

**Washoe County School District  
Special Monitoring: IDEA Part B Preschool Program**

**Order of Corrective Action**

**March 10, 2023**

**Background**

In State Complaint #WA120822, Washoe County School District (WCSD) was found out of compliance with regard to timely action upon a parent's referral of a student of preschool age for an evaluation to determine whether the student was a student with a disability in need of special education and related services. This State Complaint was preceded by two other State Complaints, #WA032222 and #WA033022, in which WCSD was found out of compliance with regard to the provision of a Free Appropriate Public Education (FAPE) to students with a disability upon turning three years of age in accordance with Individuals with Disabilities Education Act, Part B (IDEA), 20 U.S.C. §1400 et. seq.; 34 C.F.R. Part 300.

While State Complaint #WA120822 was also a student-specific case, WCSD acknowledged the existence of systemic issues and barriers in relation to Child Find for students of preschool age, including shortages in staffing and resources, and committed to the provision of compensatory services for this student and other students whose parents requested an evaluation, if the students later qualified for special education services. However, since State Complaint #WA120822 was not a systemic Complaint, Nevada Department of Education (NDE) did not have sufficient information at the time of the investigation to ascertain the extent of the acknowledged systemic noncompliance in WCSD's preschool Child Find system and whether WCSD's proposed systemic and student-specific remedies would timely address both the past failure to provide appropriate services, as well as the appropriate future provision of services, for all students with disabilities. In accordance with NDE's general education supervision responsibilities, it was determined that good cause existed to conduct a special on-site monitoring of WCSD's preschool Child Find system. 34 C.F.R. §§300.149, 300.151(b), 300.600.

WCSD was receptive to the conduct of the special monitoring of WCSD's preschool Child Find system and to technical assistance to assist them in a systemic resolution and demonstrated this same receptivity during the monitoring process. NDE conducted the on-site monitoring on March 1, 2023 for the above- described purpose. The monitoring team was comprised of the NDE State Director of the Office of Inclusive Education, the NDE EPP/619 Coordinator, and the independent member of the State Complaint Investigation Team.

**Findings**

During the special monitoring, WCSD provided the requested documentation and extensive additional information on not only WCSD's preschool Child Find system, but with regard to the timely placement of preschool students with disabilities. The data revealed a significant backlog of students referred in the 2021/2022 school year waiting to be evaluated and a growing backlog in the 2022/2023 school year. Similarly, in addition to the identification of students with disabilities not timely placed in the 2021/2022 school year upon turning three years of age, there was a large number of students already on a waiting list for the 2022/2023 school year who had not been timely placed. Based on this data, NDE determined, and WCSD concurred, that there was, and continues to be, a systemic failure of the WCSD Child Find system 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 Individualized Education Programs (IEP) upon turning three years of age.

With regard to the documented failure of WCSD to provide an appropriate evaluation and/or appropriate services to individual students prior to the conduct of the special monitoring, WCSD provided documentation verifying offers of compensatory education had been made to the parents of these identified students.

NDE recognizes that there are some major obstacles, such as a shortage of qualified preschool teachers, to the correction of the identified noncompliance in WCSD's preschool Child Find system and the preschool program for students with disabilities and that WCSD has taken some action toward correcting the outstanding noncompliance. These actions include establishing an Early Childhood Task Force with a variety of stakeholders to address district resource issues; creating a mapping system based on the addresses of upcoming students to identify potential program needs; developing a Child Find screening system and establishing an alternative to the centralized Child Find intake system; and supplementing current resources with an itinerant teacher model to address the needs of some students.

Notwithstanding these efforts, the exclusion of students with disabilities who had a right to a FAPE upon turning three years of age is a significant violation of IDEA and Chapter 388 of Nevada Revised Statutes and Nevada Administrative Code (hereinafter NRS/NAC.) The reoccurrence of this noncompliance in the 2022/2023 school year is the very thing the corrective actions in State Complaints #WA032222 and #WA033022 were designed to prevent.

### **Corrective Action**

Pursuant to IDEA, 34 C.F.R. §§300.149 and 300.600, NDE's general education supervision responsibilities include ensuring that the requirements of IDEA, are carried out and that when it identifies a local educational agency's noncompliance with the requirements of the IDEA that the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. It is recognized that "[T]he one-year timeline for the correction of noncompliance in 34 CFR § 300.600(e) is not intended to limit an SEA's authority or flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the SEA has found that the public agency has failed to provide appropriate services to a child or group of children with disabilities." *Letter to Zirkel*, 68 IDELR 142 (OSEP August 22, 2016). However, given WCSD has been unable to develop and implement a plan as ordered in State Complaints #WA032222 and #WA033022 to avoid the reoccurrence of the identified violation in this and subsequent school years, NDE has determined additional enforcement mechanisms with technical assistance and support from NDE are necessary to remedy the identified systemic noncompliance.

### **WCSD Order of Corrective Action<sup>1</sup>**

1. WCSD must take action immediately, and complete the action no later than three months after the March 16, 2023 meeting to review this Order of Corrective Action, to:

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<sup>1</sup> Given WCSD's commitment to correct the identified systemic noncompliance in WCSD's preschool program for student with disabilities; documented attempts to remedy the noncompliance; and receptivity to technical assistance and support from NDE in the correction of this systemic noncompliance, it has been determined at this time the WCSD is able to establish and maintain programs of FAPE that meet the requirements of the IDEA and NRS/NAC. Therefore, at this time, NDE is not required to utilize the funds that would otherwise have been available to WCSD to provide special education and related services directly to students with disabilities of preschool age residing in WCSD. 34 C.F.R. §300.227.

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Eliminate the backlog in the preschool Child Find system in processing referrals and conducting evaluations and eliminate the wait list for the implementation of the IEPs of students with a disability of preschool age in the student's designated educational placement from the 2021/2022 school year and the 2022/2023 school year up to the date of this Order of Corrective Action.

2. WCSD must take action immediately and must complete the action no later than the commencement of the 2023/2024 school year to:
  - a. Timely act upon referrals for evaluation and identification for all children suspected of being a student with a disability;
  - b. Upon the determination that good cause exists to evaluate (NAC §388.337), timely conduct the initial evaluation and determine eligibility; and
  - c. Timely implement every eligible student with a disability's IEP by the student's third birthday.
3. Within 3 business days of the receipt of this Order of Corrective Action, WCSD must designate a single point of contact in the implementation of the Order of Correction Action with written authority from the Superintendent of WCSD to serve in this capacity on her behalf and provide NDE the contact information.
4. WCSD must attend an initial meeting with NDE on the previously agreed upon date of March 16, 2023 to review this Order of Corrective Action. NDE will inform WCSD in advance of the meeting of the attendees from NDE. Unless NDE authorizes a representative of an attendee in advance of the meeting who is knowledgeable about the resources of the WCSD and able to commit WCSD to actions that will be taken to comply with the Order of Correction Action, WCSD attendees must include the WCSD Special Education Program Director; Area Superintendent, Special Education; Special Education Operations Director; preschool Child Find administrator; Child & Family Services Director; and Psychological Services Coordinator.
5. No later than April 17, 2023, WCSD must submit the following in writing to NDE:
  - a. The additional actions that WCSD has determined it must implement to comply with the Order of Corrective Action in the required timeframe(s), including maximization and/or reallocation of existing resources;
  - b. A description of the additional actions WCSD has taken since the March 16, 2023 meeting to review this Order of Corrective Action and will take in next 30 days to comply with the Order of Corrective Action; and
  - c. Any determined technical assistance and/or support necessary from NDE, consistent with its role as the State Education Agency, in order for WCSD to comply with the Order of Corrective Action in the required timeframe(s).
6. No later than March 31, 2023, or an alternative date agreed upon at the March 16, 2023 meeting to review this Order of Corrective Action, WCSD must provide NDE two draft notices regarding this Order of Corrective Action to be provided to parents accessing WCSD's preschool Child Find system and preschool program until such time as NDE determines WCSD has complied with this Order of Correction in its entirety:
  - a. Child Find: The new notice regarding this Order of Corrective Action for Child Find must, at minimum, be posted on the WCSD's Child Find website as the final step in the referral registration process to notify parents that:
    - i. WCSD is required by law to act on the referral in a reasonable period of time and issue a Prior Written Notice proposing or refusing to evaluate the student, and for those students WCSD proposes to evaluate, WCSD must provide the parent a request for consent for evaluation in a reasonable period of time and complete the

initial evaluation of the student in 45 school days after WCSD receives parental consent; timely determine eligibility and schedule an IEP meeting to develop the student's initial IEP no later than 30 days of the determination that the student needs special education and related service. NAC §§388.281(6)(e) and (13)(a), 388.337(1)(a); 34 C.F.R. §§300.301(c), 300.323(c).

- b. Development of the IEP: The new notice regarding this Order of Corrective Action for placement in a preschool program after the development of the student's initial IEP must, at minimum, be provided to parents with the Prior Written Notice after the development of the student's IEP notifying the parent that WCSD is obligated to make special education and related services available to the student in accordance with the student's IEP as soon as possible after it is developed and WCSD receives parental consent for the initial provision of special education and related services to the student. NAC §§388.300(1), 388.281(6)(e); 34 C.F.R. §§300.300(b), 300.323(c).
  - c. Compensatory Education:
    - i. Both notices must include the statement that WCSD is under an Order of Corrective Action from NDE for systemic noncompliance in the 2021/2022 and 2022/2023 school years with regard to the timeliness of WCSD's preschool Child Find process and the timely provision of FAPE in preschool programs for students with disabilities.
    - ii. Both notices must also include a statement that WCSD is offering compensatory education for the failure to comply with the IDEA and NRS/NAC with regard to the timeliness of WCSD's preschool Child Find process and the timely provision of FAPE in preschool programs for students with disabilities and, if the parents would like their child to receive compensatory education to remedy the noncompliance with regard to their child, the procedures to do so. The phone number for WCSD's single point of contact for this Order of Corrective Action or designee must be included in the notices. In the event the parent has any questions or concerns after initiating the WCSD compensatory education procedures, the contact information for the single point of contact at NDE must also be included in the Notice.
  - d. Other Rights: Both notices must include a statement that the Order of Corrective Action for WCSD's failure to comply with the IDEA and NRS/NAC, does not limit the parent's access to appropriate dispute resolution procedures available under the IDEA and NRS/NAC.
7. By April 17, 2023 or an alternative date agreed upon at the March 16, 2023 meeting to review this Order of Corrective Action, WCSD must establish a centralized data base that must, at minimum, include the names of all children suspected of being a student with a disability who are referred to WCSD for evaluation and the date and nature of the action taken, including when good cause is determined, the conduct of the evaluation; determination of eligibility; development of the student's IEP; and placement of the student. WCSD must collect the data on a daily basis.
8. WCSD must provide periodic, but no less than monthly, reports to NDE in the manner and form directed by NDE that includes the names of all children suspected of being a student with a disability who are referred to WCSD for evaluation and the date and action taken, including when good cause is determined, the completion of the evaluation; determination of eligibility; development of the student's IEP; placement of the student; and, for any continued violations prior to the commencement of 2023/2024 school year, compensatory education or other remedies offered to the parent and the outcome. The required monthly reports must include the identification of any trends, including the number and referral source of children referred to WCSD for evaluation from community referrals 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).

9. WCSD, including at minimum the individual designated as the single point of contact and other designates at WCSD's discretion, must meet with NDE and the Independent Monitor on a periodic, but no less than monthly basis, to report on the progress of the implementation of the corrective action, including the number and status of the backlog/waiting lists for children previously referred to Child Find and implementation of the students' IEPs and anticipated date of the elimination of the backlog/waiting list; the number and status of new referrals to the Child Find system and implementation of newly developed IEPs; the identification of any statewide or district-wide obstacles to completing the corrective action; the actions to be taken by WCSD to eliminate any obstacles/impediments to achieving timely compliance; and the identification of any specific requested support/assistance from NDE to address these obstacles/impediments.
10. By May 17, 2023, or an alternative date agreed upon at the March 16, 2023 meeting to review this Order of Corrective Action, WCSD must review the allocation of all resources for the preschool Child Find system and the preschool program districtwide to ascertain whether the existing resources are utilized in an effective and efficient manner and to identify available resources that are either not utilized or underutilized and report the findings to NDE.
11. On an ongoing basis, WCSD must provide NDE a copy of all transition conferences notices of the transition conference with IDEA Part C, the family, and WCSD to be conducted not fewer than 90 days prior to the toddler turning three years of age to discuss services, if a child may be eligible for preschool services under IDEA Part B. 34 C.F.R. §303.209.
12. Prior to the commencement of the 2023/2024 school year, WCSD must conduct a training(s) of all involved district-level and other individuals, as determined by WCSD, who are responsible for the implementation of WCSD's preschool program on the requirements of the IDEA and NRS/NAC, with regard to: Child Find; the conduct of initial evaluations and determination of eligibility; and, for those students determined eligible under IDEA, Part B, the development of the initial IEP, including the requirement that each student's IEP must be individualized to meet the student's unique needs, the required members of the IEP Team and IEP content; determination of the appropriate placement; and the implementation of the individually determined specially designed instruction by special education teachers. The training materials, dates and location of the trainings must be provided to NDE in advance of the training and NDE, at its discretion, can attend all or part of the trainings.

#### **NDE Technical Assistance and Support**

1. Within 3 business days of the issuance of this Order of Corrective Action NDE will designate a single point of contact at the NDE for the implementation and oversight of the Order and provide WCSD the contact information.
2. NDE will participate in the discussions, at WCSD's request, and provide technical assistance and support appropriate to its role as the State Education Agency in 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.
3. NDE will provide technical assistance and support with regard to state level obstacles and resources/solutions, such as the dissemination of information regarding the options program alternative

route to licensure and the optimization of the inclusion of eligible students with disabilities in WCSD's Nevada Ready! State Pre-K program.

4. NDE will work with representatives from the DHHS IDEA Part C program on collaborative solutions to ensure a smooth transition of children who may be eligible for preschool services under IDEA Part B, including, data collection and data sharing at both the state and local educational agency levels, and, as appropriate, the review and revision of the Interagency Agreement between NDE and DHHS.
5. At the request of WCSD, NDE will review training materials and/or provide other support, such as the names of knowledgeable trainers, to assist WCSD in the conduct of the required training of all involved district-level and other individuals who are responsible for the implementation of WCSD's preschool program on the requirements of the IDEA and NRS/NAC.

### **Independent Monitor**

1. In accordance with IDEA, 34 C.F.R. §300.600(a), NDE has determined the technical assistance of an Independent Monitor with knowledge of, and expertise in, IDEA and NRS/NAC and experience in IDEA compliant systemic reform is required to assist NDE in the enforcement of the Order of Corrective Action. Until NDE determines WCSD has complied with this Order of Corrective Action in all regards, the Independent Monitor will monitor WCSD's systemic reform of its preschool Child Find system and preschool program for compliance with IDEA and NRS/NAC, including any modification of integral systems, policies, practices and procedures by WCSD to prevent recurrence of the identified noncompliance.
2. The selection and performance of the Independent Monitor is under NDE's sole control and any technical assistance and/or support provided by the Independent Monitor is to assist NDE in its general education supervision responsibilities with regard to the enforcement of the Order of Corrective Action. NDE will notify WCSD of the name of the Independent Monitor in advance of the initial meeting on March 16, 2023 to review this Order of Corrective Action.
3. While under NDE's exclusive control, WCSD is responsible for all costs related to the Independent Monitor's performance of the professional services to monitor WCSD's implementation of the Order of Corrective Action in the manner and form requested by NDE, commencing with the preparation for and associated costs to attend the initial meeting with NDE on March 16, 2023 to review this Order of Corrective Action. NDE will approve the Independent Monitor's hourly rate and associated costs in advance of the commencement of these professional services and, on a monthly basis, will authorize and direct WCSD's payment of the Independent Monitor's invoices.

