

COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA100416)

Report Issued on November 18, 2016

INTRODUCTION

On October 4, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations in the special education program of a student with a disability attending school 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 and the Nevada Administrative Code (NAC) with regard to the implementation of the student's Individualized Education Program (IEP) in the 2016/2017 school year, specifically failure to provide the student time in the General Education Classroom with the student's typical peers the first eight weeks of the school year; and failure to provide the following accommodations and modifications for the first seven weeks of the 2016/2017 school year: "multiple modes of communication...sign...IPad"; communication device to travel back and forth from school to home; the accommodations and modifications of a sensory diet and adult support for safety and instruction.

The Parent also alleged that the WCSD failed to ensure the required members of the IEP Team were present at the IEP meeting conducted on September 2, 2016, specifically a WCSD representative who had knowledge about the availability of resources of the WCSD given that the representative did not demonstrate that knowledge by saying a move to another school would require a zoned variance and that she would have to check with her supervisor.

All documents submitted by the Parent 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 from the commencement of the 2016/2017 school year up to the date of the Complaint, October 4, 2016:

Issue One: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to implementing the student's IEP in effect at the commencement of the 2016/2017 school year through October 4, 2016 specifically with regard to:

- a. Student participating in the General Education Classroom; and**

- b. Providing the accommodations of a sensory diet, multiple modes of communication of signing and an iPad required to be provided at school and at home, and adult support.**

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to ensuring the required members of the IEP Team were present at the student's September 2, 2016 meeting, specifically a Local Educational Agency (LEA) representative with the knowledge about the availability of resources of the LEA.

FINDINGS OF FACT (FOF)

1. In the 2016/2017 school year, the student transitioned from kindergarten to an elementary school in the WCSD. The Parent removed the student from the school that is the subject of this Complaint on October 19, 2016 and the student started attending another elementary school in the WCSD on October 20, 2016. (Complaint, WCSD Response)
2. The 2016/2017 school year began on August 8, 2016. There were 39 school days in the first eight weeks of school and 34 school days for the first seven weeks of school. Prior to transferring out of the school that is the subject of this Complaint, the student was absent for seven school days for the PM period, from September 20, 2016 to October 4, 2016 for periods commencing from 12:18 PM to 1:50 PM. (Student Period Attendance Detail, School Calendar)
3. The student had a June 9, 2016 IEP in effect at the commencement of the 2016/2017 school year. The June 9, 2016 IEP was revised by a September 8, 2016 IEP. (IEPs, WCSD Response)
4. Relevant to this Complaint, the student's June 9, 2016 and September 8, 2016 IEPs provide specially designed instruction in the General Education Setting two hours per week; 7% of the student's school day in the regular education environment; and the following Supplementary Aids and Services:
 - a. Student benefits from a sensory diet (jumping, heavy play, rolling, etc.) to be provided both in the General Education and Special Education Settings during school hours from June 9, 2016 to June 9, 2017.
 - b. Provide multiple alternative modes of communicating, including but not limited to sign, picture supports, iPad etc. to be provided both in the General Education and Special Education Settings during school hours from June 9, 2016 to June 9, 2017.
 - c. Direct adult support for safety and all instruction to be provided both in the General Education and Special Education Settings during school hours from June 9, 2016 to June 9, 2017. (IEPs)

5. The Complaint Investigation Team requested documentation that the student was provided the opportunity to participate in the General Education Setting and documentation that the listed Supplementary Aids and Services in the student's IEPs in effect at the commencement of the 2016/2017 were implemented. (Nevada Department of Education (NDE) Issue Letter)
6. The student's schedule in General Education included 30 minutes of "Core Knowledge" every school day in the PM. However, the time for this subject was changeable week to week. In addition to this class, the student was scheduled to participate in the regular education environment every school day for 45 minutes for lunch and recess; a second session of recess for 30 minutes in the afternoon; music for 30 minutes for one school day and library for 30 minutes for one school day. No documentation was provided by the WCSD on the fidelity of staff to the schedule. (Student's General Education Schedule)
7. In WCSD's response to the Complaint, the General Education teacher stated the student was invited to join the class for the first four sessions on the Human Body and, given the student left school most days in the PM, the student did not "push in" for those lessons. The teacher did cite one lesson regarding the Circulatory System that the student joined the class for 20-25 minutes. It is unknown whether these cited incidences were on or before October 4, 2016 and whether the student was provided specially designed instruction during the one brief period of attendance. (October 27, 2016 WCSD Email)
8. The WCSD responded to the request for documentation of the implementation of the sensory diet by indicating that the student received Adaptive Physical Education and that addressed the sensory diet. In addition, the WCSD cited to the student's IEPs for activities and motor skills objectives that addressed the student's sensory diet. (WCSD Response)
9. On August 18, 2016, WCSD administrators and the Parent discussed ordering some items such as a body sock, tunnel or tent for the student and noted the student works for a big ball in the classroom. The ball is rolled over the student. At that same meeting the Parent was informed that staff members taught the student their "sign names" and were looking for someone to sign with the student. (WCSD Team Notes, WCSD Response)
10. The student's June 9, 2016 and September 8, 2016 IEPs required direct Speech Therapy as a related service for 240 minutes per month in the Special Education Setting. The areas covered in the Speech Therapy sessions with the student were in Functional Communication Skills, Language Therapy and Pragmatic/Social Skills. The student's Speech and Language Pathologist used signs and picture supported text with the student in the direct Speech Therapy services. Relevant to this Complaint, the student received direct Speech Therapy from August 15, 2016 to October 4, 2016. The student received 175 minutes of direct Speech Therapy in August and 255 minutes in September. Three hours and 45 minutes of consultation services were provided on

behalf of the student, including preparing materials. The implementation of the Speech Therapy related service was not an issue in this Complaint. (Student Smart Log Book, Complaint)

11. The student's June 9, 2016 and September 8, 2016 IEPs required 40 minutes a year of the Assistance Technology Service of consultation in the Special Education Setting. (IEPs)
12. Neither the student's June 9, 2016 IEP nor the September 8, 2016 IEP provided that home was the location of services for the multiple alternative modes of communication that included the iPad or provided the Assistive Technology Device of an iPad to be sent back and forth from school to home with the student. At a Parent meeting on August 9, 2016, the school Principal made a note to ask if the iPad could be sent home. (August 9, 2016 Principal Notes)
13. On August 22, 2016, an iPad mini with Proloquo2go and a case were delivered to the student's Special Education teacher. Proloquo2Go is a symbol-supported communication application for the iPad designed for individuals who cannot speak. There was no documentation or other information provided regarding the provision of the iPad to the student for use during the school hours in both the General and Special Education Settings. (Agreement for Loan for Assistive Technology Equipment, WCSD Assistive Technology Email)
14. The WCSD was asked to provide documentation on the provision of adult support to the student for safety and all instruction in the 2016/2017 school year through October 4, 2016. The WCSD responded to the request for documentation by asserting that additional adult support was provided to the student and referring to typed notes that indicated a substitute teacher was provided for the student until an aide could be hired. There are typed notes from a Parent meeting on August 18, 2016 that a substitute would be paid for until the WCSD had a one-to-one aide for the student, but no documentation was provided of this intended adult support for the student from August 18, 2016 to October 4, 2016. (Complaint, WCSD Response, WCSD Team Notes, Review of Record)
15. The first IEP meeting for the September 8, 2016 IEP was on September 2, 2016. The WCSD representative at both the September 2 and 8, 2016 IEP meetings was the same individual, the Principal of the student's school. The Principal is a certified school administrator in the WCSD. The WCSD asserts the Principal has the authority to commit resources of the school and the district. The WCSD did not provide any information regarding the Principal's knowledge of the resources of the district. (WCSD Response, Complaint)
16. In accordance with the WCSD Administrative Regulation 5015, while variance requests are initiated by a Parent at the home school and are granted or denied by the Principal of the student's home school and the Principal of the receiving school, it is the WCSD's

Office of School Performance and Student Accounting Department that are responsible for a variance from a zoned school. At a meeting on August 18, 2016 between the Parent and WCSD administrators, the schools that were available to the student were discussed as well as the need the application for a variance to another school that was not in the home or neighborhood school. (WCSD Team Notes, WCSD Website)

CONCLUSION OF LAW

Issue One: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to implementing the student's IEP in effect at the commencement of the 2016/2017 school year through October 4, 2016 specifically with regard to:

- a. Student participating in the General Education Classroom; and**
- b. Providing the accommodations of a sensory diet, multiple modes of communication of signing and an iPad required to be provided at school and at home, and adult support.**

The requirement 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) Pursuant to NAC §388.215(5)(b), 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. The Complaint Investigation Team requested documentation that the student was provided the opportunity to participate in the General Education Setting and documentation that the listed Supplementary Aids and Services in the student's IEP in effect at the commencement of the 2016/2017 were implemented. (FOF #6)

As discussed below, the WCSD may have implemented the student's June 9, 2016 and September 8, 2016 IEPs in part with regard to the student's participation in the General Education Setting and the implementation of the required Supplementary Aids and Services. However, even by the WCSD's own account, the student's IEPs were not implemented as described and at the frequency required. In the absence of the documentation required by NAC §388.215(5)(b) to confirm the implementation of the student's IEPs in the requisite manner, the Complaint Investigation Team determined that the WCSD failed to provide the student's participation in the General Education classroom; and the accommodations of a sensory diet, multiple modes of communication of signing, an iPad at school and adult support in conformity with the student's IEPs.

General Education Setting

The student's June 9, 2016 and September 8, 2016 IEPs require the provision of specially designed instruction in the General Education Setting two hours per week and 7% of the student's time in the regular education environment. (FOF #4) It is the student's participation in the General Education Classroom that is at issue in this Complaint.

In response to the request for documentation that the student had the opportunity to participate in the General Education Setting, the WCSD did provide the student's schedule in General Education that included 30 minutes of "Core Knowledge" every school day; music for 30 minutes for one school day; and other activities in which the student participated in the regular education environment. (FOFs #5, #6)

However, no documentation was provided by the WCSD on the fidelity of staff to the schedule. (FOF #6) On the contrary, the information provided by the WCSD only cited five school days when the student might have been provided the opportunity to participate in the General Education Classroom during the period of time at issue in this Complaint and only one when the student "joined" the class and may or may not have been provided with specially designed instruction during the brief time the student was in the class. (FOFs #2, #7) Even if the student was absent during some of the opportunities to participate in the General Education classroom (FOF #7), that would only explain the student missing seven school days of participation over the 35 school day period. (FOF #2) Therefore the Complaint Investigation Team determined the WCSD failed to provide the student specially designed instruction in the General Education Setting two hours per week for the first eight weeks of school in the 2016/2017 school year.

Sensory Diet

The student's June 9, 2016 and September 8, 2016 IEPs require the Supplementary Aid and Service that the student benefits from a sensory diet (jumping, heavy play, rolling, etc.) to be provided both in the General Education and Special Education Settings "during school hours"¹ from June 9, 2016 to June 9, 2017. (FOF #4) In response to the request for documentation that the student's IEPs were implemented in this regard, the WCSD did not provide any records that verified the student received the services as required. The WCSD did state that the sensory diet was provided in Adaptive Physical Education; cited the student's IEPs for activities and motor skills objectives that addressed the student's sensory diet (with no evidence of implementation); described the use of a big ball being rolled over the student; and discussed ordering sensory items with the Parent 10 days after school started. (FOFs #5, #8, #9)

Based on the above information, the WCSD may have implemented the student's sensory diet service at times during the time period of this Complaint. However, the student was to be provided a sensory diet during school hours, not just during a single class or on occasion. Even by the WCSD's own account, the student was not provided the required sensory diet during school hours in the General Education and Special Education Settings. Therefore the Complaint Investigation Team determined the WCSD failed to provide the student a sensory diet in the General and Special Education Settings during school hours for the first seven weeks of school in the 2016/2017 school year.

Modes of Communication

The student's June 9, 2016 and September 8, 2016 IEPs require the Supplementary Aid and Service of multiple alternative modes of communicating, including but not limited to sign, picture supports, iPad etc. to be provided both in the General Education and Special Education Settings during school hours from June 9, 2016 to June 9, 2017. (FOF #4) While the Parent alleged that the student did not have the use of the iPad both at school and at home, the student's IEPs do

¹ In the absence of more specificity regarding the frequency of the services, the Complaint Investigation Team determined that use of the term "during school hours" for this and the other listed Supplementary Aids and Services required the service to be provided throughout the school day when the student was in the specified locations.

not provide that the required modes of communication, including the iPad, be provided in the location of the home. (FOF #12)

In response to the request for documentation that the student was provided alternative modes of communicating as required in the student's IEPs, the WCSD did provide documentation in the form of a log² on the use of the alternative modes of picture support and signing during the provision of Speech Therapy for 430 minutes (approximately 7 hours) during the months of August and September. (FOFs #5, #10) Given the nature of the related service, the Complaint Investigation Team determined it was not unreasonable that the alternative modes of communicating did not include the iPad during the Speech Therapy sessions. However, other than the student's time with the Speech Therapist, and antidotal information that staff members taught the student their "sign names" (FOF #9), the WCSD did not provide documentation that the student was provided the minimally required modes of communication of signing and picture supports and the iPad during school hours both in the General Education and Special Education Settings.

The WCSD did provide documentation that the WCSD delivered an iPad with a symbol-supported communication application to the student's Special Education teacher for the student two weeks after the commencement of the 2016/2017 school year. (FOF #13) As such, the Complaint Investigation Team determined it is more likely than not that the student was provided the use of the iPad in the Special Education Setting after its delayed delivery. However, the WCSD did not provide any documentation of the availability of the iPad to the student in the General Education Setting, including at daily sessions of recess and lunch.

Therefore, the Complaint Investigation Team determined that in the absence of a requirement to provide the student an iPad for use at home, the WCSD complied with regard to that allegation. The WCSD also did comply in part in the provision of alternative modes of communicating for approximately seven hours during the provision of Speech Therapy to the student during the time period of this Complaint and in providing an iPad to the student in the Special Education Setting for five of the required seven weeks. However, the student's IEPs required the provision of alternative modes of communicating during school hours in both the Special Education and General Education Settings and, in the absence of documentation otherwise, the Complaint Investigation Team determined the WCSD failed to implement the student's' IEPs in this regard for the first seven weeks of school in the 2016/2017 school year.

Adult Support

The student's June 9, 2016 and September 8, 2016 IEPs require the Supplementary Aid and Service of direct adult support for safety and all instruction to be provided both in the General Education and Special Education Settings during school hours from June 9, 2016 to June 9, 2017.(FOF #4) While there is some indication that adult support may have been provided to the student for at least a portion of the time period of this Complaint commencing August 18, 2016 (FOF #14), the WCSD was asked to provide documentation on the provision of the required adult support to the student from the commencement of the 2016/2017 school year through October 4, 2016 and did not do so. (FOFs #5, #14) In the absence of the documentation required pursuant to NAC §388.215(5)(b), the Complaint Investigation Team determined that the WCSD failed to provide the student the required adult support for the first seven weeks of

² The SmartLogbook Report of the Speech Therapist meets the standard of the required system of records for the purpose of verifying that the student received services appropriate to the disability as required by NAC §388.215(5)(b).

school in the 2016/2017 school year.

Therefore, in the absence of a requirement to provide the student an iPad for use at home, the WCSD complied with the IDEA, 34 C.F.R. §§300.17(d) and 300.101, and NAC §388.281(6)(g), with regard to the provision of the iPad for use at home. However, the WCSD failed to provide the student the required: two hours of participation in the General Education Classroom per week; and the sensory diet, adult support for safety and all instruction, and the provision of alternative modes of communication in the General Education and Special Education Settings.

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to ensuring the required members of the IEP Team were present at the student's September 2, 2016 meeting, specifically a LEA representative with the knowledge about the availability of resources of the LEA.

Both the IDEA, 34 C.F.R. §300.321, and the NAC §388.281(2) set forth the mandatory members of each IEP Team for the development and review and revision of a student's IEP. The only issue raised in this Complaint with regard to the attendance of required IEP Team members was the requisite knowledge of the availability of resources of the public agency representative (34 C.F.R. §300.321(a)(4); NAC §288.281(2)(a)(3)) at the student's September 2, 2016 IEP meeting. The WCSD representative at the September 2, 2016 IEP meeting was the Principal, a certified school administrator in the WCSD. Even though it was the same individual present at the student's September 8, 2016 IEP meeting, the Parent did not raise the allegation with regard to that meeting. The WCSD asserts the Principal has the authority to commit resources of the school and the district, but did not provide information of the Principal's knowledge of the availability of the resources of the WCSD. (FOF #15)

Based on the Parent's allegation in the Complaint, the Parent was not asserting the WCSD's representative lacked knowledge of the availability of the resources of available schools or other information about the services available in the school district. Rather, the allegation was derived from the Parent's belief that the representative was incorrect on the need for a school variance for the student to move to another school and indicated that she would have to check with her supervisor.

In accordance with the WCSD's local Administrative Regulation 5015, while variance requests are initiated by a Parent at the home school and are granted or denied by the Principal of the student's home school and the Principal of the receiving school, it is the WCSD's Office of School Performance and Student Accounting Department that are responsible for a variance from a zoned school. (FOF #16) While it may have been helpful to the Parent for the WCSD representative at the student's IEP meeting to have knowledge of zoned variances, the absence of this knowledge, without more, does not lead to a conclusion that the WCSD representative lacked knowledge about the availability of the resources of available schools or other information about the services available in the school district. In addition to the availability of information regarding school variances from the divisions of the WCSD tasked with this responsibility, the Complaint Investigation Team also noted the Parent was provided information on the schools that were available to the student as well as the need for an application for a variance to another school that was not in their home or neighborhood school prior to the September 2, 2016 IEP meeting. (FOF #16)

Therefore, the WCSD complied with the IDEA, 34 C.F.R. §300.321(a)(4), and NAC §288.281(2)(a)(3) with respect to ensuring the required members of the IEP Team were present at the student's September 2, 2016 meeting, specifically a LEA representative with the knowledge about the availability of resources of the LEA.

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 implement the student's IEP in all regards.

Directed Action Plan

Due to the failure of the WCSD to implement the student's IEP, a student specific remedy is required. In the absence of information regarding the student's progress at the new school and emergent needs, the Complaint Investigative Team determined that crafting appropriate compensatory services to be provided directly to the student would be speculative.³ Given the Parent's requested remedy of training for staff in the student's modes of communication in this Complaint, the compensatory services remedy below is in the form of consultation on behalf of the student with regard to the student's Functional Communication Skills using multiple modes of communication as provided in the student's IEPs.

The WCSD and the Parent can agree in writing to an alternative service(s), including services directly to the student; alternative amounts of services; and/or an alternative timeline for the delivery of the service. Any such written agreement must be provided to the NDE within ten school days of its execution. In the absence of such agreement, the WCSD will implement the following additional hours of consultation, over the required services in the student's IEP, for the student's current Special Education and General Education teachers and any adult support assigned to assist the student in the classroom or in the regular education setting:

1. Six additional hours of Assistive Technology consultation on behalf of the student with the student's current Special Education teacher, General Education teacher and Speech and Language Pathologist on the student's current or recommended technology on the student's alternative modes of communication. The consultation must be completed by the end of the 2016/2017 school year and may include the development of recommendations for the IEP Team's consideration at the student's annual IEP meeting.
2. Twelve additional hours of consultation on behalf of the student from a Speech Language Pathologist on the student's Functional Communication Skills for the student's current Special Education and General Education teachers or any adult support assigned to assist the student in the classroom or in the regular education setting. The consultation must be completed by the end of the 2016/2017 school year and may include development of recommendations for the IEP Team's consideration at the student's annual IEP meeting and preparing materials for the student's mode of communication for use in the Special Education and General Education Settings. At the WCSD's discretion the service may be provided by a public or private Speech and Language Pathologist. If the service is not provided by the student's current Speech and Language Pathologist, the assigned Speech and Language Pathologist must consult

³ In the course of the investigation, the NDE did contact the Parent to obtain information regarding the student's progress at the new school to assist in the crafting of a compensatory education remedy; however, the NDE was unable to reach the Parent.

with the student's Speech and Language Pathologist prior to the provision of the ordered service.

The WCSD must provide the NDE written documentation of the completion of the delivery of the above ordered compensatory services 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 and in three prior Complaints in 2016, the NDE concluded in a recent Complaint, #WA090916, that this noncompliance may be systemic in nature.

As such, consistent with its general supervision responsibilities under the IDEA, the NDE determined it would conduct a Special Monitoring of the WCSD's implementation of students' IEPs as a remedy in Complaint #WA090916.⁴ The Special Monitoring involved the NDE's random selection of students for IEP implementation review. 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 students with disabilities enrolled in the WCSD in accordance with their IEPs.

Given the failure of the WCSD to implement the student's IEP in this instant case, the NDE will review the implementation of the IEPs in the 2016/2017 school year for at least five other students who attended the same involved elementary school of the WCSD that this student attended at the commencement of the 2016/2017 school year. The review of this involved school will encompass the implementation of students' IEPs up to the date the NDE notifies the WCSD of the selected students for the Special Monitoring.

Documentation of Implementation

In Complaint #WA090916, the WCSD was ordered to review and finalize the WCSD's Draft Special Education Procedures Manual and include a new section that describes with specificity the WCSD's mandatory system of records to document the implementation each student's IEP. Since each school is required to train personnel responsible for the implementation of any student's IEP on the WCSD's required system of records, the Complaint Investigation Team determined that the involvement of the personnel responsible for the implementation of any student's IEP will remedy this same concern at the student's school. Given that the student's Speech and Language Pathologist maintained a system of records required by NAC §388.215(5)(b) to verify the student's receipt of the Speech and Language Therapy as a related service, if she desires and the WCSD concurs, the NDE exempts her from this ordered training set forth in Complaint #WA090916.

⁴ When posted, see publically posted #WA090916 for additional details of the conduct of the Special Monitoring: http://www.doe.nv.gov/Special_Education/Reports/Complaint_Reports/2016-2017_Complaint_Reports/