

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

**State-Level Complaint 2018:508
ADAMS COUNTY SCHOOL DISTRICT 27J**

DECISION

INTRODUCTION

This state-level complaint (“Complaint”) was properly filed on March 14, 2018 by the mother and stepfather (“Parents” or “Mother” and “Stepfather”, respectively) of a child (“Student”) who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). Parents bring this Complaint against Adams County School District 27J (“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. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations, under which a written Decision was to be issued by May 11, 2018. Based on exceptional circumstances, the SCO extended the final decision date to May 18, 2018.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the School District violated the IDEA and denied Student a free appropriate public education (“FAPE”) beginning on March 14, 2017 by:

1. Failing to report progress to Parents toward the goals in Student’s Individualized Education Program (IEP) from March 14, 2017 through December 2017.
2. Failing to provide Parents with meaningful participation in the IEP process since May 2017, including ensuring parental participation when revising Student’s IEP and changing the provision of FAPE without prior written notice.
3. Failing to fully implement or comply with Student’s IEP.

FINDINGS OF FACT (FF)

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

Background

1. Student lives with Parents in School District and attends School where he is currently in the [grade level]. Student has been a student in School District since kindergarten and was initially determined to be a student with a disability in need of special education and related services when he was in the 1st grade under the category of speech language impairment (SLI). Student has a diagnosed language disorder and specific learning disorder with impairments in reading, written expression, and mathematics. Currently, Student is eligible under the primary disability category of specific learning disability (SLD) in reading, written expression and math, with a secondary disability of (SLI).¹

2. Student's 12/5/16 IEP (IEP), which was in effect on March 14, 2017, identifies Student's needs with related goals in written expression, reading comprehension, reading fluency, mathematical calculation, task initiation and attending, and receptive and expressive language. The service delivery statement in Student's IEP indicates that he was to be provided with 120 minutes per month of speech language services, 100 minutes per week of direct services from a special education teacher or math interventionist in math instruction, 10 minutes per month of indirect services from a special education teacher for all needs related to task initiation and attention, reading and written expression, and 10 minutes per month of indirect services from a special education teacher for case management.²

3. At an IEP meeting on March 21, 2018 (March 21, 2018 Meeting) Special Education Director (or Director) provided Parents with a document she had prepared (Corrected Services Document). Corrected Services Document indicates that beginning in December 2016 Student was provided with 50 minutes per week of reading fluency instruction by a special education teacher and reading instruction "via Moby Max".³ The document also indicates that beginning in August 2017 a reading interventionist has supported Student's reading comprehension and written expression goals in his language arts class for 100 minutes per week. The Prior Notice of Special Education Action, dated March 21, 2018, indicates that School District proposed to "Amend the Dec. 5 2016 IEP (which is currently the Stay Put IEP) to reflect the services that have been provided related to the IEP literacy goals as well as revise the accommodations listed."⁴

¹ Exhibits 1 and G; SCO notes that Student's IEP incorrectly identifies both primary and secondary disability categories as SLD.

² Exhibit F

³ Moby Max is an adaptive online learning tool intended to provide individualized plans for students K-8.

⁴ Exhibits 2 and O; SCO notes that there is no mention of written expression instruction in 2016-17 or task initiation.

Parent Participation

4. Based on the following facts in the credible record, SCO finds that School District has refused Mother's repeated requests to meet to discuss her concerns about Student's IEP since May 15, 2017. On May 15, 2017, one of Student's teachers emailed Mother, Case Manager, and three other teachers requesting to meet to discuss Mother's concerns about Student's IEP goals. Case Manager explained that she did not understand the purpose of the meeting and that since it was the end of the school year she thought it made sense to postpone meeting until the next school year, but that they did schedule an informal meeting for May 23, 2017. Mother emailed Special Education Director on May 19, 2017 requesting her advocacy support at the meeting and describing her concerns about Student's IEP, lack of support at School, and change of accommodations. Special Education Director did not respond to Mother before the meeting, but recalled that sometime after the school year ended she did speak with Mother on the phone and that the conversation was related to Mother's misunderstanding about summer school programming. On May 23, 2017 Mother, Grandmother, Case Manager, Assistant Principal, and four of Student's teachers met. Case Manager recalled that the purpose of the meeting was unclear. Case Manager and Assistant Principal described the meeting as stressful with Mother complaining about the teachers. Case Manager stated that she brought a copy of Student's IEP to the meeting, but that they never discussed it.⁵⁶⁷

5. On October 4, 2017 School District sent Mother notice of a December 5, 2017 eligibility and IEP review meeting, which was due to be held no later than December 8, 2017. Case Manager did not request consent for School District's reevaluation until November 28th, which Mother provided on November 30th along with Private SLP's evaluation report (Private Evaluation).⁸ On November 29th Mother emailed Special Education Director again, attaching her previous email from May 19th, explaining that nothing had improved, and requesting that Special Education Director attend the upcoming meeting. On December 4th Mother emailed Special Education Director again requesting that Director attend the meeting. On December 5th Director emailed Mother to extend the meeting past the December 8th deadline⁹ and provided times she could meet the following week. In Mother's response to Director's email, Mother asked that School District comply with the deadline, explaining that she had been trying to meet to discuss her concerns about Student's IEP since the beginning of the previous school year, had asked for the upcoming meeting to be moved up since mid-October, and had ensured that private testing had been completed in time for the meeting that had been scheduled since October 4, 2017. Case Manager and Director called Mother together and left a voicemail

⁵ Interview with Case Manager; Exhibits A and 6

⁶ Response; Interview with Special Education Director; Exhibit A

⁷ Interviews with Mother, Grandmother, Case Manager, and Assistant Principal

⁸ Exhibits P, 3-2; Private SLP, who had begun providing private speech language services for Student in August 2017, began conducting formal assessments to be completed in time for this meeting. On November 10th Case Manager confirmed the December 5th meeting with Mother, who informed Case Manager of Private SLP's evaluation at that time and on November 27th Mother emailed Case Manager a list of Private SLP's assessments, as Case Manager had requested. See Exhibit 3-7.

⁹ Special Education Director admitted that School District was out of compliance with these deadlines.

explaining that a meeting could not be held that week, but that the School team would meet with Mother to discuss where they were in the assessment process. They also explained that they could not complete the IEP or determine eligibility due to “limited opportunity to complete the reevaluation.” Mother objected and revoked her consent. SCO notes that School District did not request consent to reevaluate Student until November 28th for the December 5th meeting, yet the Notice of Meeting and request for consent were both dated October 4, 2017.¹⁰

6. On December 5, 2017 Special Education Director attempted to reach Mother by phone again and then emailed her, revoking her offer to meet until the reevaluation was complete, and stating that School District would be ready to meet on December 14, 2017, regardless of whether Mother consented to additional assessments. On December 8, 2017 Mother reinstated her consent to the reevaluation and they subsequently agreed to schedule the meeting for December 19, 2017. School District provided Mother with its reevaluation report (December 19, 2017 Evaluation Report) on December 18, 2017.¹¹

7. The IEP meeting was held on December 19th (December 19, 2017 Meeting). Director, Assistant Principal, Mother, Stepfather, Grandmother, SLP, SLPA, Case Manager, School Psychologist, Private SLP and Student’s [grade level] teachers attended. Mother and Private SLP explained that Mother reached out to Case Manager and Special Education Director in May 2017 with concerns about Student’s IEP, but had been ignored, and that they wanted to discuss concerns about the lack of services and accommodations being provided to Student related to Student’s IEP before moving to the discussion about the reevaluation and Student’s eligibility. Special Education Director, who was facilitating the meeting, would not allow any discussion related to Mother’s concerns about Student’s IEP. Mother and Grandmother also expressed concerns about Student’s social emotional needs.¹²

8. Special Education Director moved on to a discussion of December 19, 2017 Evaluation Report and Private Evaluation during which Private SLP, Grandmother, and Mother repeatedly raised issues related to Student’s IEP. Special Education Director would not allow a discussion of Student’s IEP and moved on to the determination of Student’s eligibility, at which point Mother stated that School District’s reevaluation was not comprehensive and requested an independent educational evaluation (IEE). Special Education Director stopped the meeting, granted the IEE request, and stated that the IEP would be in “stay put”, explaining that Student’s IEP would remain in effect until IEEs were completed and they could meet to determine eligibility and develop a new IEP. Mother objected and requested that Student’s 2015 IEP be used instead due to the issues with lack of services and accommodations related to Student’s IEP. Special Education Director refused to discuss Mother’s concerns related to

¹⁰ Exhibits A, 2, K, 3-2, 3-4, 3-7, and 6

¹¹ Exhibits 2, 6, and 3-2

¹² Exhibit 2; Audio recording

Student's IEP.¹³

9. On December 22, 2017, Special Education Director emailed Mother a prior written notice (PWN) and information on obtaining IEEs, agreeing to provide IEEs in the areas of academics, social emotional health, and speech language. The PWN made no mention of Mother's requests to discuss Student's IEP or her objection to its continued implementation. The PWN also did not mention that Mother had requested a social emotional assessment.¹⁴

10. On February 16, 2018, Special Education Director emailed Mother explaining that they needed to meet to complete the determination of Student's eligibility by March 16, 2018. Assistant Principal provided Mother with two possible meeting times, yet when Mother responded that she could not meet at either of those times, Assistant Principal responded that those were the only times being offered and sent Mother notice. Subsequently, they agreed to meet on March 21, 2018 (March 21, 2018 Meeting). School District provided Mother with an updated version of the original evaluation report (March 21, 2018 Evaluation Report).

11. Based on the following in the credible record, SCO finds that Student's IEP was amended on March 21, 2018 to include 160 minutes of direct services in reading and written expression with a special education teacher. At March 21, 2018 Meeting, Student's eligibility was still not determined and Mother's concerns about Student's IEP were not discussed. Instead, Special Education Director explained that services had been provided that had not been included in the service delivery of Student's IEP and provided Mother with Corrective Services Document (See FF# 3). The Prior Notice of Special Education Action, dated March 21, 2018, notified Mother that School District proposed to "Amend the Dec. 5 2016 IEP (which is currently the Stay Put IEP) to reflect the services that have been provided related to the IEP literacy goals as well as revise the accommodations listed."¹⁵ The notice further indicated that that Parents have given permission for the School District team "to administer assessments to collect data related to Cognitive, Social-Emotion [sic] and Executive Functioning." A third IEP Meeting is currently scheduled.¹⁶

IEP Implementation

12. Based on the following in the credible record, SCO finds that 160 minutes per week of special education services were not provided related to reading and written expression from March 14, 2017 through the end of the 2016-17 school year. SCO also finds that no instruction

¹³ Exhibit 1; Audio recording; SCO notes that Special Education Director stated that she had not reviewed 2016 IEP or any previous IEPs.

¹⁴ Exhibit 2; Interview with Mother; Failure to provide PWN is a violation of 34 C.F.R. §300.503. SCO notes that Mother has obtained one IEE related to academics and another IEE is still in progress and provided consent on March 21, 2018 to School District conducting a social emotional evaluation.

¹⁵ SCO notes that the language related to provision of accommodations if Student was using his time wisely was removed.

¹⁶ Exhibits 2 and 6

related to reading fluency was provided during both the 2016-17 and 2017-18 school years. Case Manager and Assistant Principal explained that in 2016-17 Student was provided with instruction in reading and written expression in a class called “Math Navigator”, in addition to the specialized instruction he was receiving in math calculations. However, the documentation provided is contradictory. December 19, 2017 Evaluation Report and March 21, 2018 Evaluation Report both indicate that Student was receiving supplemental math intervention, speech language services, and reading fluency instruction during both school years with no mention of reading comprehension, written expression, or task initiation. Student’s IEP indicates that he was receiving only the “Tier 3 Math Intervention (Math Navigator)” and speech language services during the 2016-17 school year. Moreover, Student’s IEP describes the Math Navigator class and its role only in terms of providing math intervention and does not mention reading comprehension or written expression. SCO also notes that Mother first began communicating in emails about lack of services in literacy after a May 23, 2017 meeting, at which Mother and Grandmother both explained that Case Manager stated that literacy services were not being provided for Student, an issue Mother and Private SLP tried to raise repeatedly at December 19, 2017 Meeting. With regard to reading fluency, Special Education Teacher explained that Case Manager directed her to conduct a daily one- minute fluency test with Student and that she did not provide any instruction.¹⁷

13. SCO also finds that special education services related to task initiation were not provided during both the 2016-17 and 2017-18 school years. Case Manager explained that she was responsible for providing teachers and Student with support related to task initiation and completion, yet could describe no strategies or instruction she provided and explained that her service involved asking Student and his teachers how he was doing. Emails, progress reports, Student’s IEP, and meeting notes all note that task initiation and completion have been a primary concern. Case Manager explained that Student refused to work, but is capable of doing so, something that is noted throughout Student’s IEP.¹⁸

14. Based on the following in the credible record, SCO further finds that Student’s accommodations were not consistently provided. Student’s IEP paints a picture that Student refuses to work or lacks motivation, but is capable of grade level work, contradicting his diagnoses, present levels, and identified needs in Student’s IEP. Student’s IEP states that Student is capable of producing grade level work “when focused” and includes teacher statements that Student is not “wanting to comprehend”, “is not motivated to perform up to his potential”, “does not hold himself accountable for his behaviors”, and “is not motivated enough to get started on his own.” February 2017 progress reports note that “[Student] refuses to do any work”. Student’s IEP also includes a list of accommodations, some of which are to be provided “when time is used wisely”. Emails from teachers during the 2016-17 school year specifically refer to this language in Student’s IEP when explaining why he was not allowed

¹⁷ Exhibits A, 1, 2, Z, and 8; Interviews with Mother, Grandmother, Case Manager, Special Education Teacher, Special Education Director, and Assistant Principal; Audio recording

¹⁸ Exhibits A, 1, 2, Z, 8; Interview with Case Manager

the accommodation.¹⁹ Student's IEP also includes notes that Student is unable to use chart/model/strategies provided independently and "must be prompted every step of the way." Student is also to be provided with graphic organizers and notes, however, email documentation and Student's work reveals that these accommodations were not consistently provided.²⁰

15. Based on the credible record, SCO finds that the inconsistency of services and accommodations resulted in Student feeling singled out by his teachers and isolated from his peers, impacting his self-esteem, and his attitude toward school. During the 2016-17 school year he had a total of 25.52 absences and 21 tardies, and received eight failing grades, including language arts, math, social studies, Connect 21²¹, and Math Navigator. Student's 2017-18 report card indicates that so far this school year he has had a total of 27.3 absences and 54 tardies. Student is described as sensitive and, having experienced negative interactions with teachers in his past, building trusting relationships with his teachers is critical for his success. SCO notes that documentation from School District was requested related to incident reports involving Student at School, which School District did not provide.²²

Progress Reports

16. Based on the following facts in the credible record, SCO finds that School District failed to provide Mother with progress reports from May 2017 until December 19, 2017. Student's IEP provides that Student's progress toward IEP goals will be reported at "regular report card times." School District asserted in its Response that progress reports are always available on their infinite campus system that Parents have access to at any time, however, Special Education Director explained that since the time of the Response she has experienced herself the difficulty in accessing progress reports on the infinite campus system. In Mother's May 19, 2017 email, she informed Special Education Director that she had requested that Case Manager email her a copy of Student's progress reports. Mother reiterated this in her November 29, 2018 email to Special Education Director, in a December 12, 2017 email, and again at December 19, 2017 Meeting. Case Manager explained that she sent progress reports to Mother in the mail, which is her practice, but she keeps no record. In its Response, School District also provided a statement from Case Manager in which she states that she provided Mother with progress reports at the meeting on May 23, 2017, however, neither Case Manager nor Assistant Principal could recall the circumstances in which they were provided on that day. Progress reports were provided to Mother at March 21, 2018 Meeting, at which time Mother requested

¹⁹ SCO notes that Student's IEP was amended on March 21, 2018, which included removal of the language related using his time wisely in Student's accommodations. See Exhibit R

²⁰ Exhibits 2, 3, S, U, and V

²¹ Described by Assistant Principal as a resource room.

²² Exhibits G, 2, 3-4; Audio recording; Interviews with Case Manager, Mother, Grandmother, Stepfather, and Private SLP; Stepfather recounted an incident at School in March or April 2018 in which he was called to School in response to an incident involving Student and was told by a school counselor that Student had made statements in class indicating self-harm and should seek mental health support.

and School District agreed that all future reports would be provided to Mother by email and regular mail.²³

CONCLUSIONS OF LAW

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

Allegations One and Two: School District denied Parents meaningful participation by failing to provide Mother with progress reports and refusing to meet with Mother to discuss Student's IEP.

Parents allege that School District failed to provide them with progress reports from May 2017 until December 21, 2017. Parents further allege that they were denied meaningful participation since May 2017, including School District's amendment of Student's IEP and changing the provision of FAPE without prior written notice. SCO agrees.

With the intention of developing an IEP that is tailored to the unique needs of the child, the IDEA placed particular emphasis on collaboration among parents and school districts, requiring that parents be afforded the opportunity to participate and that their participation be meaningful, including giving careful consideration to their concerns about their child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(iii). It is well-established that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningful participate in the IEP process, the result is a "per se" denial of FAPE. *See, E.g., O.I. 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...").

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).

Reviewing and revising a child's IEP is a critical step in the IEP process and 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 does not establish a specific requirement for convening an IEP team meeting at parental request. 34 C.F.R. § 300.345(a)(1). However, if the parents of a child with

²³ Response; Exhibits 5, 6, and A; Audio recording; Interviews with Case manager, Mother, and Grandmother
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a disability believe that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP team meeting and the public agency should grant any reasonable request for such a meeting.²⁴

The IDEA permits districts and parents to agree not to convene an IEP team meeting to make changes to the child's IEP, as long as the annual IEP meeting has been held. In these instances, the parents and the district may implement a written document to amend or modify the child's IEP. 20 U.S.C. § 1414(d)(3)(D); 34 C.F.R. § 300.324(a)(4). *See also K.A. v. Fulton County Sch. Dist.*, 59 IDELR 248 (N.D. Ga. 2012), *aff'd*, 62 IDELR 161 (11th Cir. 2013)(noting that when the parties agree to amend an IEP without a meeting, parental consent is required, but that is not the case when the change is made during an IEP team meeting, if they ask for it. 20 U.S.C. § 1414(d)(3)(F).

In this case, School District has not conducted an annual review of Student's IEP since December 2016. Moreover, as explained fully in FF # 4-9, SCO finds that School District refused Mother's repeated requests to meet to discuss Student's IEP since May 15, 2017. SCO further finds that School District amended Student's IEP outside of an IEP meeting (FF# 11).

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). Providing progress reports is essential to providing parents with information about the effectiveness of a student's IEP. As well, the IDEA provides parents with the right to inspect and review their child's education records. 34 CFR §300.613 (a). As explained more fully in FF# 16, SCO finds that School District failed to provide Mother with progress reports from May 2017 until December 19, 2017.

For these reasons, SCO concludes that School District has denied Parents meaningful participation in the IEP process since May 2017, a per se denial of FAPE.

Allegation Number Three: School District failed to fully comply with or implement Student's IEP.

Parents specifically allege that School District has failed to provide Student with services related to reading and written expression and accommodations Student requires in order to access general education. Parents allege that this lack of access has impacted Student's self-esteem, grades, and attendance.

School District asserts that it has fully implemented and complied with Student's IEP, as amended on March 21, 2018, and that Student's poor grades are a result of his failure to turn in homework and frequent absences.

²⁴ SCO notes that in the event of a district's refusal to meet, the IDEA also requires that PWN must 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).

Under the IDEA local education agencies are required to provide eligible students with disabilities a free appropriate public education (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 (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 public agency, here the School District, must implement a student's IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, the School District must ensure that all identified accommodations and services are being consistently provided. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

The IEP is a comprehensive written statement that identifies the unique educational needs of an eligible student and sets forth the specific special education programming and related services that will be provided to meet the identified needs. 34 C.F.R. § 300.320. Because the IEP is the public agency's (School District's) written offer of what it has determined constitutes FAPE for a particular student, it has the obligation to ensure that the IEP accurately reflects the IEP team's determination. 34 C.F.R. § 300.17. Parents reasonably relied on the services described on Student's IEP to enforce the School District's obligation to provide FAPE. "[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017)(Relying on *Rowley* for this proposition), *cert. denied*, 138 S. Ct. 556 (2017). "Parents must be able to use the IEP to monitor and enforce the services that their child is to receive." *Id.*

In this case, a review of the documentation itself reveals that not only were 160 minutes of direct services in reading, written expression, and task initiation absent from Student's IEP until it was amended on March 21, 2018, but that the IEP created a picture of Student refusing to work, despite being capable. This directly contradicts Student's present levels or identified needs and goals in his IEP, as well as his diagnoses. Moreover, each IEP goal should have corresponding items of instruction or services. Having goals without related programming indicates that the district is not providing FAPE. *See, e.g., Burlington Sch. Dist.*, 20 IDELR 1303 (SEA VT 1994)(Although the district's IEP for a teenager with ED contained detailed goals and objectives in the areas of study skills and social and emotional development in school, it did not offer FAPE because it did not include specific related services to address the student's identified needs for social and emotional development in his home or community); and *Sacramento City Unified Sch. Dist., v. R.H.*, 68 IDELR 220 (E.D. Cal. 2016)(stating that by making the student's social and emotional development part of the IEP, the district committed itself to providing the services the student needed to make progress toward those goals).

SCO finds the language used in the IEP itself (See FF# 14), as well as teachers' concerns noted throughout the documentation particularly persuasive. As stated more fully in FF# 12-14, SCO concludes that Student's IEP was not consistently complied with or implemented in

that he and his teachers were not provided with services in reading and written expression or task initiation and he was not consistently provided with accommodations, violating the IDEA and resulting in a denial of FAPE.

Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)(*de minimis* failure to implement IEP does not deny FAPE). This means that a finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry. Rather, the SCO must also determine whether the failure was material.

A showing of educational harm is not required to demonstrate that the failure to implement the IEP was material. Rather, it is sufficient to compare the services required by the IEP to the services actually provided. *Holman v. District of Columbia*, 67 IDELR 39 (D.D.C. 2016)(stating that "[t]he 'crucial measure' under the materiality standard is the proportion of services mandated to those provided' and not the type of harm suffered by the student."). In this case, Student was inconsistently provided with accommodations and Student and his teachers were not provided with support or instruction in task initiation and completion, which has been the most consistent and notable concern from School staff (See FF# 13-14). As well, according to Student's IEP as it was amended on March 21, 2018, Student was to be provided with 160 minutes per week of direct services in reading and written expression, which were not provided from March 14, 2017 through the end of the 2016-17 school year (See FF# 11). Given the difference between what was required and what was provided, the SCO concludes that School District's failure to consistently comply with or implement Student's IEP violates the IDEA and results in a violation of Student's right to FAPE entitling Student to compensatory services.

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).

REMEDIES

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

- a. parent participation (34 C.F.R. § 300.501(b));
- b. prior written notice (34 C.F.R. § 300.503(a))
- c. provision of progress reporting to parents (34 C.F.R. §300.613)
- d. amending IEP outside of IEP meeting (34 C.F.R. §300.324(a)(4))

e. IEP implementation (34 C.F.R. § 300.323(c))

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

1. By June 22, 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. Effective training must be conducted for all special education case managers, coordinators, and designees concerning the policies and procedures, to be provided by September 14, 2018.
- b. 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 September 28, 2018.

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

- a. By no later than June 4, 2018 School District will schedule a meeting at a time that is agreeable to all parties, to discuss the status of all evaluations (including Private Evaluation, IEEs, and all of School District's evaluation), discuss all areas of suspected disability, determine Student's continued eligibility, and conduct a full review of Student's IEP. SCO suggests that the IEP team consider Student's challenges and needs related to task avoidance in its discussion and consider removing language related to task avoidance that may not reflect the team's considerations. This process must be completed prior to the beginning of the 2018-19 school year. SCO also suggests the use of a facilitator. A CDE facilitator will be provided upon request and agreement of the parties.
- b. Within 10 days after completion of the process referred to in section a, School District will meet with Parents to schedule compensatory services with regard to reading, written expression, and task initiation and completion deficits and the failure to provide 160 minutes per week of direct services with a special education teacher in reading and written expression from March 14, 2017 through the end of the 2016-17 school year. The Parties shall cooperate in determining how the compensatory education services will be provided, including a plan for monitoring of Student's progress in these areas to be reported on a monthly, with special consideration to Student's needs, stamina, and schedule.

These compensatory services shall begin as soon as possible and 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 School District must submit the schedule to the Department within one week after the plan is devised.

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 18th day of May, 2018.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated 3/12/18, pp. 1-6

- Exhibit A: Emails 5/15/17-5/19/17, 2/16/18-3/8/18, and 11/29/17
- Exhibit B: Service Delivery and Placement sections of 12/9/15 and 12/5/16 IEPs; Private SLP IEP Document Review 12/19/17
- Exhibit C: Service Delivery grid section from Original 12/5/16 IEP with highlighting
- Exhibit D: Present Levels section pages from Original 12/5/16 IEP
- Exhibit E: 2017-18 Student Grade Reports, Grade Book Assignments, District and State Testing Reports
- Exhibit F: 12/5/16 IEP
- Exhibit G: Private SLP Evaluation Report 11/8/17

Reply, dated 4/17/18, pp. 1-5

- Exhibit H: Parent statement regarding progress reports; reference to audio recording
- Exhibit I: Emails 2/6/18-3/9/18 regarding scheduling of March 21, 2018 Meeting
- Exhibit J: 3/5/18 Notice of Meeting; emails 3/9-3/11/18 regarding March 21, 2018 Meeting
- Exhibit K: Emails 12/6-12/7/17 regarding December 19, 2017 Meeting
- Exhibit L: Sections 12-14 of Original 12/5/16 IEP
- Exhibit M: Parent statement regarding May 23, 2017 meeting
- Exhibit N: Reference to audio recording
- Exhibit O: Document showing Student's IEP Services 2014 to present and explanation of service provided 2016-17 and 2017-18 school years
- Exhibit P: Parent statement regarding Corrected Service Delivery Document; emails 3/11/18-4/9/18, 5/19/17, 11/29-11/30/17, 12/4-12/5/17; Notice of Meeting, dated 10/4/17
- Exhibit Q: Reference to audio recording
- Exhibit R: Emails 3/21/18-4/9/18 regarding Amended 12/5/16 IEP and IEE
- Exhibit S: Emails 2/27/17 related to graphic organizer and accommodation if on task
- Exhibit T: Emails 5/15-5/16/17
- Exhibit U: Parent statement related to note taking
- Exhibit V: Student's handwritten class notes
- Exhibit W: Student work; Grade Book Assignments
- Exhibit X: Parent statement related to checklist for completing tasks; IEE (4/7/18); IEE recommendations (4/7/18)

Documents provided by Parents at SCO's Request

- Exhibit Y: 12/9/15 IEP

Exhibit Z: 12/19/17 evaluation report (March 21, 2018 Evaluation Report); 12/5/16 IEP with highlighting and handwritten notes

Audio recording

Response, dated 3/29/18, pp. 1-3

- Exhibit 1: 8/26/16 Notice of Meeting; Original 12/5/16 IEP; 12/5/16 Meeting Notes; 12/19/16 Prior Notice; Progress Reports (2015-16)
- Exhibit 2: 12/13/17 Notice of Meeting; 10/4/17 Prior Written Notice and Consent for Evaluation; 12/17/14 [sic] Evaluation Report (December 19, 2017 Evaluation Report); 10/12/17 and 12/19/17 Progress Reports; 12/19/17 Meeting Notes; 12/22/17 Prior Notice of Special Education Action; 11/8/17 Private SLP Evaluation Report and assessment data
- Exhibit 3: SLP Service log (9/8/17-3/27/18)
- Exhibit 3-1: 2016 IEP Documentation and Progress Reports
- Exhibit 3-2: 12/13/17 Notice of meeting; 10/14/17 Prior written notice and Consent for Evaluation; 12/17/14 [sic] Evaluation Report; Private SLP Evaluation Report; Progress Reports; 12/19/17 Meeting Notes; 12/19/17 IEP Meeting Participants sign in sheet; 12/22/17 Prior Notice of Special Education Action
- Exhibit 3-4: Student's person summary report, enrollment history, attendance records, 2017-18 class schedule, report cards, grade reports, 2018 emails related to grades, Special Education contact log 11/6/17- 3/11/18
- Exhibit 3-6: Team roster and School staff licensing documentation
- Exhibit 3-7: Email correspondence
- Exhibit 4: Student's person summary report, enrollment history, attendance records, 2017-18 class schedule, report cards, grade reports, 2018 emails related to grades, Special Education contact log 11/6/17- 3/11/18
- Exhibit 5: School district policies and procedures
- Exhibit 6: Email and correspondence between school district, school staff and parents
- Exhibit 7: Team roster and School staff licensing documentation

Documents provided by School District at SCO's request

- Exhibit 8: Student's 2016-17 and 2017-18 Class Schedules with highlighting and handwritten notes; fluency graphs; handwritten notes; CDE guidance document re: Reading and Math Interventionists
- Exhibit 9: Reading fluency graphs; handwritten notes and reading passages
- Exhibit 9-1: Teacher calendars; handwritten note

Interviews

Mother

Stepfather

Grandmother

Case Manager

Assistant Principal

Special Education Director

Private SLP

Special Education Teacher