

**WASHOE COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#WA082924)**

Report Issued on October 24, 2024

INTRODUCTION

On August 29, 2024, the Nevada Superintendent of Public Instruction received a State Complaint from the Parents¹ of a student enrolled in Washoe County School District (WCSD). The State Complaint alleged violations 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 State Complaint were that WCSD failed to develop an Individualized Education Program (IEP) for the student for seven to nine months; withheld the Nevada initial consent for special education from November 29, 2023, when it should have been provided, to March 12, 2024 and then provided no information related to what the document was for; provided specifically identified erroneous Prior Written Notices; WCSD named personnel failed to have a basic understanding of identified IEP processes and other matters; WCSD failed to have an IEP in place the first day of school in the 2024/2025 school year, even though the student was made eligible for IDEA nine months earlier; and a named WCSD professional failed to maintain detailed records and could not remember agreements and also unilaterally made changes to the student's IEP.

The State Complaint included seven proposed resolutions to address the allegations of noncompliance. The proposed resolutions are stated here in summary form:

- a. Implement special education services for the student immediately;
- b. Comprehensive training of named WCSD personnel by a NDE selected contractor or WestEd on the applicable law;
- c. 48 hours of mentoring for one WCSD professional in a designated area;
- d. Compensatory reimbursement for costs incurred and paid up to a designated time period in the area of executive functioning coaching;
- e. Reimbursement for the cost associated with writing the goals for the student's IEP;
- f. Updating the IEP form with a new section; and
- g. Designated WCSD personnel meet with the student and parents to, among other things, apologize.

Given the Parents' proposed resolution included reimbursement for paid services, the State Complaint Investigation Team requested the Parents submit documentation of the paid invoices for the identified compensatory services for the student and the cost associated with writing goals for the student's IEP. The Parents were informed that in the event, NDE determined that WCSD failed to comply with IDEA or Chapter 388 of the NRS or NAC as alleged, the documentation would be considered in the determination of an appropriate remedy for the student. The Parents elected not to submit this information for consideration. In an interview with a member of the State Complaint Investigation Team, the student's Parents indicated they might seek an amendment to the State Complaint and were informed of the procedure to do so. Neither a new State Complaint nor a request to amend the State Complaint was filed with NDE prior to the issuance of this Report.

¹ While both Parents filed this State Complaint, occasionally only one Parent participated in the events relevant to this State Complaint, the term "Parents" will be used throughout this Report.

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:

Issue One:

Whether WCSD complied with IDEA and NAC, Chapter 388 in the timely conduct of an IEP Team meeting for the student after being determined eligible as a student with a disability in need of special education and related services on November 29, 2023.

Issue Two:

Whether WCSD complied with IDEA and NAC, Chapter 388, with regard to the timely provision of a request for informed consent for the initial provision of special education and related services for the student from November 29, 2023 to March 12, 2024.

Issue Three:

Whether WCSD complied with IDEA and NAC, Chapter 388, to ensure that an IEP was in effect for the student at the beginning of the 2024/2025 school year, specifically with regard to WCSD's refusal to implement the student's May 7, 2024 IEP without the Parents' agreement and consent to the IEP.

The State Complaint included numerous statements of concern in the description of the facts on which the statement of alleged violations was based. Given these concerns were not included as allegations of noncompliance, NDE did not have jurisdiction over these concerns and they were not investigated as part of this State Complaint. Further, the State Complaint included allegations regarding specifically named WCSD personnel, including a lack of a basic understanding of the IEP process, Child Find and other requirements under the IDEA; erroneous claims and notices; and poor record keeping and other actions of one member of the student's IEP Team. NDE does not have jurisdiction to investigate local school personnel issues; however, the Parents were informed that if wished to pursue these concerns they may do so by contacting the WCSD superintendent.

In the September 3, 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 September 25, 2024, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of the State Complaint. WCSD's request to extend the date for the documents to be submitted was granted and the student's Parents were afforded the same extension. (No extension of the timeline for the issuance of the State Complaint Report was necessary given the length of the extension.)

WCSD did timely provide a response with required documentation. WCSD denied the alleged noncompliance with Issues One and Two but conceded Issue Three by admitting that the school did not comply with IDEA and NAC, Chapter 388, by ensuring an IEP was in effect for the student at the beginning of the 2024/2025 school year, specifically with regard to WCSD's refusal to implement the student's May 7, 2024 IEP without the Parents' agreement and consent to the IEP. WCSD does, however, attest that there was no harm in the delay in providing the student special education services, citing the student's grades; performance on state and district assessments; Section 504 accommodations; and the absence of behavior incidents.

The State Complaint; the information provided by the Parents orally in an interview and the Parents' substantial additional documentation; 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. On September 14, 2023, the student's Parents provided consent for the conduct of the initial evaluation of the student under IDEA and NAC, Chapter 388. (September 14, 2023 Nevada Consent for Evaluation – Initial Evaluation)
2. On November 29, 2023, the student was determined to be eligible for special education as a student under the category of health impairment. After the eligibility meeting, the student's Parents requested time to discuss the results and consider the eligibility determination. (November 29, 2024 Statement of Eligibility, Nevada Parental Prior Notice – Proposed Meeting Arrangements², State Complaint, WCSD Response)

Development of Initial IEP

3. On December 7, 2023 and again on December 18, 2023, WCSD contacted the Parents to check in regarding the November 29, 2023 eligibility meeting, asking whether the Parents had any questions and what next steps the Parents wanted to take. (December 18, 2023 Email Correspondence)
4. On January 8, 2024, 40 days after the determination of eligibility of the student on November 29, 2023, the student's Parents informed WCSD that they wanted to move forward with the IEP and to let them know what steps were next. (January 8, 2024 Email Communication from Parents to WCSD)
5. WCSD responded the next day, January 9, 2024, asking the Parents' what days were best for them to conduct the student's IEP Team meeting. On January 10, 2024, the Parents inquired about availability the following week for the IEP Team meeting, but due to the occurrence for snow days WCSD suggested the following week. The student's Parents and WCSD discussed the scheduling of the student's initial IEP Team meeting for several weeks thereafter prior to scheduling and conducting the student's initial IEP Team meeting on February 6, 2024. (Email Communications, State Complaint)
6. February 6, 2024 was 29 days after the student's Parents notified WCSD that they wanted to proceed with the development of the student's IEP and 69 days after the determination of the student's eligibility on November 29, 2023. The student's Parents expressly excluded the time period from the Parents' request on January 10, 2024 for an IEP Team meeting to following week to the conduct of the IEP Team meeting on February 6, 2024: "We initially requested a meeting the

² No Prior Written Notices were provided to the State Complaint Investigation Team in the course of the Investigation. The student's school used WCSD's proposed meeting arrangement form not only to arrange meetings but after the meeting, presumably as a Prior Written Notice, throughout the events reviewed as part of this investigation, including the student's October 3, 2024 IEP. The WCSD proposed meeting arrangement form does not include all components of a Prior Written Notice. 34 C.F.R. §300.503; NAC §388.300.

week of January 16, 2024. Due to snow days and other conflicts the initial IEP was scheduled for a mutually agreeable date of February 6, 2024. Although this was outside the 30 day range, we do not mean for this meeting date to be addressed in the state complaint, because with out delay, the holiday break and snow days, this was reasonable.” (State Complaint, Calendar)

7. WUSD conducted IEP meetings on February 6, 2024, March 5, 2024, and May 7, 2024. (May 7, 2024 IEP, Meeting Notices, WUSD Response)
8. On March 12, 2024, WUSD provided the Parents the form for parental consent for the initial provision of special education and related services. (March 12, 2024 Nevada Parental Consent for Initial Provision of Special Education and Related Services, WUSD Response)
9. On March 14, 2024, the student’s Parents consented to the initial provision of special education and related services to the student. (March 14, 2024 Nevada Consent for the Initial Provision of Special Education and Related Services)
10. In response to this State Complaint, WUSD characterized the request for parental consent prior to the development of the student’s IEP as “inherently” a procedural misstep not in accordance with WUSD procedures in the absence of an IEP indicating the services that would be provided. In this regard WUSD’s Special Education Procedures Manual provides:

“Section 7.5.1. Consent for the Initial Provision of Services is only obtained after the initial eligibility has been determined in the State of Nevada a. Consent for Initial Provision of Services **must be obtained before the Initial IEP meeting.** b. Before consent is obtained, the parent must be provided with an explanation of the continuum of services. c. The parents must be fully informed of the special education and related services that may be found to be needed for their child rather than the exact program of services that would be included in the IEP. d. The district may not initiate a due process hearing to provide special education and related services to a student when a parent refuses to consent to initial services. A student whose parent has refused consent for initial services would not be provided special education and related services and would continue to receive general education services. e. The parent consent is for the initial provision of special education and related services generally not for a particular service. A parent cannot revoke one service (e.g. revoke resource services but want the speech/language services). If a parent disagrees with the provision of any particular service, they can pursue their due process rights by requesting a hearing.” (bolded for emphasis, WUSD Response, WUSD Special Education Procedure Manual)
11. The student’s IEP was completed on May 7, 2024 IEP. The student had two annual goals in the area of academics focused on improving the skills necessary for academic success; and checking in with the student’s case manager to confirm the use of a planner, deadlines being met, and checking on missing assignments. The May 7, 2024 IEP provided the student specially designed instruction of directed studies in the special education setting at a frequency of 120 minutes per month (with no distinction provided for partial months); no related services; and supplementary aids and services. The services in the student’s IEP had a beginning date of May 7, 2024 and an ending date of May 6, 2025. The student did not require extended school year services. (May 7, 2024 IEP, Response)
12. The Parents checked the statement on the student’s May 7, 2024 IEP that “As the parent, I disagree with all or part of this IEP. I understand the school district must provide me with written notice of any intent to implement this IEP. If I wish to prevent the implementation of this IEP, I must submit a written request for a due process hearing to the local school district superintendent.” The Parents added a handwritten note stating: “We agree to placement. We disagree with the district not

including our parental concerns. The present levels do not contain []³ academic achievement, most recent evaluation results, functional behavior assessment or positive behavior supports.” (May 7, 2024 IEP)

13. While the student’s initial IEP was completed on May 7, 2024, the student’s Parents and WCSD continued to schedule and hold IEP meetings in an attempt to resolve the stated concerns of the Parents documented on the May 7, 2024 IEP and in email communications, including as late as September 25, 2024 prior to the October 3, 2024 IEP Team meeting; and to review the results of a Functional Behavioral Assessment requested by the Parents at the March 5, 2024 IEP Team meeting. The first such IEP Team meeting was conducted on June 10, 2024 and, after the filing of this State Complaint, on September 17, 2024, and October 3, 2024. The Parents continued to have concerns with the student’s IEP after the development of the October 3, 2024 IEP. (September 17, 2024 Draft IEP, October 3, 2024 IEP, IEP Team Meeting Notices, September 25, 2024 and October 6, 2024 Email Communications from Parents to WCSD, WCSD Response, Parents’ Additional Information)
14. On June 14, 2024, the WCSD school informed that Parents the May 5, 2024 IEP could not be implemented due to the Parents’ disagreement with the IEP: “Contrary to the assumption that Nevada is a no-consent state, the school cannot implement an initial IEP without parent agreement and consent to the IEP. Subsequent IEPs do not require parent signature to implement. Thus, when the parent inquired why the IEP had not been implemented, it is directly because the team cannot implement an initial IEP without parent agreement. As such the team will reconvene to determine the reasons why the parent is disagreeing with the IEP and try to resolve concerns so that agreement can be obtained on the initial IEP....” (June 14, 2024 Nevada Parental Prior Notice – Proposed Meeting Arrangements)
15. After the commencement of the 2024/2025 school year, on August 23, 2024, the student’s school once again informed the Parents that in order for any special education services to be provided to the student, the student’s initial IEP must be agreed to and signed by both Parents. The school proposed some additional dates to convene the student’s IEP Team to try to resolve the Parents’ concerns. (August 23, 2024 Email Communication)
16. The Parents were active participants in the development of the student’s May 7, 2024 initial IEP, including in the provision of comments on the development of the student’s IEP between IEP meetings during and after the relevant time period of this State Complaint. (Email Communications, May 7, 2024 IEP)
17. The student had a November 2, 2023 Section 504 Plan in effect in the 2023/2024 school year. The student received the services of accommodations in instruction and testing; classroom setting/visual aid support; anxiety; and teachers and parents engaging in ongoing communication regarding the student’s academics. The Section 504 Plan did not provide special education services to the student. While documentation was not provided in the course of the investigation, WCSD asserted in the Response to this State Complaint that the student continued to receive the accommodations in the student’s Section 504 plan during the development of the student’s IEP. (WCSD Response, November 2, 2023 Section 504 Plan)

³ [] denotes the redaction of personally identifiable information.

18. The student obtained a cumulative GPA of 3.25 in term four of the 2023/2024 school year. At the time of the WCSD Response to this State Complaint, for the 2024/2025 school year, the student had earned B and A grades with the exception of an overall grade of C in math (mostly due to two missing assignments) with an academic warning. (Student Transcript 2023/2024 School Year, Student Grades 2024/2025 School Year, September 17, 2024 Draft IEP)
19. The student's I-Ready diagnostic test results in reading and math in August 2024 showed the student was at or above grade level in reading except for comprehension: informational text and, overall, in math, the student was one grade level below, with only one domain, algebra and algebraic thinking, at grade level. The developmental analysis for the reading results included that the student would likely benefit from instruction in the prior grade informational skills and strategies; and for math, the student may benefit from review of using proportions and scale drawings to solve problems. (I-Ready Diagnostic Results)
20. The student's October 3, 2024 IEP was characterized as the student's "initial IEP" and provided specially designed instruction in executive functioning/organizational skills 120 minutes a month in the special education setting from October 4, 2024 to September 16, 2025; supplementary aids/services; and the related service of a BCBA consult with the student's Parents quarterly. When implemented, this will be the first IEP WCSD will have implemented for this student. (October 3, 2024 IEP, WCSD Response)
21. The last day for students in the 2023/2024 school year was June 12, 2024 and the first day of school for students in the 2024/2025 school year was August 19, 2024. (2023/2024 and 2024/2025 School Calendars for Student's School)

CONCLUSIONS OF LAW

Issue One:

Whether WCSD complied with IDEA and NAC, Chapter 388 in the timely conduct of an IEP Team meeting for the student after being determined eligible as a student with a disability in need of special education and related services on November 29, 2023.

Pursuant to IDEA, 34 C.F.R. §300.323(c), and NAC§388.281(13), a student's IEP Team must meet to develop a student's IEP not later than 30 days after it is determined that the student is eligible for special education and related services. Typically, once eligibility has been determined under IDEA, Part B, and NAC Chapter 388, the initial IEP Team meeting follows significantly in advance of this time limitation.

This case did not follow that normal progression. While the student was determined eligible for special education on November 29, 2023, as was their right, the student's Parents requested time to discuss the results and consider the eligibility determination. (Finding of Fact (FOF) #2) WCSD did follow up with the Parents several times in December 2023 to inquire whether the Parents had any questions and what next steps the Parents wanted to take. (FOF #3) On January 8, 2024, 40 days after the determination of eligibility of the student on November 29, 2024, the student's Parents informed WCSD that they wanted to move forward with the IEP and to let them know what steps were next. (FOF #4)

WCSD responded to the Parents attempting to schedule the IEP Team meeting the next day and over a period of several weeks WCSD and the Parents attempted to schedule the student's initial IEP Team meeting at a mutually agreed upon date and time. (FOF #5) 34 C.F.R. §300.322(a)(2); NAC §388.281(8). The student's initial IEP Team meeting was mutually set for February 6, 2024, 29 days after the student's Parents notified WCSD that they wanted to proceed with the development of the student's IEP and 69 days after the determination of the student's eligibility on November 29, 2024. In the State Complaint, the student's Parents expressly excluded the time period from the Parents' request on January 10, 2024 to February 6, 2024, indicating it was reasonable due to the circumstances. (FOF #6) As such the only time period at issue in this State Complaint is from the determination of the student's eligibility as a student with a disability in need of special education through January 9, 2024.

The determination of whether a student is a student with a disability under IDEA, Part B, and NAC Chapter 388 must be made by a group of qualified professionals and the parent of the child. 34 C.F.R. §300.306(a)(1), and NAC §388.340. The student's Parents did participate in the eligibility determination on November 29, 2023 and, as previously mentioned, the student's Parents requested time to discuss the results and consider the eligibility determination. (FOF #2) Throughout the events reviewed as part of this investigation, while WCSD provided the student's Parents a meeting notice memorializing at least some of the Parents' requests and the determinations, WCSD did not provide the student's Parents a Prior Written Notice that included the mandatory content in IDEA, 34 C.F.R. §300.503, and NAC §388.300. (FOF #2, including footnote)

Had WCSD provided the Parents a Prior Written Notice as required, the Parents may have understood the eligibility determination, including the difference between Section 504 and IDEA; the Parents would have been provided a statement that as Parents, had protections under the procedural safeguards in the law; and the Parents would have been provided sources to contact to obtain assistance in understanding the provisions of IDEA and NAC, Chapter 388. 34 C.F.R. §300.503(b); NAC §388.300(9). Upon providing the required Prior Written Notice on the proposal to identify the student as eligible for special education under the category of health impairment (FOF #2), after a reasonable period of time, WCSD could have timely scheduled the IEP Team meeting as required to implement the proposal.

“The purpose of such advance notice is to provide the parent sufficient time to consider the proposal or refusal and respond prior to implementation of the proposed action, or in response to a refusal to take a requested action. In order for the parent to make his or her decision, she or he must be clear on the action being proposed or refused...” *Letter to Atkins-Lieberman*, 56 IDELR 141 (OSEP August 5, 2010)⁴. In *Union School District v. B. Smith*, 15 F.3d 1519, 20 IDELR 987, 990 (9th Cir. 1994). cert. denied, the Ninth Circuit Court of Appeals⁵ stressed the importance of a public agency's formal offer: “...The IDEA explicitly requires written prior notice . . .” “We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later...”

In this case, the State Investigation Team determined that WCSD's failure to provide the student's Parents a Prior Written Notice after the November 29, 2023 eligibility determination was a harmful procedural error that significantly impacted not only the Parents' opportunity to participate in the decision-making during the 30-day time period by which the student's IEP Team was required to meet to develop the student's IEP, but resulted in a failure to timely provide a Free Appropriate Public Education to the student. *Amanda J. v. Clark County School District*, 260 F.3d 1106, 35 IDELR 65 (9th Cir. 2001); 34 C.F.R. §300.323(c); NAC

⁴ This OSEP policy letter is publicly available at:

<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-3/atkinslieberman080510pwr3q2010.pdf>

⁵ The State of Nevada is in the United States Court of Appeals, Ninth Circuit.

§388.281(13). As such, the delay attributable to the Parents from November 29, 2023 to January 9, 2024 was determined not to mitigate the responsibility of WCSD to comply with IDEA, 34 C.F.R. §300.323(c) and NAC§388.281(13).

Therefore, WCSD failed to comply with IDEA and NAC, Chapter 388, in the timely conduct of an IEP Team meeting for the student after being determined eligible as a student with a disability in need of special education and related services on November 29, 2023.

Issue Two:

Whether WCSD complied with IDEA and NAC, Chapter 388, with regard to the timely provision of a request for informed consent for the initial provision of special education and related services for the student from November 29, 2023 to March 12, 2024.

There is a fundamental disagreement between the complainant Parents and WCSD regarding when, under controlling law, WCSD was required to obtain informed consent from the Parents before the initial provision of special education and related services to the student. (FOFs #14, #15) 34 C.F.R. §300.300(b); NAC §300.300. In the discussion of the IDEA 2006 regulations, the United States Department of Education clarified the timing of a public agency's request for parental consent to the initial provision of special education for a student in response to a number of comments:

IDEA, 34 C.F.R. §300.300(b)(3)(ii)) "...follows the specific language in section 614(a)(1)(D)(ii)(III)(bb) of the Act and reflects the new provision in the Act that relieves public agencies of any potential liability for failure to convene an IEP Team meeting or develop an IEP for a child whose parents have refused consent or failed to respond to a request for consent to the initial provision of special education and related services. It does not, however, prevent a public agency from convening an IEP Team meeting and developing an IEP for a child as a means of informing the parent about the services that would be provided with the parent's consent."

"... we do not view the consent provisions of the Act as creating the right of parents to consent to each specific special education and related service that their child receives. Instead, we believe that parents have the right to consent to the initial provision of special education and related services. "Fully informed," in this context, means that a parent has been given an explanation of what special education and related services are and the types of services that might be found to be needed for their child, rather than the exact program of services that would be included in an IEP. *Discussion of IDEA regulations: Final Rule, 71 Fed. Reg., p. 46601 (August 14, 2006).*

Notwithstanding WCSD's response to this State Complaint, as set forth in its Special Education Procedures Manual, WCSD has determined that parental consent for the initial provision of special education services must be obtained before the initial IEP meeting. (FOF #10) In this case, the sequence of events regarding the request for parental consent is neither before the commencement of the development of the student's IEP nor after the IEP was finalized. (FOFs #7, #8) That said, it is not WCSD's policies and procedures that are before the NDE in the State Complaint process, but compliance with IDEA and NAC, Chapter 388.

Consistent with the above discussion of the timing of the request for parental consent for the initial provision of special education and related services, pursuant to IDEA it was permissible for WCSD to request the Parents' consent prior to the development of the student's IEP or thereafter. Given IDEA does not establish a specific timeframe from the determination of student's eligibility as a student with a disability to

requesting parental consent, 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); *Discussion of IDEA regulations: Final Rule*, 71 Fed. Reg., pp. 46540, 46637 (August 14, 2006).

In this case, WCS D provided the student’s Parents the form for parental consent for the initial provision of special education and related services on March 12, 2024, during the development of the student’s IEP. The student’s Parents consented to the initial provision of special education and related services to the student on March 14, 2024. (FOFs #7, #8, #9) The provision of consent to the Parents was more than three months after the determination that the student was eligible as a student with a disability in need of special education and related services. The determination of timeliness in this case is inexplicitly tied to the events at and following the determination of the student’s eligibility on November 29, 2023, including the determined failure of WCS D under Issue One to provide the required Prior Written Notice.

The State Complaint Investigation Team acknowledges that the Parents’ request for time to consider the student’s eligibility prior to proceeding was a basis for a delay of some reasonable period of time in obtaining parental consent, with an eye toward the requirement to develop the student’s IEP within 30 days. (FOFs #2, #4) However, even considering only the time period from January 8, 2024, when the student’s Parents notified WCS D that they wanted to proceed with the student’s IEP, to March 12, 2024, the State Complaint Investigation Team determined that this more than 60-day delay was not a “reasonable time.”

Therefore, WCS D failed to comply with IDEA and NAC, Chapter 388, with regard to the timely provision of a request for informed consent for the initial provision of special education and related services for the student on March 12, 2024.

Issue Three:

Whether WCS D complied with IDEA and NAC, Chapter 388, to ensure that an IEP was in effect for the student at the beginning of the 2024/2025 school year, specifically with regard to WCS D’s refusal to implement the student’s May 7, 2024 IEP without the Parents’ agreement and consent to the IEP.

At the beginning of each school year, a public agency is required to have an IEP in effect for each student with a disability within its jurisdiction. 34 C.F.R. §300.323(a); NAC §388.281(1). Ideally an IEP will be by consensus; but if not, the public agency has the duty to formulate a plan to the best of its ability. *Doe v. Maher*, 793 F.2d 1470 (9th Cir. 1986). cert. granted, in part.

“The IEP Team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child. The IEP team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE)... If the team cannot reach agreement, the public agency must determine the appropriate services and provide the parents with prior written notice of the agency’s determinations regarding the child’s educational program and of the parents’ right to seek resolution of any disagreements by initiating an impartial due process hearing or filing a state complaint.” *Letter to Richards* 55 IDELR 107 (OSEP January 7, 2010).⁶

⁶ This OSEP policy letter is publicly available at:
<https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/letters/2010-1/richards010710iep1q2010.pdf>

Pursuant to IDEA, 34 C.F.R. §300.300, parental consent is required only for the initial evaluation of a student to determine if a student qualifies as a student with a disability; before the initial provision of special education and related services to the student; and, with some exceptions, the reevaluation of the student. NAC, Chapter 388, does not go beyond IDEA in this regard and, even if the State had opted to do so, IDEA explicitly provides that a State may do so only if it ensures that effective procedures are established and implemented to ensure that a parent's refusal to consent does not result in a failure to provide the student with a Free Appropriate Public Education. 34 C.F.R. §300.300(d)(2).

WCSD conceded this Issue, admitting that WCSD did not comply with IDEA and NAC, Chapter 388, with regard to ensuring an IEP was in effect for the student at the beginning of the 2024/2025 school year, specifically with regard to WCSD's refusal to implement the student's May 7, 2024 IEP without the Parents' agreement and consent to the IEP.

It was clear to the State Complaint Investigation Team that a misunderstanding of the requirement of the law relative to WCSD obtaining the Parents' consent to the initial provision of special education and related services to the student was the reason for WCSD's failure to implement the student's May 7, 2024 initial IEP. This misunderstanding had the cumulative and unfortunate result that the student ended one school year and started the following school year without an IEP in effect. (FOFs #14, #15)

While WCSD's efforts to reach a consensus with the Parents in the development of the student's IEP may have been well intentioned, the student's Parents provided the required parental consent to the initial provision of special education and related services on March 14, 2024. (FOFs #12, #13, #16) As such, upon the completion of the student's May 7, 2024 initial IEP, WCSD was required to provide the student's Parents a Prior Written Notice a reasonable time before WCSD implemented this proposal to provide the student a Free Appropriate Public Education and, if the Parents continued to disagree with components of the IEP, the Parents had the right to exercise their procedural safeguards to resolve any such disagreement. WCSD was then required to make the special education and related services available to the student in accordance with the student's May 7, 2024 initial IEP soon as possible after it is developed, and did not. 34 C.F.R. §300.323(c)(2); NAC 388.281(6)(c).

Therefore, WCSD failed to comply with IDEA and NAC, Chapter 388, to ensure that an IEP was in effect for the student at the beginning of the 2024/2025 school year, specifically with regard to WCSD's refusal to implement the student's May 7, 2024 IEP without the Parents' agreement and consent to the IEP.

ORDER OF CORRECTIVE ACTION⁷

WCSD is required to take corrective action to address the violations found in this State Complaint investigation. 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 are required. In determining the appropriate, the State Complaint Investigation Team considered both the Parents' and WCSD's proposed resolution. **With the exception**

⁷ Nothing in this Order precludes either the Parents or WCSD from accessing the dispute resolution processes available under IDEA and NAC, Chapter 388, as appropriate.

of the student-specific Order One that must be implemented as ordered, in accordance with NRS §385.175(6), NDE requests a plan of corrective action plan (CAP) from WCSD within 15 WCSD business days of the date of this Report on WCSD’s plan to implement the ordered actions below, including the timeline. 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.

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 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, WCSD attests that there was no harm in the delay in providing the student special education services, citing the student’s grades; performance on state and district assessments; and absence of behavior incidents. (FOFs #18, #19) However, the student’s IEP Team determined that the student required the special education and supplementary aids/services in the May 7, 2024 IEP in order to provide the student a Free Appropriate Public Education. (FOF #11) It is that determination that the State Compliant Investigation Team finds convincing, “even though the student had not failed or been retained in a course or grade, and was advancing from grade to grade.” 34 C.F.R. 300.101(c)(1).

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.

The student was without special education services from May 7, 2024 to the end of the school year and the commencement of the 2023/2024 school year through August 28, 2024, the date of the State Complaint. Notwithstanding WCSD was put on notice of the allegations of noncompliance in this State Complaint in August 2024 and later conceded the noncompliance, it is of particular concern that the student remained without the special education services the student’s IEP Team determined were necessary to provide the student a Free Appropriate Public Education through, at least, October 3, 2024.

Order One: If the student’s October 3, 2024 IEP is not being implemented as of the date of this Report⁸, WCSD is ordered to implement the IEP **within two school days** of the date of this Report and include in

⁸ The only exception to this Order is in the event the implementation of the student’s October 3, 2024 IEP has been stayed by a Hearing Officer in a due process hearing or by a court of competent jurisdiction.

the ordered compensatory education in Order Two an additional two hours of the specially designed instruction of tutoring/coaching in executive functioning/organizational skills.

Order Two:

Unless an alternative student-specific remedy is otherwise agreed to in writing by WCSD and the Parents prior to the submission of the CAP⁹, 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:

480 minutes (8 hours)¹⁰ of compensatory education of the specially designed instruction as set forth in the student's October 3, 2024 IEP (FOF #20) in the form of tutoring/coaching in executive functioning/organizational skills, including strategies in the management and completion of assignments. 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 services may be provided by a qualified private provider.

WCSD must consult with the student's Parents 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 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 to the student **no later than March 14, 2025**, unless the ordered compensatory education was previously completed and documentation provided to NDE of that completion prior to that date.

Systemic Remedy

Order Three:

As soon as possible after the approval of the CAP, but no later than March 1, 2025, WCSD must conduct a training on IDEA and NAC, Chapter 388, for school personnel from the school the student attended in the 2023/2024 school year with the following mandatory attendees: the school special education department professional staff, including the student's assigned case manager, if different; the principal; and vice principal.

The training must include the timelines from the determination of the eligibility of a student with a disability to the development and implementation of the student's IEP; the content and timing of Prior Written Notices; the distinction between a meeting notice in advance of a meeting and a Prior Written Notice after the decision has been made on identification, evaluation, or placement of a student or the provision of a Free Appropriate Public Education to the student; parental consent requirements; and the procedures that

⁹ If WCSD and the Parents 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.

¹⁰ This order of compensatory education is based on the calculation of numbers of minutes of missed specially designed instruction 120 minutes per month in the special education setting in the student's May 7, 2024 IEP (with no distinction provided for partial months). WCSD failed to implement the student's May 7, 2024 IEP in May and June of school year 2023/2024 and for the months of August and September 2024, a total of four months. (While the student may have received accommodations through a Section 504 Plan, the student's plan did not include special education. FOF #17)

must be followed if, after careful consideration of parental input in the development/review of a student's IEP, the WCSD members of the IEP Team and parents disagree with a WCSD proposal to provide a student a Free Appropriate Public Education. The trainer must possess expertise and experience with the requirements of the IDEA and NAC, Chapter 388, in these areas and must not have been involved in the events of this case at any point, including at the district office.

The documentation of the conduct of the training on the aforementioned areas must be provided to NDE within 10 business days of the conduct of the training and include the qualifications of the trainer; training materials; sign-in sheet; and documentation of the attendees' satisfactory completion of the training.