

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

**State-Level Complaint 2018:503
POUDRE SCHOOL DISTRICT**

DECISION

INTRODUCTION

This state-level complaint (“Complaint”) was properly filed on January 31, 2018 by the parents (“Parents” or “Mother” and “Father”, respectively) of a child (“Student”) who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹. Parents bring this Complaint against Poudre School District (“District” or “School District”).

Based on the written Complaint, the State Complaints Officer (“SCO”) determined that the Complaint raised three 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 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failing to develop Student’s Individualized Education Program (IEP) based on his individualized needs beginning on September 25, 2017, specifically, by determining services to be provided based upon School District policy.
2. Failing to provide Parents with meaningful input in the development of Student’s IEP beginning on September 25, 2017, including:
 - a. determining services to be provided outside of an IEP meeting;
 - b. failing to provide Parents with prior written notice (PWN) and failing to include Parents’ input in the IEP; and
 - c. failing to provide Parents with access to records, specifically, data regarding

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

² 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).

Student's progress.

3. Failing to assemble a proper IEP team member on October 24, 2017, specifically, by excusing School IEP team members without parents' written consent.

Parents proposed resolutions in their Complaint, which included their request for a copy of the raw data for the last three years associated with all of Student's goals and objectives, as well as the provision of data collected in the future. Parents requested clarification of the measurements associated with Student's IEP goals and objectives, as well as documentation that accurately reflects progress Student has made toward IEP goals and objectives. Parents proposed that the speech and OT services remain the same as the 2016-17 school year. Lastly, Parents requested independent educational evaluations (IEE) with regard to the School District's speech and OT assessments. Since the Complaint filing School District has provided the IEEs requested by Parents.

FINDINGS OF FACT

After a thorough and careful analysis of the credible record,³ the SCO makes the following FINDINGS:

1. Student lives with Parents in School District and qualifies for special education and related services under the category of Multiple Disabilities, including Intellectual Disability, Visual Impairment, Hearing Impairment, Speech/Language Impairment, and Autism Spectrum Disorder. In addition to an IEP, Student has a Healthcare Plan, a Learning Media Plan, and a Communication Plan.⁴
2. Student is currently a fifth grader at School where he is in an integrated learning supports (ILS) program for students with significant support needs. Student has full time adult support throughout his day by the ILS team, which is comprised of a special education teacher (Case Manager) and her paraprofessional staff. He also receives support services from Occupational Therapist, Speech Language Pathologist, a teacher of the visually impaired, and a teacher of the deaf and hard of hearing.⁵
3. Student entered the current school year with October 3, 2016 IEP (2016 IEP) in effect. Relative to the Complaint allegations, 2016 IEP provided Student with 240 minutes per month of direct speech services provided one-to-one (1:1) outside of the classroom and 180 minutes per month of 1:1 direct occupational therapy (OT) services provided outside of the classroom

³ The appendix, attached and incorporated by reference, details the entire record.

⁴ Response; Exhibit 1; SCO notes that although Student has a Communication Plan and a Learning Media Plan, Student's IEPs do not identify Student as Deaf-Blind and should be corrected.

⁵ Response; Exhibits 1 and 4

provided by an occupational therapist (OT). 2016 IEP includes an accommodation providing Student with a quiet, 1:1, consistent work area while working on pre-academic and IEP goals and objectives. This same plan has been implemented for several years and Student's IEPs indicate that he has made progress toward his IEP goals.⁶

4. Student was due for a triennial reevaluation at the beginning of the school year. On August 23, 2017 Parents signed consent for the reevaluation. School District's notice identified general intelligence, communicative status, academic performance, social and emotional status, health, and motor abilities as the areas to be evaluated. The reevaluation was completed on September 17th (Evaluation Report). Evaluation Report noted that Parents regarded speech and OT services as having been most helpful for Student. Evaluation Report also indicates that Student's behavior acts as a barrier to his learning and skill development. Evaluation Report concludes that as Student transitions to the secondary level, increasing independence with functional and social communication skills are areas to focus.⁷

5. Occupational Therapist, who began working with Student at the beginning of the current school year, conducted the assessments related to Student's motor abilities through structured observations, classroom observations, file review⁸, and work sample review. Occupational Therapist concluded that Student's overall functional motor skills continue to be similar to those he had when he started in School District years before, indicating to Occupational Therapist that Student had not made sufficient progress. This conclusion is contradicted by the record, including School District's position that Student has made satisfactory progress on his IEP goals. As well, Lead OT stated that when she reviewed the data in Student's file from years prior it appeared that he had made progress. Parents explained that Student's progress is slow and that he requires skills to be specifically taught and reinforced through a great deal of repetition. This was reiterated by Private OT, who has been working with and observing Student outside of school for three years. Indeed, September 2017 ESY Data Documentation indicates that "Student makes slow but consistent progress towards goals and objectives."⁹

6. Speech Language Pathologist, who is in her second year working with Student, conducted the informal assessment related to Student's communication and language, which included classroom and therapy observations and data, teacher and parent feedback using the Functional Communication Profile – Revised (FCP-R), a comprehensive file review, and anecdotal records. Speech Language Pathologist reported significant deficits in Student's expressive and receptive language skills. Student wears BAHA hearing aids at School, which

⁶ Response; Exhibit H and 1

⁷ Exhibits 2 and 4

⁸ SCO notes that Occupational Therapist could not ascertain from the previous OT provider's service logs what was being reported regarding Student's progress on his IEP goals. See Exhibit F and 8.

⁹ Interviews with Occupational Therapist, Lead OT, Private OT, Parents; Response; Exhibits 1 and 4

connect through Bluetooth technology to enable Student to access sound on his personal iPad. School staff working with Student also wear a sound field microphone provide Student with visual and tactile cues. At School, Student's primary mode of expressive communication is through an augmentative and alternative communication device (AAC device or talker). Evaluation Report indicates that Student's expressive language is limited. In terms of social/pragmatics Student is still working on appropriately getting the attention of adults and peers, is limited to requesting items or actions, giving greetings and closures, and asking for help. With regard to his talker, Evaluation Report notes that Student appears to understand the "cause and effect" concept of the device, but is inconsistent in the actual meaning and purpose for pushing the buttons. Speech Language Pathologist reported that Student presents with inappropriate/aggressive behaviors such as kicking, grabbing peers and adults to get attention". The report also notes that Student's ability to understand non-verbal communication is limited to specific gestures and speakers and Student cannot comprehend body language, facial expressions or social cues. Speech Language Pathologist's overall conclusion was that "Student is not independent in the use of his talker, and this, in conjunction with his struggles to consistently communicate his needs, hinders his development with peer and adult relationships." The report notes that goals and expectations for his communication skills should consider additional variables that may be impeding growth, specifically cognitive abilities, vision, hearing, inappropriate or unexpected behaviors around people, and the complexity and consistency with his talker in his school and home/community environments.¹⁰

September 25, 2017 IEP Meeting (September Meeting)

7. A meeting was scheduled for September 25, 2017 to review the results of the School District's evaluation, determine eligibility, and conduct an annual review of Student's IEP. On September 17th Case Manager emailed Mother a draft evaluation report and draft IEP. Case Manager's email explained that several goal priorities had already been identified for discussion and that they wanted to discuss service minutes with Parents at the meeting, which is why several services were not listed in September Draft.¹¹

8. Special Education Coordinator, Case Manager, Teacher, Speech Language Pathologist, Occupational Therapist, Teacher of the Deaf, Teacher of the Visually Impaired, School Psychologist, and Parents, who were accompanied by Advocate, all attended September meeting. The meeting lasted for over two hours, during which the team discussed the reevaluation and Student's present levels. They had just begun to discuss goals when they needed to adjourn the meeting, still needing to discuss goals and objectives, accommodations, and services, as they had only completed present levels. As they were all packing up to leave, Speech Language Pathologist mentioned that they were considering reducing services and explained that it was School District's practice to move away from direct services toward more

¹⁰ Interview with Speech Language Pathologist; Exhibit 4; SCO notes that Private OT stated that Student is showing progress in terms of expressing himself through speech, which she incorporates into her work with him.

¹¹ Exhibits A, 8, and 5; Response

consultation as students transitioned into middle school, referencing School District policy.¹²

9. On September 29th Mother emailed Case Manager a document Parents had prepared entitled “Strengths, weakness, and support worksheet” and asked meet again to continue the annual IEP review. On October 6th Parents asked for an updated draft of the IEP prior to the next meeting. Case Manager incorporated much of Parents’ input from their document, updated the present levels to reflect what they had discussed at September Meeting, and included roughly drafted proposed goals. Case Manager emailed an updated draft to Parents on October 17th (October 17 Draft). In its Response, School District asserts that the October 17 Draft did not include any suggested service minutes because the team had not yet discussed what Student’s service minutes should be, however, Case Manager’s email stated that the draft included proposed service minutes. As well, October 17 Draft shows a decrease in both direct OT and speech services. OT direct services were decreased from 180 minutes to 90 minutes per month. The service delivery statement also indicated that Student would no longer be provided with direct OT services the following school year. With regard to direct speech services, the service delivery grid shows a decrease from 240 to 140 minutes per month.¹³

10. On October 22nd Mother emailed Case Manager another document Parents had prepared entitled “[Student] – IEP NOTES” with notes related to the proposed goals with objectives related to understanding his environment and acting appropriately, interacting with adults and peers, expressive language related to emotions, and increasing vocabulary and receptive language. The next day Case Manager emailed Mother another draft (October 23 Draft). SCO notes no alterations of the goals on the October 17 Draft.¹⁴

October 24, 2017 IEP Meeting (October Meeting)

11. The IEP team reconvened on October 24th to continue the annual review of Student’s IEP. Parents, Case Manager, Speech Language Pathologist, Occupational Therapist, Teacher of the Deaf, Teacher of the Visually Impaired, School Psychologist, Coordinator, and Teacher all attended. School team members planned to finalize the IEP at the meeting, which was scheduled for 35 minutes, with 10 minutes planned for a discussion of goals and objectives and 10 minutes for services.¹⁵ The team discussed goals and objectives for longer than the 10 minutes they had anticipated and had moved on to discuss service delivery, by which time Teacher needed to leave because the meeting had gone longer than her class schedule allowed.¹⁶ Parents verbally agreed to Teacher’s excusal and they continued to discuss the

¹² Response; Interviews with Advocate, Parents, Speech Language Pathologist, Case Manager, Coordinator, and Occupational Therapist; Exhibits 1, 8, and 3

¹³ Exhibits 3, 8, and H; Response

¹⁴ Exhibit H and 8

¹⁵ Exhibit 3 and G. SCO notes that the agenda indicated only these areas.

¹⁶ SCO notes that the meeting had been scheduled to align with the class period that Teacher’s class was attending specials.

proposed service reduction for a few more minutes before everyone started packing up to leave.¹⁷ They discussed decreasing direct speech services to 160 minutes, rather than the 140 minutes Speech Language Pathologist proposed. School District contends that Parents' expressed their concerns about the decrease in direct OT and speech services, but that the meeting concluded with Parents' agreement to try the plan. SCO concludes otherwise. The team had not finished their discussion of goals as Parents questioned how the conclusions that Student had met objectives or made satisfactory progress on goals had been made and requested supporting data. Parents also objected to the reduction of direct speech and OT services for the current school year and the plan to further reduce services the following year and wanted to consult with Advocate, who had not attended the meeting. The meeting ended with Parents' understanding that Case Manager would type up what they had discussed at the meeting and the discussion would continue after Parents consulted with Advocate.¹⁸

12. On October 27th Case Manager sent home a copy of September 2017 IEP with a handwritten note indicating that the IEP was "finalized". September 2017 IEP reflects the OT services School District had written into October 17 Draft and 160 minutes¹⁹ of direct speech services for the current school year, with another decrease to 30 minutes the next school year. With regard to the reduction of services, the PWN states "Speech and Occupational Therapy services have been reduced for the 2017/2018 school year, and we will re-visit the effectiveness of this reduction prior to [Student's] transition to middle school." There is no mention in the PWN of Parents' objections, nor is it included in any other section of the IEP. As well, despite behavior having been identified as a significant area of need, there is no related goal. SCO notes that the accommodations were not discussed at either meeting and that the 2016 IEP accommodation providing for IEP goals to be worked on in a quiet, 1:1 consistent work area remained in September 2017 IEP.²⁰

13. On October 29th, two days after receiving the note from Case Manager that the IEP was finalized, Parents began sending emails to School District team members, clearly communicating that they had not completed their discussion of goals and that they disagreed with the decrease in services. Through November, Parents continued to communicate this, as well as request data supporting School District's conclusions that Student had made satisfactory progress on 2016 IEP goals. Case Manager and Speech Language Pathologist emailed Parents with further explanations, but provided no additional data. SCO concludes that goals were not measurable in 2016 IEP. A review of the progress report provided by School District indicates that progress on goals were considered satisfactory and objectives mastered without supporting data and despite contradictory statements. In order to be measurable, a goal and

¹⁷ School District admits that Parents' written consent to Teacher's excusal was never requested.

¹⁸ Interviews with Case Manager, Coordinator, Speech Language Pathologist, Occupational Therapist, and Parents; Response; Exhibits G and 3

¹⁹ SCO notes that the service delivery statement indicates 10 minutes of direct speech services, which appears to be a mistake.

²⁰ Exhibits 1, 2, and C

corresponding goal need to have the same unit of measurement. One goal related to Independent Living Skills uses two different units of measurement. Another related to physical motor has no baseline unit of measurement, while the objective simply states that Student has been observed performing the function, with no measures provided. As well, all of the objectives refer to Student's need for support, assistance, or inability to perform a function essential to the task.²¹

December 2017 Meeting

14. On November 28th, Coordinator emailed Parents to inform them that Lead SLP and Lead OT would observe Student and meet with Case Manager, Speech Language Pathologist, and Occupational Therapist. Coordinator also requested a meeting during the week of December 18th. Lead SLP and Lead OT reviewed Student's file and observed Student at School. Coordinator, Parents, Advocate, Lead SLP, and Lead OT met on December 19th (December Meeting). At that meeting, Lead SLP and Lead OT explained that the School District's practice was to decrease direct services at the middle school level in favor of more consult time and referred to a document related to providing speech and language services to secondary students.²² Upon review of this document, SCO concludes that it is not relevant to determining services for Student as it is expressly related to addressing needs of students with speech language impairments versus students with specific learning disability in oral/expression and listening. Advocate questioned how School District's practice addressed Student's individualized needs. Parents again requested data related to Student's progress. The meeting resulted in an agreement that Special Education Coordinator would collect the data and provide it to Parents after winter break, Mother would have an opportunity to observe Student in the classroom, and they would schedule an IEP meeting to discuss services and goals.²³

15. On January 11, 2018, Case Manager emailed Parents with further clarification related to progress made on four of the goals in 2016 IEP, but provided no new data. Notably, Case Manager explained in this email that Student had shown regression on one goal resulting in a nine percent regression, but they still concluded that Student's progress was satisfactory. Mother never observed Student at School and an IEP meeting was not scheduled. Rather, Parents filed this Complaint.²⁴

16. School District subsequently agreed to provide independent educational Evaluations (IEEs) in speech/language and occupational therapy, which Parents had proposed in the resolution section of their Complaint. The IEEs were completed and shared with Parents and School District on March 19th. The IEE related to OT (OT IEE) included observations and sensory

²¹ Exhibits 1, 6, D, and E

²² Exhibit 7

²³ Exhibits E, F, 1, and 7; Interviews with Lead SLP, Lead OT, Coordinator, Advocate, and Parents

²⁴ Exhibit F; Interviews with Coordinator and Parents

profiles from home and School. The evaluator opined that Student would benefit from intense sensory exposure to decrease concerning behaviors and to help regulate his systems for increased opportunities for learning. The evaluator recommended exposure to multisensory learning as often as possible and frequent sensory breaks. The IEE related to speech and language (Speech/Language IEE) assessed Student's receptive and expressive language, as well as oral motor integrity. The evaluator found that Student demonstrates potential to continue learning how to utilize his talker in order to express his wants/needs and made recommendations related to fostering greater independence with the talker. The evaluator also found that Student benefits from 1:1 and small group learning environments with minimized distractions.²⁵

CONCLUSIONS OF LAW

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

Under the IDEA, public school districts are required to provide children with disabilities with 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) that is developed according to the IDEA's procedures. 20 U.S.C. §1401(9); 34 C.F.R. §300.17; ECEA Rule 2.19. The IDEA's extensive procedural requirements relate to the development of the IEP, including the requirements 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, as well as on evaluations conducted in compliance with the IDEA's requirements. *See, e.g.*, 34 C.F.R. §§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

²⁵ Exhibit I; Response

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...”).

A. School District predetermined Student’s services outside of an IEP meeting, based on policy and practice rather than Student’s unique needs.

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. The IDEA also requires districts to ensure that the parents of each child with a disability are members of any group that makes decisions about their child’s educational placement. 34 C.F.R. §§300.327 and 300.501(c)(1).

The regulations are clear that modifications to a student’s services or IEP must be based on individual needs and not “the availability of services.” *Washoe County Sch. Dist.*, 115 LRP 3790 (SEA NV 1/5/15). Predetermination occurs when members of the IEP team make decisions about the provision of FAPE in advance of an IEP meeting without parents’ participation or input. *Deal v. Hamilton County Board of Education*, 42 IDELR 109 (6th Cir. 2004), *cert. denied*, 110 LRP 46999, 546 (U.S. 936 (2005)). Predetermination constitutes a denial of FAPE because it significantly impedes parental participation in the decision making process.

In this case, SCO finds that as early as September 17th and certainly by October 17th School District planned to reduce speech and OT services for Student based on its policy and practice, rather than Student’s unique needs. The first indication that School District was planning to decrease Student’s services was in Case Manager’s September 17th email. The next indication was at September 24 Meeting when Speech Language Pathologist referred to School

District's policy and explained their practice of reducing direct services as students transition into middle school, a point that was reiterated by Lead SLP and Lead OT at December 18 Meeting. The next indication in the record was the October 17 Draft, in which the decreased services hours were already drafted into the IEP, including an additional decrease the following school year.

Setting these clear indications of predetermination aside, SCO finds that the reduction of services is likewise unsupported by data and unaligned with Student's significant needs. School District simultaneously contends that Student has plateaued and has also made satisfactory progress. School District relied on these contradictory conclusions, in conjunction with Parents' requests for increased opportunities for Student's inclusion, to devise a new plan where paraprofessionals and Case Manager would provide the services that were previously provided through 1:1 targeted therapy with highly skilled specialists. Student has significant needs, yet School District provides no explanation or support for a plan to decrease those services from which they also assert Student has demonstrably benefited. SCO does note that increasing OT and speech indirect services to support those working with Student throughout his day are an appropriate change aligned with Student's need to generalize skills previously learned.

For these reasons, SCO finds that School District violated the IDEA by predetermining Student's services outside of an IEP meeting and based on School District policy and practice, rather than on Student's unique needs, denying Student FAPE.

B. School District denied Parents participation in the development of Student's IEP.

Parents allege that School District failed to provide them with data they have requested related to progress on IEP goals.

The purpose of IEP goals is to allow the IEP team, the parents, and the School District to measure a student's progress in a specific area of need. *Los Angeles Unified Sch. Dist.*, 110 LRP 34448 (SEA CA 06/03/10). The goals must be based on a student's unique needs and be reasonably calculated to enable a child to make progress that is appropriate in light of the student's circumstances. *Andrew F. v. Douglas County Sch. Dis. RE-1*, 69 IDELR 174 (U.S. 2017). When goals are found to be inappropriate in light of the student's abilities or are identical to goals from prior IEPs, this can be an indication that the student has not been offered FAPE or is not making progress. *Ibid.* Because the evaluation of a student's progress is so closely tied to the student's IEP goals, the school district must ensure that the goals included in each student's IEP are clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff'd*, 38 IDELR 63 (6th Cir. 2003, *unpublished*) (holding that measurable goals must have "sufficiently objective criteria" for measuring progress). One ALJ suggested that a well-written IEP goal should pass the "stranger test." Under that test, an IEP goal is appropriate if a person unfamiliar with the IEP would be able to implement the goal, implement the assessment of the student's progress on the goal, and determine whether the student's progress was

satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006). A finding that a child's goals are vague or immeasurable generally leads to a ruling that the district denied FAPE. *See, e.g., Independent Sch. Dist. No. 701 v. J.T.*, 45 IDELR 92 (D. Minn. 2006) (An IEP's statement that a student would "improve his functional academic skills from a level of not completing assignments independently to a level of being able to read, write, and do basic math skills independently" was too vague to permit measurement of the student's progress); and *Anchorage Sch. Dist.*, 51 IDELR 230 (SEA AK 2008), *aff'd*, 54 IDELR 29 (D. Alaska 2009) (affirming a finding by an IHO that the lack of clear, measurable goals in a child's IEP precluded an objective measurement of the child's progress). As well, the IDEA provides parents with the right to inspect and review their child's education records. 34 CFR §300.613 (a).

Here, Parents repeatedly requested data related to Student's progress when questioning the goals and reduction of services. While School service providers were responsive, they only provided more detailed explanations of their conclusions related to Student's progress. Although Parents were provided with regular progress reports, SCO concludes that the reports do not support their conclusions as 2016 IEP goals were not measurable. *See* Finding of Fact #13. Parents requested raw data for this reason. Accordingly, SCO finds that School District failed to provide Parents with the data they requested, inhibiting their participation and resulting in a denial of FAPE.

Next, SCO addresses Parents' allegation that School District failed to provide them with appropriate PWN or include their input regarding the reduction of services and requests for data.

The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008). Meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parent's questions, incorporates some suggestions or requests into the IEP, and discusses privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *Id*; *See Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

A change in the provision of FAPE triggers a number of IDEA procedural safeguards, which includes PWN 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). 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).

Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability within a reasonable time period before the public agency:

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. § 300.503 (a).

The notice must include:

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (6) A description of other options that the IEP team considered and the reasons those options were rejected; and
- (7) A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. §300.503 (b).

As already discussed, Parents have continually requested data related to the progress Student has made toward IEP goals and objected to the reduction of services in September 2017 IEP. Yet, the PWN section included in September 2017 IEP stated only that service hours were being changed and that the team would plan to revisit the effectiveness of the plan prior to Student's transition into middle school. The PWN provided no other information required by the regulations. As well, there was nothing in the parent input section of September 2017 IEP indicating that parents disagreed with the change of services.

SCO finds it notable that School District team members felt confident that the IEP had been agreed upon at October 24 Meeting given that the agenda prepared for the meeting allowed for a total of 35 minutes, providing the IEP team with ten minutes to fully discuss goals and objectives and another ten minutes to discuss a significant reduction of services for a student with significant needs. Indeed, all of Parents' communications immediately following

October 24 Meeting up to and including the filing of this Complaint support SCO's conclusion that School District was aware that Parents were not in agreement with September 2017 IEP and that the determinations were made outside of an IEP meeting. Moreover, it is evident that Student's IEP was not fully discussed, resulting in an IEP that does not address Student's unique needs. Accordingly, SCO finds that School District failed to provide Parents with PWN, a violation of the IDEA resulting in a denial of FAPE.

C. School District improperly excused Teacher without obtaining Parents' written consent.

Lastly, SCO addresses Parents allegation that School District failed to assemble a proper IEP team, specifically by excusing IEP team members without Parents' written consent.

The IDEA provides that a district IEP team member (regular education teacher, special education teacher, district representative, or evaluation results interpreter) is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. 34 C.F.R. §300.321 (e)(1) and 34 C.F.R. §300.321 (a). The IDEA makes a distinction between the excusal of IEP team members whose area of service is being discussed and excusal of IEP team members whose area is not being discussed. The excusal of a team member whose area of service is not being modified or discussed requires a written agreement between the parent and the district, while the excusal of a team member whose area of service is being modified or discussed requires written consent. 34 C.F.R. §300.321(e)(2); *See also Letter to Finch*, 59 IDELR 15 (OSEP 2012).

Here, School District admits that Teacher was excused prior to the end of the October 24 Meeting without written consent, but contends that Teacher's role in the meeting had been fulfilled. While the IEP team's discussion involved only a discussion of goals and services, SCO has already found that the IEP review was not completed on October 24th. Either way, Teacher's excusal was not consented to by Parents in writing. Accordingly, Teacher's excusal without obtaining written consent is a violation of the IDEA.

SCO has found violations of the IDEA resulting in a denial of FAPE. Compensatory education is an equitable remedy intended to place a student in the same position they would have been, but for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.D. Cir.2005). Accordingly, Student is awarded compensatory education as specified in the remedies section of this decision.

REMEDIES

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

- a. measurable goals and unique needs of a student(34 C.F.R. §§ 300.320 and 300.324);
- b. parent participation (34 C.F.R. § 300.501(b);
- c. written consent for excusal (34 C.F.R § 300.321(e);
- d. prior written notice (34 C.F.R. § 300.503);
- e. provision of data requested by parents (34 C.F.R. §300.613)

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

1. By April 20, 2018, the School 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 School 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 April 30, 2018.
- b. Effective training must be conducted for all special education case managers, coordinators, and designees concerning the policies and procedures, to be provided by June 1, 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 June 8, 2018.

2. To address the aforementioned violations and to provide compensatory services, School District shall:

- a. Issue PWN reflecting Parents' disagreement beginning on October 24, 2017 with the School District's reduction of direct speech and OT services and requests for data related to Student's progress toward October 2016 IEP goals within five school days of receipt of this Decision.
- b. Provide Parents with complete copies of all documentation related to progress monitoring and data collection related to special education and related services

provided for Student since the 2014-15 school year. School District shall also provide Parents with same on a monthly basis for one year from the date of this Decision.

- c. Schedule a meeting within two weeks of receipt of this Decision to discuss the IEEs in conjunction with the September 2017 evaluation and conduct a full review of Student's IEP. Independent evaluators shall be invited to participate. SCO also recommends that School District consider including service providers with expertise in autism and assistive technology. Upon request and agreement of the parties, the CDE will provide a facilitator.
- d. Provide Student with 480 minutes of direct speech services and 540 minutes of direct OT services to be completed within one year from the date of this Decision. The School District and parents are to meet to schedule these compensatory services after the IEP review meeting.

These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The Parties shall cooperate in determining how the compensatory education services will be provided, with special consideration to Student's needs, stamina, and schedule. The School District must submit the schedule to the Department by April 30, 2018.

- 3. With regard to the School District's policy and practice of reducing services in middle school, within thirty days of the date of this Decision School District will provide the Department with access to review current school year IEPs and previous school year IEPs for all students who are in the 5th and 6th grade who receive OT and speech services.

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: Fran Herbert
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 23rd day of March, 2018.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-8, dated January 28, 2017

- Exhibit A: Notice of Meeting (8/29/17); Communication Plan (9/26/17); IEP marked as "DRAFT" (9/25/17); Alternative Assessment Worksheet (9/26/17); ESY Data Documentation (9/26/17); Student Profile Snapshot marked as "DRAFT" (9/25/17); Learning Media Plan (9/26/17)
- Exhibit B: Email correspondence (9/29/17)
- Exhibit C: handwritten note; Notice of Meeting (10/16/17); Communication Plan (9/26/17); IEP (9/25/17); Alternative Assessment Worksheet (9/26/17); ESY Data Documentation (9/26/17); Student Profile Snapshot (9/25/17); Learning Media Plan (9/26/17)
- Exhibit D: Email correspondence (10/29/17 - 12/7/17)
- Exhibit E: Email correspondence (11/15/17 - 11/28/17)
- Exhibit F: Email correspondence (1/11/18)

Reply, pages 1-5, received by SCO on March 6, 2018

- Exhibit G: IEP Review Continuation Meeting Agenda (10/24/17)

Documentation provided by Parents upon SCO's request

- Exhibit H: Email correspondence, parent input documents, and October 2017 draft IEPs
- Exhibit I: Independent Educational Evaluations

Response, pages 1-16, dated February 21, 2018

- Exhibit 1: IEPs (10/3/16 and 9/25/17); Learning Media Plans (10/3/16 and 9/26/17); Alternative Assessment Worksheets (10/4/16 and 9/26/17); Communication Plans (10/3/16 and 9/26/17); ESY Data Documentation (10/4/16 and 9/26/17)
- Exhibit 2: Prior Notice & Consent for Reevaluation (8/23/17); Prior Written Notice and Service Delivery Statement sections from IEP (9/25/17)
- Exhibit 3: Notices of Meetings (8/29/17 and 10/16/17); email correspondence (8/28/17 - 2/11/18)
- Exhibit 4: Evaluation Report (9/17/17)
- Exhibit 5: Occupational Therapy Special Services Provider Logs; email correspondence (10/11/17 – 1/24/18); SLP Service Logs; SLP IEP notes (9/25/17); email correspondence (8/31/17 – 2/6/18)

- Exhibit 6: Pages from IEP (9/25/17); Progress Report (9/22/16 – 5/26/17)
Exhibit 7: Procedures Manual and Policy Document
Exhibit 8: Email correspondence
Exhibit 9: List of School District staff members; Independent Education Evaluation Offer, evaluation criteria, and email correspondence

Documentation provided by School District at SCO's request

- Exhibit 10: Daily Communication Log

Interviews with:

Case Manager
Speech Language Pathologist
Occupational Therapist
Special Education Director
Coordinator
Father
Mother
Advocate
Lead SLP
Lead OT
Private OT