

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act

State-Level Complaint 2017:522

MOFFAT COUNTY SCHOOL DISTRICT RE-1

DECISION

INTRODUCTION

This pro-se, state-level complaint (“Complaint”) was properly filed on October 5, 2017 by the mother (“Mother”) of a child (“Student”) who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). Mother bring this Complaint against Moffat County School District RE-1 (“District”).

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint raised allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.¹ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT

Whether the District has violated the IDEA and denied Student a free appropriate public education (“FAPE”) by:

1. Failing to implement Student’s IEP since August 28, 2017, specifically, by failing to provide an American Sign Language (“ASL”) course;
2. Failing to conduct an IEP meeting in a timely manner after Mother’s August 21, 2017 request and without prior written notice (“PWN”); and
3. Denying Mother meaningful participation in the development of Student’s IEP by unilaterally changing his IEP on September 11, 2017.

Summary of Proposed Remedies. To resolve the Complaint, Mother proposes, in summary, that District:

- Reimburse Mother for an online ASL course and fund three additional semesters through Private University;

¹ Hereafter, only the IDEA regulation and any corresponding Exceptional Children’s Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

- Provide accommodations needed, including adult support (tutoring) in ASL, multi-modal instruction, and use of technology for online ASL course; and
- Provide training to District’s teachers and administrators regarding transition planning and services, PWN, and making determinations outside of an IEP meeting.

FINDINGS OF FACT

After a thorough and careful analysis of the credible record,² the SCO makes the following FINDINGS:

1. Student lives with Mother within the boundaries of the District and attends School, where he is in his junior year. Student has a diagnosis of fetal alcohol spectrum and has been identified by District as a child with a disability, eligible for special education and related services under the IDEA and ECEA.
2. Since freshman year, Student’s post-secondary transition plan (“transition plan”) has been to attend college. Last school year, Student’s IEP team, which included Mother, Advocate #1, Director, Case Manager, Math Teacher, Guidance Counselor #1, and School Psychologist, reviewed his IEP on November 7, 2016 (“November 2016 IEP”). The resulting IEP noted that, as a result of his disability, Student performs well below grade level overall. November 2016 IEP provides that “[a]ssignments need to be given at his current cognitive level (4th-5th grade at this time)” and includes a list of accommodations and modifications due to his significant academic delays (i.e., teacher read directions, small group, projects broken down into steps, multimodal instruction, differentiated tests, etc.).³
3. District’s reevaluation of Student in the fall of 2016 confirmed significant deficits in Student’s overall language. The November 2016 IEP team identified that “[h]is reading ability will at times impact his ability to complete his work without assistance.” The November 2016 IEP also provides that “[i]ndependent reading assignments need to be given at the 6th grade reading level [sic] if not possible the text will be read to him out loud and explained.”⁴
4. Given Student’s challenges with overall language, the November 2016 IEP team discussed how Student could satisfy the two years of foreign language that is typically required by colleges for admission. Despite the fact that Spanish is the only foreign language offered by District⁵, Mother recalls that the IEP team never discussed Student taking Spanish because they agreed it was not a good fit and instead discussed Student taking sign language as an alternative. District’s position is that Student can be accommodated in Spanish through his IEP accommodations, yet, District team members admitted that they never discussed Student

² The appendix, attached and incorporated by reference, details the entire record.

³ Exhibits 1, A, and E

⁴ *Ibid.*

⁵ SCO notes that District has no foreign language requirement for graduation.

taking Spanish at the meeting and explained that this was because Mother “would not allow it.” Regardless of the reason, SCO concludes that the November 2016 IEP team never discussed how Student could be supported in Spanish, but did discuss that he would take sign language as an alternative. Consequently, the November 2016 IEP specifies that “to prepare for college entrance [Student] will take 2 years of foreign language but the IEP team will explore avenues for sign language as an alternative.”⁶

5. In the beginning of March 2017, Mother started asking District staff about sign language and Student’s 2017-18 class schedule, as it was time to begin choosing classes for the next school year. Throughout April, Case Manager, Director, and Mother discussed sign language options with an understanding that District needed to find a class Student could take that would be accepted for District graduation credits. Mother explained that she was patient throughout the summer and believed that approval for a course was simply being held up in District administrative processing. Mother finally emailed Director for a status update on August 14th, two weeks before the beginning of the school year. On August 18th Director emailed Mother that the District offers Spanish and does not provide “any other option for foreign language.” Director also stated that they could change Student’s schedule and provide accommodations as listed in his IEP, but did not mention sign language.⁷

6. On August 21st Mother emailed Director and requested that an “emergency IEP meeting” be held that week in order to update Student’s IEP with regard to foreign language before school started the next week. Mother specifically stated in her email that the IEP team needed to “work Spanish into a developmentally appropriate class” for Student if he was going to take be taking it. District never scheduled an IEP meeting, nor did it provide Mother with a PWN at that time.⁸

7. On August 24th, just two days before the start of school, Mother went to School to resolve the sign language issue herself and ultimately met with Guidance Counselor #2 and Case Manager for 45 minutes. Guidance Counselor #2 and Case Manager discussed an online ASL class offered through Private University. Guidance Counselor #2 explained that Private University’s online classes are regularly taken by students in District as independent study classes and are accepted by the District for credit toward graduation. Guidance Counselor #2 provided Mother with the information she needed to enroll Student in the online ASL class herself. Later that same day, Mother emailed Director to inform her of the online ASL class and requested guidance on the foreign language issue, including the question about who would pay for the online class. Director responded that Student would be permitted to take the online ASL class and receive credits toward graduation, however, Mother would be responsible for the cost and Student would not be permitted to take the class during the school day. Mother responded the next day with an email requesting that District fund the class.

⁶ Exhibits 1, A, and 15; Response; Interviews with Director, Case Manager, Mother, and Advocate #1

⁷ Exhibits 2 and 3; Response; Interviews with Mother, Case Manager, Guidance Counselor #2, and Director

⁸ Exhibit 6; Response

8. When Student started the school year, the IEP team had not met to determine how to support Student in Spanish, nor was he enrolled in Spanish, and Director had never responded to Mother's August 25th request to fund the online ASL class. On August 30th, Mother emailed Director to request a response to her request for an IEP meeting, as well as a response to her request for provision of the online ASL class, noting that she needed Director's response before September 8th. Because Student needed to take a foreign language, Mother enrolled Student in the online ASL class herself on September 2nd and Student has since been participating in the online class at home with Mother's support.⁹ On September 5th, District provided Mother with a Notice of a Meeting to be held on September 11th to "discuss foreign language accommodations."¹⁰

9. Director, Case Manager, and legal counsel for District all insisted that the September 11th meeting, attended by Student¹¹, Mother, Advocate #2, Director, Case Manager, Guidance Counselor #2, and Language Arts Teacher, was not an IEP meeting. At the meeting, Advocate #2 reiterated Mother's request that District provide the online ASL class, as well as provide the required support and accommodations for Student to take the class at school. District's position was that sign language was the family's choice and that District was not required to provide it, but that District would support Student through his IEP if he chose to take Spanish. SCO notes that Director stated at the meeting that they had not yet determined how Student would be supported in taking Spanish.¹² SCO also notes that they did discuss how Student could be supported in taking the online ASL class, however, the meeting ended without resolution.¹³

10. Advocate #2 requested that District provide Mother with PWN explaining the District's position following the meeting. Nine days later, District provided Mother with PWN of its denial of Mother's request for provision of the online ASL class. The September 20th PWN stated that the IEP team determined that they are able to support Student in Spanish with accommodations specified in his IEP. SCO also notes that the PWN indicated that the decision was also based on the fact that there was no evidence that Student would not be successful, or provided with FAPE in Spanish at School.¹⁴

⁹ SCO notes that November 2016 IEP specifically states that "All assignments will be completed at school with staff (always schedule resource time in his schedule to provide opportunity to make this happen)."

¹⁰ Exhibits 5, 6, 7, 11, and 12; Response; Interviews with Guidance Counselor #2, Case Manager, Director, and Mother.

¹¹ SCO notes that Student only attended part of the meeting.

¹² Exhibit 11

¹³ Exhibit 11; Interviews with Mother, Advocate #1, Case Manager, Director, and Guidance Counselor #2

¹⁴ Exhibits 8, 10, and 11; Interviews with Mother, Advocate #2, Director, Case Manager, and Guidance Counselor #2

CONCLUSIONS OF LAW

Based on the Findings of Facts above, the SCO enters the following CONCLUSIONS OF LAW:

Issue 1: Whether the District failed to implement or comply with Student's November 2016 IEP, specifically, by failing to provide an ASL course.

Mother alleges that the District failed to comply with Student's November 2016 IEP by failing to provide an ASL course by the beginning of the 2017-18 school year. SCO agrees. Under the IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (or FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program (or IEP) developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A local education agency, in this case the District, must implement a student's IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, the District must ensure that the specific accommodations, modifications, and supports are provided in accordance with the IEP. 34 C.F.R. § 300.323(d)(2). For older students, the IDEA also requires that IEPs include a plan for a coordinated set of services designed to move students successfully from school to post-school settings, commonly referred to as a transition plan. 34 C.F.R. §§ 300.1 and 300.43. With regard to transition planning, the IDEA requires that the IEP include transition services needed to assist the child in reaching appropriate measurable post-secondary goals, including courses of study. 34 C.F.R. § 300.320(b).

In this case, Student's November 2016 IEP included a transition plan that he would attend college. Student's IEP team discussed that in order to attend college he would need to take two years of foreign language, a common admission requirement. Spanish is the only foreign language offered in the District and, while District now argues that Student can be appropriately supported in Spanish, it is clear to SCO that the IEP team only discussed that Student would take sign language as an alternative. Indeed, all communications between Mother and District after the November 2016 IEP substantiate this understanding, which was relied upon by Mother when she ultimately enrolled Student in an online ASL class herself. Accordingly, SCO finds that District violated the IDEA and denied Student a FAPE by failing to provide Student with a sign language course by the beginning of the 2017-18 school year.

Issue 3: Whether the District denied Mother meaningful participation in the development of Student's IEP by unilaterally changing Student's IEP.

Mother alleges that she was denied meaningful participation in the IEP process when District decided they would not provide sign language, but would only provide accommodations in Spanish. SCO agrees. The IDEA requires that the IEP be developed according to its extensive procedural requirements, including that it be developed by a team of individuals with knowledge about the child, including parents, and that it be based upon the input of the IEP

meeting participants. 20 U.S.C. § 1401(9); 34 C.F.R. §§ 300.17, 300.301-300.304 and §§ 300.320-300.324.

In the seminal case of *Board of Education v. Rowley*, the United States Supreme Court emphasized the importance of compliance with the IDEA's procedural requirements, particularly given the lack of specificity provided by the IDEA with respect to the substantive requirements for FAPE.

“[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrate[s] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.”

Board of Education v. Rowley, 458 U.S. 176, 205-206 (1982).

Typically, contemplation of the two prong analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley*, *supra* at 206-207. “First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?” *Id.* It is well-established, however, that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process, the result is a “per se” denial of FAPE. See, e.g., *O.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6th Cir. 2004); see also, 34 C.F.R. § 300.513(a)(2)(ii) (“In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child...”).

Because parent input is critical in the process, the IDEA is intentional that their participation in the development of an IEP be meaningful, including giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321. This was recently underscored in *Andrew F.* in which the Supreme Court reasoned that developing an IEP that is reasonably calculated is a “fact-intensive exercise” that is “informed not only by the expertise of the school officials, but also by the input of the child's parents or guardians.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 137 S. Ct. 988 (U.S. 2017).

As previously explained, District admits that Student's IEP team never discussed Student taking Spanish. Moreover, Student's IEP team has only ever discussed that Student would take sign language as an alternative. Indeed, the IEP team's determination regarding sign language informed all of the communication between District and Mother throughout the spring of 2017 and up until the beginning of the 2017-18 school year, at which point Student was still not enrolled in a foreign language. Relying on this understanding and having received no clear communication from District whatsoever, Mother finally enrolled Student in the online ASL class herself. Indeed, when Mother, Student, and their advocate met with District on September 11th, they still did not resolve the issues. Nonetheless, District issued a PWN on September 20th that the IEP team determined that Student could be appropriately supported in Spanish, a conclusion that is not only unsupported by Student's IEP, but which District admits was never discussed by Student's IEP team. Accordingly, SCO finds that District denied Mother meaningful participation when it unilaterally changed its November 2016 offer of FAPE on September 20th.

Issue 2: Whether District failed to hold an IEP meeting in a timely manner after Mother's August 21st request and whether District failed to provide Mother with PWN.

Mother also alleges that the District failed to hold an IEP meeting in a timely manner after her August 21st request and failed to provide her with PWN. Once again, SCO agrees. Reviewing and revising a child's IEP is a critical step in the IEP process. The changing needs of some students with disabilities may demand more frequent reviews and revisions to ensure FAPE is provided. Generally, there should be as many meetings in a year as any one child may need. The IDEA itself does not establish a specific requirement for convening an IEP team meeting at a parent's request. 34 C.F.R. § 300.345(a)(1). However, if the parent believes that there is a problem with the child's current IEP, it would be appropriate to request an IEP team meeting and the public agency should grant a reasonable request, as District should have done here. Mother was trying to get an answer about sign language, yet Director was telling her that District only offers Spanish. The IEP team had never discussed how Student could be supported in taking Spanish, a class Mother understood the IEP team agreed was not a good option for Student. Mother reasonably requested an emergency IEP meeting the week before school started. It is notable that Student was still not enrolled in a foreign language course at all the week before school started. Despite Mother's August 21st request to meet and all of the email communication about foreign language, District not only admits, but insists, that it never held an IEP meeting at all. Accordingly, SCO finds that District failed to hold an IEP meeting upon Mother's reasonable request.

With regard to PWN, the IDEA requires that it be provided "a reasonable time" before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement, *or the provision of FAPE*. 34 C.F.R. § 300.503(a)(emphasis added). PWN is critical in putting parents on notice of decisions that affect the provision of FAPE and must be provided, regardless of how a change was suggested or whether the parent agreed to it. *Letter to Lieberman*, 52 IDELR 18_(OSEP 2008). Here, SCO finds that as early as August 18th District

failed to provide Mother with PWN of its decision that District would not provide Student with a course in sign language. Director's August 18th email, if taken on its face, is not necessarily a final decision that Student would not be provided with sign language. When considered in light of the subsequent communications and the decision in District's September 20th PWN, however, it is evident that the District had decided that District's offer of FAPE was Spanish and not sign language. This decision required a PWN that, had it been properly provided, would have further informed Mother's decisions. Instead, Mother continued to move forward with the understanding that District would provide the sign language course and proceeded to enroll Student in the online ASL class herself. Accordingly, SCO finds that District failed to provide Mother with PWN, a clear violation of the IDEA.

REMEDIES

The SCO has concluded that the District committed the following violations of the regulations:

1. Failure to develop an IEP according to the procedural requirements of the IDEA and ECEA rules, including:
 - a. failure to provide meaningful participation to the child's parents (34 C.F.R. §§300.321(a)(1); 300.324);
 - b. failure to hold an IEP meeting in a timely manner upon a reasonable request by parent (34 C.F.R. § 300.345(a)(1)); and
 - c. failure to provide prior written notice in accordance with 34 C.F.R. § 300.503(a).
2. Failure to provide student with the special education and related services in conformity with an IEP, resulting in a denial of FAPE (34 C.F.R. §§ 300.17; 300.323).

To remedy these violations, the District is ordered to take the following actions:

1. By January 15, 2018, the District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than January 29, 2018.

- b. Effective training must be conducted for all special education case managers, coordinators and designees concerning the policies and procedures, to be provided no later than February 12, 2018.
- c. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department no later than February 19, 2018.

2. District shall reimburse Mother for the online ASL course and fund the remaining three semesters. District will also convene an IEP meeting no later than December 11, 2017 in order to determine how District will support Student in taking the online ASL course at School and update Student's IEP accordingly.

District must provide the Department with documentation that it has complied with these requirements no later than December 18, 2017. Documentation must include a copy of the result of the IEP meeting, including all required notices.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely compliance with this Decision. Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn: Beth Nelson
1560 Broadway, Suite 1100
Denver, CO 80202-5149

Failure of the District to meet the timelines set forth above will adversely affect the District's annual determination under the IDEA and will subject the District to enforcement action by the Department.

CONCLUSION

The Decision of the SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

This 4th day of December, 2017.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-6, dated October 2, 2017

- Exhibit 1: IEP (11/7/16); Evaluation documentation
- Exhibit 2: Email correspondence (4/3/17, 4/18/17)
- Exhibit 3: Email correspondence (4/19/17, 4/27/17, 6/7/17, 8/14/17)
- Exhibit 4: Email correspondence (8/18/17); District policy document; FASD document
- Exhibit 5: Email correspondence (8/24/17)
- Exhibit 6: Email correspondence (8/30/17)
- Exhibit 7: Email correspondence (8/30/17)
- Exhibit 8: Notice of Meeting (9/5/17)
- Exhibit 9: A Transition Guide (OSERS, January 2017)
- Exhibit 10: Prior Written Notice (9/20/17)
- Exhibit 11: Audio Recording (9/11/17)
- Exhibit 12: Registration receipt for private university ASL class (9/2/17)
- Exhibit 13: Documentation related to admission requirements at various colleges
- Exhibit 14: "Fetal Alcohol Spectrum Disorders: Education Strategies" (Center for Disabilities, Sanford School of Medicine of the University of South Dakota, 2009)

Documentation provided by Mother at SCO's request

- Exhibit 15: Email correspondence (3/7/17)

Response, pages 1-30, dated October 24, 2017

- Exhibit A: Student's special education records
- Exhibit B: Correspondence between District staff and Mother concerning Complaint allegations
- Exhibit C: Contact information
- Exhibit D: District policies, procedures and manuals relating to the Complaint allegations

Documentation provided by District at SCO's request

- Exhibit E: Evaluation and eligibility documentation
- Exhibit F: Report cards

Interviews with:

- Mother
- Advocate #1
- Advocate #2
- Director
- Case Manager
- Guidance Counselor #1
- Guidance Counselor #2