

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA120822)  
Report Issued on February 1, 2023**

**INTRODUCTION**

On December 8, 2022, the Nevada Superintendent of Public Instruction received a State Complaint from a Parent<sup>1</sup> dated November 29, 2022 alleging violations by Washoe County School District (WCSD) in a student's special education program. The allegations in the Complaint were that WCSD completed an intake for the student in January 2022 through Child Find, but delayed responding to the request for evaluation; failed to timely conduct the initial evaluation; and failed to provide a Prior Written Notice upon refusing to timely evaluate the student. In the facts supporting the problem, the Parent indicated that WCSD was proposing a February 2023 evaluation. The Parent's proposed remedy was for WCSD to provide compensatory services if the student was determined to be eligible as a student with a disability and for WCSD to provide Child Find evaluations using "creative, collaborative methods" such as utilizing out-of-state or consultative psychologists to ensure students are able to be evaluated and receive a Free Appropriate Public Education.

Given the Parent's proposed resolution regarding the manner in which WCSD should provide evaluations through Child Find, the Parent was informed that while corrective action would be ordered if it was determined that WCSD violated the requirements of IDEA or Nevada law/regulations for special education programs, including, if applicable, addressing the appropriate future provision of services for all children with disabilities, the requested manner of correction of utilizing "creative, collaborative methods" would remain a matter of local discretion for WCSD.

In the December 16, 2022 issue letter to WCSD, Nevada Department of Education (NDE) requested additional documents and information in order to investigate the State Complaint. WCSD was notified in that same correspondence that if WCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; reference to the provided documentation that factually supported the denial; and that a failure to do so by January 6, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. WCSD did timely respond and disputed one allegation of noncompliance in the Complaint and conceded two of the allegations in the Complaint. Specifically, WCSD conceded Issue One(a) regarding timely acting upon the Parent's referral for evaluation in January 2022 and Issue Two regarding providing a Prior Written Notice on WCSD's refusal to timely conduct an initial evaluation of the student, but disputed Issue One(b) regarding conducting the initial evaluation of the student within 45 school days after the Parent provided informed written consent.

The State Complaint and WCSD's response, including requested supplemental information/clarification, were reviewed and considered in their entirety in the investigation of this Complaint. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint and the original source document, where available, was relied upon.

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<sup>1</sup> This State Complaint was filed by one of the student's Parents. While it is recognized that both of the student's Parents participated in some of the referenced events in this Complaint Report and are likely to continue to participate in the student's education, the term 'Parent' will be used throughout the Report.

## **COMPLAINT ISSUES**

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

### **Issue One:**

Whether WCSD complied with IDEA and NAC, Chapter 388, and timely:

- a. Acted upon the Parent's referral of the student for an evaluation in January 2022 to determine whether the student is a student with a disability in need of special education and related services; and
- b. Conducted the initial evaluation of the student within 45 school days after the Parent provided informed written consent.

### **Issue Two:**

Whether WCSD complied with IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice on WCSD's refusal to timely conduct an initial evaluation of the student.

## **FINDINGS OF FACT**

### **General**

1. The student is a student with a disability of preschool age. It is uncontested that the student's Parent referred the student for an initial evaluation on January 4, 2022. The Parent completed the intake requirements on January 10, 2022. (Complaint, CCSD Response, Student Child Find Contact Log)
2. Commencing January 18, 2022, the student's Parent began contacting WCSD by email communication and telephone to check on the status of the referral for evaluation. The student was placed on a waiting list for evaluation with no Prior Written Notice provided to the Parent. It was not until October 24, 2022 that WCSD took affirmative action and inquired whether the Parent still had concerns regarding the student's development and wanted the student to remain on the waiting list for evaluation. (WCSD Child Find -Special Ed Contact Log, WCSD Response)
3. WCSD conducted the evaluation of the student on December 5, 2022 and employed an accelerated clinic-type approach to complete the evaluation process in a single day. Sequentially, the WCSD Child Find Project met with the student's Parent and engaged in evaluation planning that resulted in WCSD's issuance of a Prior Written Notice to the Parent proposing to evaluate the student and to determine the student's eligibility for special education services; the Parent was provided and signed the request for consent to evaluate the student and returned it to WCSD; the initial evaluation of the student was conducted. (Multidisciplinary Psycho-Educational Team Report, Documentation of Assessments Conducted, including the date, December 5, 2022 Prior Written Notice, December 5 2022 Nevada Consent for Evaluation)
4. That same day, December 5, 2022, after the completion of the evaluation process, WCSD issued a Multidisciplinary Psycho-Educational Team Report, and determined the student to be eligible for special education under the category of developmentally delayed. The Parent provided WCSD consent for the initial provision of special education and related services. (December 5, 2022

Multidisciplinary Psycho-Educational Team Report and Statement of Eligibility - Developmental Delayed, Parent Consent - Initial Provision of Special Education and Related Services)

5. On December 13, 2022, the student's IEP Team, including the Parent, developed the student's initial IEP. The student's IEP provided two annual goals and neither were required to be addressed during Extended School Year Services. The student's IEP provided: specially designed instruction of specialized instruction in pre-academics with the frequency of services of 1500 minutes per week (25 hours per week) in a special education setting; three supplementary aids and services to be available during the instructional day in that setting; and the related service of transportation. The student's Parent agreed with the components of the IEP. (December 13, 2022 IEP)
6. The student's IEP Team determined that the student's placement was in an early childhood self-contained program with zero percent of time in the regular school environment. On December 13, 2022, WCSD met with the Parent and provided enrollment information to the Parent to complete enrollment at the developmental preschool program site. The Parent enrolled the student on January 10, 2023, the first day of school after winter break, and the student commenced attendance that same day. (December 13, 2022 IEP, WCSD Child Find-Special Ed Contact Log, Student Enrollment History, WCSD Response)
7. WCSD acknowledged the existence of systemic issues and barriers in relation to Child Find for pre-school aged students, including shortages in staffing and resources. To date, WCSD indicated in response to this Complaint that these systemic issues and barriers have been addressed by the following:
  - a. WCSD is in the process of securing a contract to provide an Ages and Stages Questionnaire (ASQ) Screening Tool for parents that is designed to identify potential developmental delays. A workflow process for the tool incorporates junctures for the issuance of a Prior Written Notice. WCSD indicates this tool will enable the identification of those students whose development skills are "raising flags," thereby eliminating unwarranted evaluations.
  - b. Simultaneous to the ASQ screening, parents will be given access to a virtual curriculum used in preschool classrooms district-wide to help support their child at home while they are "scheduled for an evaluation at Child Find."
  - c. The centralized Child Find evaluation team approach is being changed to a centralized Child Find *intake* system with two different pathways based on the nature of the referral for evaluation. Children who are transitioning from the IDEA Part C Early Intervention Program for Infants and Toddlers with Disabilities administered by the Nevada Department of Health and Human Services (DHHS) will be evaluated by the centralized Child Find evaluation team and children who are community referrals (parent, private preschool or daycare referrals) will be evaluated using the team at the student's zoned school.
  - d. Evaluation clinics are being conducted during scheduled school breaks with recruited personnel from schools to address community referrals. (WCSD Response)
8. WCSD acknowledged the need for compensatory services for this student and other students whose parents requested an evaluation, if the students subsequently qualified for special education services. WCSD indicated compensatory services would be offered 45 school days after the parents requested an evaluation to the date services began. (WCSD Response)
9. WCSD proposed 675 hours of compensatory services to be provided to the student for missed time. WCSD's calculation for the provision of compensatory services to this student were calculated based on 27 school weeks of missed services and day-for-day compensatory services for the time missed. WCSD Response, 2021/2022 and 2022/2023 WCSD Balanced Calendar)

## CONCLUSIONS OF LAW

### Issue One:

Whether WCSD complied with IDEA and NAC, Chapter 388, and timely:

- a. Acted upon the Parent's referral of the student for an evaluation in January 2022 to determine whether the student is a student with a disability in need of special education and related services; and
- b. Conducted the initial evaluation of the student within 45 school days after the Parent provided informed written consent.

In accordance with NAC §388.337(1)(a), with some exceptions not applicable in this case, when WCSD determined that good cause existed to evaluate the student, it was required to conduct the initial evaluation within 45 school days after the Parent provided informed written consent. (See also IDEA, 34 C.F.R. §300.301(c).) Pertinent to this case, neither IDEA nor NAC, Chapter 388, provide timelines for a local educational agency to act on a referral of a student suspected of being a student with a disability and to request parental consent, if good cause is found to evaluate the student.

However, as the United States Department of Education indicated in the discussion of the 2006 IDEA regulations: "Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed." *Discussion of IDEA regulations*: Final Rule, 71 Fed. Reg., 46540, 46637 (August 14, 2006). Consistently, the Ninth Circuit Court of Appeals<sup>2</sup> determined: "To allow a state to use its regulations as a safe harbor in the absence of a congressional directive or regulation allowing for such would flout Congress's intent that judicial review of IDEA claims be child-specific. Compliance with the state regulation is relevant and should be considered, but the ultimate and dispositive question is whether the District acted in a reasonable time." *J.G. v. Douglas County Sch. District*, 552 F.3d 786; 51 IDELR 119 (9th Cir. 2008).

NDE adopts this reasonableness standard as the timeframe from referral for evaluation to requesting parental consent to evaluate, if good cause is found to evaluate the student. (See the related discussion under Issue Two on the timely issuance of a Prior Written Notice.) In this case, the delay from the referral of the student by the Parent on January 4, 2022 to the issuance of a Prior Written Notice and request for parental consent was 11 months. (Finding of Fact (FOF) #1, #2, #3) This delay was not only unreasonable, but significant, given the time period was almost equivalent to the duration of an annual IEP. 34 C.F.R. §300.324(b)(1); NAC §388.281(6)(a). As previously discussed WCSD has conceded it failed to timely act upon the Parent's referral of the student for an evaluation to determine whether the student was a student with a disability in need of special education and related services and no further discussion is required.

With regard to the timeliness of the initial evaluation of the student, pursuant to NAC §388.337(1)(a) the commencement of the 45-school day timeline for the conduct of an initial evaluation of a student is triggered by the local educational agency's receipt of the parent's written consent. In this case, once WCSD commenced the evaluation process, it used an accelerated evaluation process. That is, all on one day (December 5, 2022), WCSD met with the Parent to plan the initial evaluation of the student; provided the Parent a Prior Written Notice of the proposal to conduct the evaluation and the request for consent; received the Parent's consent and conducted the evaluation. (FOF #3) As such, WCSD did conduct the initial

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<sup>2</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

evaluation of the student within 45 school days as required by NAC §388.337(1)(a) and IDEA, 34 C.F.R. §300.301(c).<sup>3</sup>

*Therefore, WCSD timely conducted the initial evaluation of the student within 45 school days after the Parent provided informed written consent, but failed to comply with IDEA and NAC, Chapter 388, and timely act upon the Parent's referral of the student for an evaluation in January 2022 to determine whether the student was a student with a disability in need of special education and related services.*

## **Issue Two**

Whether WCSD complied with IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice on WCSD's refusal to timely conduct an initial evaluation of the student.

In accordance with IDEA, 34 C.F.R. §300.503(a), and NAC §388.300(8), a parent must be provided a written notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a Free Appropriate Public Education to the student.

The purpose of a Prior Written Notice is to inform parents of an agency's action on a proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education to a student. In this case, the student's Parent referred the student for an initial evaluation on January 4, 2022 (FOF #1) and a Prior Written Notice of WCSD's proposal or refusal to evaluate the student was required a reasonable time before WCSD proposed or refused to initiate the initial evaluation. After the referral of the student for evaluation, WCSD placed the student on a waiting list for evaluation and did not provide the Parent a Prior Written Notice to the student until December 5, 2022. (FOFs #2, #3) As previously discussed WCSD has conceded this issue and no further discussion is required with regard to this student-specific issue.

*Therefore, WCSD failed to comply with the IDEA and NAC, Chapter 388, with regard to the provision of a Prior Written Notice on WCSD's refusal to timely conduct an initial evaluation of the student.*

## **Corrective Action**

### **Systemic Noncompliance**

While this case is a student-specific case, WCSD acknowledged the existence of systemic issues and barriers in relation to Child Find for pre-school aged students, including shortages in staffing and resources, and committed to the provision of compensatory services for this student and other students whose parents requested an evaluation, if the students later qualified for special education services. (FOFs #7, #8, #9) WCSD is commended for taking affirmative action to address the identified systemic issues and barriers; the commitment to providing student-specific remedies; and the candid acknowledgement of these systemic issues and barriers in this State Complaint investigation.

Pursuant to IDEA, 34 C.F.R. §§300.149 and 300.600, NDE's general education supervision responsibilities include ensuring that the requirements of IDEA, Part B, are carried out and that when it identifies a local educational agency's noncompliance with the requirements of the IDEA that the noncompliance is

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<sup>3</sup> It is important to note that the determination of WCSD's compliance with the timely conduct of the initial evaluation of the student after the receipt of parental consent does not diminish the significance of the 11-month delay from the referral of the student by the Parent to the issuance of a Prior Written Notice and request for parental consent.

corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. Given this was a student-specific State Complaint, not a systemic Complaint, NDE does not have sufficient information at this time to ascertain the extent of the acknowledged systemic noncompliance in WCSD's pre-school Child Find system and whether WCSD's proposed systemic and child specific remedies for other students will timely correct the noncompliance.

Therefore, given NDE has a multifaceted general supervision system to ensure a local educational agency's compliance with the IDEA, it is determined that good cause exists to conduct a special monitoring of WCSD's pre-school Child Find system to determine the extent of the acknowledged identification of systemic noncompliance in WCSD's pre-school Child Find system and whether WCSD's systemic and student-specific solutions will address both the failure to provide appropriate services to other children and the appropriate future provision of services for all children with disabilities. 34 C.F.R. 300.151(b). To avoid further delay, WCSD was contacted by NDE in the course of this investigation and arrangements were made for the conduct of on-site monitoring for the above-described purpose. WCSD expressed receptivity to the conduct of the special monitoring of WCSD's pre-school Child Find system and to technical assistance to assist them in the resolution of this systemic issue.

### **Student-Specific Directed Action**

The determination of noncompliance with regard to WCSD's failure to timely act upon the Parent's referral of the student for an evaluation constitutes a substantive noncompliance. *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007). As previously mentioned, WCSD has acknowledged the need for compensatory services for this student. (FOF #9)

### **Corrective Action Plan**

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from WCSD as soon as possible, but no later than 14 WCSD business days of the receipt of this Report. The CAP must be approved by NDE prior to implementation. CAP must provide for the following student-specific directed action, including the timeline within which it will be implemented:

#### **A. Compensatory Education**

Compensatory education is designed to provide the educational benefits that likely would have accrued to the student from special education services if they had been supplied in the first place. This is a fact-specific determination. (*Parents of Student W. ex rel. Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489; 21 IDELR 723 (9th Cir. 1994); *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005)) In compensatory education awards, there is no obligation to provide a day-for-day compensation for time missed. *Parents of Student W. v. Puyallup*. This approach for determining compensatory education is considered 'qualitative' in nature, rather than strictly 'quantitative' and requires that a compensatory education award be made not merely by establishing the amount of services which were not provided, but that an analysis be done to establish what may make the student whole for the denial of services. In this case, upon consideration of the student's age and significant loss of services in the 2021/2022 and 2022/2023 school years, NDE has determined, as WCSD has proposed, day-to-day compensatory services are warranted.

It is unknown when WCSD would have received the Parent's consent if WCSD had timely issued a Prior Written Notice with the proposal to evaluate the student after the initial referral of the student for evaluation and timely requested the Parent's consent. Therefore, NDE will adopt the timeframe put forward by WCSD of compensatory services to be provided 45 school days (the evaluation timeline) after the Parent completed the intake process on January 10, 2022 (six days after the initial referral of the student) to the date services

began. (FOFs #1, #4, #6, #9) Upon consideration of the 1500 minutes per week (25 hours) of specially designed instruction in the student's December 13, 2022 IEP (FOF #5) and a review of the 2021/2022 and 2022/2023 school year calendars, NDE also adopts WCSD's calculation of 27 missed school weeks of services, totaling 675 hours of compensatory services. (FOF #9)

WCSD and the Parent are encouraged to work together throughout this process to enable the student to recoup any lost skills and expected progress that resulted from the missed services. WCSD must consult with the student's Parent on the appropriate means to provide this ordered compensatory education to meet the student's educational needs and must consider any concerns of the Parent and/or proposals in the development of the compensatory education plan. This compensatory education must be in addition to the services in the student's IEP and, as such, must be provided during school breaks or before or after school.

**Unless agreed to otherwise in writing by WCSD and the Parent,** the CAP must provide 675 hours of specially designed instruction as compensatory education consistent with the student's IEP to be completed no later than one year from the date of this Report. 34 C.F.R. §300.164(e).

Documentation of the completion of the CAP must be provided to NDE within 14 days of its completion.