

**North Carolina Department of Public Instruction  
Office of Exceptional Children**

**Complaint Investigation Final Report  
Case No. 23-176  
June 25, 2024**

The Office of Exceptional Children (OEC), Department of Public Instruction (DPI), has completed the investigation of the complaint filed on April 26, 2024, against Wake County Public School System (WCPSS). Based upon statements in the complaint, the OEC identified the following issue[s] to be investigated:

**Whether WCPSS followed the *Policies* regarding:**

- **Develop, review and revision of the student's Individualized Education Plan (IEP) to address the student's unique needs, including, but not limited to assistive technology, related services, and educational placement.**
- **Personnel qualifications during the 2022-2023 school year.**
- **Reevaluation.**
- **Implementation of IEP, including specially designed instruction and related services.**

The findings that follow are drawn from the information in the complaint letter, the school system's letter of response, and supporting documentation provided by both parties. The conclusions of law are drawn from the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 (20 U.S.C. 1400 *et seq.*), the IDEA regulations (34 CFR §300), the North Carolina *Policies Governing Services for Children with Disabilities (Policies)*, and Article 9 Chapter 115C of the NC General Statutes. The following report conveys the issues, findings of fact, conclusions, and final decisions of our investigation of the complaint.

**Background**

The student is a rising ninth grader in WCPSS and is identified as a student with a disability in the area of Autism. The student is following the Extended Content Standards Course of Study.

**Issue One: Whether WCPSS followed the *Policies* regarding develop, review and revision of the student's Individualized Education Plan (IEP) to address the student's unique needs, including, but not limited to assistive technology, related services, and educational placement.**

**Description of the Complaint**

The complainant alleges that the student has not made progress towards his goals; services have diminished; including reduction in speech services and removal of Occupational therapy (OT) without parent knowledge; and the student continues to struggle to read and write; yet, the LEA has not provided any recommendations or accommodations. The LEA failed to consider a communication device that would help the student identify words with pictures to ultimately help him learn to read. The student was placed in a separate classroom with a teacher assistant away from the larger classrooms, causing the student to be isolated from the larger group due of his behaviors. The complainant further alleges that she was not aware that Occupational Therapy services were removed from the IEP but was unclear how the removal happened since the school did not have an Occupational Therapist.

## **Findings of Fact**

1. The IEP dated June 8, 2022, to June 7, 2023, and in effect during the investigation period includes the following information:

- The student was enrolled as an ECS Virtual Academy student in the sixth grade.

**Parental concerns:** [Parent] has seen a regression in being able to transition with his schedule. [Parent] continue to have concerns about the lack of progress from the academic perspective and the basics (writing, counting). She is also concerned about strategies for redirecting behaviors when unpreferred events occur. [Parent] would like to see more strategies implemented to help handle frustrations.

### **Present Levels of Academic and Functional Performance (PLAAFP)**

- **Reading:** [Student] is able to answer “wh” questions at kindergarten level, listen to text, look at a picture and answer fill in the blank and multiple-choice questions, and identify sight words a, can, the, go, see, like, is, to, up, of, they, and pretty.
- **Math:** [Student] is able to rote count to 30 with prompting, can solve with modeling an oral story problem, add single digit numbers using a number line or fingers.
- **Social-Emotional:** [Student] showing an increase in verbalization when upset or sharing feelings, will work for a time period.
- **Speech:** [Student] participate in back-and-forth conversations, prefers to talk about his likes, demonstrates an understanding of conversations and will answer questions appropriately on a topic.

**Medical Information:** [Student] take medication for seizures.

**Special Factors:** Communication needs (Speech services), Behavior Goals, receives instruction using Extended Content Standards.

**Goals:** Reading, Math, Social-Emotional, and Speech and Language.

**Service delivery (location):** Math: 90 minutes, 5 per week, Reading: 90 minutes, 5 per week, Writing: 30 minutes, 5 per week, Social-Emotional: 45 minutes, 5 per week, Motor Skills: 15 minutes, 5 per week, Communication Skills: 45 minutes, 5 per week, Occupational Therapy: *Supplemental Aids/Services*, Speech/Language: 20 minutes, 6 times per reporting period,

**Supplemental Aids/ Services/Accommodations/Modifications:** Dictation to scribe, Other (Alternative to written output: [Student] will require alternative means/materials to communicate his knowledge and participate in activities. (manipulatives, letter, and word tiles, etc.).

**Least Restrictive Environment:** Due to deficits in academics and functional needs, as well as communication, social/emotional needs, and fine motor needs, [Student] will be removed from nondisabled peers in order to provide explicit instruction in a small, structured environment.

2. The IEP Team, including the parent, convened on May 19, 2023, to conduct the annual review. The IEP dated May 22, 2023, to May 21, 2024, implemented during the investigation period and Prior Written Notice (PWN), includes the following information:

### **IEP (new information)**

**Parental concerns:** [Parent] continue to have concerns about the lack of progress from the academic perspective and the basics (writing, counting). She is also concerned about strategies for redirecting behaviors when unpreferred events occur. [Parent] would like to see more strategies implemented to help handle frustrations.

### **PLAAFP**

- **Reading Decoding and Comprehension:** [Student's] listening comprehension skills are stronger than reading comprehension. Successful when provided with symbol to support text, can verbally and manually indicate his understanding of visual decoded text, follow along with text read aloud with prompts. With 50% or less proficiency, the student reads level A books (early kindergarten), answer literal written or inferential comprehension questions with two or three answer choices.

- **Math:** According to Unique Learning Systems assessment data, [Student] has mastered numbers and counting to 20, measurement (vocabulary, measurement tools, and units), shapes, and understands more/less.
- **Social/Emotional:** [Student] can follow one step directions, follow a schedule with visuals, maintain and follow a set routine, maintain focus on a preferred activity or topic for an unlimited amount of time, verbalize frustration, state rules and consequences and identify when others are not following the rules.
- **Speech:** [Student] can complete topic maintenance tasks and identify expected and unexpected behaviors.

**Medical Information:** [Student] take medication for seizures, anxiety, and ADHD.

**Goals:** Reading Decoding, Reading Comprehension, Math, and Social-Emotional

**Service Delivery (Special Education):** Math: 90 minutes, 5 per week, Reading: 70 minutes, 5 per week, Writing: 20 minutes, 5 per week, Social-Emotional: 60 minutes, 5 per week, Academic Skills, 120 minutes, 5 per week, Occupational Therapy: *Supplemental Aids/Services*, Speech/Language: *Supplemental Aids/Services*, 1 time per month.

**Least Restrictive Environment:** Despite modifications provided such as modified assignments and the use of visual communication symbols, [Student] continue to demonstrate delayed academics and communication skills. [Student] needs would best be served at the separate level of service in a classroom with a low student to teacher ratio where communication and visual supports are in place. He requires additional supervision during his transportation to and from school to safely access his education services. [Student] will participate in lunch, enrichment classes and assemblies with his general education peers.

**Prior Written Notice (PWN)**

- **Proposals:** Review parent concerns and vision, review PLAAFPs, goals and objective, review service delivery time and location, review/revise transportation and review accommodations.
  - **Explanations:** The team reviewed the parental concerns, present levels of performance in math, social-emotional, speech and language, and removed reading to add reading comprehension and decoding. The team used informal assessments data, therapy notes and data, and limited behavioral incident data to revise the present levels of performance. The social emotional goal remained the same due to limited data. The speech goal was removed based on data. Based on [Student's] unique needs the team continue service delivery in reading, math, writing, social emotional. The team continue occupational therapy as a supplemental aid service plan, based on therapy notes and observations, the team agreed to move [Student] from a direct service delivery plan to a supplemental aid and support plan because [Student] is quite intelligible to familiar listeners and his language had improved with the structure of the ECS (communication based) classroom. The team kept the accommodations of the previous IEP because the accommodations that the student would need are provided within the self-contained classroom. The team discussed the student's least restrictive environment statement. The IEP team agreed that [Student's] data supports the current location in the separate classroom.
  - **Explanations of actions refused:** None, the team did not make any refusals.
  - **Sources of relevant data:** Informal assessments data, therapy notes and data, and limited behavioral incident data.
3. IEP Progress Reports for the fourth quarter of the 2022-2023 school year indicates the following information:
    - Math, Reading Comprehension and Reading Decoding and Social-Emotional goals: Limited progress due to extra time needed due to newly implemented goal May 22, 2023.
  4. The student's 2023 – 2024 IEP Progress Report for the first quarter indicates the following information:

- Math, Reading Comprehension and Reading Decoding: Progressing at a rate appropriate to meet annual goal. Social-Emotional: Met goals.
5. The student's 2023-2024 Extended Content Standards Report Card for the first quarter include the following information:
    - Reading: D/D- [Student] is making good progress towards his IEP goals. He continues to work best with direct instruction and is able to follow simple step instructions with little redirection needed, Math: C/D, Science: D- [Student] is making great progress towards his IEP goals. He continues to work best with direct instruction and is able to follow simple step instructions with little redirection needed. [Student] work best with one-on-one instruction, Social Studies: D: [Student] is continuing to make gains in these areas with direct support, adapted materials and redirection when needed.
  6. The LEA provided evidence to support data collection and service delivery for reading, math, and social-emotional goals, beginning on September 15, 2023, to December 18, 2023. The data identifies the following information:
    - The IEP goals and how the student scored based upon the number of attempts within the goals every 2-3 days.
  7. The student's 2023-2024 Extended Content Standards Report Card for the quarters two and three include the following information:
    - Reading: D/D- [Student] is making good progress towards his IEP goals. He continues to work best with direct instruction and is able to follow simple step instructions with little redirection needed, Math: C/D, Science: D- [Student] is making great progress towards his IEP goals. He continues to work best with direct instruction and is able to follow simple step instructions with little redirection needed. [Student] work best with one-on-one instruction, Social Studies: D: [Student] is continuing to make gains in these areas with direct support, adapted materials and redirection when needed.
  8. The student's 2023 – 2024 IEP Progress Reports for quarters two and three indicate the following information:
    - Math, Reading Comprehension and Reading Decoding: Progressing at a rate appropriate to meet annual goal. Social-Emotional: Met goals.
  9. Email communication between the parent and school staff between February 14, 2024, and February 15, 2024, includes the following information:
    - Parent: Inquired about getting her for her son to read. Requested a language/speech device that most children with Autism use for speaking. Believed that the device would help with picture connected words. Expressed that he does not have the attention span to focus to learn to comprehend.
    - School staff: Informed the parent that the assistive technology department had been notified of the request.
  10. The LEA provided evidence to support data collection and service delivery for reading, math, and social-emotional goals, beginning on February 5, 2024, to April 22, 2024. The data identifies the following information:
    - The IEP goals and how the student scored based upon the number of attempts within the goals every 2-3 days.
  11. Email communication between the parent and school staff from April 15, 2024, to April 17, 2024, 2024, includes the following information:

- School staff: Informed the parent that she had not heard from the AT specialist, that she was sending another email. Staff also informed the parent that it was an IEP team decision so it is a suggestion that would need to be discussed at his next IEP meeting. She believed that the annual was due soon, so the meeting was coming up.

12. An IEP Invitation dated April 11, 2024, and addressed to the parent indicates that an IEP meeting on April 29, 2024.

### **Findings of Fact after the Investigation Period**

13. The IEP team, including the parent, met on April 29, 2024, for a Reevaluation and Annual Review.

### **IDEA and Federal Regulations**

**34 CFR § 300.324 Development, review, and revision of IEP.** (a) Development of IEP - (1) General. In developing each child's IEP, the IEP Team must consider - (i) The strengths of the child; (ii) The concerns of the parents for enhancing the education of their child (iii) The results of the initial or most recent evaluation of the child; and (iv) The academic, developmental, and functional needs of the child. (b) Review and revision of IEPs - (1) General. Each public agency must ensure that subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team - (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and (ii) Revises the IEP, as appropriate, to address - (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate; (B) The results of any reevaluation conducted under § 300.303; (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2); (D) The child's anticipated needs; or (E) Other matters.

**34 CFR § 300.116 Placements.** In determining the educational placement of a child with a disability, including a preschool child with a disability, each LEA must ensure that-- (a) The placement decision-- (1) Is made by the IEP Team, which includes the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Conforms to LRE requirements; (b) The child's placement on the continuum-- (1) Is determined at least annually; and (2) Is based on the child's IEP; (c) Unless the IEP of a child with a disability requires some other arrangement-- (1) The child is educated in the school that he or she would attend if nondisabled; and (2) If the child cannot be educated in the school he or she would attend if nondisabled, the child is educated as close to the child's home as possible; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

### **NC Policies**

**NC 1503.5.1 Development, Review, and Revision of IEP.** (see Federal Regulations).

**NC 1501-3.3 Placement Decisions.** (see Federal Regulations).

### **Analysis and Final Decision**

*Policies* require IEP teams to consider the needs of students based on evaluation data and other relevant information. When making the placement decision, the Team must base the decision on the student's IEP and consider the least restrictive environment in which the student can make adequate progress with the use of supplementary aids and support.

In this case, the complainant alleges that the student has not made progress towards his goals over a significant period, services diminished without her knowledge and accommodations had not been provided, including the use of assistive technology. According the PWN for the IEP meeting held on May 19, 2023, the IEP team used Informal assessments data, therapy notes and data, and limited behavioral incident data to make IEP team decisions. The Team addressed the student's reading and math needs through IEP goals, and services; and decided to reduce the student's speech service based on the current data. There is no indication that the Team revised the student's OT services during the period in question. However, the student's PLAAFP, IEP goals, and service delivery described in the most recent IEP do not align. Specifically, the IEP developed in May 2023, does not contain PLAAFP in the areas of writing and academic skills, nor corresponding goals. Yet, the IEP includes services related to writing and academic skills. When developing an IEP, the services must align with the student's needs described in the PLAAFP and the corresponding goals. Absent this information, the Team failed to consider the student's unique needs, including PLAAFP, and goals, when determining the student's services, and educational placement.

Further, the Team failed to address the parent's concerns shared with the LEA in February 2024, related to a communication device. Considering the parent's request was specific to the student's needs, including assistive technology, the Team was required to reconvene to address this request and the parent's concerns related to the request. However, the Team delayed the meeting for over two months, and until after the complaint was filed. Therefore, the unnecessary delay in addressing the parent's concerns and request specific to assistive technology, resulted in a violation of the *Policies* specific to the review and revision of the student's IEP.

**WCPSS ☒ IS ☐ IS NOT in violation of the *Policies* regarding develop, review and revision of the student's Individualized Education Plan (IEP) to address the student's unique needs, including but not limited to assistive technology, related services, and educational placement.**

**Issue Two: Whether WCPSS followed the *Policies* regarding personnel qualifications during the 2022-2023 school year.**

### **Description of the Complaint**

The complainant alleges that during the 2022-2023 school year her son was place in a separate classroom with a teacher assistant and was provided instruction by a noncertified teacher.

### **Findings of Facts**

1. The Investigation period began on April 26, 2023.
2. Email communication between the parent and LEA between May 3, 2023, to May 4, 2023, includes the following information:
  - Parent: Expressed concerns about who would conduct her child's IEP meeting; and requested the attendance of the teacher assistants at the upcoming IEP meeting because the individual would have the data and input related to student's IEP goals. The parent expressed understanding of why the student was in a smaller setting and her belief that it was working for the student. However, she noted that 'it may be a title issue or protocol issue,' yet the teacher assistant was introduced as the student's teacher at the beginning of the year.
  - School in response to parent: Informed the parent that they understood the concern, however, the individual that would attend the meeting was assigned to oversee the student's academics and

collect data so that an effective IEP can be written. The school informed the parent the requested individuals may not be able to have both attend due to the safety concerns for the students.

3. A narrative response provided by the LEA dated May 21, 2024, contends the following:
  - “During the 2022-2023 school year, [Student] was assigned to a regional program Extended Content classroom that had a teacher vacancy. The school assigned an experienced instructional assistant (IA) to teach the class who was in the process of gaining her licensure. There was also another experienced IA in the classroom to support. The IA assigned to teach was provided class materials for instruction by two licensed teachers throughout the year, as well as guidance and support on how to use the provided materials by the licensed teachers. Additionally, the licensed teachers would periodically come into the class to observe and/or collect data. One of the licensed teachers acted as case manager for the IEP meeting. Over the summer of 2023, the IA gained a provisional teaching license.”
  - “Wake County is compliant with regards to Personnel Qualifications. The instructional assistant was supervised by licensed teachers and the instructional plans and materials were designed and provided by licensed instructors.”
4. The LEA provided a copy of the Licensure information of the student’s EC teachers and therapists responsible for provision of specially designed instruction during the 2022 – 2023 school year. Each service provided was full licensed during the 2022-2023 school year.
  - [Teacher A-Supervising Teacher]: Mentally Disabled (K-12) and Exceptional Children: Adapted Curriculum (K-12); Effective Date: 07/01/2022/Expiration Date: 06/30/2027.
  - [Teacher B-Supervising Teacher]: Exceptional Children: Adapted Curriculum (K-12) and Cross Categorical (K-12); Effective Date: 07/01/2022/Expiration Date: 06/30/2027.
  - [Teacher C]: Permit to Teach, Effective Date: 8/21/2023/Expiration Date: 06/30/2024. Instructional Assistant during the 2022-2023 school year.
  - [Teacher D]: Exceptional Children: Adapted Curriculum (K-12); Effective Date: 07/01/2019/Expiration Date: 06/30/2025.
5. The following requested documents were not provided for the period of time in question (2022-2023 school year, beginning April 26, 2023): Service logs, the student’s schedule, and the teacher’s schedule, including the licensed EC teachers who provided supported to the IA.

### **IDEA and Federal Regulations**

**34 CFR § 300.156 Personnel qualifications. (a) General.** The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (c) Qualifications for teachers. (1) The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school teacher in the State who teaches in an elementary school, middle school, or secondary school—(i) Has obtained full State certification as a teacher (including certification obtained through an alternate route to certification as a special educator, if such alternate route meets minimum requirements described in 34 CFR 200.56(a)(2)(ii) as such section was in effect on November 28, 2008), or passed the State teacher licensing examination, and holds a license to teach in the State as a teacher, except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law; (ii) Has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Holds at least a bachelor's degree. (2) A teacher will be considered to meet the standard in paragraph (c)(1)(i) of this section if that teacher is participating in an alternate route to certification program under

which—(i) The teacher—(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; (B) Participates in a program of intensive supervision that consists of structured guidance.  
**NC Policies**

**NC 1501-12.2 Personnel Qualifications.** (See Federal Regulations)

**Analysis and Final Decision**

According to regulations, teachers must be properly licensed as indicated through the licensure standards of the state. In this case, the complainant alleges the LEA student's services were provide by a teacher assistant in a separate classroom during the 2022-2023 school year.

Based on the email communication, the parent and LEA both acknowledge that they were aware of the student being instructed by a teacher assistant. The licensure information confirm that the EC teachers referenced in the LEA's narrative response were properly licensed; however, the Instructional Assistant providing the instruction had not yet received her special education license, during the period in question. The narrative response indicates that the licensed EC teachers provided materials to the IA, and periodically observed and collected data within the student's classroom. However, no other evidence was provided to confirm this information, including the requested service logs, schedules, or the data collected during the period in question, or that the instruction provided and/or developed, was specially designed to address the student's IEP goals.

Therefore, it is determined that the student did not receive services from a properly licensed EC teacher, beginning April 26, 2023, until the end of the 2022-2023 school year.

**WCPSS ☒ IS ☐ IS NOT in violation of the *Policies* regarding personnel qualifications during the 2022-2023 school year.**

**Issue Three: Whether WCPSS followed the *Policies* regarding reevaluation.**

**Description of the Complaint**

The complainant alleges the LEA failed to consider a communication device that would help the student identify words with pictures to ultimately help him learn to read.

**Findings of Fact**

1. Email communication between the parent and school staff between February 14, 2024, and February 15, 2024, includes the following information:
  - Parent: Inquired about getting her for her son to read. Requested a language/speech device that most children with Autism use for speaking. Believed that the device would help with picture connected words. Expressed that he does not have the attention span to focus to learn to comprehend.
  - School staff: Informed the parent that the assistive technology department had been notified of the request.
2. Email communication between the parent and school staff from March 22, 2024, to March 28, 2024, includes the following information:



- Parent: The parent requested an Independent Educational Evaluations (IEE) at public expense due to disagreeing with the results. The request was for the following evaluations: Psychological, Educational, Speech-Language; Occupational Therapy, Motor, Autism, Assistive Technology, AAC Evaluation, Anxiety, Mental Health, Adaptive Behavior, Behavior, and Functional Behavior Assessment. In addition to the evaluations, the parent requested observations from each evaluator on two separate occasions as well as for the evaluators to attend the IEP meeting to explain the evaluation results. The parent would also like to select the evaluators with a provided list from the school. The parent informed the school that if the request was refused, that the email communication would serve as a request for evaluation in the areas denied for an IEE. A response was requested with an expected response in five days.
  - School in response to parent: Acknowledged the request, informed the parent that the records request would be resolved within 45 days as allowed by policy and that someone would be in contact regarding the request for evaluations.
3. A letter dated April 2, 2024, from the district office to the parent includes the following information:
- Letter was in response to the request for an IEE. Informed the parent that must disagree with evaluations that are conducted by the LEA within the last three years. The LEA never conducted the following evaluations (Assistive Technology, AAC Evaluation, Anxiety, Mental Health, Behavior or Functional Behavior Assessment) and the following evaluations have been completed outside of the three-year criteria (Psychological, Educational, Speech-Language, Occupational Therapy, Motor, Autism and Adaptive Behavior). At the time, the LEA could not approve an IEE for the requested evaluations. Please reach out to your school team to request an IEP meeting to consider these evaluations.
4. Email communication to the parent and school staff dated April 15, 2024, to April 17, 2024, informed the parent that the school had not heard from the AT specialist, therefore was sending another email. Staff noted that it was an IEP team decision so the request would need to be discussed at next IEP meeting. It was not that the IEP annual review was due soon, so the meeting was coming up.

### **Findings of Fact after the Investigation Period**

5. The Reevaluation Report dated April 30, 2024, indicates that the IEP team determine that the following evaluations/information is needed:
- Sensory Processing Evaluation, Education Evaluation Review of existing data, Audiological Evaluation, Motor Evaluation, Speech-Language/Communication Evaluation, Adaptive Behavior Evaluation, Summary of Conference(s) with parents, review of educational history/records, Social/Developmental History, Behavior Assessment Related to Autism Spectrum Disorder, Observation, Health Screening, Medical Evaluation, Psychological Evaluation, Motor Screening.
6. The Consent for Evaluation, signature dated on May 7, 2024, includes the following information:
- Sensory Processing Evaluation, Educational Evaluation, Review of existing data, Audiological Evaluation, Motor Evaluation, Speech-Language/Communication Evaluation, Adaptive Behavior Evaluation, Summary of Conference(s) with parents, review of educational history/records, Social/Developmental History, Behavior Assessment Related to Autism Spectrum Disorder, Observation, Health Screening, Medical Evaluation, Psychological Evaluation, Motor Screening.

### **IDEA and Federal Regulations**

**34 CFR § 300.303 Reevaluations.** (a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—(1) If the public agency determines that the educational or related service's needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or (2) If the child's parent or teacher requests a reevaluation. (b) Limitation. A reevaluation conducted under paragraph (a) of this section—(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

### **34 CFR § 300.502 Independent educational evaluation.**

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.(3) For the purposes of this subpart—(i) *Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.103. (b) *Parent right to evaluation at public expense.*(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. (4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation. (5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

### **NC Policies**

**NC 1503-2.4 Reevaluations.** (a) **General.** A public agency must ensure that the timely reevaluation for each child with a disability is conducted in accordance with NC 1503-2.5 through NC 1503-3.5 (2) If the LEA determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant additional evaluation data; or (3) If the child's parent or teacher requests additional evaluation data. (b) **Limitation.** The reevaluation conducted under paragraph (a) of this section– (1) May occur not more than once a year unless the parent and the LEA agree otherwise; and (2) Must occur at least once every three years.

**34 CFR § 300.502 Independent Educational Evaluation.** (See Federal Regulations)

### **Analysis and Final Decision**

Federal regulations require public agencies to ensure the timely reevaluation for each child with a disability if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrants additional evaluation data or if the parent requests additional evaluation data.

In this case the parent sent an email in February 2024, requesting assistive technology for her son as well as requested independent evaluations in March 2024, for evaluations that she believed were previously conducted by the LEA. The LEA responded to the first request by indicating that information was needed from the AT specialist. However, input and the availability of the evaluator have no impact on the IEP Team's responsibility for initiating the reevaluation process based on a parent's request. When the parent requested an IEE, including the AT evaluation, the LEA provided a timely response, yet did not initiate the reevaluation meeting until five weeks after the parent submitted the request. Though the IEE response was timely, the failure to convene the IEP meeting unnecessarily delayed the reevaluation process.

**WCPSS ☒ IS ☐ IS NOT in violation of the *Policies* regarding reevaluation.**

**Issue Four: Whether WCPSS followed the *Policies* regarding implementation of IEP, including specially designed instruction and related services.**

### **Description of the Complaint**

The complainant alleges that during the 2022-2023 school year, the student did not receive special education instruction by a properly licensed teacher. The complainant further alleges that speech services were not provided as written in the IEP.

### **Findings of Fact**

1. IEP dated June 8, 2022, to June 7, 2023, includes the following service delivery:
  - Math: 90 minutes, 5 per week, Reading: 90 minutes, 5 per week, , Writing: 30 minutes, 5 per week, , Social-Emotional: 45 minutes, 5 per week, , Motor Skills: 15 minutes, 5 per week, , Communication Skills: 45 minutes, 5 per week, , Occupational Therapy: Supplemental Aids/Services, Speech/Language: 20 minutes, 6 times per reporting period, .
2. IEP dated May 22, 2023, to May 21, 2024, includes the following service delivery:
  - Math: 90 minutes, 5 per week, Reading: 70 minutes, 5 per week, Writing: 20 minutes, 5 per week, Social-Emotional: 60 minutes, 5 per week, Academic Skills, 120 minutes, 5 per week, Occupational Therapy: Supplemental Aids/Services, Speech/Language: Supplemental Aids/Services, 1 time per month.
3. Speech service delivery logs for the 2022-2023 school year, beginning April 26, 2023, indicate that the student received two sessions on May 2, 2023, and June 5, 2023.
4. Email Communication between the parent and LEA from May 3, 2023, to May 4, 2023, includes the following information:
  - Parent: Expressed concerns about who would conduct her child's IEP meeting, requested the attendance of the teacher assistants at the upcoming IEP meeting because the individual would have the data and input related to student's IEP goals. The parent understood why the student was

in a smaller setting and believed that it was working for the student as well as that it may be a title issue or protocol issue, however, the teacher assistant was introduced as the student's teacher at the beginning of the year.

- School in response to parent: Informed the parent that the understood the concern, however, the individual that would attend the meeting was assigned to oversee the student's academics and collect data so that an effective IEP can be written. Expressed that the requested individuals may not be able to have both attend due to the safety concerns for the students.
5. Service logs for the 2022 – 2023 school year, beginning April 26, 2023, were not provided. The work samples provided do not include dates.
  6. Speech service delivery logs for the 2023-2024 school year, indicate that the student received sessions on September 27, 2023, November 3, 2023, December 15, 2023, January 19, 2024, February 21, 2024, March 15, 2024, and April 11, 2024.

### **IDEA and Federal Regulations**

**34 CFR § 300.323 When IEPs must be in effect.** (a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320. ... (d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that— (1) The child's IEP is accessible to each regular education teacher, teacher, related services provider, and any other service provider who is responsible for its implementation; and (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of— (i) His or her specific responsibilities related to implementing the child's IEP; and (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

### **NC Policies**

**NC 1503-4.4 When IEPs Must be in Effect** (See Federal Regulations)

### **Analysis and Final Decision**

The LEA is required to ensure that IEPs are implemented as written, at the beginning and throughout each school year. As indicated in Issue Two, the instruction provided to the student was by a non-licensed Instructional Assistant. The LEA failed to submit any evidence to support that the instruction provided by the IA, was specially designed or was provided in accordance with the student's IEP, except for speech services. The speech logs confirmed that the student received the speech services as outlined in the IEP during the 2022-2023 and 2023-2024 school years. The Occupational therapy was not direct services; therefore, direct services were not required.

Therefore, it is determined that the LEA failed to implement the student's IEP, specifically specially designed instruction.

**WCPSS ☒ IS ☐ IS NOT in violation of the *Policies* regarding implementation of IEP, including specially designed instruction and related services.**

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### **SUMMARY OF FINAL DECISION**

The NCDPI's final decision is that WCPSS **IS** in violation of the *Policies* regarding FAPE, specific to:

- **Develop, review and revision of the student's Individualized Education Plan (IEP) to address the student's unique needs, including, but not limited to assistive technology, related services, and educational placement.**
- **Regarding personnel qualifications during the 2022-2023 school year.**
- **Reevaluation.**
- **Implementation of IEP, including specially designed instruction and related services.**

**Based on the identified violation[s], corrective action is warranted.**

## CORRECTIVE ACTION

The investigation of state complaint 23-176 is concluded. When allegations of noncompliance are substantiated by an investigation, corrective action is required. WCPSS is directed to take the following corrective action to remedy the violations identified:

- **By August 19, 2024**, the EC Administrator or designee will provide training to the EC teachers, related services providers, including speech therapist, and school administrators from the school the student attended in 2023-2024 school year, and who are currently employed with WPSS. The training must include the process for parent's requests for evaluations, specifically reevaluation.
  - Additional training is required for school administrators, and the EC lead teacher from the school the student attended in 2023-2024 school year. The EC Administrator or designee will provide training on the provision of specially designed instruction, including documentation, related to EC teacher vacancies. The training must include a parent letter informing the parents of the students impacted, of the vacancy; provision of compensatory education services, if appropriate; requirement of service logs, and lesson planning (specially designed instruction) and progress monitoring by a licensed EC teacher.
  - IEP Team, specific to EC personnel, and LEA representative from the May 2023, IEP meeting, and current IEP Team. CANVAS COURSE : PLAAFP, GOALS and SERVICE DELIVERY
    - Course 4a: Present Levels of Academic Achievement and Functional Performance (PLAAFP) and Considerations of Special Factors.
    - Course 4c: Annual Goals, Short-Term Objectives, and Benchmarks.

Once completed, the EC Administrator or designee will submit the training materials, sign in sheet, including dates, names and titles, the staff directory and CANVAS certificates, to the Corrective Action Coordinator.

- **Five days prior to the first day of the 2024-2025 school year for students, and after the completion of the required CANVAS modules noted above**, the IEP Team, including the parent, will reconvene to review and revise the student's IEP. The Team must ensure that the student's IEP includes PLAAFPs, IEP goals, and services that align with each PLAAFP, and corresponding goals. The Team will consider new information provided by the parent, if any; and data collected at the end of the school year, evaluation results, and revise the IEP, as appropriate. The Team must ensure that appropriate supports, and services are in place to allow the student to be educated in the least restrictive environment and document the decisions within the PWN.

Within two days of the IEP meeting, the EC Director will submit a copy of the IEP, PWN, and IEP meeting minutes, if any, to the Corrective Action Coordinator.

Evidence of corrections shall be submitted according to the due dates established. Any request to deviate from the required due date shall be communicated, by either the LEA or parent, via email to the Corrective Action Coordinator with a courtesy copy to the other party.

**All evidence of corrections must be submitted electronically by the dates established above to:**

**Teresa King, Dispute Resolution Consultant/Corrective Action Coordinator**  
 NC DPI, Office of Exceptional Children  
 6356 Mail Service Center, Raleigh, NC 27699-6356  
 StateComplaintCorrectiveAction@dpi.nc.gov

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This complaint shall remain open pending the submission and approval of all elements of the corrective action plan. Failure to implement the corrective action will result in sanctions in accordance with General Statute §115C-107.4.

DocuSigned by:



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Leigh Mobley, Section Chief  
Office of Exceptional Children

### COMPENSATORY SERVICES PLAN

State Complaint Number	<b>23-176</b>
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An offer of compensatory services must be provided in the event that services were not delivered according to a student's individualized education program (IEP). The offer of compensatory services includes the following:

- Services provided by a licensed exceptional children (EC) teacher and or related service provider;
- Services are to be provided outside of the school day;
- Services based on peer-reviewed, evidenced-based practices to the extent practicable;
- Transportation at no cost to the parent, if necessary;
- Progress monitoring of services provided; and
- Progress report(s) to the parent guardian.

Student Name		Unique ID Number	
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#### Services Required by Corrective Action

Service	Total Minutes/Hours

#### Compensatory Services

Service	Service Time Frequency	Dates to be Provided	Total Minutes Hours

Location: (Home/School/Community)	
Schedule: (Days of Week)	
Schedule: (Time Service will be provided)	
EC Service Provider(s):	
Transportation:	

#### Parent/Guardian Decision

- ☐ Parent/Guardian accepts offer of compensatory services.
- ☐ Parent/Guardian declines offer of compensatory services.

Parent Signature		Date	
PSU Representative		Date	