

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA120617)**

Report Issued on January 30, 2018

INTRODUCTION

On December 6, 2017 the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.; the IDEA regulations, 34 C.F.R. Part 300; Chapter 388 of the Nevada Revised Statutes; and the Nevada Administrative Code (NAC), alleging that the Washoe County School District (WCSD) failed to provide a behavior intervention plan and failed to appropriately address the toileting needs of a student with a disability thus denying the student a free appropriate public education (FAPE)¹. The Parent's proposed resolution to the Complaint requested that the student be assigned a one-to-one aide for daily activities, have a behavior plan, and also asked to have an Independent Educational Evaluation (IEE) granted².

The Parent's Complaint and all documentation provided by the Parent, as well as all documentation provided by WCSD in response to the complaint were reviewed and considered in their entirety in this investigation. The Findings of Fact cite the source(s) of the information deemed necessary to resolve the issues in this Complaint.

COMPLAINT ISSUES

The allegations in the Complaint that are under the jurisdiction of the Nevada Department of Education (NDE) to investigate through the special education complaint process raise the following issues for investigation:

Issue One:

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to conducting a behavior assessment on the student's "school fighting."

Issue Two:

¹ Parent raised additional allegations not under the jurisdiction of the Nevada Department of Education (NDE) to investigate. These were referred to appropriate authorities. (NDE Correspondence, dated 12/14/2017)

² Parent requested an IEE, which was granted by WCSD, and is not at issue in this Complaint. (Parent email, dated 11/20/2017; WCSD Parental Prior Written Notice (PWN), dated 12/1/2017)

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, and provided a free appropriate public education for the student in regard to the student's toilet training needs in the 2017-2018 school year.

FINDINGS OF FACT

General

1. The student, born 5/28/2010, is eligible for special education services pursuant to IDEA and NAC, Chapter 388, under the category of Health Impairment, due to a genetic duplication syndrome. (2/27/2017 Individualized Education Program (IEP))
2. The student is and was enrolled in first grade in their³ zoned school in WCSD in the 2016-2017 school year and second grade in the 2017-2018 school year. (2/27/2017 IEP; 12/19/2017 Informed Notice of Proposal or Refusal to Change Evaluation, Identification, Educational Placement or FAPE (Informed Notice))
3. An IEP Team meeting was conducted to develop an annual IEP on 2/27/2017 and the resulting IEP was implemented beginning 2/28/2017 (2/27/2017 Nevada Parental Prior Notice (PWN); 2/28/2017 PWN)
4. A Health Assessment was conducted 1/28/2016 and set out the following results:

"[Student] has a genetic syndrome, 7q11.23 duplication syndrome.

[Student] also takes daily medication for constipation.

[Student] is having difficulty using the bathroom on [their] own at home and school, which is addressed under behavior." (2/27/2017 IEP)

5. Data was collected, through teacher observation of "Adaptive Behavior" and lists the following teacher observed data and parent reported data:

"Toileting Data Collecting

8/8/16-9/16/16 [Student had 0 accidents per school day. Parent reports that [student] arrives home with wet clothes and has many accidents at home.

9/16/16-12/15/16 [Student] has 1-3 accidents (usually 3 accidents) per school day. Parent reports that [student] has 3-8 accidents per day at home.

³ The pronouns "they" and "their" will be utilized throughout the document in place of the gendered pronouns "she/he" and "her/his" to further preserve student anonymity.

1/9/17-2/24/17 [Student] has about 2 accidents per week at school. Parent reports that [the student] has 0-3 (usually 1) accidents per day at home.

8/8/16-2/24/17 [Student] reports accidents 0% of the time.

8/8/16-2/24/17 [Student] infrequently admits to having had accidents in the classroom when asked by [their] classroom teachers.

The 2/27/2017 IEP provides narrative observations by the teacher and includes the following summary:

"Summary: [Student] continues to struggle with toileting at school. The number of accidents [student] is having varies dramatically between quarters, with a reduction following lengthy breaks. [Student's] facial expressions around toileting demonstrate that [student] is having negative emotional consequences due to toilet training and toileting accidents. [Student's] accidents cause [the student] to miss instructional time, due to the time to change into clean outfits." (2/27/2017 IEP)

6. The student's 2/27/2017 IEP states the following goal to address the student's toileting needs:

"Given a school setting [Student] will use the toilet independently with zero accidents for each school day on 5 out of 5 school days as measured by teacher observation with 100% mastery by 2/27/2018."

7. Modifications, Accommodations, or Supports for Student or Personnel listed to address student's toileting needs are:

"[P]rompt [Student] to use the bathroom – 2/22/2017-2/27/2018 – every 60 minutes – General Education Setting;

Teacher created toileting positive behavior support chart - 2/22/2017-2/27/2018 – for each school day – General Education Setting."

Progress reporting for the 2/27/2017 IEP was to be done by providing quarterly Specialized Progress Reports and Report Cards. (2/27/2017 IEP)

8. The 2/27/2017 IEP lists no significant behavior concerns, outside of the toileting issues previously referenced, and summarizes the review of Infinite Campus behavior data and Teacher Observation as follows:

"[Student's] behavior demonstrates lack of confidence and control over [their] emotions. [Student] is easily upset, however, when made aware of expectations [student] strictly adheres to them."

[Student] would benefit from additional social and emotional supports to learn to understand and express their thoughts and emotions in the school environment." (2/27/2017 IEP)

9. The 2/27/2017 IEP further indicates the following under Student Strengths:
"[Student] is a kind and sensitive little [child]. [Student] is very cooperative and compliant. [Student] has a wonderful smile and enjoys talking with [their] close friends." (2/27/2017 IEP)
10. The 2/27/2017 IEP indicates the student's behavior does impede [their] learning, and indicates this is "Addressed in the IEP." The only behaviors addressed in the IEP are those relating to the student's toileting issue. The IEP contains no indication that the Parent, who participated in and signed the IEP, raised concerns regarding any behaviors that impeded the student's learning other than those relating to toileting. (2/27/2017 IEP)
11. The 2/27/2017 IEP did not include any data reporting on or reference to consideration of an assessment of adaptive skills which made use of a validated adaptive behavior scale. No documentation submitted in the course of this investigation indicated such an assessment was conducted. (2/27/2017 IEP).
12. The Student's Quarterly Progress Report for the fourth quarter of the 2016-2017 school year lists the toileting goals and progress under "Adaptive behavior." Under "Overall Comments" the progress report indicates, in relevant part:

"[Student] has improved to having zero toileting accidents at school. [Student] uses restroom on a schedule and does not object... [Student] should be very proud of [their] progress.
13. The Student's Quarterly Progress Report for the first quarter of the 2017-2018 school year lists the toileting goals and progress under "Adaptive behavior." Under "Overall Comments" the progress report indicates:

"[Student] has regressed some since the previous quarter. Prior to fall break [student] had 3 accidents at school over a 2 day period. [Student] will need to continue to work toward this goal." (10/20/2017 Progress Report)
14. Extensive email correspondence addressing the student's ongoing toileting issues between the Parent, an advocate working on behalf of the Parent and WCSD staff took place in October, November and December 2017. (Email correspondence dated October 2017, November 2017 and December 2017)
15. Parent and school staff had discrepant views of the student's toileting progress during the first semester of the 2017-2018 school year, with school staff indicating the student was not having accidents at school and the parent indicating the student was returning home wet and/or soiled. School staff

posited that the student may be having toileting accidents on the bus ride home from school. (Email strings, dated 11/14/2017, 11/21/2017, 12/2/2017, 12/3/2017, and 12/8/2017)

16. On October 27, 2017 the student was prescribed "disposable youth underwear... Wear daily for incontinence." Parent began to send student to school in pull-up underwear or disposable underwear. (Saint Mary's Medical Group prescription in student's name, dated 10/27/2017; Parent Letter to Principal, dated 10/29/2017)
17. Parent expressed ongoing concern about the student's toileting issues, specifically expressing concern with the student's placement in a teacher's classroom of a different gender from the student and expressed their preference that a staff member of the student's gender conduct visual checks of the student's disposable underwear to check for wetness and/or soiling. (Email strings 11/16/2017 and 11/26/2017)
18. WCSD denied any impropriety in the existing plan for addressing the student's toileting needs, but transferred the student to another second grade classroom with a teacher of the student's gender. School personnel further expressed the position that changes in how the student's toileting needs were addressed needed to be considered through the IEP Team Process, and attempted to convene IEP Team Meetings on 10/20/2017 and 12/7/2017, which the Parent declined. (Email strings, dated 11/25/2017 and 12/8/2017; PWN and Notice of Meeting, dated 10/16/2017 and 11/21/2017)
19. The Parent requested an IEE for a behavior assessment. WCSD granted an IEE for a psychoeducational report. (Email string dated 11/20/2017; PWN, dated 12/1/2017)
20. An IEP Team Meeting was conducted on 12/19/2017 and a revised IEP developed⁴. The revised IEP and subsequent Informed Notice, dated 12/19/2017, indicate a revision to the student's toileting goals and accommodations. The IEP indicates ongoing, and, from the Parent's perspective, worsening, issues with toileting at school and reflects the student's use of 'prescription diapers.' The revised IEP maintains the prior toileting accommodations and adds a weekly "toileting note home" and "diaper change reminders... prior to lunch and dismissal." (12/19/2017 IEP; 12/19/2017 Informed Notice)

⁴ A final, signed copy of the 12/19/2017 IEP was not provided by either Parent or District; however, Informed Notice, dated 12/19/2017, reflecting implementation of updated IEP goals and accommodations relating to toileting was provided by WCSD, indicating a revised IEP was finalized at the 12/19/2017 meeting. This IEP postdates the Complaint at issue and is, therefore, outside of the period of the time under investigation; however, it's content has been considered for context.

CONCLUSIONS OF LAW

Issue One:

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with regard to conducting a behavior assessment on the student's "school fighting."

During the course of the investigation, it was determined that the inclusion of a behavior assessment for "school fighting" as an issue for investigation was misplaced. Although Parent did not reach out to clarify the issue as articulated by NDE correspondence, documents reviewed indicate that the student has not engaged in any "school fighting" and there is no student behavior that interferes with learning other than the adaptive behaviors surrounding the toileting issue. (Findings of Fact (FOFs) #8, #9, #10)

Therefore, no determination is required for Issue One, please see the discussion of an assessment of the adaptive behavior of toileting under Issue Two.

Issue Two:

Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, and provided a free appropriate public education for the student in regard to the student's toilet training needs in the 2017/2018 school year.

State Educational Agencies (SEAs) are charged with investigating State complaints alleging a violation of FAPE, and, in so doing, must determine whether the public agency has followed the required Part B procedures to reach its determination, and whether the public agency has properly addressed the individual child's abilities and needs. OSEP Dispute Resolution Procedures Under Part B of the IDEA (7/23/2016), 61 IDELR 30291, citing 71 FR 46601 (8/14/2006)⁵. Federal guidance further indicates that in resolving an investigation regarding the provision of FAPE to a student, SEAs must review data provided "including evaluation data and any explanations included in the public agency's prior written notice to the parents under 34 CFR §300.503 as to why the public agency made its decision regarding the child's educational program or services." "The SEA may find that the public agency has complied with Part B requirements if the evidence clearly demonstrates that the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data. 71 FR 46601 (August 14, 2006)." Id.

IDEA requires that eligible students be provided a FAPE. 34 C.F.R. §300.101. A student's IEP describes his/her individual needs and sets out the proper placement and services designed to meet those needs and, thus, provide the student a FAPE. Schaffer v. Weast,

⁵ This policy letter is publicly available at:
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

44 IDELR 150 (U.S. 2005).

Consistent with IDEA, Nevada regulations require that special education programs comply with both state and federal laws and regulations. NAC §388.145.

In accordance with the IDEA and the NAC, a public agency must ensure that a reevaluation of each student with a disability is conducted if the public agency determines that the educational or related services needs of the child warrant a reevaluation. 34 C.F.R. §300.303, NAC §388.440(1). Both the IDEA and the NAC require that a student be evaluated in "all areas of suspected disability." 34 C.F.R. §300.304(c)(4), NAC §388.340.

Nevada regulations define "Adaptive Skills" as including, "communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work." NAC §388.015. These regulations further require that if a student's adaptive skills are assessed, "the person conducting the assessment must use a validated adaptive behavior scale." NAC §388.360. Nevada regulations also provide that when the health of a student with a disability is assessed, the assessment may include (in relevant part), "a review of the developmental history" and "a physical examination." NAC §388.365.

IDEA regulations set out general requirements for the procedures required of IEP Teams and the required IEP content. 34 C.F.R §300.320, 34 C.F.R §300.321, 34 C.F.R §300.322. The facts at issue in this Complaint establish that, during the time at issue, the WCSD complied with a timely annual IEP Team meeting and implemented the resulting IEP with appropriate notice to, and participation of, Parents as required by IDEA Part B. (FOF #3) However, analysis of whether the WCSD provided the student a FAPE also requires an inquiry into whether, in so doing, the district properly addressed the individual child's needs and abilities. Consistent with the allegations at issue in this Complaint, this analysis is undertaken specifically regarding whether the WCSD properly addressed the student's needs and abilities in the area of toileting, which, under the umbrella of self-care, is defined by NAC as an adaptive skill. NAC §388.015.

Documents reviewed indicate that the IEP Team was well aware of, and sought to address, the student's toileting issues in the IEP developed during the student's first grade year, and remained aware of those issues, including the student's regression, during the first semester of the student's second grade year. (FOFs #2, #3, #4, #5, #12, #13) The 2/27/2017 IEP reflects that assessment of the student's needs around the adaptive behavior of self-care, was accomplished by review of a health assessment which was over a year old at the time that it was considered for the annual IEP development and teacher data collection. (FOFs #4, #5) Despite the extensive discussion of the assessment of the student on this adaptive skill, and the development of goals and accommodations relating to this self-care issue, the IEP Team did not review any assessment of the student's adaptive skill which utilized a validated adaptive behavior scale, nor any interpretation of such assessment by a qualified person, as required by Nevada regulations. NAC §388.360. Furthermore, despite repeated notations of the student's constipation issues and prescription of medication to address these issues, the IEP Team did not appear to engage in any significant consideration of whether, and if so how, the student's constipation and medication might contribute to

the ongoing toileting issue and whether the IEP needed to be reviewed and revised to address these issues. (FOF #4)

Subsequently, the student, now in second grade, was prescribed and placed in youth disposable underwear – also referred to as prescription diapers. (FOFs #15, #16, #17) While the Team could not have known when the 2/27/2017 IEP was developed that the student would regress to diapers in the 2017-2018 school year, it is nonetheless instructive of the depth of the student’s toileting issue. Indeed, although WCSD was able to demonstrate that attempts were made to reconvene the IEP Team in response to the Parent’s concerns and the student’s youth disposable underwear prescription, and that those meetings did not go forward due to the Parent’s reticence to meet, the revised IEP after the filing of this complaint⁶, merely inserts diaper check reminders and an additional note to Parent. No information was provided in the course of the investigation that the WCSD considered whether additional assessments would be reasonable in order to ascertain the student’s current educational needs and to analyze the impact of the regression in the student’s toileting ability on their education during the 2017-2018 school. (FOFs #13, #14, #17, #19)

In this case, circumstances warranted a reevaluation pursuant to the IDEA and the NAC regarding the student’s educational needs in the area of the self-care of toileting. Given the failure to conduct an assessment in this area of educational need; to consider an adaptive skills assessment that utilized a validated adaptive behavior scale; and the lack of substantive discussion around the student’s health issues, the WCSD had insufficient information regarding the student’s ability and needs in the area of toileting and, therefore, is unable to demonstrate that the IEP accommodations properly addressed this individual student’s abilities and needs and the WCSD reached a determination that is reasonably supported by the child-specific data. OSEP Dispute Resolution Procedures Under Part B of the IDEA (7/23/2016), 61 IDELR 30291.

Therefore, WCSD failed to comply with the requirements of the IDEA and the NAC, Chapter 388, with regard to the provision of FAPE relating to the student’s toilet training needs in the 2017-2018 school year.

ORDER OF CORRECTIVE ACTION

Corrective Action Plan

In accordance with NRS §385.175(6), the NDE requests a plan of corrective action from WCSD to correct the identified noncompliance in this Complaint with regard to the failure to provide the student a FAPE in the area of adaptive behavior needs around toileting. The ordered Corrective Action Plan (CAP) must be provided to the NDE for approval within 14 days of the receipt of this Report.

The CAP must:

⁶ See Footnote 4, above.

1. Include a plan to conduct an assessment of adaptive skills that must include the self-care skill of toileting for the student, consistent with NAC §388.360, within a reasonable period of time from approval of the CAP. This assessment may be conducted and interpreted by qualified WCSD staff, or, at the WCSD's discretion, may take place in conjunction with the previously granted IEE, contingent upon the individual performing the IEE being qualified under NAC §388.360.
2. Include a plan to convene an IEP Team meeting and revise the student's IEP to consider all recommendations resulting from the assessment of adaptive skills, within a reasonable period of time from the receipt of the assessment ordered in No. 1, above.
3. Include a description of steps to be taken, and timeline proposed, to obtain a release of information from the Parent for any treating healthcare profession relating to the student's constipation and incontinence, so that such information may be considered in the IEP Team meeting Ordered in No. 2, above. In the event the Parent declines to approve the release of such medical information, WCSD shall include a plan to obtain a timely school health assessment and the same shall be considered by the IEP team at the IEP Team meeting convened to consider the above-ordered assessment of adaptive skills.

The CAP must be approved by the NDE prior to implementation. Following completion of the CAP as described above and NDE approval, copies of the assessment of adaptive skills, health assessment and revised IEP and notice for the convening of the IEP Team meeting and PWN for implementation of the revised IEP must be provided to the NDE no later than 60 days from the approval date of the CAP.