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August 20, 2014

Mr. Pedro Martinez, Superintendent
Washoe County School District
P.O. Box 30425
Reno, NV 89520

RE: #WA060413 Washoe County School District Complaint

Dear Superintendent Martinez:

Pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et. seq. and 34 C.F.R. Part 300, the Nevada Department of Education (NDE) has specific monitoring and enforcement responsibilities with regard to the implementation of the IDEA, Part B. In the exercise of these responsibilities, the NDE must ensure that when it identifies noncompliance with the requirements of the IDEA by a local educational agency, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. (20 U.S.C. §1416(e); 34 C.F.R. §300.600(e); OSEP Memorandum 13-08, 61 IDELR 232 (OSEP 2013))

In State Complaint #WA060413, noncompliance was identified in the Complaint Investigation Report issued by the NDE on August 1, 2013; specifically the Washoe County School District (WCSD) failed to comply with the requirements of the IDEA and the NAC, Chapter 388, with regard to implementing a student's individualized education program (IEP). The Report required the following corrective action:

"Upon consideration of the findings in this Complaint regarding failure to provide services in accordance with an IEP and the finding of this same violation in two prior Complaint Reports in the past year, the WCSD is directed to, within 30 days of the receipt of this Report, to develop and submit to the NDE a proposed comprehensive CAP to correct this noncompliance. The CAP must include a method to document and monitor the implementation of designated services in this student's and other students' IEPs in the WCSD. The CAP must include an explanation of the distinction between this CAP and the prior CAPs addressing this same issue and why this CAP will effectively correct this repeated noncompliance."

"Following approval of the CAP by the NDE, it must be implemented within 30 days, and in any case, by September 30, 2013. The method of documentation and monitoring of the CAP must include its commencement within 30 days of its approval and a report submitted to the NDE to document its ongoing implementation periodically but no less than twice during the 2013/2014 school year."

The WCSD did timely provide an approved CAP to correct the noncompliance and implemented the CAP in part. Specifically, compensatory education was provided to the student as mandated by the order for corrective action, training was provided by the NDE regarding IEP implementation on September 24, 2013, and the WCSD developed a policies and procedures checklist on IEP implementation and compliance on October 31, 2013. The WCSD met with NDE staff on January 17, 2014 to report on progress of the ongoing implementation of the approved CAP. The original document provided on October 31, 2013 did not meet NDE approval and through technical assistance and further revisions approval of the IEP Implementation Checklist was provided during that meeting.

However, the WCSD failed to provide the requisite training for special education teachers, related service providers, and LEA representatives regarding the approved IEP Implementation Checklist. The IEP Implementation Checklist was not utilized district-wide until July 2014 and, due to this delay, the checklist was only implemented for students with a disability attending an extended school year program and did not include the student who was the subject of this Complaint. WCSD's failure to provide training on the use of the checklist and to implement the IEP Implementation Checklist district-wide for six months after approval of the checklist does not constitute the timely correction of noncompliance as required by Title 34 C.F.R. §300.600(e). Further, the WCSD's failure to submit a report to the NDE, on at least a second occasion in the 2013/2014 school year consistent with the CAP, impeded the NDE's ability to monitor the timely correction of noncompliance consistent with its general education responsibilities. (34 C.F.R. §§300.600 and 300.149)

On numerous occasions during the WCSD's implementation of the CAP to correct the findings in #WA060413, the NDE monitored and provided technical assistance to facilitate the timely and effective correction of noncompliance, including email communications, phone calls, and meetings. There were also instances of technical assistance on the correction of the related prior finding in #WA032013 with regard to the absence of a system of records to verify that each student with a disability was receiving services appropriate to the student's disability. This latter technical assistance included a meeting on June 4, 2013 with WCSD personnel, the State Director of Special Education, and the Interim NDE Superintendent of Public Instruction to discuss a comprehensive corrective action to remedy prior identified noncompliance and to address prospective IEP implementation consistent with the IDEA and the NAC.

Due to the failure of the WCSD to correct the noncompliance identified in #WA060413 in its entirety within one year of the State's identification of this noncompliance, the NDE is taking specific enforcement action to achieve the requisite compliance in accordance with the IDEA. (34 C.F.R. §300.600(a)(3); Vol. 73, Fed. Reg. pg. 73021 (December 1, 2008)) Since the NDE previously engaged in the enforcement mechanism of technical assistance and the WCSD still did not achieve full compliance consistent with the CAP, continued failure of the WCSD to remedy this noncompliance in accordance with the directives below will cause the escalation of the enforcement action(s) available to the NDE to ensure compliance pursuant to Title 34 C.F.R. §300.600(a), including the possibility of withholding of IDEA funds, whole or in part.

The WCSD is hereby directed to:

- 1. Provide training to special education teachers, related service providers, and LEA representatives regarding the policies and procedures checklist. This training is to occur no later than September 30, 2014.**

2. **Implement the IEP Implementation Checklist in its entirety for all students with an IEP in the WCSD during the 2014 – 2015 school year.**
3. **Implement the IEP Implementation Checklist *retroactively* for all students with an IEP, who remain enrolled in the WCSD and attended the school of the student who was the subject of the complaint for the period from *January 15, 2014 to the end of the 2013-2014 school year*. This directive must be completed by *November 1, 2014*.**

NAC §388.215(5) requires a school district to establish a system of records for the purpose of verifying that each student with a disability is receiving services appropriate to the student's disability. Therefore, any response on the approved checklist that a student's IEP was implemented during the time period from January 15, 2014 to the end of the school year must be verifiable by documentation. In the absence of this required documentation, the WCSD must find a failure to implement the student's IEP for that item(s).

For each finding of a failure to implement a student's IEP during the time period from January 15, 2014 to the end of the school year, the WCSD must develop a compensatory education plan for the student. The proposed compensatory education plan must be submitted to the parents of the student for their consideration and input. In the absence of an agreement between the parent and the WCSD with regard to the nature of the proposed compensatory education plan, at minimum, the WCSD must offer compensatory education equal to one half of the duration of each designated service that was not provided in accordance with the student's IEP. A parent may decline the compensatory education services. Documentation of any such refusal must be maintained by the WCSD in the student's record. This directive must be implemented no later than February 1, 2015 with all services to be provided no later than the end of the 2014-2015 school year or extended school year, if applicable.

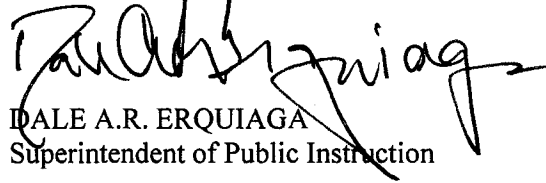
1. **The WCSD must notify all parents of students with an IEP enrolled in the WCSD in the 2014-2015 school year of the implementation of the IEP Implementation Checklist *and how to access the Checklist for their child*. This directive must be implemented by *October 1, 2014*.**
2. **The WCSD must cooperate with the NDE in the audit of the implementation of the IEP Implementation Checklist and the provision of compensatory education services in accordance with the above directives. The NDE will conduct an audit during the ~~implementation of the above directives and/or~~ upon the completion of these additional enforcement actions.**

The WCSD is provided until September 5, 2014 to respond to this enforcement action with a specific operational plan to timely fulfill the directives. If it is WCSD's position that the directives cannot be implemented in any regard, the WCSD must provide the rational for this position and an alternative enforcement action. Any such enforcement action must include compensatory education services for any failure to implement a student's IEP as designated in number 3 above during the period of January 15, 2014 to the end of the 2013-2014 school year.

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If you have any questions regarding this correspondence, please contact Marva Cleven, Director of Special Education at (775) 687-9146 or mcleven@doe.nv.gov.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Dale A.R. Erquiaga", written over the typed name and title.

DALE A.R. ERQUIAGA
Superintendent of Public Instruction

DE:MC/ct

c: S. Canavero
M. Cleven
F. Selvaggio
A. Drendel-Haas
#WA060413 Parent(s) ✓