

**WASHOE COUNTY SCHOOL DISTRICT  
COMPLAINT INVESTIGATION  
(#WA011224)**

**Report Issued on March 12, 2024**

**INTRODUCTION**

On January 12, 2024, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging a violation by Washoe County School District (WCSD) of the Individuals with Disabilities Education Act (IDEA) law and regulations, 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).

The allegations in the Complaint were that WCSD failed to implement the student's Individualized Education Program (IEP) in effect in the 2023/2024 school year starting August 15, 2023 with regard to the provision of an adult assistance/one-to-one aide consistently during the entire school day and to provide adult assistance on the bus. The Parent further alleged that, when WCSD did provide adult assistance to the student, the staff had not received the required training to support the student at school, including training to help the student transition to different activities or help the student de-escalate when behaviors occur. Due to the failure to provide the student a one-to-one aide in class, the Parent indicated that the student is being overlooked at school and often sits away from the class due to the possibility that inappropriate behavior may be displayed; the student is not engaged in learning activities; and the staff often does not interact with the student. It was further alleged that WCSD has too many children and not enough adults in the student's classroom and is in violation of NAC, Chapter 388.

The Parent's proposed resolution to address these allegations was to provide a trained one-to-one aide to support the student so that the student can attend school and make meaningful progress; school staff to receive training so that the student has access to teaching and is able to manage behaviors; and compensatory services due to the lack of the implementation of the student's IEP from August 15, 2023, the number of hours to be determined by the investigation.

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 through January 11, 2024, the date of the State Complaint:

**Issue One:**

Whether WCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year commencing August 15, 2023, specifically with regard to providing the student trained adult assistance/one-to-one aide during the school day and on the school bus.

**Issue Two:**

Whether WCSD complied with NAC §388.150 with regard to the maximum size of the student's class and maximum number of students per teacher in the student's class during the 2023/2024 school year.

In the January 22, 2024 correspondence from Nevada Department of Education (NDE) regarding the issues in this State Complaint, WCSD was notified that if WCSD disputed the allegations of noncompliance in

the State 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 February 7, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint. WCSD did timely provide a response; denied the alleged noncompliance, asserting that the student received one-to-one-aide support through the use of qualified staff; and provided the statement of the factual basis for the denial and referenced documents.

The State Complaint; supplemental information provided orally by the Parent;<sup>1</sup> and WCSD's denial of all claims, arguments and documents submitted by WCSD, including supplemental documentation, were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the relevant information determined necessary to resolve the issues in this Complaint.

## **FINDINGS OF FACT**

### **General**

1. The student is a student with a disability enrolled in WCSD in the 2023/2024 school year. (IEP, State Complaint, WCSD Response, Student Period Attendance Detail)
2. The first day of school for students in the 2023/2024 school year was August 14, 2023. There were 84 school days from the commencement of the school year through January 11, 2024. (WCSD 2023/2024 Balanced Calendar)
3. During the relevant time period of this State Complaint, the student was absent for an unverified reason on seven days for one to three periods and was absent for the reason of medical on one day for more than half of the day. Other than the medical absence, the other absences were all preceded and followed by periods of attendance, with no explanation provided. (Student Period Attendance Detail)

### **April 19, 2023 IEP**

4. The student had an April 19, 2023 annual IEP in effect at the commencement of the 2023/2024 school year with the ending date for services of April 19, 2024. The date for the student's anticipated three-year reevaluation is April 29, 2024. The student is placed in a self-contained program with 28% of the school day in the regular education environment and requires extended school year services, including transportation, for four of the student's eight goals. (April 19, 2023 IEP)
5. The student's IEP Team determined that the student's behavior impeded the student's learning or the learning of others. The student displays self-injurious and aggressive behaviors at school. The self-injurious behaviors include banging the student's head into the wall/floor/another person/ knee, hitting the face with an open or closed hand, and causing the nose to bleed. Aggressive behaviors, typically to adult staff, include pulling hair; head butting; scratching; and hitting/ punching. (April 19, 2023 IEP)

<sup>1</sup> While the student's Parent indicated in an interview with a member of the State Complaint Investigation Team the intention to submit additional documentation to support the State Complaint, NDE did not receive any supplemental documentation during the course of the investigation. (Parent Interview, Review of Record)

6. The student requires a one-to-one aide to accompany the student everywhere the student goes during the school day due to the potential for behaviors and the severity of the behaviors. (April 19, 2023 IEP)
7. As of April 2023, the potential for the student's aggression and self-injurious behaviors on the school bus, to and from the school site, had decreased from past years, however, the student still required an aide on the bus to ensure the safety of the student and others. (April 19, 2023 IEP)
8. With regard to emotional regulation, the student needs the assistance of a one-to-one aide to help the student stay on the behavior plan and to implement the plan for the student to calm down when behavior is escalated. When the student is frustrated and engages in the self-injurious or elopement behaviors, it is challenging for the student to complete the modified curriculum at the student's instructional level. (April 19, 2023 IEP)
9. The student's April 19, 2023 IEP has eight annual goals, one of which is a social/emotional/behavioral goal to identify signs of frustration, anxiety or stress in self or others when prompted by the student's teacher or an adult aide. (There is a related social/self-help goal to identify a self-calming technique.) During the relevant time period of this State Complaint, the student was to be provided specially designed instruction in functional academics and social and/or behavioral skills and the method for reporting the student's progress toward meeting annual goals was a specialized progress report with the projected frequency of quarterly. (April 19, 2023 IEP)
10. Relevant to this State Complaint, the following supplementary aids and services were included in the student's April 19, 2023 IEP:
  - a. One-to-one aide for frustration intolerance 1075 minutes per week (rounded, 18 hours a week or 3.6 hours per day);
  - b. One-to-one aide support on the bus up to two hours per day;
  - c. One-to-one support for language arts 420 minutes per week (seven hours a week);
  - d. One-to-one support in math 415 minutes per week (rounded, seven hours a week).
  - e. Reinforce desired behavior when doing academic and non-academic tasks. (April 19, 2023 IEP)
11. The student was also provided the following relevant related services:
  - a. A Board-Certified Behavior Analyst (BCBA), on a consultative basis, with the frequency of 300 minutes per month and BCBA staff training 120 minutes per year in the location of the special education setting.
  - b. Direct transportation 120 minutes per day during the regular school year and extended school year with the description that the student requires a one-to-one aide on the bus. (April 19, 2023 IEP)
12. A Functional Behavioral Assessment was conducted in December 2021 on the target behavior of self-harm. The hypothesis of the function of the self-harm was "automatic; escape; or tangible." (April 19, 2023 IEP)
13. The student has a Behavior Intervention Plan (undated) for self-injurious behavior/self-harm. This conduct is defined as any instance of the student making contact between the student's head and any object with enough force to make a visible mark. Staff are required to collect data throughout the day on the student's target behavior. (No data on the student's target behavior was provided in the course of the investigation.) The student's appropriate/replacement behaviors are to be reinforced by providing the student access to edible reinforcers throughout the day and setting a timer for every break for three minutes and allowing the student access to preferred activities and

items in the classroom. The student's use of an iPad was one of the student's preferred activities during the relevant time period of this State Complaint. (Student Positive Behavior Intervention Plan, August 16, 2023 Staff Training, BCBA Technical Assistance Reports)

### **One-to-One**

14. The student was not provided a dedicated one-to-one aide during the relevant time period of this State Complaint. (State Complaint, WCSD Response, Review of the Record)
15. It is WCSD's position that, notwithstanding the absence of a one-to-one aide assigned to the student, the student had adult support throughout the day, also described as one-to-one coverage, and on the school bus. However, WCSD did not provide the requested documentation of the asserted provision of one-to-one coverage throughout the school day or on the school bus. WCSD did provide, in brief summative narrative form, the student's routine and assistance provided to the student through seven class periods by the program assistant or lead teacher, with some coverage by the case manager. Notwithstanding WCSD's assertion of full coverage, the narrative included activities when the student was not provided one-to-one assistance, such as the student's independent transitions from period to period with only adult line-of-sight assistance; the life skills class, where only the lead teacher and assistant were noted; and the student's participation in blended group lessons, as distinguished from one-to-one lessons with assistance. With regard to the school bus, WCSD only provided the name of an aide that was assigned to the student's bus, not to the student. (WCSD Response/Supplemental Response, January 31, 2024 Email Communication, NDE Issue letter)
16. In the course of the investigation, WCSD was provided the opportunity to provide additional documentation that was contemporaneous, or near in time, to verify the implementation of the one-to-one coverage in lieu of the one-to-one aide in the student's IEP and was unable to do so. In the additional response, WCSD conceded that there may have been times during which line-of-sight was provided instead of dedicated adult support or an aide. To remedy this implementation issue, WCSD proposed the provision of 50 hours of compensatory services to the student focused on academic or functional areas. (NDE Request for Additional Information, WCSD Supplemental Response)
17. The student's Parent acknowledged that the student does get periodic one-to-one assistance, but that there are more gaps than not. (State Complaint, Parent Interview)
18. In accordance with WCSD's April 2023 assessment of the student, the student's one-to-one aide has to be trained in crisis prevention intervention to assist the student in the event of self-injurious behaviors; and to prevent the student "from eloping and is injured or worse when alone outside the school." While the length of the training is unknown, the BCBA did conduct a training on the student's Behavior Intervention Plan for staff in the three classes the student attends on August 16, 2023, including a section on "managing challenging behaviors." The BCBA did also review the student's emergency procedures in case of escalated behaviors with the student's teacher prior to the commencement of school and again on August 14, 2023. The Behavior Intervention Plan training conducted by the BCBA is different from crisis prevention certification. (April 19, 2023 IEP, August 16, 2023 Student Positive Behavior Support Plan Staff Training, October 16, 2023 Technical Assistance Report – Behavior Department)
19. In the 11 observations of the student by the BCBA during the relevant period of this State Complaint, there were only three occasions the BCBA reported a one-to-one aide, rather than the classroom aide, working with the student: on October 16, 2023, at which time the aide was not

crisis prevention intervention certified, but was to be later that week; October 24, 2023; and November 20, 2023.<sup>2</sup> On or before December 5, 2023, the aide left the position and the school team was reviewing options to ensure the student was worked with throughout the day. On December 19, 2023, the BCBA noted that the teacher reported that the “team” was rotating to ensure the student was staffed and assisted throughout the day. (BCBA Technical Assistance Reports)

20. In the response to the State Complaint, WCSD indicated the school advertised for a dedicated one-to-one position of 40 hours per week (including the travel time on the bus), but there were no applicants. (WCSD Response)
21. In response to the Order of Corrective Action for two prior State Complaints, WCSD developed policies and procedures in the event a student is not provided required IEP services. The procedures include notice to the student’s parent; the convening of the student’s IEP Team to consider the student’s need for compensatory services; and communication protocols and forms. Upon approval of these procedures/policies by NDE, WCSD committed to the implementation of a training plan for principals, school teams, and other relevant stakeholders. (WCSD Supplemental Response and Developed Policies/Procedures)

### **Student Progress**

22. At the commencement of the school year, based on the observation of the student during the student’s participation in three different classes, the BCBA noted: “Group instruction is a common format for these classrooms. [ ]<sup>3</sup> has done very little of this and will need additional assistance to attend to instruction.” (August 16, 2023 BCBA Technical Assistance Report)
23. At the time of the development of the student’s April 19, 2023 IEP, the student had met the annual social/emotional/behavioral goal to identify signs of frustration, anxiety or stress in self or others when prompted by the teacher or other adult staff. Nonetheless, the goal was continued in the April 19, 2023 IEP. (April 19, 2023 IEP)
24. In the first quarter of the 2023/2024 school year, the student was determined likely to meet all of the student’s IEP goals by the next annual review, including the social/emotional/behavioral goal. The comment on the student’s social/emotional/behavioral goal of identifying signs of frustration, anxiety or stress was that whenever the student has a problem or is frustrated the student always asks for help. (November 21, 2023 Student Progress Report)
25. During the relevant time period of the State Complaint, the student’s BCBA reported the student was on the iPad on numerous occasions watching preferred videos when the group was working on academic activities and, during the use of the iPad, the student was observed engaging in vocal and physical stereotypy. The time period when the student started and ended (either voluntarily or involuntarily) the use of the iPad in non-free-choice activity periods ranged from three minutes to 17 minutes. The student was also observed eloping during one observation on October 19, 2023 and the BCBA recommended that while giving the student extra breaks is good, make sure it is not because the student eloped. (BCBA Technical Assistance Reports)

<sup>2</sup> The named aide was not one of the two paraprofessionals employed by WCSD as a paraprofessional in the 2023/2024 school year. (Employee Information)

<sup>3</sup> [ ] denotes the redaction of personally identifiable information.

26. During the relevant time period of this State Complaint, the following self-injurious and/or aggressive behaviors were observed or reported to the BCBA during the BCBA's 11 observations of the student:
- a. On October 24, 2023, the student hit the microwave and threw a glass jar on the floor. The aggressive behavior did not escalate and no self-injurious behaviors occurred. The aide then took the student on a walk around the sport's field. Later that same day, the student "open hand" slapped a student peer on the back when the peer engaged in a particular conduct. When the peer did not respond, the student turned back to the iPad.
  - b. On October 30, 2023, the student engaged in self-injurious behavior.
  - c. On October 31, 2023, the student engaged in self-injurious behavior and the student's Parent was called at 9:45 AM to pick the student up after multiple staff interventions/options did not work. The day is noted on the record of student attendance as a day the student was absent.
  - d. On November 2, 2023, the student engaged in self-injurious behavior, hitting their head against hard objects and hitting themselves in the head. The BCBA observing the student intervened by blocking the student and prompting. Later the student again hit their head against the wall, but followed the prompt to de-escalate.
  - e. On December 18, 2023, the student threw a glass bottle while in the sport's area and ran off into the equipment room where the student started putting objects in the sink drain. The student was then redirectable.
  - f. On December 19, 2023, the student attempted to take a phone from the classroom aide and a peer, but was redirected. (BCBA Technical Assistance Reports, Student Period Attendance Detail)

### **Student's Class**

27. There are three classrooms at the student's school with the student's designated program for specially designed instruction. Two of the designated programs had eight students on the teacher's caseload, including the student's assigned class, and the third program had five students on the assigned teacher's caseload. The classrooms, including the student's, each had a program assistant (classroom aide). (WCSD Responses, BCBA Technical Assistance Reports, Caseload Report)
28. The school utilizes "flexible grouping" that, in the student's case, included the combination of classrooms. WCSD asserted that the staffing for two combined classes for that purpose would include the two assigned teachers and two program assistants for the maximum of 16 students. WCSD was provided the opportunity to provide supplemental documentation in support of the class size when flexible grouping occurs, but was unable to do so. (WCSD Response and Supplemental Response, Review of the Record)
29. WCSD was provided an exception by NDE to exceed the caseload maximum to address teacher shortages on August 29, 2023 for the duration of the 2023/2024 school year. (August 28, 2023 and August 29, 2023 Correspondence between NDE and WCSD)

## **CONCLUSIONS OF LAW**

### **Issue One:**

Whether WCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year commencing August 15, 2023, specifically with regard to providing the student trained adult assistance/one-to-one aide during the school day

and on the school bus.

The requirements of the provision of a Free Appropriate Public Education to students with disabilities under IDEA and NAC, Chapter 388, necessitate that special education and related services and supplemental aids and services are provided in conformity with a student's IEP. 34 C.F.R. §§300.17(d), 300.101; NAC §388.281(6)(e); *Capistrano Unified Sch. Dist. v. Wartenberg*, 59 F.3d 884 (9th Cir. 1995); *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007).<sup>4</sup>

“Part B does not contain specific requirements for public agencies to document that a child with a disability has been provided with FAPE in accordance with the child's IEP. However, the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80 are applicable to the Part B program. Section 76.731 requires that a State and a subgrantee must keep records to show its compliance with Federal legal requirements.... Consistent with the EDGAR provisions cited above, States and public agencies must maintain documentation sufficient to ensure that a public agency provides FAPE to a child with a disability in accordance with the child's IEP. A State determines the form of documentation deemed sufficient to demonstrate whether its public agencies are in compliance with this requirement....” *Letter to Broussides*, (OSEP, June 9, 2010).<sup>5</sup>

Pursuant to NAC §388.215, the State of Nevada has established measures each public agency must take to ensure that every student with a disability in the school district is identified, evaluated and served in the manner appropriate to the unique needs of the student. These measures include the establishment of a system of records that verifies these measures were implemented, including that each student identified as a student with a disability is receiving services appropriate to the student's disability. This requirement for a verifiable system of records is particularly important in the State Complaint process because, unlike due process hearings where testimony is under oath; cross examination of witnesses is available; and there is an opportunity for the Hearing Officer to judge credibility on matters with conflicting evidence, this process is an investigation process. Accordingly, verifiable documentation is required to reach a determination whether the assertions of the public agency should be believed over the assertions of the complainant or vice versa.

In this case, the student had an April 19, 2023 IEP in effect during the relevant period of the State Complaint. (Finding of Fact (FOF) #4) The student displays self-injurious and aggressive behaviors at school. The self-injurious behaviors include banging the student's head into the wall/floor/ another person/ knee, hitting the face with an open or closed hand, and causing the nose to bleed. Aggressive behaviors, typically to adult staff, include pulling hair; head butting; scratching; and hitting/ punching. The student requires a one-to-one aide to accompany the student everywhere the student goes during the school day due to the potential for behaviors and the severity of the behaviors. The one-to-one aide has to be trained in crisis prevention intervention to assist the student in the event of self-injurious behaviors; and to prevent the student “from eloping and is injured or worse when alone outside the school.” (FOFs #5, #6, #18) Similarly, the student requires a one-to-one aide on the school bus to ensure the safety of the student and others. (FOF #7)

The student also needs the assistance of a one-to-one aide for emotional regulation to help the student stay on the student's Behavior Intervention Plan and to implement the Plan when behavior is escalated. (FOF #8) In accordance with the plan, staff are required to collect data throughout the day on the student's target behavior and to reinforce desired behavior when the student is doing academic and non-academic tasks. (FOF #13)

<sup>4</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

<sup>5</sup> This United States Department of Education policy letter is publicly available at:

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-2/broussides060910sea2q2010.pdf>

Accordingly, the student's April 19, 2023 IEP provided the student: a one-to-one aide for frustration intolerance 1075 minutes per week and one-to-one aide support on the bus up to two hours per day. In addition, given the student needs additional assistance to attend to instruction, the student was to be provided one-to-one support for language arts 420 minutes per week; and one-to-one support in math 415 minutes per week. (FOFs #9, #10, #22) The student was also provided the consultative related service of a BCBA for 300 minutes per month and a staff training for 120 minutes per year. (FOF #11) A staff training on the student's Behavior Intervention Plan did take place on August 16, 2023. (FOF #18)

It is uncontested that the student was not provided a dedicated one-to-one aide during the relevant period of this State Complaint. (FOF #14) Nonetheless, it is WCSD's position that, notwithstanding the absence of a one-to-one aide assigned to the student, the student had adult support/one-to-one coverage throughout the day and on the school bus. (FOF #15)

As discussed above, WCSD was required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to the student. NAC §388.215. The narrative developed after the filing of the State Complaint and provided in WCSD's response to this State Complaint does not constitute sufficient verification that the student was provided the asserted one-to-one adult support/coverage consistent with the student's IEP. To ensure the conduct of a comprehensive investigation, WCSD was provided the opportunity in the course of the investigation to provide contemporaneous or near in time documentation to support the implementation of the student's supplementary service of a one-to-one aide throughout the school day and on the school bus, and was unable to do so. (FOFs #15, #16)

No information or documentation was provided in the course of the investigation that verified WCSD's provision of the required one-to-one assistance to the student on the school bus for purposes of safety. Based on the acknowledgement of the student's Parent that the student received periodic one-to-one assistance during the school day and the three documented days a one-to-one aide was observed to be working with the student, the State Complaint Investigation Team determined that, while the student did not have a dedicated one-to-one aide, it is likely that the student did receive periodic one-to-one assistance during the school day. (FOFs #18, #19) Nevertheless, periodic one-to-one assistance, rather than one-to-one assistance/support throughout the school day did not conform to the student's IEP. NAC §388.281(6)(g), 34 C.F.R. §§300.17(d) and 300.101.<sup>6</sup>

*Therefore, WCSD failed to comply with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year with regard to providing the student trained adult assistance/one-to-one aide during the school day and on the school bus.*

## **Issue Two:**

Whether WCSD complied with NAC §388.150 with regard to the maximum size of the student's class and maximum number of students per teacher in the student's class during the 2023/2024 school year.

<sup>6</sup> In the absence of the required verifiable system of records as required by NAC §388.215, it is also unknown whether any of the provided periodic one-to-one assistance was for the required purpose for frustration intolerance or may simply have been for the purpose of the required additional minutes of one-to-one support in language arts and math; or whether all staff persons who provided the assistance during the relevant time period of the State Complaint received the required crisis prevention intervention training. (FOF #10)



IDEA Part B does not provide specific teacher-pupil ratios. However, states may establish teacher-pupil ratios so long as a Free Appropriate Public Education is provided for all children, *Letter to Fascell*, 18 IDELR 218 (OSEP, August 15, 1991).<sup>7</sup> In the State of Nevada, NAC §388.150 does limit the maximum number of cases per teacher in a unit and the maximum cases per teacher in a unit, with exceptions.

There are three classes at the student's school with the student's designated program for specially designed instruction and each class has an assigned teacher and classroom aide. Two of the designated programs had eight students on the assigned teacher's caseload, including the student's assigned class, and the third class had five students on the assigned teacher's caseload. With regard to caseload, the maximum number of cases per teacher in a unit for student's designated disability is 12 students, with exceptions. NAC §388.150(1). The teacher's caseload for the student's class was only eight students. (FOF #27) Therefore, WCSD did comply with the maximum number of cases per teacher in the student's class in accordance with NAC §388.150.<sup>8</sup>

Pursuant to NAC §388.150(2), the maximum size of a class per instructional period for students with the student's designated disability is six students. However, if a teacher's aide is used in a unit, the maximum size of a class in the unit with the student's designated disability is eight students. While NAC §388.150 is straightforward on the maximum class size for the student's class, the facts are not. In this case, the school utilized "flexible grouping" that included combining classes at the student's school with the same designated program as the student's. (FOFs #27, #28) NAC §388.150 does not address when two classes or more of the required class size and staffing are combined for this purpose. While WCSD was provided the opportunity to provide supplemental documentation on the class size when the student's class was combined with another class for the purpose of "flexible grouping," WCSD was unable to do so. (FOF #28)

The State Complaint Investigation Team independently reviewed and weighed all information and documentation provided in the course of this investigation. Upon consideration of the caseload in all three classes at the student's school with the student's designated program (FOF #27), including the student's, the State Complaint Investigation Team determined that it is likely that the combined classes, each with an assigned teacher and classroom aide, did not cause the student's class size to exceed the maximum class size permitted by NAC §388.150. However, as discussed previously, other than documentation, there is no impartial method in this investigative process to reach a determination that the assertions of the public agency should be believed over the assertions of the complainant or vice versa. As such, the State Complaint Investigation Team determined that the evidence was insufficient to make a determination as to the probable truth of the matter in this case regarding the student's class size.

<sup>7</sup> This letter is not publicly available; therefore, the paragraph is quoted verbatim: "First, [ ] asked for the Federal regulations or recommendations regarding the size of classes for students with disabilities for four different disability categories. The regulations for Part B of the Individuals with Disabilities Education Act (Part B), formerly cited as the Education of the Handicapped Act, are the Federal regulations that can provide Dr. Rucker with the information he needs. A copy of the Part B regulations is enclosed for his review. Part B requires that each child with a disability who qualified for services under Part B must be provided with a free appropriate public education (FAPE) that meets the child's needs (see 34 CFR §§ 300.300-300.307). Part B further specifies that FAPE must be provided to each child with a disability in the least restrictive environment (LRE) appropriate to meet the needs of the child (see 34 CFR §§ 300.550-300.556). Each child's individual needs are determined when an individualized education program (IEP) is developed for the child (see 34 CFR §§ 300.340-300.349). The Part B regulations do not specify teacher-pupil ratios. States may generally establish teacher-pupil ratios. However, in doing so, they must ensure that FAPE is provided for all children."

<sup>8</sup> While NAC §388.150 authorizes an exception to the maximum number of cases per teacher prescribed with the written approval of NDE, and WCSD's request to do so was granted for the student's designated specialized class (FOF #29), the student's class did not exceed the case load prescribed.

As a final matter, it is important to note the evidence was sufficient to determine that, even if WCSD complied with NAC §388.150 in all regards, WCSD's failure to provide the student the one-to-one aide, determined by the student's IEP Team to be necessary for the student to receive educational benefit, denied the student a Free Appropriate Public Education.

*Therefore, WCSD complied with NAC §388.150 regarding the maximum number of students per teacher in the student's class during the 2023/2024 school year; however, there was insufficient evidence to make a determination whether WCSD complied with NAC §388.150 regarding the maximum size of the student's class.*

## **ORDER OF CORRECTIVE ACTION<sup>9</sup>**

WCSD is required to take corrective action to address the violation found in this State Complaint investigation, specifically, WCSD's failure to implement the student's required one-to-one aide throughout the school day and on the school bus.

In accordance with IDEA, 34 C.F.R. §300.151(b), in resolving a State Complaint in which the State Education Agency has found a failure to provide appropriate services, the agency, pursuant to its general supervisory authority under IDEA Part B must address: (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) appropriate future provision of services for all children with disabilities. In this case, both a student-specific corrective action for the failure to provide the student a Free Appropriate Public Education and a systemic remedy is required.

### **Student-Specific Remedy**

Whether the failure to provide the services in a student's IEP is a minor discrepancy or a material failure is relevant to the determination whether a student-specific corrective action is required to address the needs of the student. 34 C.F.R. §300.151(b). This is an individualized determination: "A material failure to implement an IEP occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP..." and the services "...a school provides to a disabled child fall significantly short of the services required by the child's IEP." The student's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided. *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007).

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.* 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.

<sup>9</sup> Nothing in this Order precludes either the Parent or WCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.

The calculation of the educational benefits the student would have received, but for WCSD's failure to provide a one-to-one aide throughout the school day and on the bus, is particularly complicated in this case. As previously discussed, in addition to the student's Parent's acknowledgement, there is some documentation that the student received one-to-one support periodically during the relevant period of this State Complaint (FOFs #17, #19) but, in the absence of documentation otherwise, this support is not quantifiable. Similarly, the documentation provided in the course of this investigation of any educational benefit the student may have received from the periodic assistance was minimal, most notably the student's Progress Report that merely indicated the student would likely meet the student's IEP goals by April 2024. (FOF #24)

Given the absence of other data, such as the Behavior Intervention Plan data required to be collected throughout each school day (FOF #13), and the fact that student had already met one of the goals the prior year that the student was "likely" to meet (FOF #23), the State Complaint Investigation Team accorded greater weight to the BCBA's documented observations as a more accurate representative of the student's engagement in instruction and incidence of self-injurious and aggressive behaviors. These observations evidenced the absence of instruction during the student's repeated use of an IPAD, along with vocal and physical stereotypy, for periods in excess of the student's Behavior Implementation Plan; elopement on at least one occasion; and the occurrence of the targeted self-injurious behavior in the student's Behavior Implementation Plan and/or aggressive behaviors. (The occurrence of the targeted self-injurious behavior included one day the school called the Parent to pick up the student when the school team was unable to manage the behavior.) (FOFs #14, #25, #26)

In determining the appropriate remedy to provide the educational benefits that likely would have accrued to the student with the provision of the required one-to-one aide, the State Complaint Investigation Team considered both the Parent's and WCSD's proposed resolution.

In accordance with NRS §385.175(6), NDE requests a plan of corrective action (CAP) from WCSD within 20 WCSD business days of the receipt of this Report on the provision on WCSD's plan to implement the ordered actions below, including the timeline. **(Note the ordered implementation of the one-to-one aide throughout the school day and on the school bus consistent with the student's IEP and request for parental consent for the conduct of an assessment (Orders One and Two) are required to be completed on or before the submission of the CAP.)** Other than the ordered implementation of the one-to-one aide and request for parental consent, the CAP must be approved by NDE prior to implementation and documentation of the completion of the approved CAP must be provided to NDE within 14 days of its completion.

**Unless an alternative student-specific remedy is otherwise agreed to in writing by WCSD and the Parent<sup>10</sup>**, the CAP must provide for the following student-specific directed action and provide the timeline to enable the completion of all the action as soon as possible, but no later than one year from the date of this Report. The ordered compensatory education/service must be in addition to the services in the student's IEP and must be provided during school breaks or before or after school:

1. If WCSD has not already assigned a dedicated one-to-one aide for the student throughout the school day and a dedicated one-to-one aide on the bus as well as the one-to-one support as required in the

<sup>10</sup> If WCSD and the Parent agree to an alternative student-specific remedy, that written agreement must be submitted with the CAP and all required documentation in this Order applies to the implementation of the agreed-upon alternative remedy.

student's IEP<sup>11</sup> by the date of the Report, WCSD must do so as soon as possible and no later than **20 school days** after the date of this Report. If not already certified, the student's one-to-one aide (and one-to-one support, if different) must receive crisis prevention intervention training prior to commencing service. At WCSD's discretion, all or part of the one-to-one aide services and/or one-to-one support may be provided by a qualified private provider with behavior intervention training.

To ensure the permitted 20-school day time period does not jeopardize the safety of the student or others (FOFs #6 - #9) or interfere with the student's engagement in the student's specially designed instruction:

- a. Until WCSD assigns a dedicated one-to-one aide to the student, WCSD must provide the student one-to-one coverage for each period of the school day and on the school bus until a one-to-one dedicated aide is assigned, and commences the provision of the required one-to-one assistance, to the student. At WCSD's discretion, the one-to-one coverage may be provided with existing staff.
  - b. Commencing the first school day after the date of this Report, WCSD must maintain hourly documentation (contemporaneous or near in time) of the provided one-to-one coverage throughout each school day and on the school bus. WCSD must provide the documentation, including the name of the assigned individual and implemented support, to NDE with the submission of the CAP. Upon review of the documentation provided with the CAP (or as soon as possible thereafter, if there are any school days after the 20 business days), NDE will determine if WCSD provided the student the required one-to-one coverage throughout the entirety of this time period up to the permitted 20-school day period and, if not, NDE will increase the compensatory education under Order Five hour-for-hour for any determined lack of verified one-to-one coverage. NDE's determination in this regard, will be final.
2. As soon as possible, but no later than **six school days** after the date of this Report, if not already done as part of the student's upcoming three-year reevaluation, WCSD must provide the student's Parent a request for parental consent for the conduct of a social/emotional/behavioral assessment of the student, including the conduct of a Functional Behavioral Assessment to include the targeted behaviors of self-injurious and aggressive behaviors and elopement.<sup>12</sup> Upon the receipt of parental consent<sup>13</sup> for the conduct of these assessments, WCSD must conduct the assessments no later than 22 school days after the receipt of parental consent. A copy of the evaluation report must be provided to the Parent and other members of the student's IEP Team at least two days prior to the IEP Team meeting. The student's IEP Team must consider the results of the ordered assessments in developing the student's IEP. (If the student's annual IEP must be developed prior to the conduct of these assessments due to the date for review, 34 C.F.R. §300.324(b), WCSD must reconvene the student's IEP Team for this purpose within 10 school days of the conduct of the ordered assessments.)

<sup>11</sup> That is: One-to-one aide for frustration intolerance 1075 minutes per week and one-to-one aide support on the bus up to two hours per day; one-to-one support for language arts 420 minutes per week; and one-to-one support in math 415 minutes per week.

<sup>12</sup> The student's last documented Functional Behavioral Assessment relied upon in the development of the student's April 19, 2023 IEP was conducted in December 2021. (FOF #12)

<sup>13</sup> If the Parent elects not to consent to the ordered assessments, as is the Parent's right, WCSD must provide documentation of the Parent's denial of consent to NDE with the submission of the CAP.

3. The WCSD BCBA and the school psychologist must participate as member(s) of the student's IEP Team at the IEP Team meeting held after the completion of the ordered social/emotional/behavioral assessment of the student, including the Functional Behavioral Assessment.
4. WCSD must provide 48 hours of compensatory education for the student of the direct related services of a BCBA to address the student's self-injurious and aggressive behaviors; and elopement. At WCSD's discretion, the direct services of a BCBA may be provided by a qualified private provider. If the student's IEP Team determines that the student requires the direct services of a BCBA during the school day in the student's annual IEP Team meeting or, if different, the IEP Team meeting conducted after the conduct of the ordered assessments, these ordered direct compensatory services must be in addition to any direct and/or consultative BCBA related services required to assist the student to benefit from special education.
5. WCSD must provide the student 100 hours<sup>14</sup> of compensatory education of outside classroom support of tutoring to be focused on the student's social/emotional/behavioral and academic goals in the student's IEP developed/revised after the conduct of the ordered assessments. The individual providing the tutoring must coordinate with the student's school in the provision of the outside classroom support; and have behavior intervention training, including on the implementation of the student's Behavior Intervention Plan and crisis intervention prevention, prior to the commencement of the tutoring. At WCSD's discretion, the 100 hours of compensatory education may be provided by a qualified private provider.

WCSD must consult with the student's Parent(s) on the appropriate means to provide this ordered compensatory education/service to meet the student's educational needs *prior* to the submission of the CAP and must consider any concerns of the Parent and/or proposals in the development of the compensatory education/services plan.

In addition to the above required documentation of completion, WCSD is required to send documentation of the progress toward the provision of the ordered compensatory education/service to the student **no later than July 24, 2024**, unless the ordered compensatory education/service was previously completed and documentation provided to NDE of that completion prior to that date.

### **Systemic Remedy**

It is of concern that this is WCSD's third State Complaint in the 2023/2024 school year with a finding of noncompliance regarding WCSD's failure to implement the one-to-one aide/adult support in a student's IEP. The previously ordered systemic remedy in the prior two State Complaints, #WA092123A and #WA092123C, required WCSD to revise WCSD's policies and procedures to address the determined

<sup>14</sup> There were 84 school days during the relevant period. (FOF #2) The State Investigation Team considered the student's attendance data to ascertain when the student was unable to access the special education services in the student's IEP due to absences, but found only one absence for medical reasons credible in that the documentation showed that one documented absence was due to the school contacting the student to be picked up (FOF #26) and other absences were all preceded and followed by class periods of attendance, with no explanation. (FOF #3) Taking into consideration the one credible absence, 83 school days equates to approximately 299 hours of one-to-one aide services the student was to be provided throughout the school day, on top of the required one-to-one support in language arts and math. Given the agreed upon periodic provision of one-to-one coverage for the student during the relevant period; the above ordered compensatory education of direct services of a BCBA; and the time period of one year for the completion of all compensatory education/services, 34 C.F.R. §300.600(e), the State Complaint Investigation Team determined that 100 hours of compensatory education is appropriate to address the needs of the student.

noncompliance that included procedures for schools to follow upon a determination that a shortage of personnel may prevent any service in a student with a disability's IEP to be implemented, including written notification to WCSD's special education department for assistance.

Upon consideration that the period of noncompliance in this State Complaint started before the previously ordered systemic remedy and documentation that WCSD's is engaged in the required revision of policies and procedures as ordered (FOF #21), the State Complaint Investigation Team determined the prior systemic remedy, if implemented with fidelity, along with the following additional Order, will address the appropriate future provision of services for all students with disabilities:

1. Prior to the 2024/2025 school year, WCSD must engage in district-level expanded efforts to recruit and hire personnel to serve as one-to-one aides for students with disabilities in accordance with the students' IEPs. These efforts must include, at least, diverse methods of recruitment throughout the State of Nevada and bordering states. WCSD's CAP for this State Complaint must identify those aspects of the proposed recruitment efforts that distinguish the expanded efforts from the prior cited unsuccessful effort of the school. (FOF #20)

2. Commencing the date of this Report through December 2024, on a monthly basis WCSD must provide NDE copies of all notices to WCSD's special education department for assistance when the school does not have the resources to implement a student's IEP; and documentation of action taken for each student, including, for any service not provided as required, the notice to any individual parent to convene the student's IEP Team to develop a compensatory education/services plan.