

**Washoe County School District
IDEA Part B Preschool
Program**

**Order of Enforcement
October 10, 2023**

Background

Washoe County School District's (WCSD) preschool program for students with disabilities was found out of compliance with the Individuals with Disabilities Education Act, Part B (IDEA), 20 U.S.C. §1400 et. seq.; 34 C.F.R. Part 300, and Chapters 388 of NRS and NAC in school years 2021/2022 and 2022/2023 with regard to the provision of a Free Appropriate Public Education to students with a disability upon turning three years of age. In accordance with NRS §385.175(6), Nevada Department of Education (NDE) requested a plan of corrective action to address the needs of the students who were the subject of the State Complaints, as well as a systemic remedy to address the appropriate future provision of services for all students with disabilities of preschool age in WCSD. 34 C.F.R. §§300.149, 300.151(b), 300.600.

NDE determined that WCSD failed to comply with approved corrective action plans to correct the identified noncompliance in one year in two state complaints (WA032222 & WA033022) 34 C.F.R. §300.600(e) through an investigation of a subsequent state complaint received in December 2022 (WA121522). Based on that finding, on March 1, 2023, NDE conducted an on-site special monitoring of WCSD's IDEA Part B preschool program. The onsite special monitoring found, and WCSD concurred that there was, and continued to be, a systemic failure of the WCSD Child Find system to timely act on the referral of children of, or approaching, preschool age; a systemic failure to timely evaluate those suspected of being a student with disability; and a systemic failure to timely place students with a disability in accordance with each student's Individualized Education Programs (IEP) upon turning three years of age. That determination resulted in an Order of Corrective Action that was provided on March 10, 2023 and reviewed in person with WCSD and NDE staff on March 16, 2023. (See attached March 10, 2023 Order of Corrective Action, Appendix One). The Order of Corrective Action was to be completed in full by the commencement of the 2023-2024 SY, which was August 14, 2023 for WCSD.

As of September 9, 2023 NDE found WCSD failed to comply with the March 10, 2023 Order of Corrective Action.

Order One

WCSD stated they complied with Order One regarding the elimination of the backlog in the preschool Child Find system in processing referrals and conducting evaluations.

WCSD provided data documenting the elimination of the wait list for the placement and implementation of the IEPs of students with disabilities of preschool age up to the date of the March 10, 2023 Order of Corrective Action. However, upon NDE's review of individual student education records, it was determined that WCSD's system of verification lacked fidelity given the evident inconsistencies. In the absence of verifiable data otherwise (NAC §388.215), at this time, it is determined that WCSD did not comply with Order One with regard to the ordered elimination of the wait list of students awaiting the implementation of their IEPs in the student's designated educational placement.

Order Two

WCSD was required, no later than the commencement of the 2023/2024 school year, to timely act upon referrals for evaluation and identification for all children suspected of being a student with a disability; timely conduct the initial evaluation and determine eligibility for those students for whom good cause exists

to evaluate; and timely implement every eligible student with a disability's IEP by the student's third birthday.

During monthly meetings with WCSD, WCSD reassured NDE of intended compliance with Order Two. In addition, WCSD submitted monthly data that was incomplete and missing required information, which resulted in NDE's inability to substantiate compliance. NDE conducted onsite reviews of education records for each individual student which revealed that WCSD created a new wait list for the implementation of the IEPs of students with a disability of preschool age in the student's designated educational placement, including for students on the evaluation backlog under Order One who were previously denied a Free Appropriate Public Education by WCSD's failure to timely evaluate the students. In addition, while children were timely evaluated after receipt of parental consent due to the practice of issuing a Prior Written Notice and requesting consent on the day the evaluation was scheduled to be conducted, WCSD failed to timely act upon referrals for evaluation and identification for all children suspected of being a student with a disability. (In one particularly egregious case, WCSD did not issue a Prior Written Notice and request for parental consent until 125 days after the referral of the child.)

State Enforcement Authority

In accordance with IDEA, 34 C.F.R. §300.600(a)(3), each State Education Agency must enforce IDEA Part B consistent with 34 C.F.R. §300.604, using "appropriate enforcement mechanisms," which must include, if applicable, the enforcement mechanisms identified in 34 C.F.R. §300.604(a)(1), relating to technical assistance; 34 C.F.R. §300.604 (a)(3) relating to conditions on funding of a local educational agency; 34 C.F.R. §300.604(b)(2)(i) relating to a corrective action plan/agreement or improvement plan; 34 C.F.R. §300.604 (b)(2)(v) and (c)(2), relating to withholding any further payments, in whole or in part, to the local educational agency.¹

Consistently, NRS §385.175 provides that the Superintendent of Public Instruction has the authority to enforce the statutes and regulations governing K-12 public education, and that authority would include taking appropriate measures upon a local educational agency's failure or refusal to comply with an ordered corrective action to ensure compliance with IDEA Part B and Chapters 388 of NRS and NAC.

In determining the appropriate measures to be taken to ensure WCSD's compliance with IDEA and Chapters 388 of the NRS and NAC, NDE considered:

1. The systemic nature of the noncompliance and, given the age of the student and duration of the preschool program, the urgency to correct this continuing failure to provide WCSD students with disabilities of preschool age a Free Appropriate Public Education;
2. WCSD's material failure to comply with Order Two of the Order of Corrective Action with the reinstatement of prohibited wait lists in violation of the requirement under IDEA Part B and Chapters 388 of the NRS and NAC to timely place students with a disability in accordance with each student's IEP upon turning three years of age;
3. WCSD's failure to comply with the prior ordered WCSD corrective action plans that mandated systemic reform to avoid the reoccurrence of WCSD's noncompliance to timely act on the referral of children of, or approaching, preschool age; to timely evaluate those suspected of being a student with disability; and a systemic failure to timely place students with a disability in accordance with each student's IEP upon turning three years of age;

¹ See also IDEA, 34 C.F.R. §300.227, requiring a State Education Agency to use the payments that would otherwise have been available to a local educational agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational, if the State Education Agency determines that the local educational agency is unable to establish and maintain programs of a Free Appropriate Public Education that meet the requirements of IDEA Part B.

4. WCSD's compliance with Order One of the Order of Corrective Action with regard to the backlog of evaluations and good faith compliance with the technical Orders such as periodic reports and monthly meetings;
5. WCSD's compliance with Order Seven of the Order of Corrective Action to establish a centralized data base to track actions taken by WCSD from the referral of a preschool child suspected of being a student with a disability to the development of the student's IEP and placement, if eligible;
6. WCSD's compliance with the ordered systemic corrective action in the 2021/2022 State Complaint Reports by establishing a projection method to anticipate the number of potentially eligible and eligible students with disabilities who will turn three prior to or during the school year to enable strategic planning to ensure the corresponding number of qualified special education teachers and classrooms for WCSD's early childhood programs;
7. WCSD's false assurance that WCSD had complied with Order Two of the Order of Corrective Action in its entirety prior to the commencement of the 2023/2024 school year and the lack of fidelity of the reported data for Order Two and Order One with regard to the wait list of students awaiting the implementation of their IEPs in the student's designated educational placement. (See Appendix 2, WCSD's letter that was sent to 179 parents notifying them that there were no openings in the early childhood program for their eligible children.);
8. WCSD's failure to voluntarily accept NDE's offered technical assistance and support in the Order of Corrective Action regarding WCSD's restructuring of its preschool Child Find system and preschool program to attain compliance; optimization of the allocation of resources; modification of integral systems and the development/revision of policies, practices and procedures to prevent recurrence of the identified noncompliance. (NDE reiterated this available technical assistance and support periodically, including in the May 4, 2023 response to WCSD's determined additional actions to comply with the Order of Corrective Action in the required timeframe(s)); and
9. WCSD's noncompliance in the preschool program for students with disabilities for two prior successive school years (2021 through 2023) and failure to comply with this Order of Corrective Action for the 2023/2024 school year causes reason to believe that WCSD cannot correct this significant noncompliance within one year without NDE intervention.

SANCTIONS – FAILURE TO COMPLY

Upon consideration of the above factors and the enforcement authority under IDEA and NRS, NDE has determined that, at this point, WCSD is not unable or unwilling to establish and maintain a preschool program for students with disabilities in compliance with IDEA and Chapters 388 of NRS/NAC but needs intervention to do so. Therefore, WCSD is ordered to comply with the following directed actions, including complying with all directives of NDE with regard to access to requested documents, data, and other information.

Nothing in this Order restricts or limits NDE's enforcement authority to initiate additional or alternative progressive enforcement sanctions if at any point NDE determines that WCSD is unable or unwilling to comply in all regards with this Order, including the directives of the NDE Monitoring Enforcement Team. This Order of Enforcement is in effect as of the date of the Order and will remain in effect until NDE determines WCSD has complied in all regards, or it is replaced by a subsequent NDE Order of Enforcement.

Student-Directed Action

1. Within 10 business days of the date of this Order, WCSD must place all preschool students with disabilities who remain on the wait list for placement in the designated educational placement in each student's IEP. Failure to place every student on the wait list within 10 business days will result in further enforcement action to ensure the implementation of the student's designated special education services in the student's IEP. Upon completion, WCSD must provide the following documentation, for each student on the wait list:

- A copy of each student's IEP.
- Documentation of each student's placement.

2. Commencing on the date of this Order, no later than 10 business days after a student's referral for evaluation, WCSD must issue a Prior Written Notice of WCSD's proposal or refusal to initiate an initial evaluation of the student and, for those students for whom good cause exists to evaluate, seek parental consent. This corrective action is applicable to prospective referrals and, for any referrals in existence at the date of this Order whose parents have not been issued a Prior Written Notice of WCSD's determined action, WCSD must take immediate corrective action. Upon completion, WCSD must provide the following documentation for each referral received:

- The referral (Transition C to B or community).
- Prior Written Notice of WCSD's proposal or refusal to initiate an initial evaluation of the student and, for those students for whom good cause exists to evaluate, the request for parental consent.
- Parental consent to conduct the initial evaluation of the student or, if the parent did not sign consent to conduct the initial evaluation of the student, documentation that the parent refused the proposal to evaluate the student and the reasonable efforts WCSD made to obtain the informed consent from the parent.
- Eligibility documentation (evaluation and eligibility).
- Parental consent for the initial provision of special education and related services to the student, or, if the parent did not sign consent for the initial provision of special education and related services to the student, documentation that the parent refused the initial provision of special education and related services to the student and the reasonable efforts WCSD made to obtain informed consent from the parent.

3. Within 10 business days of the date of this Order, WCSD must provide NDE a copy of every letter issued to parents of students placed on WCSD's wait list for placement since March 10, 2023 and the parent's response to WCSD's offer of compensatory education. Commencing October 16, 2023 and on a monthly basis thereafter, WCSD must provide NDE documentation of the implementation of the agreed upon compensatory education for each student with a disability. Upon completion, WCSD must provide the following documentation:

- A copy of every letter issued to parents of students included on the WCSD's wait list for placement.
- Parent's response to WCSD's offer of compensatory education.
- Documentation of the implementation of each student's agreed upon compensatory education.

4. Order One with regard to the wait list for the placement and implementation of the IEPs of students with disabilities of preschool age; Order Two; and Order Eight of the March 10, 2023 Order of Corrective Action remain in effect. In addition to the periodic, but not less than monthly, reports to NDE in the manner and form directed by NDE as required by Order Eight, upon completion, WCSD must provide the following

documentation:

- Referral (Transition C to B and community), Prior Written Notices, Eligibility documentation, IEPs, and proof of enrollment for each eligible student with a disability for Order One and Order Two.
- Monthly uploads of valid and accurate data for Order One and Order Two.

Awareness

5. Within 10 business days of the date of the Order, WCSD must schedule two Parent Awareness Town Halls in compliance with Open Meeting Law, to be conducted no later than October 30, 2023 for parents in Washoe County of all students with disabilities of preschool age and parents who suspect their child may or will be a student with disability of preschool age. The Parent Awareness Town Halls must be conducted on two different dates and times to provide the opportunity for each interested parent to attend.

WCSD must individually notify the parent of each child of preschool age referred for evaluation as of March 10, 2023; awaiting evaluation or placement as a student with a disability at the commencement of the 2023/2024 school year; or placed as a student with a disability in the WCSD preschool program at the commencement of the 2023/2024 school year of the conduct of the Parent Awareness Town Halls. The notification must be in writing, and by recorded telephone call (containing no personally identifiable information). The notices must inform the parent of the dates, times and locations of the Parent Awareness Town Halls and how to obtain additional information. The written notice must include a link to the previously ordered notices regarding the availability of compensatory education for failure to timely evaluate students suspected of being a child with disability and timely implement a student with disability's IEP.

At the Parent Awareness Town Halls, WCSD must review Orders One and Two of the NDE March 10, 2023 Order of Corrective Action and this Order of Enforcement, report actions taken by WCSD to implement the Order of Enforcement to date, and the availability of individual student remedies for noncompliance, including compensatory education. WCSD must also notify parents at the Parent Awareness Town Halls that WCSD will schedule in-person meetings within 5 business days of the parent's request for any parent of a student with a disability of preschool age with an IEP who is awaiting placement or any parent of a child suspected of being a student with a disability who referred their child for an evaluation and are awaiting a Prior Written Notice or the conduct of an evaluation.

Upon completion, WCSD must provide NDE with the following documentation:

- Copy of the written notice issued to each parent that includes all required information as indicated in Action #5; log that verifies that the notices were sent to each parents; and a copy of the recorded announcement provided telephonically to each parent.
- A copy of all materials and resources provided during the Parent Awareness Town Halls.
- Agenda for the Parent Awareness Town Halls.
- Sign in sheet for Parent Awareness Town Halls.
- A list of all parents who requested in-person meetings.
- Detailed minutes of each Parent Awareness Town Hall.
- Dates of scheduled in-person meetings with parents.

6. WCSD must immediately take action to schedule a meeting with the WCSD's Superintendent's Executive Leadership Team to be held no later than October 26, 2023 to review the findings of noncompliance in the NDE March 10, 2023 Order of Corrective Action and this Order of Enforcement; actions WCSD has taken and will take to comply with the Order of Enforcement; and to discuss any assistance the WCSD Office of Special Education requires from the various WCSD offices to enable the correction of the findings of noncompliance as soon as possible. Upon completion, WCSD must provide

NDE with the following documentation:

- Copy of the meeting agenda.
- List of attendees.
- Documentation of the actions to be taken by the respective WCSD offices in the 30 days following the meeting to enable correction of the findings of noncompliance as soon as possible.

7. Within 15 business days of the date of this Order WCSD must notify the public of WCSD's noncompliance in evaluating and placing students with disabilities of preschool age on the WCSD Office of Special Education - Office of School Leadership Student Services home page with a link to the March 10, 2023 Order of Corrective Action and this Order of Enforcement.

This notice, along with a copy of the March 10, 2023 Order of Corrective Action and this Order of Enforcement, must be distributed to all WCSD internal professional staff with a responsibility associated with WCSD's preschool program for students with disabilities. In addition, the WCSD Office of Special Education - Office of School Leadership Student Services must convene a meeting with professional staff from the WCSD preschool Child Find Office and WCSD's Office of Strategies, Psychological Services Office to review the findings of noncompliance in the NDE March 10, 2023 Order of Corrective Action and this Order of Enforcement; and actions WCSD has taken and will take to comply with the Order of Enforcement.

Upon completion, WCSD must provide NDE with the following documentation:

- Copy of the notice with required information as indicated in Action #7.
- A list with signatures and/or confirmation that each internal professional staff received a copy of the notice.
- Agenda of the meeting held with professional staff from WCSD preschool Child Find Office and WCSD's Office of Strategies, Psychological Services Office to review the findings of noncompliance in the NDE March 10, 2023 Order of Corrective Action and this Order of Enforcement; and actions WCSD has taken and will take to comply with the Order of Enforcement.
- Sign in sheet of attendance at the meeting held with professional staff from WCSD preschool Child Find Office and WCSD's Office of Strategies, Psychological Services Office to review the findings of noncompliance in the NDE March 10, 2023 Order of Corrective Action and this Order of Enforcement; and actions WCSD has taken and will take to comply with the Order of Enforcement.
- Detailed minutes of meeting with professional staff from WCSD's preschool Child Find Office and WCSD's Office of Strategies, Psychological Services Office.

NDE Monitoring Enforcement Team

8. A NDE Monitoring Enforcement Team is now assigned to the WCSD's Office of Special Education - Office of School Leadership Student Services. The Monitoring Enforcement Team is under the direction of NDE's Office of Inclusive Education Director, and will include designated individuals and U.S. Department of Education technical assistance centers at the Director's discretion, such as the Early Childhood Technical Assistance Center (ECTA), to provide technical assistance and support to NDE in the review of WCSD's policies, procedures, and practices, including infrastructure, internal organization, local plan budget, data collection, communication protocols, and internal compliance monitoring system for students that impact WCSD's preschool program for students with disabilities with regard to WCSD's timely action upon referral for evaluation and identification for all children suspected of being a student with a disability; timely conduct of the initial evaluation (upon the determination that good cause exists to evaluate) and determination of eligibility; and timely availability of a Free Appropriate Public Education for students with a disability beginning at age three.² The Monitoring Enforcement Team will direct WCSD's compliance with any findings of noncompliance in the preschool program for students with disabilities, including necessary revisions to existing policies, procedures, practices and infrastructure, and WCSD must

comply with all directives of the Monitoring Enforcement Team.³

Within 30 business days of WCSD's submission of required documentation, NDE will provide WCSD with notice whether the district complied with the Order as directed.

² It is recognized that children referred to WCSD preschool program for evaluation/identification come from two distinct sources: the community and the IDEA Part C Early Intervention Program for Infants and Toddlers with Disabilities (hereinafter, IDEA Part C) administered by Nevada Department of Health and Human Services (DHHS). Accordingly, for referrals of children previously served in IDEA Part C, WCSD must comply with IDEA, 34 C.F.R. §300.124, including ensuring that by the third birthday of a student with a disability, an IEP or, if applicable an Individualized Family Service Plan (IFSP), has been developed and is being implemented.

For community referrals, that is, children not previously served in IDEA Part C, the requirements of IDEA Part B and NAC, Chapter 388, apply with regard to timely action upon referral for evaluation and identification for all children suspected of being a student with a disability; timely conduct of the initial evaluation (upon the determination that good cause exists to evaluate) and determination of eligibility; the conduct of a meeting to develop an IEP for the student within 30 days of a determination that the student needs special education and related services; and as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

³ Upon the issuance of the report from the Council of the Great City Schools of the study of WCSD, NDE will review and consider this report relative to the development of any compliance directives