

**COMPLAINT INVESTIGATION  
WASHOE COUNTY SCHOOL DISTRICT  
(#WA051313)**

**Report Issued on 6/19/13**

**INTRODUCTION**

On 5/13/13, the Nevada Superintendent of Public Instruction received a Complaint dated 5/13/13 from a parent (Parent(s) or Complainant) alleging the Washoe County School District (WCSD) violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq. and 34 C.F.R. Part 300, and the Nevada Administrative Code (NAC), Chapter 388. Specifically, the Parent alleged that, with regard to the WCSD's response to the Parent's February 26, 2013 proposal on the composition of an "oversight" committee, the WCSD failed to "Correctly notify me within a reasonable time before refusing actions regarding the provision of a free appropriate public education to my child. For example, the District did not provide a. the reasons for its refusal; b. a description of other options the District considered and the reasons why those options were rejected; c. a description of each evaluation procedure, assessment, record or report upon which the action is based; d. a description of the factors which are relevant to the District's refusal; e. a complete statement that the parents had rights and the means by which a statement of parental rights could be obtained."

**PROCEDURAL HISTORY**

This Complaint raised the same issue previously determined not to be within the jurisdiction of the Nevada Department of Education (NDE) since that alleged violation, in correspondence dated 4/2/13, was with regard to the investigation and enforcement of a Mediation Agreement with the WCSD. In accordance with the IDEA, 34 C.F.R. §300.506(b)(7), and the NAC §388.305(7), mediation agreements are enforceable in any Nevada State court with competent jurisdiction or in a district court of the United States.

However, the Complainant provided additional information in this Complaint to support the Parent's assertion that the alleged noncompliance related to matters outside the scope of the Mediation Agreement. Therefore, the NDE accepted the Complaint for investigation to the extent the allegation was not related to the matter of oversight addressed in the Mediation Agreement between the Parents and the WCSD.

Due to this limitation on the NDE's jurisdiction, the complaint investigation team was required to first determine whether the alleged noncompliance was outside the scope of the Mediation Agreement to confirm it had the jurisdiction to address the substantive allegation of noncompliance. The Findings of Fact and the Conclusions of Law with regard to the NDE's jurisdiction over this Complaint are set forth below.

**COMPLAINT ISSUE**

The allegations articulated in the Complaint raised the following substantive issue to investigate if jurisdiction of the NDE was established as described in the Procedural History:

Issue: Whether the WCSD was required to provide the Parents a Prior Written Notice (PWN) with the required contents in accordance with the IDEA and the NAC, Chapter 388, upon

the refusal of the Parents' proposal on the composition of an "oversight team" to monitor the education of the student and, if so, whether the PWN included the required contents.

### **PERSONS PROVIDING INFORMATION**

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

- Parents
- WCSD

### **DOCUMENTS REVIEWED**

The documents reviewed by the complaint investigation team included the following:

1. Complaint
2. Mediation Agreement
3. [Student] Case Oversight Action Plan (Oversight Action Plan)
4. Parent Emails of 7/10/12, 8/30/12, 10/22/12, 2/26/13, 3/12/13, 3/27/13, 3/31/13 (Parent Emails)
5. WCSD Emails of 7/10/12, 7/20/12, 8/30/12, 8/31/12, 9/4/12, 10/22/12 (WCSD Emails)
6. 7/20/12 PWN
7. 9/4/12 Parent Letter
8. 2/25/13 PWN
9. 3/11/13 PWN
10. 3/28/13 Letter to Parents from WCSD Legal Counsel (3/18/13 Letter)

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

#### **Jurisdiction**

1. The Mediation Agreement between the Parent and the WCSD was dated March 22, 2012 and signed March 23, 2012. In relevant part, the Mediation Agreement stated that the WCSD would retain a specific independent person (hereinafter Facilitator) to provide expert assistance to the parties. The expert assistance included the Facilitator meeting with the IEP team and that the Facilitator "will also meet at the end of the Spring 2012 quarter, the beginning of the 2012/2013 school year and at least at the end of each quarter throughout the 2012/2013 school year." The Special Education Area Administrator was designated to be responsible for scheduling the meetings. The Mediation Agreement further indicated that the continuation of the outside assistance provided by the Facilitator would be reviewed in May 2013. (Mediation Agreement)
2. The Mediation Agreement contained an Oversight Section that stated "a. Oversight will be addressed through the Case Manager, Principal, Special Ed Area Administrator and the Chief Student Support Services Officer" and that "b. Unresolved Oversight issues will be addressed with the assistance of the Facilitator." (Mediation Agreement)
3. On 7/10/12 at 10:54 A.M., the Parent sent an email to a Special Education Area Administrator thanking her for attending the meeting about management oversight and stated that there were some important oversight issues that remained unsolved, including a number of examples. (7/10/12 Parent Email)
4. On 7/10/12 at 11:55 A.M., the Director of Student Support Services sent an email to the Parent stating, among other things, "As you know from our last meeting it was decided to hold a meeting with you, the Facilitator, [school administration] the Special Education Area Administrator and

myself in order to establish an action plan and identify what the IEP Team still needs to address at IEP Team's next meeting." The Email also stated "You may also remember that the mediation settlement provided for the Facilitator to provide summer support for [student]... " (WCSD Emails)

5. On 7/20/12 at 11:42 A.M., the Special Education Area Administrator sent an email to the Parents, the Director of Student Support Services, another Special Education Area Administrator, the Principal and the Facilitator regarding a meeting proposed for 8/6/12 and included as an attachment a 7/20/12 PWN. The 7/20/12 PWN, among other things, stated that "The meeting agenda would address the following: 1. Development of action plan to address IEP agenda items yet to be completed and oversight action items 2) Discussion of parental questions regarding ESY. (WCSD Emails, 7/20/12 PWN)
6. An Oversight Action Plan (with the date of 8/16/12 handwritten at the top) stated that the following actions, among others would take place: Meeting with Oversight Team with the Director of Student Support Services being the person responsible for the action. (Oversight Action Plan)
7. On 8/30/12 at 8:55 A.M., one of the Parents stated in an email that "[Parents] have talked it over, and we'd like to go forward with an oversight meeting with [Director of Student Support Services], [Special Education Area Administrator], and the Facilitator." After suggesting some possible meeting dates for 9/5/ and 9/7 the Parent stated "As we have an IEP meeting scheduled for Monday, Sept. 10, I think an oversight meeting in advance would help greatly." (Parent Emails)
8. On 8/30/12 at 12:42 P.M., the Director of Student Support Services stated in an email "We will meet in my office and include AACT administration as well, since they are part of the oversight team." (WCSD Emails)
9. On 8/30/12 at 2:45 P.M., the Parent, in response to the 8/30/12 email referenced in FOF #8 stated in an email, among other things that "You're requesting the full oversight team's attendance..." (Parent Emails)
10. On 8/30/12 at 3:06 P.M., in response to the 8/30/12 Parent email referenced in FOF #9, the Director of Student Support Services stated in an email that "...the immediate oversight team consisted of you, [spouse], the Principal and/or Assistant Principal, the Special Education Area Coordinator, the Facilitator and myself." (WCSD Emails)
11. On 8/31/12 at 8:06 A.M., the Director of Student Support Services sent an email stating "At our last meeting together we discuss (*sic*) an action plan were (*sic*) we would be utilizing the Principal, Assistant Principal, the Special Education Area Administrator, the Facilitator, and myself as the oversight team to (*sic*) that would meet at least quarterly, and sooner if needed, in order to monitor and problem-solve case needs... ." (WCSD Emails)
12. On 9/4/12 an email was sent indicating the location and time of the Oversight Meeting. (WCSD Emails)
13. On 9/24/12 the Parents sent a letter to the WCSD Superintendent and Deputy Superintendent, stating among other things that "As a result of today's meeting, we understand that:
  - [Deputy Superintendent] will be following up to ensure the next meeting of the oversight team..."

- [Deputy Superintendent] will be reviewing action on our [child's] case since the last meeting of the oversight team (Sept. 7, 2012) to ensure compliance with the Mediation Agreement.” (9/24/12 Parent Letter)
14. On 10/22/12 at 9:24 A.M., the WCSD Legal Counsel sent an email to the Parents stating it was “to clarify the purpose, procedures and personnel from the WCSD who will be involved with respect to the Oversight Committee established as part of the March 23, 2012, Mediation Agreement between the two of you on behalf of your [child] and the District. As you know, the Oversight Committee will meet quarterly to address problems, concerns or other matters regarding your [child's] special education program. Oversight will be addressed through the Case Manager (name) the Principal (name), the Special Education Area Administrator (name), and the Director of Student Support Services (name). [Facilitator] will provide support to the two of you, as well as staff, regarding data collection and problem solving with the Oversight Committee, which includes the two of you, the persons names immediately above, and me as legal counsel for the WCSD. [Facilitator's] services will continue through the academic school year 2012/2013 and will be reviewed in May, 2013, as provided in the Mediation Agreement... .” (WCSD Emails)
  15. In a 10/22/12 email sent at 9:49 A.M. to the WCSD Legal Counsel, the Parent stated (though not with the bullets):
    - “In looking at our mediation agreement, specifically how oversight will be managed, I do not see your name the (*sic*) the list. And I see no provision for including it.
    - “I do not think you have the right to unilaterally modify a state-facilitated mediation agreement. To presume so seems wrong.
    - Since the District has previously let us know, in no uncertain terms, that it considers the insertion of an attorney to be a destabilizing factor in meetings, please know that your participation on the oversight committee to be inappropriate, unless all parties agree otherwise. And [spouse] and I do not agree.” (10/2/12 Parent Email)
  16. In a 10/22/12 email sent at 10:44 A.M. to the WCSD Legal Counsel, the Parent stated among other things (though not with the bullets):
    - “As you know, the oversight committee was formed as a result of our mediation meeting...”
    - “To technical (*sic*) again, an “oversight Committee” is not mentioned in our mediation agreement at all. It's something we formed and enacted in the spirit of collaboration, accountability and moving forward. And the parents are on that team.”
    - “The people on that list [oversight names] are, with the Facilitator's help, to ensure FAPE, legal compliance, that ESY Services are to be provided, correct meeting notice is delivered, safeguards are in place, and other management oversight issues.” (Parent Emails)
  17. In a 10/22/12 email sent at 11:50 A.M. to the WCSD Legal Counsel, the Parent stated among other things “The Oversight Committee was created by mutual consent as a result of our mediation agreement. It happened after the mediation meeting. Everybody involved should know that.” Further in the same email the Parent stated “Our mediation agreement simply assigns responsibility, in rank order, for dealing with management oversight of [student's] case. It basically states what should already be self evident.” (Parent Emails)
  18. A 2/25/13 PWN was issued stating that the WCSD was proposing an Oversight Team meeting and that the action was being proposed based on the Mediation Agreement with a date to be determined. (2/25/13 PWN)

19. On 2/26/13, the Parent sent a written proposal to the WCSD Superintendent of Schools on the composition of the “oversight committee”. (Complaint)
20. A 3/11/13 PWN was issued proposing an Oversight Team meeting on 3/15/13 at 8:30-9:30 A.M. based on the Mediation Agreement. (3/11/13 PWN)
21. In a 3/12/13 email sent at 6:38 A.M. to some WCSD personnel, the Parent stated, among other things, that “Our mediation agreement does not specify “oversight team meetings” as the PWN that you sent this morning seems to indicate. It does specify that oversight is to be given to my child’s case and that very specific people are to be held accountable.” (Parent emails)

## **CONCLUSIONS OF LAW AND REASONS**

### **Jurisdiction**

In order to determine whether the NDE has jurisdiction over the substantive allegation in this Complaint, the complaint investigation team conducted an investigation regarding the nature of the group of individuals and nature of the meetings at issue in this Complaint, specifically the Parent’s February 26, 2013 proposal regarding the composition of the “oversight committee” and the response of the WCSD to that proposal. (The group of individuals is variously referred to as the “oversight team” or “oversight committee” in this Report.)

The Mediation Agreement between the Parent and the WCSD included the expert assistance of a Facilitator to assist the parties, with the provision that the continuation of the outside assistance would be reviewed in May 2013. This assistance included specifically designated periodic meetings to be scheduled by the Special Education Area Administrator (FOF #1). The Mediation Agreement contained an Oversight Section that stated “a. Oversight will be addressed through the Case Manager, Principal, Special Ed Area Administrator and the Chief Student Support Services Officer” and that “b. Unresolved Oversight issues will be addressed with the assistance of the Facilitator” (FOF #2).

In order to ascertain whether the “oversight meeting” cited in the Complaint as the basis for the allegation of noncompliance is outside or within the scope of the Mediation Agreement, it is necessary to examine the establishment of the “oversight meetings” retrospectively. Based on an email from the Parent at least as early as July 2012, the Parents and the WCSD began meeting about “management oversight”, “oversight action items” and “oversight issues”. These meetings were not IEP meetings and the Facilitator was present at some of these meetings (FOFs #3-#7 and #10).

The various emails exchanged between the Parents and the WCSD from July to September 4, 2012, regarding the meetings of the “oversight team” (FOFs #8-#12) do not expressly connect the oversight meetings with the Mediation Agreement. However, as noted previously, the Facilitator designated in the Mediation Agreement was present at some of the meetings. On 9/24/12 the Parents confirmed that the purpose of the oversight team was to ensure compliance with the Mediation Agreement (FOF #13).

Likewise, on 10/22/12, the WCSD confirmed the establishment of the “oversight committee” as a part of the Mediation Agreement and set forth the purpose, procedures, and personnel from the WCSD who would be involved with respect to the oversight committee (FOF # 14). In response, the Parent referenced the Mediation Agreement with regard to “specifically how oversight will be managed” and the absence of the WCSD’s “right to unilaterally modify a state-facilitated mediation agreement”

(FOF #15). Later that same day the Parent indicated that while an “oversight committee” is not mentioned in the Mediation Agreement it was created by mutual consent afterwards as a result of the mediation (FOFs #16-#17). Based on the provision in the Mediation Agreement requiring oversight, the determination of the WCSD and the Parent to utilize the oversight meetings and oversight committee to implement this provision, the complaint investigation team determined that the establishment of the oversight committee and the various oversight meetings that ensued after the Mediation Agreement were within the scope of the Mediation Agreement.

Is this “oversight committee” referenced in the Parent’s 2/26/13 correspondence, which is central to the Complaint, within the scope of the Mediation Agreement, or as the Complainant indicates, outside the scope of the Mediation Agreement? On 2/25/13, the WCSD issued a notice that the WCSD was proposing an oversight team meeting and that the action was being proposed based on the Mediation Agreement with a date to be determined (FOF #18). On 2/26/13, the Parent sent a written proposal to the WCSD on the composition of the “oversight committee” (FOF #19). The WCSD issued a second notice on 3/11/13 proposing an oversight team meeting, based on the Mediation Agreement (FOF #20). While the Parent responded to the notice by drawing a distinction between the oversight requirement in the Mediation Agreement and the implementation through the “oversight team meetings” (FOF #21), the oversight committee and oversight meetings during this time period remained a matter within the scope of the Mediation Agreement.

The Mediation Agreement includes a process by which unresolved oversight issues will be addressed (FOF #2). Any disagreement between the WCSD and the Parent with regard to the implementation of the oversight of the Mediation Agreement, including any notification requirement on a disagreement on oversight, is within the scope of the Mediation Agreement. Pursuant to the IDEA and the NAC, Chapter 388, the Mediation Agreement is enforceable in any Nevada State court with competent jurisdiction or in a district court of the United States (NAC §388.305(7); 34 C.F.R. §300.506(b)(7)).

As such, the NDE does not have the jurisdiction to investigate and decide the substantive issue in this Complaint. This matter is now closed.