COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA082015)

Report Issued on October 19, 2015

INTRODUCTION

On August 20, 2015, the Nevada Superintendent of Public Instruction received a Complaint from Parents[1] alleging violations in the special education program of a student with a disability attending school in the Washoe County School District (WCSD). The Parents alleged violations of the IDEA and the NAC, Chapter 388 relating to the following subjects: 1) Eligibility/IEP File Review-failing to allow parent participation; 2) High School Proficiency Exam (HSPE); 3) Reading Goal; 4) Consideration of Special Factors - Behavior; 5) Geometry Class; 6) Assistive Technology and End of Day Checklist and 7) Science Goal. While the Complaint contained comprehensive facts and citations of law designed to support each subject, the Complaint lacked clarity in that the facts and related discussion did not always correlate with the stated perceived violations. After a thorough review of the Complaint, the Nevada Department of Education (NDE) notified the Parents of the issues accepted for investigation and the absence of jurisdiction through the special education complaint process for one of the allegations.

All documents submitted by the Parents and the WCSD relevant to the issues in the Complaint were reviewed in their entirety in this investigation. Recordings of IEP meetings submitted by the Parents were reviewed, at a minimum, at the places identified by the Parents as addressing the issues. The Complaint Investigation Team also collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint. Information from the Parents' original Complaint and additional information submitted are referenced collectively as "Complaint".

COMPLAINT ISSUES

The allegations in the Complaint, further clarified during the investigation, raised the following issues under the jurisdiction of the NDE to investigate from the period of January 30, 2015 to May 20, 2015:

Issue One: **Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to parental participation in the review and revision of the student's IEP, specifically whether the WCSD considered the concerns of the Parents in:**

a) Developing the student's present levels of academic and functional performance (PLOP) in the student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision, specifically the inclusion of the full reports of a neuropsychological assessment dated August 21, 2010 and the 2013 School Psychologist's reevaluation;
b) Developing the goal in reading in the February 2, 2015 Annual IEP, specifically with regard to how progress towards reaching the goal in reading would be measured;
c) Developing the content of the goal in science in the March 17, 2015 IEP.

Issue Two: **Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to implementing the student's IEP, with respect to:**

a) Access to the internet daily;
b) The Spring 2015 HSPE class, specifically:
1) The required amount of writing instruction in preparation for the HSPE;

[1] The Complaint was filed by both Parents. The term Parents is used throughout this Report, even on the occasion when only one Parent was involved.

2) **Providing an electronic copy of the final HSPE study guide in the required format;**
3) **Providing an opportunity to take the written final exam.**

Issue Three: **Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to consider whether the student's behavior impeded the student's learning or the learning of others with regard to the student's February 2, 2015 Annual IEP and the March 17, 2015 and May 18, 2015 IEP Revisions.**

Issue Four: **Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to allowing the student to participate as a member of the March 17, 2015 IEP Team in the review and revision of the specially designed instruction in geometry.**

FINDINGS OF FACT (FOF)

General

1. The student has reached the age of majority; however, the Parents have Power of Attorney authorizing them to act on behalf of the student in advocating for the student's education. (Complaint, Power of Attorney)

2. The student had a February 2, 2015 Annual IEP developed over two meetings. (January 30, 2015 draft Annual IEP and February 2, 2015 Annual IEP)

3. A revision to the student's February 2, 2015 Annual IEP was made over two meetings on February 23, 2015 and March 17, 2015. (February 2, 2015 Meeting Notice, February 23, 2015 Draft IEP Revision, March 17, 2015 IEP Revision)

4. The student's IEP was revised again on May 18, 2015 at a May 18, 2015 IEP Revision meeting. (May 1, 2015 IEP Meeting Notice, May 18, 2015 IEP)

5. One or both of the Parents were present at each of the IEP meetings in 2015 and actively provided input in the development/revision of the student's IEP. The student was present at each of the IEP meetings with the exception of the February 2, 2015 meeting. (January 30, 2015 draft IEP, February 2, 2015 Annual IEP, February 23, 2015 draft IEP and March 17, 2015 and May 18, 2015 IEP Revisions)

6. The 2014/2015 school year ended on June 12, 2015. (Academic Calendar)

Parental Participation

7. The WCSD issued a Prior Written Notice (PWN) to the Parents after the development of the February 2, 2015 Annual IEP and the March 17, 2015 revised IEP. (February 2, 2015 PWN, March 19, 2015 PWN)

Eligibility/File Review in the February 2, 2015 Annual IEP, 2015 and the March 17, 2015 IEP Revision

8. In the student's IEPs from August 22, 2013 to January 30, 2015, the student's PLOPs included the results of an August 22, 2013 reevaluation by the School Psychologist that detailed the review of 2009 assessments and a 2010 independent educational neuropsychological evaluation and included various recommended teaching methods and curriculum recommendations. (January 23, 2014 IEP, Complaint)

9. The WCSD developed a draft IEP in advance of the January 30, 2015 IEP meeting. The draft referenced the School Psychologist's 2013 reevaluation as an assessment conducted and included a statement of the assessment results. The statement of the effect on the student's involvement and progress in the general education curriculum

(Effect on Student Section) was much abbreviated as compared to the detailed teaching methods and curriculum recommendations in the PLOPs in the student's 2013 and 2014 IEPs. The Effect on Student Section in the draft IEP stated "due to [student's] difficulties with attention and focus, [student] ability to fully participate in the general education can be limited in terms of organizational deficits and work completion." (January 30, 2015 draft Annual IEP, February 2, 2015 Annual IEP, Complaint, WCSD response)

10. The Parents disagreed at the January 30, 2015 IEP meeting with the revision of the Effect on Student Section and stated they wanted the previous wording from the Effect on Student Section included in the Annual IEP. (Complaint, Compliance Specialist)

11. At the January 30, 2015 IEP meeting and the February 2, 2015 Annual IEP meeting, the WCSD Team members explained to the Parents that the revised version in the Annual IEP was proposed to accurately reflect the assessment results of the three-year reevaluation. The previous Effect on Student Section was determined to be inaccurate in that the School Psychologist's Report did not include all of the recommendations attributed to it. Further, the WCSD Team members explained that they did not believe the listed recommendations were a discussion of the effects of the assessments on the student's involvement and progress in general education. (Compliance Specialist, Special Education Area Coordinator)

12. The IEP Team made the following additions to the student's February 2, 2015 Annual IEP to address recommendations previously listed in the Effect on Student Section that were not included in the January 30, 2015 draft IEP:

    a. Specially Designed Instruction of push-in instruction for science, math and English classes. (January 30, 2015 draft IEP, February 2, 2015 Annual IEP, Compliance Specialist, Special Education Area Administrator)
    b. Two annual goals, one addressing the use of assistive technology, and the other addressing reading. (January 30, 2015 draft IEP, February 2, 2015 Annual IEP, Compliance Specialist)
    c. Two accommodations to assist the student with organizational challenges. (January 30, 2015 draft Annual IEP, February 2, 2015 Annual IEP, Compliance Specialist)

13. The WCSD developed a draft IEP in advance of the February 23, 2015 IEP Revision meeting. In response to the Parents' request at the February 23, 2015 IEP Revision meeting and correspondence outside of the meetings with WCSD personnel in reference to the results of the 2010 neuropsychologist report, the IEP Team included an expanded summary of the assessment results in the student's March 17, 2015 IEP. (March 17, 2015 IEP Revision, Parents, Compliance Specialist)

Goal in Reading in the February 2, 2015 Annual IEP

14. At the student's February 2, 2015 Annual IEP meeting and again at the February 23, 2015 IEP Revision meeting, there was a great deal of discussion about the goal in reading, including how it should be measured. (Principal, Area Administrator)

15. The Parents acknowledged the considerable discussion between the WCSD Team members and the Parents in the development of the student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision regarding how progress towards reaching the goal in reading would be measured. The Parents describe their participation in the discussion at the February 23, 2015 IEP Revision meeting as follows: "There was considerable discussion between the District and the Parents regarding the fact that the student would be provided 1 opportunity to meet this goal. The LEA, the English teacher and the Area Administrator felt it was appropriate goal [nee] and reachable for the student. The parents were not in agreement and the District made the unilateral decision to give [student] only one opportunity to master this goal despite the parents objections." (Complaint)

16. The student's February 2, 2015 Annual IEP and March 17, 2015 Revision provided that the student's progress toward meeting the goal in reading would be measured with one opportunity. (February 2, 2015 Annual IEP, March 17, 20125 Revision)

Goal in Science in the March 17, 2015 IEP

17. The Parents wanted the student to take chemistry in the 2014/2015 school year. At the February 23, 2015 IEP Revision meeting, in response to the Parents' request that the student have a goal in science, a goal with objectives in science addressing the student's challenges with organizational skills were added to the IEP. (March 17, 2015 IEP Revision, Special Education Area Administrator)

18. At the February 23, 2015 IEP meeting, the Parents stated that they wanted the goal in science to focus more on math skills that would assist the student to be successful in chemistry. The Science Teacher responded to the Parents that while math was important to being successful in chemistry, math goals shouldn't be part of the goal in science. The IEP Team did not include math content to the goal in science as the Parents requested and the Parents disagreed with the determination. (March 17, 2015 IEP Revision, February 23, 2015 Audio Recording)

19. The student's March 17, 2015 IEP Revision included specific math goals in addition to the goal in science. (March 17, 2015 IEP Revision)

Implementation of the IEP

Access to the Internet Daily

20. The February 2, 2015 Annual IEP and the March 17, 2015 and May 18, 2015 IEP Revisions included an accommodation stating that the student would have access to the internet daily in all classes in the general education setting. (February 2, 2015 Annual IEP, March 17, 2015 and May 18, 2015 IEP Revisions)

21. There was no requirement in the February 2, 2015 Annual IEP and the subsequent draft IEP revisions on March 17, 2015 and May 18, 2015 that the WCSD provide the student with a laptop or that it provide access to the internet wirelessly. The WCSD provided the student a laptop that was able to connect to the internet wirelessly at the school. (February 2, 2015 Annual IEP, March 17, 2015 and May 18, 2015 IEP Revisions, AT Specialist)

22. The student rarely, if ever, brought the district issued laptop to school. (Case Manager)

23. The general education classes in which the student was enrolled had computers with access to the internet which were available to the student upon request. The student did not request to use the classroom computers on any occasion when the student did not bring the issued laptop to school. (Principal)

Instruction and/or Accommodations for the Written Final Exam in the HSPE Class

24. The student, who had not yet passed the writing HSPE Exam, was enrolled in a general education HSPE class for students who had not yet passed either the Math or Writing HSPE exams. While the student's IEPs in effect in the 2014/2015 school year included some accommodations in all general education classes, none of the IEPs included the required amount of writing instruction in preparation for the HSPE; providing an electronic copy of the final HSPE study guide in the required format; providing an opportunity to take the written final exam. (February 2, 2015 Annual IEP, and IEP revisions dated March 17, 2015 and May 18, 2015, Class schedule, Case Manager)

Consideration of the Student's Behavior at the IEP meetings

25. The student's IEP Team discussed whether the student's behavior impeded the learning of the student or others at the February 2, 2015 Annual IEP meeting, determined it did not and the Annual IEP had an "X" in the box indicating that the student's behavior did not impede the student's learning or the learning of others. The Parent did not provide contrary input during the discussion of the student's behavior at the February 2015 Annual IEP meeting. (February 2, 2015 Annual IEP, Case Manager, Special Education Area Administrator, Complaint)

26. The March 17, 2015 and May 18, 2015 IEP Revisions retained the determination in the February 2, 2015 IEP that the student's behavior did not impede the student's learning or the learning of others. (March 17, 2015 and May 18, 2015 IEP Revisions, February 26, 2015, March 19, 2015 and May 20, 2015 PWNs)

27. The student's March 17, 2015 and May 18, 2015 IEP Revisions did not include any new assessment results or other information indicating that the student's behavior had become a problem. (February 2, 2015 Annual IEP, draft February 23, 2015 IEP revision and IEP revisions dated March 17, 2015 and May 18, 2015)

28. Following the February 23, 2015 IEP Revision Meeting, the Parents asked the Principal, to check the box stating that the student's behavior impeded the student's learning and the learning of others. The Principal informed the Parents that it was the IEP Team that needed to make that decision and told them it would be put on the agenda for the March 17, 2015 IEP meeting. Consideration of the student's behavior was not subsequently put on the agenda for the March 17, 2015 IEP revision meeting nor was it brought up by the Parents or discussed by the IEP Team at the IEP meeting. (February 27, 2015 emails, March 17, 2015 IEP Revision, Complaint, Case Manager)

29. The Parents did not raise a concern about the student's behavior impeding the student's learning or the learning of others prior to or at the May 18, 2015 IEP meeting. (May 18, 2015 IEP Revision, Review of Documents)

30. The Parents clarified in their submittal of additional information to the Complaint Investigation Team that the allegation regarding the student's behavior was the absence of a discussion at the IEP meetings of the student's Specialized Progress Reports and the Assistive Technology Trackers relative to the student's behavior and that by denying the IEP Team this data, the WCSD prohibited the IEP Team from discussing and determining if the student's behavior impeded learning. (Complaint)

31. The Specialized Progress Reports and the Assistive Technology Trackers had no references to the behavior of the student impeding the student's learning or the learning of others. No other data was provided to the Complaint Investigation Team that the student's behavior interfered with learning in the 2014/2015 school year. (2015 Specialized Progress Reports and AT Trackers)

Student's Participation in the February 23, 2015 and the March 17, 2015 IEP Revision Meetings regarding Specially Designed Instruction in Geometry

32. The student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision included the specially designed instruction of push-in support in math (geometry) for 950 minutes a month in the regular education classroom. The push-in support was provided by one of the two co-teachers of the Geometry class, who held a special education credential and who co-taught the class with the Geometry teacher. The push-in support was available throughout the entire geometry class to the student and provided when requested by the student. (February 2, 2015 Annual IEP, March 17, 2015 IEP Revision, Special Education Geometry Co-teacher)

33. At the February 23, 2015 IEP Revision meeting, the student actively stated concerns and provided input in the discussion with regard to geometry: "I don't understand any of the math concepts really. This is my second student intern teacher and I haven't…" at which point the Principal asked "Instruction wise you're still missing?" and the student replied "Everything". A discussion among the IEP Team members followed the student's input

and a proposed geometry goal was discussed. There was also a discussion about the implementation of one of the accommodations. (Complaint, Audio Recording of the February 23, 2015 IEP meeting)

34. At the March 17, 2015 IEP Revision meeting, the student again voluntarily contributed to the IEP Team discussion with regard to geometry and the student's input was solicited at other times by the WCSD IEP Team members. (Audio Recording of March 17, 2015 IEP Revision meeting)

35. At the March 17, 2015 IEP Revision meeting, the student stated that the student would like a geometry tutor. The IEP Team discussed the student's request for a geometry tutor and other various alternatives to meet the student's stated concerns regarding a lack of understanding of geometry concepts, including the student's increased use of the existing specially designed instruction in the Geometry class. The discussion at the March 17, 2015 IEP meeting regarding the student's proposal for a tutor was extensive and, as cited by the Parents in the Complaint, did include some comments by the WCSD representative regarding commitment of resources. A tutor was not added to the student's March 17, 2015 IEP; however, a new geometry goal and a new math accommodation were added to the IEP. (Complaint, Audio Recording of March 17, 2015 IEP Revision meeting, March 17, 2015 Revised IEP)

CONCLUSIONS OF LAW AND REASONING

Issue One: **Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to parental participation in the review and revision of the student's IEP, specifically whether the WCSD considered the concerns of the Parents in:**

a) Developing the student's present levels of academic and functional performance (PLOP) in the student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision, specifically the inclusion of the full reports of a neuropsychological assessment dated August 21, 2010 and the 2013 School Psychologist's reevaluation;
b) Developing the goal in reading in the March 17, 2015 IEP, specifically with regard to how progress towards reaching the goal in reading would be measured
c) Developing the content of the goal in science in the March 17, 2015 IEP.

In accordance with the IDEA, 34 C.F.R. §300.324(a)(1)(ii), and NAC 388.284(2)(a), in developing each child's IEP, the IEP Team must consider the concerns of the parents for enhancing the education of their child. While the rights of the Parents transferred to the student at the age of majority (34 C.F.R. §300.520; NAC §388.195), the Parents have Power of Attorney authorizing them to act on behalf of the student in advocating for the student's education. (FOF #1)

In this case, the student had three IEPs in effect from January 30, 2015 to May 20, 2015: a February 2, 2015 Annual IEP; a March 17, 2015 IEP Revision; and a May 18, 2015 IEP Revision. (FOFs # 2 - 4) While the Parents reference a February 23, 2015 IEP in the allegation regarding the science goal, the IEP meeting on this day was the first day of two meetings resulting in the March 17, 2015 Revised IEP and the issue was revised accordingly. (FOF #3)

One or both of the Parents were present at each of the IEP meetings in 2015 and actively participated in the development/revision of the student's IEP. (FOFs #5, 10, 16, 18) The Parents allege in the Complaint that the WCSD made unilateral determinations regarding specified content of the student's February 2, 2015 and March 17, 2015 IEPs. However, the facts reveal that the crux of the dispute in this case is not that the Parents' participation was precluded, but rather that the WCSD IEP Team members disagreed with the Parents' proposals in three areas of the student's needs and the student's IEPs did not include those proposals. (FOFs #10, 16, 18)

The WCSD prepared a draft IEP in advance of the IEP meetings to revise the student's Annual IEP. (FOFs #9, 13) It is well established that IEP Team members are permitted to bring a draft IEP to the IEP meeting that represent their

preliminary thoughts for consideration by the entire Team. However, a district may not come to the IEP meeting with a "take it or leave it" mindset. (Mrs. S. v. Vashon Island School District, 337 F.3d 1115; 39 IDELR 154 (9th Cir. 2003); cert denied. 125 S.Ct. 1662 (2005)). A district must offer parents a meaningful opportunity to participate in the development/revision of a student's IEP. (W.G. v. Board of Trustees, 960 F.2d 1479; 18 IDELR 1019 (9th Cir. l992)) With regard to the Parents' proposal to include the detailed results of the 2010 neuropsychological assessment and 2009 assessments in the student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision, the IEP Team discussed and considered the Parents' proposal. The WCSD IEP Team members provided an explanation of their disagreement with the Parents' proposal at the meetings to develop the February 2, 2015 Annual IEP and, while the IEP was not revised precisely as the Parents requested, the IEP Team did revise the student's IEP in response to the Parents' input. The student's IEP Team did include an expanded summary of the assessment results in the March 17, 2015 IEP Revision in response to the Parents' persistent proposal. (FOFs #8 - 12)

The Parents' proposals relative to the measurement of the student's goal in reading in the February 2, 2015 Annual IEP and the content of the goal in science in the March 17, 2015 IEP Revision were also discussed and considered by the IEP Team. The WCSD IEP Team members disagreed with the Parents' proposals and provided an explanation of their disagreement. The Parents' proposed changes in the student's goals in reading and science were not included in the student's IEPs. (FOFs #14 - 19)

Parents are an integral part of the IEP process and are considered equal partners with school personnel in making IEP decisions. As such, the IEP Team was required to consider the Parents' concerns and the information that they provided regarding the student in the development/revision of the IEPs at issue. This requirement to consider the Parents' concerns and information did not, however, require the WCSD to adopt the recommendations of the Parents or allow their veto over any individual IEP provision. (Mrs. S. v. Vashon Island School District, 337 F.3d 1115; 39 IDELR 154 (9th Cir. 2003); cert denied. 125 S.Ct. 1662 (2005). The Parents meaningfully participated in the development/revision of the student's February 2, 2105 Annual IEP and the March 17, 2015 IEP Revision and the IEP Team discussed and considered the Parents' concerns and input.

Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to parental participation in the review and revision of the student's IEP, specifically the WCSD considered the concerns of the Parents in developing the student's PLOPs in the student's February 2, 2015 Annual IEP and the March 17, 2015 IEP Revision with regard to specified evaluation results; developing the goal in reading in the February 2, 2015 Annual IEP with regard to how progress towards reaching the goal in reading would be measured; and developing the content of the goal in science in the March 17, 2015 IEP.

Issue Two: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to implementing the student's IEP, with respect to:

- **a) Access to the internet daily**
- **b) The Spring 2015 HSPE class, specifically:**
  - **1) The required amount of writing instruction in preparation for the HSPE**
  - **2) Providing an electronic copy of the final HSPE study guide in the required format**
  - **3) Providing an opportunity to take the written final exam**

Pursuant to NAC §388.281(6)(g) the WCSD was required to provide the services and instruction deemed necessary for the student by the IEP Team. (See also 34 C.F.R. §300.323(c)(2)).

The student's IEPs in effect for the 2014/2015 school year included an accommodation that the student would have access to the internet daily in all classes in the general education setting. (FOF # 20) While there was no requirement that the WCSD provide the student with a laptop or that it provide access to the internet wirelessly, the WCSD provided the student a laptop that was able to connect to the internet wirelessly at the school. (FOF #21) Therefore, the WCSD did provide access to the internet as required by the student's IEPs. However, a problem of access ensued

since the student rarely, if ever, brought the district issued laptop to school. (FOF #22) Since the general education classes in which the student was enrolled had computers with access to the internet that were available to the student upon request (FOF #23), the student still had access to the internet as required by the student's IEPs.

While the student's IEPs in effect in the 2014/2015 school year included some accommodations in all general education classes, none of the IEPs included the accommodations cited in the Complaint as having not been implemented in the Spring 2015 HSPE Class. (FOF #24)

Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to implementing the student's IEP with respect to access to the internet daily and instruction and/or accommodations in the Spring 2015 HSPE class.

Issue Three: Whether the WCSD complied with the requirements of the IDEA and the NAC, Chapter 388, to consider whether the student's behavior impeded the student's learning or the learning of others with regard to the student's February 2, 2015 Annual IEP and the March 17, 2015 and May 18, 2015 IEP Revision.

In the development and review and revision of a student's IEP, the IEP Team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. (34 C.F.R. §300.324(a)(2)(i)). If the behavior of the student impedes the learning of the student or other students, the IEP Team must provide positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address that behavior. (NAC §388.284(2)(b)). In addition, as discussed previously, in accordance with the IDEA, 34 C.F.R. §300.324(a)(1)(ii), and NAC 388.284(2)(a), in developing each child's IEP, the IEP Team must consider the concerns of parents for enhancing the education of their child.

At the February 2, 2015 Annual IEP meeting, the student's IEP Team, including the student's Parents, determined that the student's behavior did not impede the student's learning or the learning of others and that determination was retained in subsequent revisions of the student's IEPs. (FOFs #25 - 26) Following the February 23, 2015 IEP Revision Meeting, the Parents asked the Principal to change the determination regarding the consideration of behavior impeding learning. The Principal informed the Parents that it was the IEP Team that needed to make that decision and told them it would be put on the agenda for the March 17, 2015 IEP meeting. (FOF #28) Consideration of the student's behavior was neither put on the agenda for the March 17, 2015 IEP revision meeting nor was it brought up by the Parents or discussed by the IEP Team at the March 17, 2015 or May 18, 2015 IEP meetings. (FOFs #28 - 29)

While the WCSD's response with regard to the revision of the student's IEP was in accordance with the IDEA, 34 C.F.R. §300.324(a), and the NAC §388.281(2), the WCSD failed to consider the Parents' request at the subsequent IEP meetings pursuant to their commitment or, alternatively, if the WCSD decided to refuse to consider such a change at the students' IEP meetings, to provide a PWN of the refusal. (Discussion of the IDEA regulations, Question 20: Vol. 64 Fed. Reg. pp. 12476 -12477 (March 12, 1999).[2] The Complaint Investigation Team determined that the WCSD's failure to schedule the IEP Team's consideration of this special factor at the impending IEP meeting was likely an oversight. However, even though the Parents did not persist in requesting the IEP Team's consideration of this concern, the failure of the WCSD to take either compliant option was violative of the IDEA and the NAC, Chapter 388. (34 C.F.R. §§300.324 and 300.503; NAC §§388.281(6)(a) and 388.300).

Notwithstanding the failure of the student's IEP Team to review whether the student's behavior impeded the learning of the student or others based on the Parents' concern, it is important to note that at the time of the Parents' request, neither the Parents' referenced data nor new assessment results or other information indicated that this was a case of a

[2] http://www.gpo.gov/fdsys/pkg/FR-1999-03-12/html/99-5754.htm

student whose behavior impeded the student's learning or that of others pursuant to the IDEA, 34 C.F.R. §300.324(a)(2)(i)), or (NAC §388.284(2)(b). (FOFs #27, 30 - 31)

Therefore, given the Parents' stated concern, the WCSD did not comply with the requirements of the IDEA and the NAC, Chapter 388, to consider whether the student's behavior impeded the student's learning or the learning of others with regard to the student's March 17, 2015 and May 18, 2015 IEP Revisions.

Issue Four: Whether the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to allowing the student to participate as a member of the March 17, 2015 IEP Team in the review and revision of the specially designed instruction in geometry.

Since the student's Parents have Power of Attorney authorizing them to act on behalf of the student in advocating for the student's education (FOF #1), the participation of the student with regard to this issue is not in exercising the rights of a parent under the IDEA and the NAC, Chapter 388, but rather in the capacity of a student with a disability. Pursuant to the IDEA, 34 C.F.R. §300.321(a)(7), a public agency must ensure that the IEP Team for each student with a disability includes, whenever appropriate, the student with a disability. (The provisions regarding the participation of the student in the discussion of postsecondary goals and/or transition service are not at issue in this Complaint.) Therefore, the investigation of this issue was with regard to the student's participation in the IEP meetings as a member of the IEP Team pursuant to the IDEA, 34 C.F.R. §300.321(a)(7).

The student was present at each of the IEP meetings with the exception of the February 2, 2015 meeting. (FOF #5) The student's stated concern at the two IEP meetings that resulted in the March 17, 2015 Revised IEP was with regard to a lack of understanding of geometry concepts. (FOF #33) The student actively participated as an IEP Team member in both IEP meetings. (FOFs #33 – 34) While another IEP Team member did interject with a question during one of the student's statements regarding difficulty in geometry (FOF #33), the Complaint Investigation Team determined that the interjection did not result in a preclusion of the student's participation in the meeting as alleged by the Parents in the Complaint.

The student had access to specially designed instruction in math throughout the entire Geometry class. (FOF #32) However, at the March 17, 2015 IEP Revision meeting, the student stated that the student would also like a geometry tutor. The IEP Team discussed in detail the student's request for a geometry tutor as well as other various alternatives to meet the student's stated concerns regarding a lack of understanding of geometry concepts. While a tutor was not added to the student's IEP, a new geometry goal and a new accommodation were added to the student's IEP. (FOF #35) After careful consideration, the Complaint Investigation Team determined that, given the issue in this Complaint, the comments of the WCSD representative concerning commitment of resources during the March 17, 2015 IEP meeting (FOF #35) did not alter the conclusion that the student participated in the March 17, 2015 IEP meeting pursuant to the IDEA, 34 C.F.R. §300.321(a)(7).

Therefore, the WCSD complied with the IDEA and the NAC, Chapter 388, with regard to the student's participation as a member of the March 17, 2015 IEP Team in the review and revision of the specially designed instruction in geometry.

ORDER FOR CORRECTIVE ACTION

Due to the failure of the WCSD to consider the Parents' concern with regard to whether the behavior of the student impeded the learning of the student or other students in the 2014/2015 school year, if the Parents are concerned that the behavior of the student impedes the learning of the student or other students in the 2015/2016 school year and request the IEP Team's consideration of this special factor in writing to the Principal of the student's school within 30 days of the receipt of this Report:

- The WCSD must convene the student's IEP Team for consideration of this factor at a mutually agreed upon time and place within twelve school days of the receipt of this written request for an IEP meeting. If the Parents are unavailable to meet during this time frame and that unavailability is documented in writing, the time frame required for the requested IEP meeting will be extended until the first available date in the 2015/2016 school year mutually agreed upon by the WCSD and the Parents. If the WCSD reconvened the student's IEP Team subsequent to the filing of this Complaint and prior to the issuance of this Report, and, at that meeting, the IEP Team considered whether the behavior impedes the learning of the student or other students, an additional meeting is not required.

Documentation of the conduct of the IEP meeting and the IEP Team's consideration of whether the behavior of the student impeded the learning of the student or other students, including the PWN with the required content under the IDEA, 34 C.F.R. §300.503, and NAC §388.300(10), must be provided by the WCSD to the NDE within 30 days of the conduct of the IEP meeting.