

**WASHOE COUNTY SCHOOL DISTRICT  
COMPLAINT INVESTIGATION  
(#WA032524)**

**Report Issued on May 23, 2024**

**INTRODUCTION**

On March 25, 2024, the Nevada Superintendent of Public Instruction received a State Complaint from a named adult student<sup>1</sup> and the student's parents (Complainants) 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) between March 2023 and March 2024 with regard to the provision of 60 minutes a month of occupational therapy and, further, WCSD violated NAC §388.150 by combining multiple classes in one room. The Complainants indicated that there were not enough adults available to supervise the student when the classrooms were combined and the student eloped from the room, which compromised the student's safety. (While the State Complaint did not include the time period for the alleged violation of NAC §388.150, NDE accepted this allegation for the 2023/2024 school year based on the facts relating to the problem that included the grade level and school for the 2023/2024 school year.)

The Complainants' proposed resolution to address these allegations is for WCSD to implement the student's IEP by providing the occupational therapy services and auditing to determine the amount of compensatory services owed; provide a systematic and child remedy to determine the amount of services owed to all students waiting for occupational therapy services; address the systemic issue of combining multiple classes and not having adequate adult to student ratios for all students receiving special education services at the student's school.

The allegations in the State Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raise the following issues for investigation from March 25, 2023<sup>2</sup> through March 7, 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(s) in effect in the 2022/2023 and 2023/2024 school years from March 25, 2023 through March 7, 2024, specifically with regard to the provision of 60 minutes a month of occupational therapy to the student.

<sup>1</sup> Given the student is a named Complainant on this State Complaint, the parents were asked to clarify whether the student was 18 years of age or older. If so, the parents were informed that since there had been a transfer of rights to the student, NDE would require documentation as to the parents' continued access to any personally identifiable information in the course of this investigation, including the personally identifiable information in the Complaint Investigation Report. 34 C.F.R. §300.622; NAC §388.289. The parents acknowledged the student was an adult and provided NDE the student's consent authorizing the parents' right of access to personally identifiable information in the course of this State Complaint investigation.

<sup>2</sup> A State Complaint must include a violation that occurred no more than one year prior to the date of receipt. 34 C.F.R. §300.153; NAC §388.318(1)(b). In this case, the State Complaint was received March 25, 2024.

**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 April 8, 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 April 24, 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 an electronic response with required documentation, including an organized analysis of the student's schedule as it related to class size and caseload in response to Issue Two.<sup>3</sup> WCSD conceded Issue One on the provision of occupational therapy to the student; and denied Issue Two on 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. WCSD's proposed remedy for the failure to implement the student's IEP was to provide the student with 11.5 hours of compensatory services in the area of occupational therapy for the missed services. WCSD also proposed a comprehensive compensatory services plan with the intention to mitigate and resolve similar future concerns; IEP implementation failures are timely reported to parents and students and the provision of services are not delayed.

The State Complaint and WCSD's response and supplemental response to the State Complaint, including all claims, arguments, documents 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 2022/2023 and 2023/2024 school years, including the 2022/2023 extended school year program from June 20, 2023 to July 13, 2023. The student is on a course of study that focuses on functional life skills, communication skills, vocational skills and behavioral skills. (Student Enrollment History, State Complaint, WCSD Response, Student Period Attendance Detail)
2. The last day of school in the 2022/2023 school year was June 9, 2023, with two months and seven school days from March 25, 2024 to the last day of school. There were four weeks of school in the 2022/2023 school year extended school year program. (Three of the four weeks were partial weeks.) The first day of school for students in the 2023/2024 school year was August 14, 2023 and there were seven months and five school days through March 7, 2024. The last day of school in the 2023/2024 school year will be June 11, 2024. (WCSD 2022/2023 and 2023/2024 Balanced Calendars, Calendar)

<sup>3</sup> While the requirement to submit a timely response included a timely submission of the hard copy within two business days thereafter and WCSD failed to do so, NDE determined that, in this case, the timely electronic documentation would be accepted. No presumption should be made based on this determination regarding the requirement of timely submission, if WCSD is named in a future State Complaint.

## IEPs

3. The student had three IEPs in effect during the relevant time period of this State Complaint: a January 30, 2023 annual IEP with the ending date for services of January 30, 2024; a May 31, 2023 revision IEP with an ending date of January 30, 2024; and a February 8, 2024 IEP with the beginning date for services of February 9, 2024.<sup>4</sup> (January 30, 2023 IEP, May 31, 2023, and February 8, 2024 IEPs)
4. The student's January 30, 2023 IEP had eight annual goals, one of which was in the area of fine motor skills: Given a classroom setting, the student will improve overall fine motor skills in order to increase the student's independence in the classroom to 80% accuracy as measured by teacher and occupational therapist observation and documentation by next annual review in four out of five trials as measured by teacher or therapist documentation by January 29, 2024. This goal was to be addressed during extended school year services. The short-term objectives for this annual goal were:
  - a. Given classroom materials, the student will increase success with manipulation and control of common classroom materials (scissors, staplers, paper clips, etc.) by 80% in four out of five trials by next annual review, in four out of five trials as measured by teacher or therapist documentation by January 29, 2024;
  - b. Given visual guidance such as lined paper, the student will write with appropriate letter sizing, spacing, and anchoring in order to provide legible writing with 80% accuracy in four out of five trials, in four out of five trials as measured by teacher or therapist documentation by January 29, 2024. (January 30, 2023 IEP)
5. This same annual goal in the area of fine motor skills and objectives were included in the student's two subsequent IEPs even though, in the case of the February 8, 2024 annual IEP, the date to achieve the goal by January 29, 2024 had already passed at the time of the development of the student's annual IEP. (January 30, 2023, May 31, 2023, and February 8, 2024 IEPs)
6. The student's February 8, 2024 IEP included the following in transition services: The student will have the opportunity to participate in vocational training off campus at several different local

<sup>4</sup> This State Complaint did not include an allegation that WCSD failed to comply with the requirement to review the student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. 34 C.F.R. §300.324(b)(1)(i); NAC §388.281(6)(a). However, given the identification of this incidence of noncompliance in the course of this State Complaint investigation, this information will be considered as part of NDE's general supervision system in the review of the data collected during the recent NDE monitoring of WCSD and will be addressed by NDE outside this State Complaint process if a pattern of noncompliance is determined. 20 U.S.C. §§ 1412(a)(11) and 1435(a)(10); 34 C.F.R. §§ 300.149.

“Due process complaints and the resulting hearing decisions, and State complaints and the SEA’s or LA’s decisions on those complaints, are an important source of compliance information available to the State that should be considered and addressed as part of a reasonably designed general supervision system. In reviewing complaints and decisions, a State may be able to identify patterns that suggest systemic noncompliance by one or more LEAs or EIS programs or providers with IDEA requirements or suggest that there may be State-wide patterns of noncompliance. Where such patterns are present, the State, as part of its general supervision system, must determine whether systemic noncompliance occurred or is occurring and ensure correction in a timely manner. 20 U.S.C. §§ 1412(a)(11) and 1435(a)(10); 34 C.F.R. §§ 300.149 and 303.120.” *Questions and Answers on Monitoring, Technical Assistance, and Enforcement*, 123 LRP 22123 (OSEP QA 23-01, July 24, 2023). This memorandum is publicly available at: <https://sites.ed.gov/idea/idea-files/guidance-on-state-general-supervision-responsibilities-under-parts-b-and-c-of-the-idea-july-24-2023/>

business where the student will be taught “soft” vocational skills community experiences. At the time of the development of the student’s February 8, 2024 IEP, the student was not participating in vocational training on campus or off campus. (February 8, 2024 IEP)

### **Occupational Therapy**

7. The related service of direct occupational therapy was included in the student’s January 30, 2023 IEP for 60 minutes a month<sup>5</sup> in the special education setting from January 31, 2023 to January 30, 2024. For the 2022/2023 extended school year program, from June 20, 2023 to July 13, 2023, the student was to be provided 30 minutes per week of occupational therapy. Consistently, the related service of direct occupational therapy in the special education setting was included in the student’s February 8, 2024 IEP to be provided from February 9, 2024 to February 8, 2025 for 60 minutes per month and from June 18, 2024 to July 11, 2024 for 30 minutes per week in the extended school year. The related service of occupational therapy is also expressly a transition service. (January 30, 2023, May 31, 2023, and February 8, 2024 IEPs)
8. WCSD conceded that the student was not provided the 60 minutes a month of occupational therapy in the students’ IEP in the 2023/2024 school year through March 7, 2024 and, thereafter, until an occupational therapist was hired April 8, 2024. WCSD asserted that the student did receive occupational therapy services in the 2022/2023 school year, but not at the frequency specified in the IEP. Specifically, WCSD indicated the occupational therapist provided only 30 minutes of the 60 minutes required for several months. (WCSD Response)
9. In the 2022/2023 school year, from March 7, 2023 to the end of the school year, the student received 30 minutes of occupational therapy on March 15, 2023; April 26, 2023; May 3, 2023; and May 24, 2023. The student did not receive any occupational therapy during the 2022/2023 extended school year period. (Occupational Therapy Service Logs, WCSD Response)
10. The student received no occupational therapy services in the 2023/2024 school year until after this State Complaint was filed. The first day of occupational therapy services provided to the student in the 2023/2024 school year was April 18, 2024. (Occupational Therapy Service Logs)
11. While the student’s February 8, 2024 IEP identified the occupational therapy January 30, 2023 annual report on fine motor skills as an assessment conducted, the most recent formal assessment of the student’s fine motor skills relied upon in the development of the student’s February 8, 2024 IEP was a November 3, 2022 assessment. (February 8, 2024 IEP)
12. Given this was the second State Complaint on implementation of occupational therapy in WCSD in the 2023/2024 school year, NDE requested WCSD provide the number of the students at the student’s school with occupational therapy in their IEPs and the name and case load of the occupational therapist(s) assigned to the school from the commencement of the 2023/2024 school year to March 7, 2024, with applicable dates of service. WCSD responded that the occupational therapist hired on April 8, 2024 has students at three schools in WCSD and provides occupational therapy services to 55 students in those three schools. (NDE Issue Letter, WCSD Response)

### **Student Progress**

<sup>5</sup> The student’s IEPs did not distinguish the required number of minutes per month/week for partial months or weeks or occurrence of school holidays.

13. The fourth quarter progress report in the 2022/2023 school year for the IEP dated May 31, 2023 in the area of fine motor provided the goal status that the student will likely meet this goal by the next annual review and included only a general comment regarding progress made in the school year. (Student Progress Report)

### **Class Size and Caseload**

14. The student's placement in the January 30, 2023 IEP was in a self-contained program with 32% of the student's school day in the regular education environment. The justification for placement involving removal from the regular education environment included the reason of the student's need for systematic instruction in a small group setting that will prepare the student for independent living. (While the percentage of time of the student's school day in the regular education environment was reduced to 25% in the May 31, 2023 revision IEP and the February 8, 2024 annual IEP, the student's placement in a self-contained program and justification for removal from the regular education environment remained the same in those subsequent IEPs.) (January 30, 2023, May 31, 2023, and February 8, 2024 IEPs)
15. There are two classes at the student's school with the student's designated program for specially designed instruction using a functional curriculum and three other classes for students with a specialized presentation of curriculum. (WCSD Response, Class Roster)
16. Term One and Term Two of the 2023/2024 school year at the student's school had seven periods/classes, three of which were the student's general education classes. Each period of the student's self-contained program had a heterogeneous areas of disabilities represented, with fluctuation between three to four different disabilities represented with varying majorities of disabilities between the classes, including one period with two disabilities equally represented. Specifically, in Term One the majority of the represented primary disabilities of students in the four periods/classes of the self-contained program were as follows: autism in two; intellectual disability in one; and the same number of health impairments and autism disabilities in one. In Term Two, the majority of represented disabilities of students in the four periods/classes of the self-contained program were as follows: the same number of autism and intellectual disability in one class; the same number of autism and health impairment in one class; and autism in two classes. (WCSD Response, Class Roster, Caseload Report)
17. In Term One, two of the classrooms had seven students, with one listed who became deceased; one classroom had six students. The fourth classroom had nine students listed on the class roster; however, the number in the classroom was actually eight students for up to three months with one student on home/hospital instruction and then seven students when one of the students became deceased. In Term Two, one classroom had eight students and three had seven students. (WCSD Response, Class Roster, Caseload Report)
18. The student moves between classrooms for targeted work support and, at times, two teachers of the self-contained program will combine their classrooms to utilize flexible grouping. During these periods of flexible grouping, WCSD asserted the students are grouped based on IEP goals and objectives, transition skill areas, and ability levels.<sup>6</sup> (WCSD Response)
19. WCSD has established procedures through "Infinite Campus" (the State-approved data management system) to schedule students in classes. Each class has a maximum cap established

<sup>6</sup> This was a student-specific State Complaint. No documentation was requested or provided on the other students' IEP goals and objectives and skill and ability levels.

and the school registrar is responsible for the class roster and scheduling students into classes that do not exceed the maximum class size or caseload cap. (WCSD Response)

20. The student's classes all had one special education teacher and a program assistant (classroom aide). (WCSD Response, Class Roster)

## CONCLUSIONS OF LAW

### Issue One:

Whether WCSD complied with IDEA and NAC, Chapter 388, in the implementation of the student's IEP(s) in effect in the 2022/2023 and 2023/2024 school years from March 25, 2023 through March 7, 2024, specifically with regard to the provision of 60 minutes a month of occupational therapy to the student.

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>7</sup>

In this case, all of the student's IEPs in effect during the relevant period of this State Complaint provided the related service of direct occupational therapy in the special education setting 60 minutes per month during the regular school year and, for school year 2022/2023, the student was to be provided 30 minutes per week in the extended school year program from June 20, 2023 to July 13, 2023. (Finding of Fact (FOF) #3, FOF #7)

With regard to the relevant time period during the 2022/2023 school year, WCSD conceded the student did not receive occupational therapy services at the frequency specified in the IEP and did not receive any occupational therapy services during the 2022/2023 extended school year period. Consistently, the State Complaint Investigation Team determined the student received only 30 minutes of the required 60 minutes of occupational therapy on four occasions from March 25, 2023 through the end of the 2022/2023 school year and the student received no occupational therapy services during the 2022/2023 extended school year period. (FOFs #8, #9)

WCSD also conceded that the student was not provided the required 60 minutes a month of occupational therapy in the students' IEP in the 2023/2024 school year through March 7, 2024 and, thereafter, until an occupational therapist was hired April 8, 2024. (FOF #8) It was not until nine months into the 2023/2024 school year that the student received any occupational therapy services, commencing April 18, 2024. (FOFs #2, #7, #8, #10)

*Therefore, WCSD failed to comply with IDEA and NAC, Chapter 388, in the implementation of the student's IEP(s) in effect in the 2022/2023 and 2023/2024 school years from March 25, 2023 through March 7, 2024, specifically with regard to the provision of the required minutes of occupational therapy to the student.*

<sup>7</sup> The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

## **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.

IDEA Part B does not provide specific teacher-student ratios or maximum class sizes for students with disabilities. 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>8</sup> In the State of Nevada, NAC §388.150 does limit the maximum number of cases per teacher in a unit, with exceptions, and the maximum size of a class based on the designated disabilities of the students. Relevant to this State Complaint, NAC §388.150(5) provides specific increased maximum class sizes if a teacher's aide is used in a unit.

WCSD has established procedures through "Infinite Campus" (the State-approved data management system) to schedule students in classes in order to comply with the caseload and class size limits in NAC §388.150. Each class has a maximum cap established and the school registrar is responsible for the class roster and scheduling students into classes that do not exceed the maximum class size or caseload cap. (FOF #19)

In this case, there are two classes at the student's school with the student's designated program for specially designed instruction using a functional curriculum and three other classes for students with a specialized presentation of curriculum. (FOF #15) All of the student's self-contained classes had one special education teacher and a program assistant (classroom aide). (FOF #20)

While the determination of compliance with the maximum number of cases per teacher in a unit and the maximum size of a class per instructional period is relatively straightforward under NAC §388.150, the application to the facts of this case is not. The student moves between classrooms for targeted work support and, at times, two teachers of the self-contained program will combine their classrooms to utilize "flexible grouping." NAC §388.150 does not address when two classes or more of the required class size and staffing are combined.

To complicate things further, the maximum number of cases per teacher and maximum class size under NAC §388.150 is based on designated disabilities and, in this case, the designated disabilities fluctuated among the student's classes in Term One and Two of the 2023/2024 school year. NAC §388.150(3) does address heterogeneous programming by requiring the maximum number of cases per teacher and the maximum size of the class to be determined according to the area of disability represented by the majority of the students in the program. However, in this case, several of the student's classes had no clear designated disability that represented the majority of the students in the class. In fact, several classes had two

<sup>8</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."

designated disabilities with equal numbers of students in the class, with varying allowable class sizes and caseloads. (FOF #16)

Upon consideration of the student's designated disability and the area of designated disabilities that represented the majority in each of the student's classes, including both of the disabilities when represented by equal numbers (FOFs #16, #17), the State Complaint Investigation Team determined that WCSD did comply with the maximum number of cases per teacher in the student's classes and maximum class size in accordance with NAC §388.150. As previously discussed, NAC, Chapter 388, does not address caseload and class size when a school uses "flexible grouping" involving the combination of classes with the requisite class size and staffing. In the absence of a prohibition to do so or standards in the event classrooms are so combined, upon consideration of the caseload per teacher with aide and the class size of all of the student's classes, the State Complaint Investigation Team determined the combined classes, each with an assigned teacher and classroom aide, did not cause the student's class size or the individual teacher's caseload to exceed the maximum permitted by NAC §388.150.<sup>9</sup>

*Therefore, 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.*

## **ORDER OF CORRECTIVE ACTION<sup>10</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 related service of occupational therapy.

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

### **Student-Specific**

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

<sup>9</sup> In accordance with the determination of the student's IEP Team, the student needs instruction in a small group. (FOF #14) The scope of this investigation was limited to the caseload in, and the size of, the student's class(s) and no inference should be taken that this determination addressed the implementation of the student's IEP in a small group when "flexible grouping" resulted in two classrooms of students in the same space.

<sup>10</sup> Nothing in this Order precludes either the adult student or WCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.



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).

In this case, it is clear that WCSD failure to implement the student's IEP with regard to the provision of occupational therapy was a material failure. Given the student's age, this finding of material failure is of particular concern in that the student was not provided the required occupational therapy services determined to be required to benefit from special education, including transition services, over two school years and the course of almost an entire calendar year. (FOF #2)

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. “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *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.

Based on the calculation of numbers of minutes of missed services alone, WCSD's proposed resolution of an additional 11.5 hours of compensatory services in the area of occupational therapy is determined to be equitable.<sup>11</sup> However, given the extended period of time the student did not receive the required occupational therapy; the student's age; and the student's lack of progress on the student's annual IEP goal in fine motor skills that carried over into a subsequent school year (FOFs #2, #5, #13), the State Investigation Team has determined that compensatory services alone is insufficient to provide appropriate relief to the student to ensure the student is provided a Free Appropriate Public Education. *Parents of Student W.*

In accordance with NRS §385.175(6), NDE requests a plan of corrective action plan (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 provision of the request for consent for the conduct of the occupational therapy assessment (Order Two) and for the referral to the vocational rehabilitation agency (Order Three) is required to be completed on or before the submission of the CAP.**) Other than the ordered implementation of the request for 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.

<sup>11</sup>The number of hours of compensatory education was based on the following calculation:

- a. 2022/2023 school year. The student was provided 120 minutes of occupational therapy from March 25, 2023 to the end of the school year and should have received 180 minutes of occupational therapy. There were four weeks of school during the 2022/2023 extended school year and the student did not receive the required 120 minutes of occupational therapy.
- b. 2023/2024 school year. There were seven months and 5 school days through March 7, 2024 over which the student should have received another 480 minutes of occupational therapy services. (Given the student was not provided the required occupational therapy services until April 18, 2024 and the student's IEP did not differentiate between full and partial months/weeks, the partial month of March 2024 was included as a full month in this calculation.) (FOFs #7, #10). The foregoing equals 660 minutes of occupational therapy services.

**Unless an alternative student-specific remedy is otherwise agreed to in writing by WCSD and the adult student<sup>12</sup>**, the CAP must provide for the following student-specific directed action and provide the timeline to enable the completion of all the actions as soon as possible, but no later than one year from the date of this Report:

One: WCSD must provide the student 11.5 hours of compensatory services of occupational therapy. The ordered compensatory 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. At WCSD's discretion, all or part of the occupational therapy services, including the ordered assessment in Order Two may be provided by a qualified private occupational therapist.

Two: As soon as possible, but no later than **six school days** after the date of this Report, WCSD must provide the adult student a request for consent for the conduct of an assessment of the student's fine motor skills by an occupational therapist, if not already completed during the course of this investigation. (FOF #11) Upon the receipt of consent from the adult student<sup>13</sup> for the conduct of the assessment, WCSD must conduct the assessments no later than 22 school days after the receipt of consent. The student's IEP Team must consider the results of the ordered assessments in reviewing and revising, as appropriate, the student's IEP within 10 school days of the conduct of the ordered assessments. A copy of the evaluation report must be provided to the adult student and other members of the student's IEP Team at least two school days prior to the IEP Team meeting.

Three: As soon as possible, but no later than **six school days** after the date of this Report, WCSD must provide the adult student a request for consent for the release of personally identifiable information to refer the student to the vocational rehabilitation agency for assessment of how the student's fine-motor skills and other skills and needs identified in the student's February 8, 2024 IEP will impact the student's ability to obtain and maintain employment and, if determined appropriate, to provide job-related assistance. Upon WCSD's receipt of consent from the adult student, if provided (see footnote number 13), WCSD must refer the student to the vocational rehabilitation agency within 14 calendar days from the receipt of consent.

Four: Given occupational therapy is provided as a transition service to the student, WCSD must provide documentation to NDE no later than October 15, 2024 of the implementation of the transition services of vocational training in the student's February 8, 2024 IEP (or subsequently revised IEP), including the student's participation in vocational training off campus at local businesses, if in effect. (FOF #6) The documentation must include a record of the occupational therapist's consideration of the acquisition of skills required to support the student's participation in vocational training and the occupational therapy provided to address those skills.

WCSD must consult with the adult student 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 adult student 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 service of occupational therapy to the

<sup>12</sup> If WCSD and the adult student 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.

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

student **no later than October 1, 2024**, unless the ordered compensatory service was previously completed and documentation provided to NDE of that completion prior to that date.

### **Systemic Remedy**

Under Part B, a State Educational Agency (SEA) must carry out general supervisory responsibilities to ensure that Part B requirements are implemented and that each educational program for children with disabilities meets the SEA's educational standards (including the Part B requirements). This is the second State Complaint in the 2023/2024 school year resulting in the determination that WCSD failed to provide the required occupational therapy services to an individual student in accordance with the student's IEP. (See State Complaint #WA111423.)

NDE's integrated monitoring system includes the consideration of facts found in the investigation of State Complaints to ascertain if systemic noncompliance occurred or is occurring. In this case, the State now has information that the identification of the student-specific noncompliance in this case due to the shortage of occupational therapists may portend a pattern of violations involving 55 or more other students with disabilities. Accordingly, as part of its general supervision system, NDE must determine whether systemic noncompliance occurred or is occurring and ensure correction of any additional noncompliance in a timely manner. 20 U.S.C. §§ 1412(a)(11) and 1435(a)(10); and 34 C.F.R. §§ 300.149; *Questions and Answers on Monitoring, Technical Assistance, and Enforcement Office of Special Education and Rehabilitative Services, supra*.

Therefore, NDE will undertake an investigation separate from this State Complaint investigation to ascertain whether the referenced 55 students received the required occupational therapy services identified in their individual IEPs in the extended school year period in 2022/2023 and the 2023/2024 school year prior to the commencement to WCSD's engagement of an occupational therapist on April 8, 2024. If not, NDE will order an appropriate student-specific corrective action to address the needs of each such student and will review the systemic CAP in State Complaint #WA111423 to determine if the ordered systemic CAP must be augmented as a result of this investigation and this current State Complaint. If a pattern of noncompliance in the implementation of students' IEPs is identified, any required augmentation may include prospective action to ensure the appropriate future provision of services for all children with disabilities.

NDE's investigation will commence no later than July 1, 2024. Based on documentation provided in the course of this investigation, at NDE's discretion, the investigation regarding the provision of occupational therapy services during this time period may be extended beyond the reported 55 students. 34 C.F.R. §300.151(b).