

**WASHOE COUNTY SCHOOL DISTRICT
COMPLAINT INVESTIGATION
(#WA092123C)**

Report Issued on November 17, 2023

INTRODUCTION

On September 21, 2023, 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 allegation in the Complaint was that the student's Individualized Education Program (IEP) was not being met, causing a denial of a Free Appropriate Public Education. Specifically, the facts supporting the allegation were that this alleged violation was caused by WCSD's failure to implement the student's IEP in effect in the 2023/2024 school year starting August 14, 2023 with regard to: the provision of a qualified one-to-one aide trained to implement the student's Positive Behavior Intervention and Support plan; and the consistent provision of the following supervision/support and social emotional learning in the student's IEP: staff addressing the student's inappropriate behavior by explicitly teaching expectations, including any behavior incident documented in Infinite Campus; should a behavior referral occur, administration discussing the course of action with the student's Parents; teaching the student replacement behaviors during searches and transitions; and providing the student 32.5 hours of one-to-one adult support for social or emotional behavior.

The Parent's proposed resolution to address these allegations was for WCSD to provide an appropriate aide (preferably a "RBT" aide, Registered Behavior Technician), qualified with behavior training, able to keep up with the student, provide consistency and help as a classroom support (while not singling the student out as this will exacerbate behaviors); classroom support (prompting the student to complete assignments, turn in assignments and stay on task with positive reinforcement); and appropriate social and emotional lessons as outlined in the student's IEP.

The allegations in the Complaint that are under the jurisdiction of NDE to investigate through the special education complaint process raises the following issue for investigation through September 19, 2023, the date of the State Complaint:

Issue:

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 14, 2023, specifically with regard to providing:

- a. The student a qualified one-to-one aide trained to implement the student's Positive Behavior Intervention and Support plan; and
- b. The following supervision/support and social and emotional learning:
 1. Staff addressing the student's inappropriate behavior by explicitly teaching expectations, including any behavior incident that would be documented in Infinite Campus;
 2. Should a behavior referral occur, administration discussing the course of action with the student's parents;
 3. Teaching the student replacement behaviors during searches and transitions;

- and
4. Thirty-two and one-half hours a week of one-to-one adult support for social or emotional behavior.

In the September 29, 2023 issue letter to WCSD, WCSD was notified that if WCSD disputed the allegations of noncompliance in the Complaint, the submitted documents and information must include a denial of the alleged noncompliance; a brief statement of the factual basis for the denial; reference to the provided documentation that factually supported the denial; and that a failure to do so by October 19, 2023, or an extended timeline authorized by NDE, would be considered a concession of noncompliance for purposes of this State Complaint. WCSD did timely provide a response; denied the alleged noncompliance, asserting the student's IEP was implemented with fidelity; provided the statement of the factual basis and clearly referenced the provided documentation.

The Parent's Complaint, including the enclosed documents and information, and WCSD's denial of all claims, arguments and all documents submitted by WCSD in response to the issue in the Complaint, including requested documentation to verify WCSD's implementation of the student's IEP, and supplemental documentation requested by NDE were reviewed in their entirety in this investigation. The Findings of Fact cite the source(s) of the 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. (May 22, 2023 IEP, Student Period Attendance Detail, State Complaint, WCSD Response)
2. The first day of school for students in the 2023/2024 school year was August 14, 2023. During the relevant time period of this State Complaint, there were five weeks and two days from August 14, 2023 through September 19, 2023. (WCSD 2023/2024 Balanced Calendar)

IEP

3. The student had a May 22, 2023 IEP in effect in the 2023/2024 school year with the beginning and ending dates for services from May 22, 2023 to March 30, 2024. The May 22, 2023 IEP was a revision IEP to the student's annual IEP. (May 22, 2023 IEP)
4. The student's IEP Team determined that the student's behavior impeded the student's learning or the learning of others and this consideration was addressed in the student's May 22, 2023 IEP. The student had a May 16, 2022 Positive Behavior Intervention Plan in effect May 23, 2022 with the targeted behaviors of off-task behavior and disruptive behavior, defined as cursing, verbal aggression or physical aggression. (May 22, 2023 IEP, May 16, 2022 Positive Behavior Intervention Plan)
5. None of the student's annual goals in the May 22, 2023 IEP were to be addressed during extended school year services. The annual goals were:
 - a. Given all school settings student will demonstrate the ability to not engage in misappropriation of tangible items (WCSD SELstandards.2b) as evidenced by no reported

- incidents of misappropriation of tangible items (theft) at school (personal property or school property) for the duration of the year with 100% accuracy by March 30, 2024.
- b. Given all school settings student will demonstrate the ability to manage impulses (WCSD SELstandards.2a) as evidenced by no reported incidents of possession of illicit personal items at school for the duration of a school year with 100% accuracy by March 30, 2024.
 - c. Given five linear equations for which three of the four values are provided student will solve one variable (CCSS.8.EE.7B) in five out of five trials with 80% accuracy by March 30, 2024.
 - d. Given a direction or classroom task student will demonstrate executive functioning skills by using a digital platform messaging function or personal planner/calendar system to remain organized and completing assignments within one day of the due date (WCSD SELstandard 2) in eight out of 10 trials with 80% accuracy by March 30, 2024.
6. The student is to spend 86% of the student's school day in the regular educational environment. In the area of transition, the focus for the student is on mastering grade level content and achieving high grades in order to foster the student's post-school goals. (May 22, 2023 IEP)
 7. In the 2023/2024 school year, the student's specially designed instruction of special instruction in directed studies and specialized instruction in social and/or behavioral skills were to be provided in the location of the special education setting. The student's specially designed instruction in math was to be provided in the location of the regular education setting. The student was to be provided the consultative related service of a Board-Certified Behavior Analyst (BCBA) two hours per month in the regular education setting. (May 22, 2023 IEP)
 8. The following supplementary aids and services relevant to this State Complaint were included in the student's May 22, 2023 IEP:
 - a. Inappropriate behavior will be addressed by staff by explicitly teaching expectations to the student. The location of the services was in the regular education setting and the frequency of the service was when the student displays behavior that is inappropriate for a school setting.
 - b. Any behavior incident that would be documented in Infinite Campus needs to be followed up with teaching the student expectations explicitly. The location of the services was in the regular education setting and the frequency of services was any time the student engages in a behavior that would normally be documented in Infinite Campus as a behavior.
 - c. Should a behavior referral occur, "admin" will discuss course of action with Parents. The location of the services was in the regular education setting and the frequency of services was that this accommodation would be provided for all behavior referrals.
 - d. Teach the student replacement behaviors (how to avoid breaking the law) during daily searches and during school transitions. The location of the services was in the special education setting and the frequency of services was every day during searches and transitions.
 - e. One-to-one adult support for social or emotional behavior. The location of the service was in the regular education setting and the frequency of the service was for 32.5 hours a week. (The assessment results in the IEP indicated that an accommodation to provide the student a "1:1 aid (sic)" was added to the May 22, 2023 IEP.)
 - f. The student's IEP does not include specific qualifications/training for the student's one-to-one adult support to meet the student's unique needs; however, the student's supplementary aids/services required an annual Behavior Intervention Plan training by the BCBA for any staff/new staff working with the student to implement with fidelity. The location of the service was in the regular education setting and the frequency was to provide accommodation for all trainings on the Behavior Intervention Plan, including with Parents.

- g. The student will always be in the line of sight of an adult at school. The location of the service was in the regular education setting and the frequency of the services was from drop off until “p/u”. (May 22, 2023 IEP)

One-to-One Aide

9. Due to a “community shortage of staff,” WCSD did not have a qualified individual for the position of the one-to-one adult support for the student until October 2023. As of September 25, 2023, WCSD had hired a one-to-one aide to be assigned to the student and the student’s one-to-one aide started providing support to the student the first school day of October, October 10, 2023. (WCSD Response, September 26, 2023 and October 9, 2023 Technical Assistance Reports - MTSS-Behavior, Health and Management Department, WCSD Response to Supplemental Request for Information, WCSD 2023/2024 Balanced Calendar, WCSD Special Education Procedures Manual)
10. It is WCSD’s position in this State Complaint, that, notwithstanding the absence of a one-to-one adult assigned to the student, the student had an adult to serve as a one-to-one and work with the student at all times of the day. The documentation WCSD provided in support of this position reflected the assignment of various staff persons to the student on three school days only, with a notation regarding transitions on one day. During observations of the student on September 11, 2023 in math class, there was also documentation that a co-teacher provided the student some adult support during the class.¹ (Student Schedule Assignments, September 11, 2023 Technical Assistance Report - MTSS-Behavior, Health and Management Department, WCSD Response)
11. Prior to the commencement of the 2023/2024 school year, a WCSD BCBA, who was also a Licensed Behavior Analyst, conducted a training on the student’s Behavior Intervention Plan for school personnel involved with the student. The student’s Parent also attended the training. The BCBA also scheduled an individual training subsequently when there was a change in the student’s schedule/teacher. Upon the hiring of a one-to-one aide for the student subsequent to the relevant time period of this State complaint, the BCBA conducted a Behavior Intervention Plan Training for the one-to-one aide and the student’s case manager the day before the student’s one-to-one aide starting working with the student on the first school day of October. (Training Materials, August 11, 2023, September 26, 2023 Technical Assistance Report- MTSS-Behavior, health and Management Department)

Inappropriate Behavior

12. There was documentation that upon one occurrence of observed inappropriate behavior, after other preceding inappropriate behavior, one of the student’s teachers reviewed expectations with regard to being on task. (Technical Assistance Report - MTSS-Behavior, Health and Management Department)

Replacement Behaviors

13. Personnel at the student’s school conducted searches of the student commencing August 15, 2023 through the relevant time period of this State Complaint on almost all school days. On two of the search days, staff listed two discovered items as questionable. WCSD did not provide any

¹ WCSD also submitted some documentation of the implementation of the student’s supplementary aid that the student was required to always be in the line of sight of an adult at school in the regular education setting from time of drop off. (Finding of Fact 8(h)) However, this supplementary aid/service for the student was not an issue set forth in this State Complaint.

documentation of further action taken, including whether the student was taught replacement behaviors on those two occasions. (Student Search Records)

Behavior Referral

14. On September 19, 2023, a behavior incident occurred of inappropriate language, actions or gestures with the resultant resolution of the student's in-school suspension. The student's Parent was contacted on the day the incident of misconduct occurred and expressed upset about the consequences of the proposed two-day in-school suspension. WCSD reviewed the student's Behavior Intervention Plan and rescinded one day of the in-school suspension. (Student Behavior Detail Report, Student Period Attendance Detail)
15. During the student's in-school suspension for the September 19, 2023 behavior incident, the student worked on lessons and reteaching of expected language was completed. (Student Behavior Detail Report)

Progress

16. At the end of the 2022/2023 school year, the goal status of the student's progress on each of the student's social/emotional/behavior goals in the student's May 22, 2023 IEP was that the student was likely to meet the goals by the next annual review in March 2024. With regard to the student's goal to demonstrate executive functioning skills by using a digital platform messaging function or personal planner/calendar system to remain organized and completing assignments, the student was reported to have documented assignments at an average of 45.3% accuracy and in the fourth quarter the student had an assignment completion rate of 98.5%, missing only one assignment out of 67. (June 2, 2023 Student Progress Report)
17. Based on a time sampling observation conducted on August 18, 2023, the first week of school for the 2023/2024 school year during the student's behavior consult minutes, the student was on task 83.3% of the time. Based on subsequent observations of the student on September 11, 19, and 25, 2023, the student was observed to be on task 50% of the time. (August 18, 2023 and September 11, 19 and 25, 2023 Technical Assistance Report - MTSS-Behavior, Health and Management Department)
18. While ranging from an average of 70% to 85% of earned points from August 14, 2023 to September 29, 2023, the percentage of points earned by the student were on a decreasing trend for the student's use of appropriate language; being on task; following instruction; and work completion. As of September 11, 2023 the student's math teacher reported the student had been struggling to stay on task and complete work in that subject. The student did consistently earn 100% of the points available for respectful transitions (October 18, 2023 Behavior Summary)
19. For the first quarter of the 2023/2024 school year, the student was reported to making significant progress toward meeting two of the student's social/emotional goals and the student's academic goal in math in the student's May 22, 2023 IEP. On the social/emotional goal to demonstrate executive functioning skills by using a digital platform messaging function or personal planner/calendar system to remain organized and complete assignments, the student was reported as making "some progress" toward reaching this goal. (While the mastery toward the goal was 80% accuracy, the student averaged 25.2% accuracy.) In addition, the student was earning a GPA of 2.86 as of the first quarter of the 2023/2024 school year and had accumulated 10 missing/incomplete assignments. (October 19, 2023 Student Progress Report)

CONCLUSIONS OF LAW

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 an 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).² In accordance with IDEA and NAC, Chapter 388, special education and related services must be made “available” to the student in accordance with the student's IEP as soon as possible after it was developed. 34 C.F.R. §§300.101, 300.323(c); NAC §388.281(6)(e). In this case, the student had a May 22, 2023 IEP in effect during the relevant period of this State Complaint. (Finding of Fact (FOF) #3)

Pursuant to NAC §388.215, WCSD is also required to have a system of records for the purpose of verifying the provision of a Free Appropriate Public Education to a student.

Qualified One-to-One Adult Support

Commencing May 22, 2023, the student’s IEP included the supplementary aid/service of one-to-one adult support for social or emotional behavior in the location of the regular education setting for 32.5 hours a week. (FOF #8(e)) (WCSD variously described this one-to-one adult support as an aide or paraprofessional (FOFs #8(e), #9, Footnote Three); therefore, the term ‘aide’ will be used alternatively for “adult support” in this Report.)

In the response to the State Complaint, WCSD conceded that the student was not provided a single dedicated individual to provide the one-to-one adult support until October 2023. Consistently, the investigation confirmed that the student did not have the supplementary aid/service of a one-to-one aide to provide the student the required adult support for social or emotional behavior until the first school day of October 2023, October 10, 2023. (FOF #9)

Nonetheless, WCSD asserted that the student was still provided the required adult support at all times of the day during the relevant time period of this State Complaint. However, WCSD submitted minimal documentation (FOF #10) in the course of the investigation to verify the student was provided the required one-to-one adult support for social or emotional behavior 32.5 hours a week. (FOF #8) Therefore, based on the absence of verifiable documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that WCSD failed to provide the student the required one-to-one adult support from the commencement of the school year through the time period of this State Complaint.

The student’s IEP does not include specific qualifications/training for the student’s one-to-one adult support to meet the student’s unique needs as alleged in the State Complaint. However, the student’s supplementary aids/services do require an annual Behavior Intervention Plan training by a BCBA for any staff/new staff working with the student to implement with fidelity. (FOF #8(f)) A WCSD BCBA did conduct this required annual training for employed staff prior to the commencement of the 2023/2024 school year and subsequently upon a change in schedule/teacher. (FOF #11) However, due to WCSD’s failure to assign the student the required supplementary aid/service of a one-to-one aide for the 2023/2024 school year at the time of the conduct of the trainings, no one-to-one aide of the student was able to participate in either the required annual training or subsequent new staff training during the time period of this investigation. While outside the scope of this investigation, it was noted that on October 9, 2023, the day before the student’s

² The State of Nevada is in the United States Court of Appeals, Ninth Circuit

one-to-one aide starting working with the student, the BCBA did conduct a Behavior Intervention Plan Training for the one-to-one aide in accordance with the student's May 22, 2023 IEP. (FOFs #8(f), #9, #11)

Addressing Behavior

Four of the student's supplementary aids/services in the May 22, 2023 IEP at issue in this State Complaint were with regard to addressing the student's behaviors.

Expectations

The student's May 22, 2023 IEP included two supplementary aids/services that the student be explicitly taught expectations: 1. Upon the occurrence of behavior inappropriate for a school setting; and 2. Upon the occurrence of any behavior incident that would be documented in Infinite Campus. (FOF #8(a)(b)) During the time period of this State Complaint, on September 19, 2023, there was one behavior incident that resulted in the student's in-school suspension. (FOF #14) During the student's in-school suspension for this behavior incident, the student worked on lessons and reteaching of expected language was completed. (FOF #15) As such, WCSD did comply with the requirement to teach the student expectations upon the occurrence of a behavior incident documented in Infinite Campus.

As demonstrated during the WCSD BCBA's periodic observation of the student and data collection, the student displayed other behavior inappropriate for a school setting that did not rise to documentation in Infinite Campus. (FOFs #12, #17, #18) While there was documentation on one occasion that the student's teacher reviewed expectations with the student (FOF #12), WCSD did not provide documentation that upon each occurrence of behavior inappropriate for the school setting the staff addressed the behavior by explicitly teaching expectations to the student. (FOF #8(a)) Therefore, pursuant to NAC §388.215, based on the absence of verifiable documentation otherwise, the State Complaint Investigation Team determined that WCSD failed to comply with the requirement to address the student's inappropriate behaviors by explicitly teaching expectations at the required frequency of the service.

Replacement Behavior

The student's May 22, 2023 IEP included the supplementary aid/service to teach the student replacement behaviors (how to avoid breaking the law) during daily searches and during school transitions. The location of the services was in the special education setting and the frequency of services was every day during searches and transitions. (FOFs #8(d)) The student's school conducted searches of the student commencing August 15, 2023 through the relevant time period of this State Complaint on almost all school days. There were two occasions when staff discovered questionable items during the search. However, no documentation was provided of action taken, including being taught replacement behaviors as required by the student's IEP. (FOF #13)

With regard to school transitions, the student consistently accomplished respectful transitions during the relevant time period of this State Complaint. (FOF #18) Therefore, while the State Complaint Investigation Team determined that, pursuant to NAC §388.215, in the absence of verifiable documentation otherwise, WCSD failed to implement the student's IEP with regard to teaching the student replacement behaviors during the two occasions items were found on searches, WCSD was not required to do so during transitions in the absence of a need to teach the student replacement behaviors.

Behavior Referral

The student's May 22, 2023 IEP included the supplementary aid/service that if a behavior referral occurred, "admin" would discuss the course of action with the student's Parents. (FOF #8(c))

On September 19, 2023, the same day the above-referenced incident of misconduct occurred, the student's Parent was contacted by WCSD and the proposed two-day in-school suspension of the student was discussed with the Parent. Based on that discussion and a review of student's Behavior Intervention Plan, WCSD reconsidered the course of action and rescinded one day of the in-school suspension. (FOF #14) As such, WCSD did implement this supplementary aid/service with regard to the sole behavior referral during the scope of this investigation.

Therefore, WCSD complied in part and failed in part to comply with IDEA and NAC, Chapter 388, in the implementation of the student's IEP in effect in the 2023/2024 school year commencing August 14, 2023. Specifically:

A. WCSD complied with regard to:

- 1. Discussing the course of action on a behavior referral with the student's Parent;*
- 2. Staff addressing the student's inappropriate behavior by explicitly teaching expectations for a behavior incident documented in Infinite Campus; and*
- 3. In the absence of the condition precedent to do so, teaching replacement behaviors during transitions.*

B. WCSD failed to comply with regard to:

- 1. The provision of one-to-one adult support for social or emotional behavior 32.5 hours per week from August 14, 2023 through September 19, 2023. The student's May 22, 2023 IEP did not require specific qualifications/training for the student's one-to-one adult support to meet the student's unique needs, but did require Behavior Intervention Plan training of staff/new staff. As a result of the failure to provide the student the required one-to-one adult support, WCSD was unable to include the student's one-to-one aide in training conducted during the relevant time period of this State Complaint; and*
- 2. Teaching the student replacement behaviors during searches on two occasions; and teaching expectations at the required frequency upon the student displaying behavior inappropriate for a school setting.*

ORDER OF CORRECTIVE ACTION

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.

The State Complaint Investigation Team determined both a student-specific corrective action for the failure to provide the student a Free Appropriate Public Education and a systemic action is required for WCSD's failure to timely implement the student's IEP.

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. 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 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).

The State Complaint Investigation Team determined that, even if adult support was provided to the student on some school days, the absence of one-to-one adult support for social or emotional behavior for the student and the failure to teach the student expectations upon the occurrence of inappropriate behavior³ (FOFs #2, #9, #10, #12) fell significantly short of the services required by the student's IEP. The decreasing trend in the student's performance during the relevant time period of this State Complaint, including performance on the student's annual executive functioning goal and earned GPA during the first quarter of the 2023/2024 school year (FOFs #16 - #19), was probative of a material failure to implement the student's May 22, 2023 IEP.⁴ *Van Duyn v. Baker School District*, 502 F.3d 811, 107 LRP 51958 (9th Cir. 2007). As such, a student-specific remedy is required.

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. In this case, the State Complaint Investigation Team determined, that given the student's age and first quarter GPA, any compensatory education should be focused on the student's mastery of grade level content and achieving high grades to foster the student's post-school goals consistent with the student's transition plan. (FOF #6) In addition, the method and amount of determined compensatory education hours took into consideration the Parent's concern that singling the student out would exacerbate behaviors (proposed resolution).

Unless an alternative student-specific remedy is otherwise agreed to in writing by WCSD and the Parent⁵, the CAP must provide for the following student-specific directed actions and provide the timeline to enable the completion of all of the actions as soon as possible, but no later than one year from the date of this Report:

³ While not negating WCSD's noncompliance, WCSD's failure to teach the student replacement behaviors in accordance with the student's IEP on the two occasions when the student possessed questionable items was determined to be a minor shortfall relative to the time period.

⁴ In WCSD's response to the State Complaint, WCSD argues that the student made meaningful progress and, therefore, there was no denial of a Free Appropriate Public Education. The determined facts in this State Complaint evidence otherwise.

⁵ 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.

1. The provision of 160⁶ hours of compensatory education of outside classroom support of tutoring for the student focused on the student's mastery of grade level content. The individual providing the tutoring must coordinate with the student's school to support the student's class curriculum and assignments and the individual must be trained by a BCBA in the implementation of the student's Behavior Intervention Plan prior to the commencement of the tutoring.
2. Commencing no later than January 2024, an additional two hours per month of the consultative related service of a BCBA in the regular education setting must be provided to the student for the duration of the 2023/2024 school year. (That is, the student would receive a total of four hours a month of this related service taking into consideration this Order and the student's May 22, 2023 IEP.) (FOFs #6, #7)

This compensatory education/service must be in addition to the services in the student's IEP and must be provided during school breaks or Extended School Year (FOF #5) or before or after school. At WCSD's discretion, all or part of the compensatory education/services 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 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 June 21, 2024**, unless the ordered compensatory education was previously completed and documentation provided to NDE of that completion prior to that date.

Systemic Remedy

It is of significant concern that WCSD relies on the "community shortage of staff" in its response to this State Complaint (FOF #9) as a justification for the failure to provide the services the student's IEP Team determined were required to provide the student a Free Appropriate Public Education, particularly given WCSD is under a NDE Order of Enforcement in which this justification was soundly rejected for the existence of wait lists and backlogs for the provision of services to preschool students with disabilities. To be clear, the obligation to provide a student a Free Appropriate Public Education is unequivocal, there may be no wait lists or backlogs for services, even if there is a personnel shortage. 34 C.F.R. §§300.17(d), 300.10, 300.323(c); NAC §388.281(6)(e)⁷

⁶ During the relevant time period of this State Complaint, the student did not receive the one-to-one support of a dedicated aide for approximately five weeks and two days (FOFs #2, #9); however, the determined violation continued through the month of September for an equivalent of a total of seven school weeks at 32.5 hours a week, the equivalent of 227.5 hours of adult support during the time period. This amount was reduced to 160 hours upon consideration that there was some one-to-one adult support coverage provided the student during the seven school weeks (FOF #10); the award of the remedy of an additional two hours a month of the consultative service of the BCBA for the remainder of the 2023/2024 school year; and the feasibility of providing, and the student participating, in the ordered number of hours of compensatory education during the 12-month period. 34 C.F.R. §300.600(e).

⁷ See for example this memorandum from the United States Department of Education on the mandate for qualified special education teachers, notwithstanding shortages: <https://sites.ed.gov/idea/idea-files/osep-memorandum-personnel-qualifications-under-part-b-of-the-individuals-with-disabilities-education-act-idea-osep-22-01-oct-4-2022/#:~:text=OSEP%20also%20recognizes%20that%20States,services%20providers%20across%20the%20country>.

Therefore, WCSD's CAP must include the revision of WCSD's policies and procedures section in Chapter One of WCSD's Special Education Services Manual to include a separate section to address the mandatory implementation of student's IEPs with fidelity; the prohibited maintenance of any wait list or backlog for services; a reference to the NDE Order of Enforcement for WCSD's failure to do so in WCSD's preschool program for students with disabilities in the 2022/2023 and 2023/2024 school years; and the 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 when the school does not have the resources to implement a student's IEP. This revision statement must be approved by NDE before inclusion in the Manual. Prior to the commencement of the 2024/2025 school year, WCSD must, at minimum, provide all school principals, special education teachers, and school psychologists a notice of the revision, with reference to the section and page on the Manual, with either a copy of the revised Manual or a link to the Manual.