

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA022613)**

Report Issued on 4/22/13

INTRODUCTION

On 2/26/13, the Nevada Superintendent of Public Instruction received a complaint dated 2/26/13 from a parent alleging violations in the special education program of a student with disabilities in the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD: 1) did not provide the name of the WCSD outside counsel on the meeting list for the 2/25/13 IEP meeting and 2) did not ensure that the outside counsel had knowledge or special expertise regarding the student.

COMPLAINT ISSUES

The allegations of violations of the Individuals with Disabilities Education Act (IDEA: 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300) and the Nevada Administrative Code (NAC), Chapter 388, articulated in the complaint, and further clarified during the investigation, raised the following issues under the jurisdiction of the Nevada Department of Education:

Issue One: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the Parents with a list of the persons who would be attending the student's 2/25/13 IEP meeting, specifically the Legal Counsel under contract with WCSD (hereinafter, WCSD Legal Counsel or Legal Counsel).

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, when WCSD invited the WCSD Legal Counsel to participate in the student's 2/25/13 IEP meeting, specifically with regard to the determination of his knowledge or special expertise.

PERSONS PROVIDING INFORMATION

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

- Parents
- WCSD Chief General Counsel (General Counsel)
- WCSD Legal Counsel
- WCSD Area Administrator, Student Support Services (Area Administrator)

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

1. Complaint and related documentation (Complaint)

2. Notification of Eligibility Team (ET) and/or Individualized Educational Program (IEP) Committee Meeting (Meeting Notices) dated 10/17/12, 10/24/12, 11/2/12, 11/7/12, 12/17/12, 2/19/13, 2/27/13 and 3/11/13
3. 2/6/13 email, 2/22/13 email, and 2/25/13 email
4. 10/4/2012 Letter from WCSD Legal Counsel to the Parents (October Letter)
5. Parent's tape recording of the 2/25/13 IEP meeting (Tape Recording)

FINDINGS OF FACT (FOF)

1. The student is a student with disabilities receiving special education in the WCSD. An IEP meeting was held to review the student's IEP on 2/25/13. (IEP and IEP Meeting Notice)
2. In October 2012, WCSD Legal Counsel notified the Parents by letter that he had been engaged "with respect to ongoing concerns, issues and disputes" between the WCSD and the parent with regard to the education of the student. (October Letter)
3. Meeting notices dated 10/17/12, 10/24/12, 11/2/12, 11/7/12, and 12/17/12 for scheduled IEP meetings were sent to the Parents and included the WCSD Legal Counsel as a committee member invited to attend the meetings. (Meeting Notices)
4. WCSD Legal Counsel attended all the IEP meetings referenced in the above meeting notices. The WCSD regards Legal Counsel's attendance as standard practice for this student's IEP meetings. (WCSD Legal Counsel, Area Coordinator, General Counsel)
5. A meeting notice dated 2/19/13 was sent to the Parents that did not include the WCSD Legal Counsel as a team member invited to attend the 2/25/13 IEP meeting. The failure to list the WCSD Legal Counsel was an oversight by the Case Manager who prepared the Meeting Notice. (Meeting Notices, Area Administrator)
6. Several email communications were sent to participants prior to the 2/25/13 IEP meeting, some with the WCSD Legal Counsel's name included as a direct or copied recipient. (2/6/13, 2/22/13, and 2/25/13 emails)
7. The 2/25/13 IEP meeting was convened with the WCSD Legal Counsel in attendance. (Complaint, WCSD Legal Counsel, Area Administrator)
8. In the tape recording of the 2/25/13 IEP meeting, the Parents did not request that the meeting be reconvened due to the presence of the WCSD Legal Counsel. Both Parents actively participated in the IEP meeting. (Tape Recording)
9. Subsequent to the filing of the complaint there were two meeting notices provided to the Parents informing them of IEP meetings for the student. Both notices listed the WCSD Legal Counsel as a committee member invited to attend the meetings. (Meeting Notices)

10. The WCSD determined that the WCSD Legal Counsel had knowledge or special expertise concerning the student and invited the Legal Counsel to attend the student's 2/25/13 IEP meeting. (General Counsel)

CONCLUSIONS OF LAW / RATIONALE

Issue One: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to providing the Parents with a list of the persons who would be attending the student's 2/25/13 IEP meeting, specifically the WCSD Legal Counsel.

The WCSD convened an IEP meeting to review the student's IEP on 2/25/13 with the WCSD Legal Counsel in attendance. (FOF #s 1 and 7) In accordance with the IDEA, 34 C.F.R. §300.322(a), the WCSD was required to provide a notice to the Parents in advance of the IEP meeting to ensure the Parents were present at the meeting or afforded an opportunity to participate. The notice was required to indicate who would be in attendance. (34 C.F.R. §300.322(b)) While the notice under the IDEA can either be oral, written, or both (17 IDELR 1105 (OSEP, 1991)), the NAC, §388.281(8), requires a written notice, including a "list of the persons who will attend the meeting". In this case, the WCSD provided a written meeting notice to the Parents on 2/19/13 that did include a list of persons who would attend the meeting. However, the WCSD Legal Counsel was not included in the list of persons. (FOF #5)

While the WCSD regarded the attendance of the Legal Counsel at IEP meetings as standard practice, and he was listed as a recipient on some emails regarding the 2/25/13 IEP meeting (FOF #s 3-6), that did not eliminate the requirement that the Parents be notified of the persons who would attend the 2/25/13 IEP meeting in accordance with the NAC, §388.281(8), and the Parents were not. The WCSD did correct this violation in the two subsequent IEP Meeting Notices provided to the Parents. (FOF # 9)

If a public agency fails to fulfill the notice requirements in 34 CFR §300.322, the parent may request that the IEP meeting be rescheduled until the public agency provides the parent the required notice of "who will be in attendance." (50 IDELR 259 (OSEP, 2008)) At the 2/25/13 IEP meeting, the Parents did not request that the meeting be reconvened due to the presence of the WCSD Legal Counsel. (FOF #8) Based on the Parents' active participation in the IEP meeting (FOF #8), the noncompliance is determined to be a procedural violation that did not infringe upon the Parents' participation in their child's IEP meeting.

Therefore, the complaint investigation team concluded that the WCSD did not comply with the IDEA and the NAC, Chapter 388, with regard to providing the Parents with a notice that the WCSD Legal Counsel would be attending the student's 2/25/13 IEP meeting. Due to the WCSD's correction of the procedural inadequacy in subsequent IEP Meeting Notices, no further corrective action is necessary.

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, when WCSD invited the WCSD Legal Counsel to participate in the student's 2/25/13

IEP meeting, specifically with regard to the determination of his knowledge or special expertise.

In accordance with the IDEA and NAC, at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding a student may join the student's IEP committee. The determination of the knowledge or special expertise of such a person must be made by the parents or the public agency who invited the person to participate as a member of the committee. (34 C.F.R. §300.321(a)(6) and (c); NAC, §388.281(3)) In this case, the Legal Counsel was engaged by the WCSD "with respect to ongoing concerns, issues and disputes" between the WCSD and the parent with regard to the education of the student. (FOF #2) The WCSD determined that the WCSD Legal Counsel had knowledge or special expertise concerning the student and invited the Legal Counsel to attend the student's 2/25/13 IEP meeting. (FOF #10)

In the discussion of the IDEA regulations, the United States Department of Education declined to provide further regulation on the specific knowledge and expertise an individual invited by a parent or public agency must possess. "Section 300.321(c) provides that the determination of the knowledge or special expertise of these individuals must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. We continue to believe that this determination is best left to parents and the public agency. We also believe that it would be inappropriate to regulate on the specific knowledge and expertise that an individual must have to be included on an IEP Team because it would be burdensome for both parents and public agencies." (Federal Register /Vol. 71, No. 156 /Monday, August 14, 2006 /Rules and Regulations, pg. 46670)

In this case, the WCSD determined the Legal Counsel had the requisite knowledge and expertise regarding the student and the facts substantiate that determination. (FOF #s 2-4 and 10) As such, the Legal Counsel was invited to attend the student's 2/25/13 IEP meeting consistent with the provisions of the IDEA and NAC. (34 C.F.R. §300.321(a) and (c) and NAC §388.281(3))

Therefore, the complaint investigation team concluded that the WCSD complied with the IDEA and the NAC, Chapter 388, when WCSD invited WCSD Legal Counsel to participate in the student's 2/25/13 IEP meeting as an individual with knowledge or special expertise regarding the student.