconvene the student's IEP Team to review and revise the student's August 20, 2016 IEP, including a discussion of an exit IEP meeting. (FOFs #2, #16) Therefore, the inclusion of an updated list of Assistive Technology Devices in the IEP was not possible due to the inability to complete any such revision. However, there was no evidence provided in the course of the investigation that any of the IEP meetings being considered and/or convened prior to the student's graduation from high school were for the purpose of providing a comprehensive list of Assistive Technology equipment and services (FOF #24) or that the WCSD provided a comprehensive list of the student's current Assistive Technology equipment and services in any other manner prior to the student graduating high school. Therefore, the Complaint Investigation Team determined that while the WCSD complied in part with the requirement to provide the student a list of the student's current Assistive Technology equipment and services, it was not comprehensive as required by the student's IEP.

Cell Phone

The student's August 20, 2015 IEP included the following description of the list of the student's Assistive Technology Devices: Student will consistently continue use of Assistive Technology supports outlined in the document titled "Assistive Technology Tracker in the Classroom" to include a cell phone to record assignments. (FOF #22) The Assistive Technology Tracker in the Classroom also includes the cell phone, without further specification of its purpose. (FOF #23)

The WCSD did not provide a cell phone to the student and relied upon the student's personal cell phone for the implementation of the student's IEP with regard to the use of this Assistive Technology Device. (FOFs #25, #26) In accordance with the IDEA, 34 C.F.R. §300.17 a free appropriate public education means special education and related services that are provided at public expense and without charge. Given that there was no agreement/waiver between the WCSD and the Complainant or the adult student regarding the use of the student's personal property at no charge and the cell phone was at the cost of the Complainant (FOF #25), the WCSD failed to provide the student the required Assistive Technology Device of a cell phone.

Transition Services

The student's August 20, 2015 IEP provided Transition Services that included the Related Service that in the Fall of 2015, WCSD Transition Services and the school would work with the student to develop a resume, master application, and portfolio. (FOF #19) The student was enrolled in a Transition Support class, Student Success/Transition Support, throughout the 2015/2016 school year. (FOF #27) The WCSD responded that during this class, students are provided instruction in transitional activities such as resume building, completing job applications, and completing other post-secondary activities. The Complaint Investigation Team requested documentation of the instruction in the Fall of 2015 that evidences work with the student on developing a resume, master application and portfolio. While the student's teacher confirmed the class did "work on some stuff", including resumes and how to fill out applications and reported that the student's resume was sent home with the student at graduation, the WCSD did not maintain or provide documentation of these activities, including with regard to the date of the services or the involvement of both the WCSD Transition Services and the school. (FOFs #27, #28)

Based on the report of the student's teacher, this Related Service may have been implemented in part. (FOFs #27, #28) However, in the absence of the documentation required pursuant to NAC §388.215(5)(b) to confirm the implementation, the Complaint Investigation Team determined that the WCSD failed to work with the student to develop a resume, master application, and portfolio consistent with the student's IEP.

STAR Reading Assessment

The Supplementary Aids and Services in the student's IEP included: an internet based reading assessment during the Student Success/Transition Support class at midterms; end of semesters; and beginning of school years. (FOF #29) There is no requirement of a Spring administration of the internet based reading assessment.

The internet based reading assessment in the student's IEP was intended to be the STAR Assessment and it was administered on October 12, 2015, December 17, 2015, and March 17, 2016. (FOF #30) Based on the administration of the STAR Assessment on March 17, 2016, the day before the end of the third grading period which was midterm second semester and prior to Spring Break (FOF #31), the Complaint Investigation Team determined the WCSD complied in the implementation of the student's IEP in the administration of the student's internet based reading assessment.

Therefore, the WCSD complied with the IDEA, 34 C.F.R. §300.502, and the NAC §388.450, with regard to the administration of the student's internet based reading assessment, but failed to comply with regard to implementation of a recent Assistive Technology assessment before graduation; a comprehensive list of the student's current Assistive Technology equipment and services; the provision of the required cell phone at no cost to the student; and working with the student on developing a resume, master application and portfolio in the Fall of 2015.

ORDER FOR CORRECTIVE ACTION

The WCSD is required to take corrective action to address the violations found in this Complaint investigation, specifically the WCSD's failure to provide the student with a summary of the student's academic achievement and functional performance upon graduation from high school

with a standard diploma; and failure to implement the student's IEP with regard to an Assistive Technology assessment before graduation; a comprehensive list of the student's current Assistive Technology equipment and services in the student's IEP; the provision of the required cell phone at no cost to the student; and the transition service of working with the student on developing a resume, master application and portfolio.

The student graduated from the WCSD with a standard high school diploma and the Complainant requested only proposed systemic remedies for any determined noncompliance by the WCSD. However, while the Complainant did not request an individual student remedy to compensate for the violations set forth above, the Complaint Investigation Team determined that with regard to those violations affecting the student's transition beyond high school, a student specific remedy was warranted. It is recognized that, having graduated, the adult student may elect not to receive the ordered compensatory education provided by the WCSD. As such, the individual student remedy is conditioned on the student accessing the ordered services in the manner and time period set forth below. This Report will be sent to both the Complainant and the adult student.

Directed Action Plan

1. Within 30 days of the receipt of this Report, the WCSD must provide the adult student:
 - a. With a summary of the student's academic achievement and functional performance in the 2015/2016 school year, which must include recommendations on how to assist the student in meeting the student's postsecondary goals;
 - b. A comprehensive list of the Assistive Technology Devices and Services provided the student by the WCSD at the time of the student's graduation;
 - c. Written notice offering the following compensatory education:
 - i. Within 120 days of the WCSD's receipt of this Report, an Assistive Technology assessment of the adult student to be completed at no cost to the adult student either by WCSD or, at WCSD's discretion by an independent educational evaluator. If the WCSD elects to use an independent evaluator, the evaluator should be agreed upon by the adult student and the WCSD, and if no agreement can be reached, the WCSD may select a qualified evaluator;
 - ii. The transition service of working with the student on an individual basis to develop a resume, master application, and portfolio. The transition service will be considered completed upon the adult student's termination of this compensatory service or when 12 hours of the service have been provided, whichever is first. The transition service may be provided on a school campus of the WCSD or, at the discretion of the WCSD and if agreed upon by the adult student and the WCSD, at another location convenient to the adult student. This individualized transition service must be completed no later than 120 days from the WCSD's receipt of this Report.
2. If the adult student wants to access the compensatory education of the Assistive Technology assessment and/or transition service set forth above, the student must provide the Superintendent of the WCSD, a written acceptance of the offered services or service within 30 days of the receipt of the written notice of the offer required above. If no written acceptance is provided to the Superintendent of the WCSD within 30 days, the NDE will consider the directed action ordered above to be satisfied.

If the adult student provides written acceptance to the Superintendent of the WCSD within 30 days of the receipt of the written notice of the offer required above, the WCSD must

commence implementation of the directed action ordered above as soon as possible, but no later than 15 school days after the WCSD's receipt of the notice of acceptance.

The WCSD must provide the NDE written documentation of the completion of the delivery of the above ordered compensatory education within 15 school days of its completion.

Special Monitoring

Given the WCSD's prior noncompliance with regard to the implementation of students' IEPs in Complaints filed in 2014, in two prior Complaints in 2016, and the reoccurrence of this same noncompliance in this Complaint, the NDE has concluded that this noncompliance may be systemic in nature.

Therefore, consistent with its general supervision responsibilities under the IDEA, the NDE will conduct a Special Monitoring of the WCSD's implementation of students' IEPs as follows:

1. The NDE Director of Special Education will appoint a monitor from the NDE Office of Special Education or, at the NDE's discretion, an independent monitor.
2. After consultation with the WCSD's Chief of the Student Services Office, the NDE will notify the WCSD 30 days in advance of the scheduled days of on-site monitoring. The WCSD must make a room available for the monitor to conduct the review. In order to prepare for the on-site monitoring, WCSD will be required to provide NDE with a list of students, who are eligible for, and being provided, special education. The list must contain the student's name, date of birth, disability category, race/ethnic category, and placement category; as well as the date of the initial evaluation and date of the most recent reevaluation. The NDE will randomly select students for IEP implementation review from the list and will provide WCSD with the final chosen list of students. The IEP implementation review will be up to a year preceding the current IEP for each student. The scope of monitoring activities will encompass the full view of IEP implementation, **to include** but not limited to file reviews, data collection, implementation documentation, student interviews, parent interviews, and staff interviews.
3. The NDE will notify the WCSD of the selected students for the Special Monitoring, the required IEPs, and the identified services and time period subject to review at least 15 school days in advance of the monitoring. Prior to the on-site monitoring, WCSD will provide NDE with parent(s) contact information for each selected student. On the day(s) of monitoring, the WCSD must make available the selected students' IEPs for the preceding year and documentation of the implementation of the identified services. The absence of documentation of the implementation of the specifically identified services in a student's IEP will be determined to be noncompliance given the requirement for the WCSD to have a system of records in place for this purpose and its commitment in Complaint #WA110614 to do so.
4. Upon the completion of the Special Monitoring, the NDE will issue a report of the findings to the WCSD and provide a redacted summary which must be maintained as a public document. If any instance of a failure to provide services is identified, the NDE will provide the WCSD a period of time to make a proposal to the parent of the identified student(s) to resolve the noncompliance. If not resolved in that matter, the NDE will order the corrective action determined appropriate to compensate the student for the loss of services required to be provided. In addition, a systemic remedy will be ordered to ensure the appropriate future provision of services for all student with disabilities enrolled in the WCSD in accordance with their IEPs

Policies/Procedures

Within 30 days of the receipt of this Report, the WCSD must commence the review and finalization of the WCSD's Draft Special Education Procedures Manual, October 22, 2015. The Procedures Manual must be revised to include a new section in Chapter Seven that describes with specificity the WCSD's mandatory system of records to document the implementation each student's IEP. The WCSD must include the WCSD's form to be used for this purpose in the Procedures Manual. (At the WCSD's discretion, the form can be modified, as needed, for an individual student by the service provider.) The form must provide a way to document the implementation of the required kind/type, amount, and frequency of the special education, related services, supplementary aids and services, the modifications or supports for school personnel and the stated extent of participation with students without disabilities in each student's IEP. This section of the Manual and form must be provided to the NDE for approval prior to finalization.

The WCSD must post the final Special Education Procedures Manual on its website no later than 90 days of the Receipt of this Report.

The WCSD must provide the Procedures Manual to each school in the WCSD and require each school principal or designee to train personnel responsible for the implementation of any student's IEP on the WCSD's required system of records and the required form. The training must take place no later than 120 days from the receipt of this Report. If any personnel are not present on the day of training, the school principal must provide a written assurance of how and when the absent personnel will be instructed on this information. The WCSD will be responsible for following-up on the training for absent members and reporting to the NDE on its completion.

The training may be conducted electronically at the WCSD's discretion or by the WCSD, however, the WCSD must have documentation of the participants by school and role and their mastery of the contents. This documentation and any assurances must be provided to the NDE within 15 school days of the completion of the training of all required personnel.