

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA022513)**

**Report Issued on 5/31/13**

**INTRODUCTION**

On 02/25/13, the Nevada Superintendent of Public Instruction received a Complaint dated 02/25/13 from a parent (Parent or Complainant) alleging violations in the special education program of a student with disabilities attending the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that with respect to the use of a test called the Sensory Processing Measure (SPM), the WCSD: 1) did not use a technically sound instrument that was valid and reliable for the assessment and evaluation for the purpose for which it was used; 2) did not ensure that the SPM was administered in accordance with instructions provided by its producer of the assessments; 3) did not ensure that trained and knowledgeable personnel administered the SPM; and 4) did not ensure that the 2/25/13 Individualized Educational Program (IEP) committee included an individual who could interpret the instructional implications of the evaluation results.

In addition, the Parent alleged that, with respect to implementing the requirements of the student's 12/17/12 IEP, the WCSD: 5) with respect to occupational therapy (OT), did not complete the OT assessment when required, did not deliver the raw data from the OT assessment as required, or provide a report of the OT consult to the parents as required; 6) with respect to assistive technology (AT), did not ensure that AT devices and/or AT services were made available to the student and did not provide AT reports to the Parents; 7) with respect to Asperger's Autism Consultant (Autism Consultant) services, did not provide required services to the student and reports to the Parents. The Parent also alleged that 8) the WCSD failed to notify the Parents within a reasonable time before any proposed or refused action regarding the provision of Free Appropriate Public Education (FAPE) to the student, specifically it failed to provide them with a Prior Written Notice (PWN) before discontinuing or refusing to provide the services and reports referenced above with respect to OT, AT and Autism Consultant services.

Subsequent to the filing of this Complaint, the Parent filed another Complaint, #WA032013, which also included an allegation of noncompliance regarding among other things, certain AT reports and services. Due to the complexity of the issues, the Nevada Department of Education (NDE) chose not to amend the existing Complaint, but rather to align the investigation and report timelines to enable the investigation of the Complaints at the same time to ensure a comprehensive investigation of the related issues on AT. The Complainant later requested the consideration of additional evidence submitted for WA#032013 on the issue of AT records and services that are also being considered in this Complaint. The additional evidence was with regard to a pending administrative hearing under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 C.F.R. Part 99.

Both the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC) permit the extension of the written decision if exceptional circumstances exist with respect to a particular complaint. (34 C.F.R. §300.152(b); NAC §388.318(5)(a)) The NDE determined that the foregoing were exceptional circumstances warranting extensions. Therefore, the NDE extended the timelines in this Complaint to align the timeline for the investigation and the issuance of the report with the newly filed Complaint and, thereafter, to await the issuance of the administrative decision.

## **COMPLAINT ISSUES**

The allegations articulated in the Complaint, and further clarified during the investigation, raised the following issues under the jurisdiction of the NDE to investigate for the 2012/2013 school year up to 2/25/13 for this student:

Issue One: Whether WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with respect to the use of the SPM for the assessment of the student, specifically:

- a) Was the SPM used for the purposes for which it is valid and reliable?
- b) Was the SPM administered in accordance with any instructions provided by the producer of the SPM?
- c) Was the SPM administered by trained and knowledgeable personnel?
- d) Was an individual who could interpret the instructional implications of the results of the OT evaluation a member of the 2/25/13 IEP committee?

Issue Two: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to provide the services and instruction deemed necessary by the student's 12/17/12 IEP committee, with respect to:

- a) Completing the OT assessment by the required date, providing a report of the OT consult within the required time period, and providing raw data from the OT assessment within the required time period.
- b) Providing Autism Consultant services directly to the student and required reports to the Parents within the required time period.
- c) Providing AT services and devices to the student and required reports to the Parents.

Issue Three: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388 to provide the parents with a PWN within a reasonable time before any proposal to change the provision of a FAPE in the 12/17/12 IEP, specifically the provision of required reports and services with respect to the OT assessment and reports, Autism services and reports and AT reports, services and devices.

## **PERSONS PROVIDING INFORMATION**

The investigation team reviewed documents and information received from the following:

- Parents
- OT Consultant
- Second OT Consultant
- Area Administrator
- AT Consultant
- Autism Consultant
- Case Manager

## **DOCUMENTS AND RECORDINGS REVIEWED**

The documents and recordings reviewed by the investigation team included the following:

1. Complaint
2. 12/17/12 IEP
3. 2/25/13 IEP
4. 2/25/13 IEP tape recording provided by parent (2/25/13 IEP Recording)
5. SPM Manual
6. OT Assessment report delivered on 2/23/13 (OT Assessment Report)
7. OT Contact Log for 3/5/13 and 3/13/13 (OT Contact Log)
8. 3/19/13 OT Report
9. 2/28/13 AT Consult Meeting Notes (AT Summary)
10. AT Contact Record (AT Contact Record)
11. Autism Consultant Report dated 2/28/13 (Autism Report)
12. Autism Consultant Hourly Time Log from 5/3/12-2/21/13 (Hourly Time Log)
13. 1/29/13 Parent Email
14. 2/19/13 Meeting Notice
15. 2/22/13 Facilitator agenda (Agenda)
16. 2/23/13 Email
17. 2/25/13 Email
18. 2/27/13 Meeting Notice
19. 3/5/13 Agenda
20. 3/5/13 IEP
21. 3/19/13 IEP
22. WCSD 2012/2013 Academic Calendar (Academic Calendar)
23. Recording of FERPA Hearing (FERPA Recording)
24. 5/9/13 FERPA Decision

## **FINDINGS OF FACT (FOF)**

### **General FOF**

1. The student was a 15 year old high school student, eligible for special education as a student with autism. (12/17/13 IEP)

### **OT Assessment and the SPM**

2. The 12/17/12 IEP required that the student receive OT Consult services in the form of an OT assessment (hereinafter assessment or evaluation) for 2 hours per year between 12/18/12 and 1/11/13. There were no other requirements with respect to providing OT services. (12/17/12 IEP)
3. The OT Consultant commenced the evaluation of the student on 12/18/12 in response to the requirement for an OT assessment. After reviewing some of the student's educational records, discussing the concerns about the student's sensory processing with the Case Manager, and observing the student, the OT asked the Case Manager to complete an SPM rating scale on 12/18/12 as part of the OT evaluation. No other person was asked to complete an SPM rating scale. (OT Consultant, OT Assessment Report)
4. The SPM is an "integrated system of rating scales that enables assessment of sensory processing issues..." "The SPM is designed to assess children in kindergarten through sixth grade (ages 5 through 12)." The SPM results are considered valid and reliable when normed on ages 5 through 12. (SPM Manual, 3/19/13 OT Report)

5. When the SPM is administered, the student's primary teacher completes a Main Classroom Form and the parents or home-based care provider complete the Home Form. Both forms yield eight norm-referenced standard scores. (SPM Manual)
6. "The SPM forms are easy to use and can be administered and scored by staff members who do not have backgrounds in occupational therapy or psychological testing. The results of the SPM are intended to be interpreted by an occupational therapist with postprofessional training in sensory integration. It is recommended that other professionals support their use of the SPM with formal training in sensory integration." (SPM Manual)
7. The OT Consultant held a Masters Degrees in OT, received postgraduate training in sensory integration and was a licensed OT. She was familiar with the instructional implications of the results of the SPM. (OT Consultant)
8. The OT evaluation was completed in December, and the OT Assessment Report was delivered to the Parents on 2/23/13. (OT Consultant, Case Manager, 2/23/13 Email)
9. The OT evaluation took more than three hours to complete. (OT Consultant)
10. In the OT Assessment Report, the OT Consultant discussed the results of the SPM and recommended the student receive 120 minutes a year of OT on a Consult Basis. (OT Assessment Report)
11. On 1/29/13 one of the Parents sent an email to the Case Manager and to the facilitator (an outside consultant retained by the WCSD for facilitation of certain meetings regarding the student). In that email the Parent stated that she was thinking that there should be an IEP meeting soon so certain items could be addressed "as well as the things that were to be done immediately after finishing the IEP: the OT sensory evaluation, the Assistive Tech consult... At that meeting I'd also like to discuss [student] performance on the final exams..." (1/29/13 Parent Email)
12. A 2/22/13 agenda was sent to the parents by the facilitator stating that items for discussion were: a review and discussion of the results of a reading test, extra time/organizational accommodations, update on data collection effort, update on OT/AT consult, Other and a review of parking lot items developed from meeting. (Agenda)
13. The OT Consultant was unable to attend the 2/25/13 IEP meeting. No one else was present at the 2/25/13 IEP meeting who was familiar with the SPM and could explain its instructional implications. The results of the OT Assessment and its instructional implications were not discussed at the meeting. At the 2/25/13 IEP meeting the Parents were told that a meeting would be scheduled at which the OT could be present to discuss the instructional implications of the SPM. (Complaint, 2/25/13 IEP Recording)
14. Subsequent to the Complaint, a 2/27/13 Meeting Notice was sent to the Parents indicating that the OT Consultant would be present at the 3/5/13 IEP meeting. An Agenda for the 3/5/13 IEP meeting developed by the facilitator stated that sensory strategies would be discussed, specifically identifying possible strategies, discussing pros/cons of the implementation of strategies and making a decision regarding implementation of strategies. (2/27/13 Meeting Notice, 3/5/13 Agenda)
15. The 3/5/13 IEP meeting was held and the OT Consultant and a second OT Consultant were present. The second OT Consultant held a Masters degree in OT and had postgraduate training in

sensory integration and was knowledgeable about the SPM and its instructional implications. The IEP committee decided that SPM rating scales would be given to all of the student's teachers and to one of the Parents as a data gathering source to identify specific sensory processing patterns, and no statistical scoring or analysis would take place, because of the student's age. (OT Contact Log, 3/19/13 OT Report, OT Consultant, Second OT Consultant)

16. Following the completion of the SPM rating scales, as well as the completion of a sensory self-report of an Adolescent/Adult Sensory Profile and an observation of the student, a 3/19/13 IEP meeting was held at which both OT Consultants were present. The results of the SPM were utilized in the determination of specific sensory needs and recommendations. (3/19/13 OT Report, OT Consultant, Second OT Consultant)
17. The 3/19/13 IEP included the related services of OT Consult for 120 minutes a year. (3/19/13 OT Report, 3/19/13 IEP)
18. The 12/17/12 IEP required in the section, "Method for Reporting the Student's Progress Toward Meeting Annual Goals," that raw data be provided weekly and consult reports for OT would be provided within 1 week of each meeting. (12/17/12 IEP)
19. The OT Assessment Report was the first report provided to the Parents subsequent to the OT Consult on 12/18/13. (Review of documents)
20. No raw data from the OT evaluation was provided to the Parents weekly. (Review of records, OT Consultant)

#### **Autism Consultant Services**

21. The 12/17/12 IEP stated that Autism Consultant services would be delivered directly 30 minutes a month in a special education setting between 12/18/12 and 6/5/13. (12/17/12 IEP)
22. No Autism Consultant direct services were provided to the student between 12/18/12 and 2/25/13. (Autism Consultant)
23. The Autism Consultant did provide consultative services for an hour both on 1/17/13 and on 2/21/13. Those consults involved meetings which included a review of the current status and supports for the student that the Autism Consultant had developed and a discussion of any additional supports deemed necessary or helpful for the student in school. (Hourly Time Log, Autism Report, Autism Consultant)
24. The 12/17/12 IEP required, as a "Method for Reporting the Student's Progress Toward Meeting Annual Goals" that "Consult reports for Asperger's/Autism be provided within 1 week of each meeting." (12/17/12 IEP)
25. The Autism consultative services provided on 1/17/13 and on 2/21/13 were discussed in the 2/28/13 Autism Report that was subsequently provided to the Parents. (Autism Consultant, Autism Report)

#### **AT**

26. The 12/17/12 IEP committee checked, under the section of the 12/17/13 IEP "Consideration of Special Factors", that the student required assistive technology devices and service. The IEP

Form does not offer an option to indicate when a student requires either an AT device or an AT service. AT Consult services were listed as a related service to be provided as a consultative service 15 minutes quarterly between 12/18/12 and 6/5/13. (12/17/12 IEP)

27. Quarterly services refer to the time period matching the grading periods at the WCSD. The grading periods covered by the Complaint were the WCSD's second quarter, 10/29/12-1/18/13 and its third quarter, 1/22/13-3/22/13. (Academic Calendar, Area Administrator)
28. There was no requirement in the 12/17/12 IEP for any specific AT equipment or software. While audio versions of books were included in the accommodations of the 12/17/12 IEP, they were not considered AT equipment by the WCSD as they could be accessed without going through the AT department. (AT Summary, AT Consultant, 12/17/12 IEP)
29. The AT Consultant provided AT Consult services on 12/7/12 for an hour. (AT Summary, AT Contact Record, Hourly Time Log, Autism Consultant, AT Consultant)
30. The AT Consultant provided AT Consult services on 2/13/13. (AT Contact Record, FERPA Recording, 5/9/13 FERPA Decision)
31. The AT Consult Services provided on 2/13/13 were provided for at least 30 minutes. (AT Consultant, Autism Consultant)
32. The AT Consultant provided AT Consult services on 2/20/13 to the Case Manager for 30 minutes. (Case Manager, AT Contact Record, AT Summary, AT Consultant)
33. The 12/17/12 IEP did not include any requirement to provide AT Consult reports within a week of any AT Consult services or at any time. (12/17/12 IEP)

#### **PWN**

34. No PWN was issued stating that the WCSD refused to implement the student's IEP with regard to the provision of services and reports regarding Autism Consultant services, OT and AT between 12/18/12 and 2/25/13. (Review of documents)

#### **CONCLUSIONS OF LAW AND REASONS**

- Issue One: Whether WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, with respect to the use of the SPM for the assessment of the student, specifically:
- a.) Was the SPM used for the purposes for which it is valid and reliable
  - b.) Was the SPM administered in accordance with any instructions provided by the producer of the SPM?
  - c.) Was the SPM administered by trained and knowledgeable personnel?
  - d.) Was an individual who could interpret the instructional implications of the results of the OT evaluation a member of the 2/25/13 IEP committee?

**a. Used for purposes for which it is valid and reliable**

The SPM was designed to be used for students in kindergarten through sixth grade (ages 5–12) and was considered valid and reliable for that purpose. (FOF #4) The NAC §388.340(4)(a)(3) requires that assessments and other evaluation materials used in assessment are used for purposes for which they were valid and reliable. (See also 34 C.F.R. §300.304(c)(1)(iii)) The WCSD used the SPM with the student who was 15 years old and in high school, three years beyond the top age range and beyond the grade range for which the SPM was considered valid and reliable. (FOFs #1, #3, #4)

*Therefore, the complaint investigation team concluded that the WCSD failed to comply with the IDEA and the NAC, Chapter 388 when it did not use the SPM for the purposes for which it is valid and reliable.*

**b. Administered in accordance with instructions**

The NAC §388.340(4)(a)(5) requires that assessments and other evaluation materials must be administered in accordance with any instructions provided by the producer of such assessments. (See also 34 C.F.R. §300.304(c)(1)(v)) The SPM is designed to be completed by the student’s primary teacher, and additionally, in this case, the Parents. (FOF #5)

In this case, the December SPM was completed only by the Case Manager, rather than by the student’s primary teacher and Parents. (FOF #3) In addition to administering the SPM outside the designated age range and grades, by only having the SPM administered or completed by the Case Manager, the WCSD failed to meet its obligation under the NAC §388.340(4)(a)(5) and the IDEA, 34 C.F.R. §300.304(c)(1)(v).

*Therefore the complaint investigation team concluded that the WCSD failed to comply with the IDEA and the NAC, Chapter 388 when it did not administer the SPM in accordance with the instructions provided by the producers of the SPM.*

**c. Administered by trained and knowledgeable people**

According to the producers of the SPM, the “SPM rating scales are easy to complete and can be administered and scored by staff members who do not have backgrounds in occupational therapy or psychological testing.” (FOF #6) The SPM was required by the NAC §388.340(4)(a)(4) to be administered by trained and knowledgeable personnel. (See also 34 C.F.R. §300.304(c)(1)(iv)) While the SPM may be administered by staff members who do not have backgrounds in occupational therapy or psychological testing, in this case, the OT Consultant assigned the completion the SPM to the Case Manager and was responsible for the review, application and interpretation of the data. (FOF #3) The OT Consultant’s qualifications for the administration and scoring of the SPM exceeded the requirements in the SPM Manual. (FOFs # 6, #7)

*Therefore the complaint investigation team concluded that the WCSD complied with the IDEA and the NAC, Chapter 388 with respect to the administration of the SPM by trained and knowledgeable personnel.*

**d. Instructional implications of the evaluation at 2/25/13 IEP Meeting**

State regulations at NAC §388.281(2)(e) require that the IEP for a student be developed, reviewed and revised by a committee which includes a person who is familiar with the tests and other assessments performed on or by the student and their results and who can interpret the instructional implications of the results of the evaluation. (See also 34 C.F.R. §300.321(a)(5)) It is important to note that this issue regarding a member of the IEP committee who can interpret the instructional implications of evaluation results was only with regard to the OT evaluation, and not the requirement in general under the NAC §388.281(2)(e) and the IDEA, 34 C.F.R. §300.321(a)(5).

While the Parents wished to discuss the results of the OT evaluation at the 2/25/13 IEP meeting (FOF #11) and an update on the OT/AT consult was on the meeting agenda sent to the Parents (FOF #12), the results of the OT evaluation were not discussed at the 2/25/13 IEP meeting because the OT Consultant was unable to attend the meeting and no one else was present who could discuss the instructional implications of the OT evaluation. (FOF #13) The WCSD scheduled and conducted another IEP meeting eight days after the 2/25/13 IEP meeting for the purpose of discussing the OT evaluation. Two OT Consultants were present at the 3/5/13 IEP meeting, both of whom could interpret the instructional implications of the evaluation in accordance with the requirements of the NAC §388.281(2)(e) and the IDEA, 34 C.F.R. §300.321(a)(5). (FOFs #7, #15)

While there was no one present at the 2/25/13 IEP meeting who could interpret the instructional implications of the OT evaluation, including the results of the SPM, and the instructional implications of the results of the evaluation were not discussed at the 2/25/13 IEP meeting, as such, an individual person meeting the requirement of the NAC §388.281(2)(e) and the IDEA, 34 C.F.R. §300.321(a)(5), was not required to be a member of the IEP committee for that purpose.

*Therefore the complaint investigation team concluded that the WCSD was not out of compliance with the IDEA and the NAC, Chapter 388 when there was not a person at the 2/25/13 IEP meeting who could interpret the instructional implications of the results of the OT evaluation.*

Issue Two: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to provide the services and instruction deemed necessary by the pupil's 12/17/12 IEP committee, with respect to providing:

- a) The conduct of the OT assessment by the required date, a report of the OT Consult within the required time period, and provision of raw data from the OT assessment within the required time period
- b) Autism Consultant services, specifically, the provision of direct services to the student and required reports to the parents
- c) AT services and devices to the student and required reports to the Parents

**a. OT Assessment**

The NAC §388.281(6)(g) required that the student receive the services and instruction deemed necessary by the IEP committee. In this case the 12/17/12 IEP committee determined that the student would receive OT Consult services in the form of an assessment for 2 hours between 12/18/12 and 1/11/13. (FOF #2) The assessment included an observation of the student, review of some of the student's educational records, and the administration of the SPM and interpretation of the results of the evaluation. The

assessment took more than 3 hours and was completed in December, although the OT Assessment Report was not provided to the Parents until 2/23/13. (FOFs #3, #8, #9)

There was a requirement in the IEP with respect to the method of recording the student's progress towards annual goals that consult reports for OT would be provided to the Parents within 1 week of each meeting. (FOF #18) Yet, the only requirement for OT Consult services in the student's IEP was in the form of an OT assessment. (FOF #2) The assessment was completed in December (FOF# 8) and a OT consult meeting has held on 12/18/12. (FOF #3) The complaint investigation team determined that while the IEP is unclear with regard to the intended requirement for the consult report for OT, the WCSD neither provided such report within one week of completing the assessment in December nor within one week of the 12/18/13 consult meeting.

There was a requirement in the IEP that raw data be provided weekly to the Parents as a method of recording the student's progress towards annual goals on a periodic basis. (FOF #18) The OT assessment was not an aspect of any ongoing data collection towards the student's progress towards annual goals. As such, the complaint investigation team determined that the requirement in the IEP for weekly raw data did not require the raw data from the OT assessment to be provided weekly.

*Therefore, the complaint investigation team concluded that the WCSD complied with the IDEA and the NAC, Chapter 388, when it completed a 3 hour OT assessment in December 2012 and with respect to any reporting requirements regarding raw data. The WCSD failed to comply with the IDEA and the NAC when it did not provide a consult report for OT to the Parents within 1 week of "each meeting".*

#### **b. Autism Consultant services**

In accordance with the NAC §388.281(6)(g), the WCSD was required to provide the Student the services and instruction deemed necessary for the student by the IEP committee. The student's 12/17/12 IEP required the student be provided 30 minutes a month of direct Autism Consultant services commencing 12/18/12. (FOF #21) During the period of this Complaint, there were two full months that the WCSD was required to provide the direct Autism Consultant services. During the time period of the Complaint, the Autism Consultant did not provide 30 minutes of direct services to the student on a monthly basis as required by the 12/17/12 IEP (FOF #22). The Autism Consultant did provide one hour of consultative services twice to staff working with the student during this two month period (FOF #23) but that is not what the IEP required. Pursuant to the NAC and the IDEA (NAC §388.281(6)(g) 34 C.F.R. §300.17(d)), the WCSD was required to provide the services and instruction deemed necessary for the pupil by the IEP committee and failed to do so by providing Autism Consultant services in a consultative manner rather than directly to the student.

The 12/17/12 IEP required that reports be provided to the Parents regarding the progress of the student toward meeting the annual goals within 1 week of Autism Consult meetings. (FOF #24) Following the filing of the Complaint, an Autism Report was completed on 2/28/13 and subsequently provided to the Parents that described the consulting services provided and a discussion about ways to support the student's progress (FOF #25). The Autism Report provided to the Parents was almost two months after the provision of services in January 2013. As such, the provision of the Autism Report was not consistent with the requirement in the IEP that the Autism Consult reports be provided to the Parents within a week following the 1/7/13 Autism Consult meeting. (FOF #25) The investigation team did not make a conclusion about the timeliness of the report on the 2/21/13 Autism Consult meeting as its jurisdiction was limited to the date of the filing of the complaint which was less than a week following the 2/21/13 Autism Consult meeting.

*Therefore, the complaint investigation team concluded that the WCSD failed to comply with the IDEA and the NAC, Chapter 388, when it failed to provide direct services to the student for 30 minutes a month and failed to provide a report within a week of a Autism Consult meeting.*

### **c. AT Services**

The NAC §388.281(6)(g) required that the student receive the services and instruction deemed necessary by the IEP committee. The WCSD was required by the IEP to provide 15 minutes a quarter of AT Consult services as a consultative service commencing 12/18/12. (FOF #26) The student received AT Consult services as a consultative service on 12/7/12 in the 2<sup>nd</sup> quarter on 12/7/12 for an hour. (FOF# 29) However, the 12/7/12 service preceded the development of the IEP on 12/17/12 and the date for the initiation of services, 12/18/12. (FOF #2) No subsequent AT Consult service was provided during the second quarter of the school year. (FOFs #32, #34) In the next quarter of the school year covered by the 12/17/13 IEP, 1/22/13-3/22/13, the AT Consult services were provided for 60 minutes, in excess of the requirement to provide 15 minutes quarterly, with the services being provided on 2/13/13 for at least 30 minutes and on 2/20/13 for 30 minutes. (FOFs #30, #31, #32)

Notwithstanding the notation in the Consideration of Special Factors Form in the IEP that the student required assistive technology devices and services, the Form does not provide an alternative that allows the IEP committee to distinguish a need for only AT devices or services. (FOF #26) The specification of what AT related services were required by the 12/17/12 IEP is discussed in the paragraph above. There were no requirements in the student's 12/17/12 IEP that the student have any AT devices or any requirement that any AT Consult service reports be provided to the Parents within a particular time frame following the provision of AT Consult services or meeting. (FOFs #26, #33)

*Therefore, the complaint investigation team concluded that the WCSD complied with the IDEA and the NAC, Chapter 388, with respect to any AT reporting requirements in the 12/17/12 IEP and the provision of AT devices. However, the WCSD did not comply with the IDEA and the NAC, Chapter 388, to provide the AT Consult services during the second quarter of the school year following the development of the 12/17/12 IEP. Due to the WCSD's provision of AT Consult services to the student for an hour in the second quarter of the school year close in proximity to the commencement of the services in the revised IEP and in excess of what was required during the third quarter of the school year, no student specific corrective action is necessary for this technical violation.*

Issue Three: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388 to provide the parents with a PWN within a reasonable time before any proposal to change the provision of a FAPE in the 12/17/12 IEP, specifically the provision of any required reports and services with respect to the OT assessment and reports, Autism services and reports and AT reports, services and devices.

In accordance with the NAC §388.300(8)(c) the WCSD was required to notify the Parents within a reasonable time before any proposed or refused action regarding the provision of a FAPE to the student. (See also IDEA: 34 C.F.R. §300.503)

The Complainant believes that a PWN is required upon the district's failure to implement the student's IEP. While, as discussed previously, failure to implement a student's IEP is violative of the IDEA and the NAC, the noncompliance does not trigger a PWN. It is instructive to examine the purpose of the requirement to provide a parent a PWN: "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....” (56 IDELR 141 (OSEP 2010))

In this case, while the district failed to provide two related services to the student in the manner in which they were supposed to be delivered, and failed to provide reports within a week to the Parents with respect to Autism Consult services and OT, the WCSD did not propose to change the student’s IEP, nor was there a refusal to change those provisions in the IEP upon parental request. (There was no requirement to provide any AT reports or devices, as discussed in the Conclusions of Law above.) Therefore, without such proposal or refusal from the WCSD with regard to the provision of FAPE to the student, there was no requirement to issue a PWN with respect to the failure to implement the 12/17/12 IEP with regard to the OT assessment and reports and the Autism services and reports.

For purposes of clarity, it is important to distinguish this conclusion from a finding in a previous Complaint, #WA120712, regarding the obligation to provide a PWN. In that case, while the services were also not provided in conformity with the student’s IEP, the failure to provide the services was a result of the WCSD’s proposal to change the FAPE of the student. As such, in that case, the WCSD was required to provide the Parent a PWN prior to taking the proposed action.

*Therefore, the complaint investigation team concluded that the WCSD was in compliance with the IDEA and the NAC, Chapter 388 when it did not issue PWNs specifically for the provision of any required reports and services with respect to the OT assessment and reports, Autism services and reports and AT reports, services and devices, because it had not proposed or refused to change the provision of FAPE for the student.*

### **ORDER FOR CORRECTIVE ACTION**

The WCSD is required to take corrective action to address the violations found in this complaint investigation, specifically:

- 1) The WCSD did not provide the student direct services for the Autism Consult for 30 minutes a month between 12/18/12 until the filing of the Complaint.
- 2) Did not provide the student 15 minutes of AT consult services to the student within a prescribed time period.
- 3) Did not deliver the Parents a report of the Autism Consult services within a week of a meeting.
- 4) Did not deliver a report of the OT Consult meeting within a week of the meeting.
- 5) With respect to the SPM, did not use a test which was valid and reliable for the purposes for which it was used and did not administer it in accordance with the instructions.

### **Compensatory Education**

An order for compensatory services to the student is appropriate under these circumstances with respect to the failure to provide 30 minutes of direct Autism services monthly over a period of two months. It is ordered that, unless the Parents and the WCSD agree otherwise, the WCSD must provide 60 minutes of compensatory services of direct Autism Consult services to the student. The WCSD must consult with the Parents on the scheduling of the 60 minutes of compensatory service. If the WCSD and the Parent cannot reach agreement on the scheduling of the compensatory service, the WCSD must provide the compensatory service either outside the student’s school day or year or during non-instructional time during the school day unless included in the student’s IEP as a nonacademic service. The compensatory education must be provided no later than September 30, 2013 unless otherwise agreed to by the Parents and the WCSD and documentation of the provision of the service must be provided to the NDE within 30 days of complying with this order.

### **Professional Development/Training**

Within 30 days of the receipt of this report, the WCSD must develop and submit to the NDE a proposed Correction Action Plan (CAP) to train appropriate personnel in the WCSD who are responsible for implementing IEPs about the requirements to provide the services and instructions in the IEPs and to train appropriate personnel in the WCSD who are responsible for evaluating students to select tests which are valid and reliable for the purposes for which they are used and to administer them according to the instructions.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 30 days, and in any case, by September 30, 2013 and a report must be submitted to the NDE to document its implementation by November 30, 2013.