

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

**State-Level Complaint 2019:545
El Paso County School District 11**

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on May, 30, 2019, by *Guardian ad Litem* on behalf of a student identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

The State Complaints Officer (SCO) determined that the Complaint identified two 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.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (CDE) has the authority to investigate alleged violations of IDEA that occurred not more than one year from the date the Complaint was filed. Accordingly, this investigation will be limited to the period of time from May 30, 2018 through May 30, 2019 to determine whether or not a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations accepted for investigation. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether Student was denied a Free Appropriate Public Education (“FAPE”) from November 8, 2018 through January 9, 2019, because the District:

1. Failed to convene an IEP team to review/revise Student’s IEP, consistent with 34 C.F.R. §§ 300.321 and 300.324.

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* and its corresponding regulations are found at 34 C.F.R. § 300.1, *et seq.* IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”), found at 1 CCR 301-8, 2220-R-1.00, *et seq.*

2. Failed to make an offer of FAPE and provide special education and related services in accordance with an IEP, consistent with 34 C.F.R. § 300.323.

FINDINGS OF FACT

After an analysis of the record detailed in the appendix, the SCO makes the following findings:

Background:

1. At all times relevant to the Complaint, Student was fifteen years old and identified as a child with serious emotional disability (SED) who is also deaf/hard of hearing. *Ex. 17*, pp. 1-11. Student's disability impacts his ability to regulate emotions and respond appropriately to environmental stimuli, and as a result, Student has exhibited serious physical aggression towards others, as well as property destruction. *Ex. 1* at 8; *Ex. 17* at 8; *Interview with Guardian ad Litem (GAL)*. As a consequence of his conduct, Student has been under the supervision of the juvenile justice system and, at all times relevant to the allegations accepted for investigation, Student was residing in foster care.² *Interview with GAL*.
2. As a result of involvement with the juvenile justice and child welfare systems, Student has experienced significant and frequent disruption in educational services over the last several years. *Exhibits A, 1, 2, 4, and 17; Interview with GAL*.
3. In May of 2018, Student was placed in a group home that specializes in the effective treatment of youth who have committed sexual offenses, have substance abuse issues, or have conduct disorders. When Student moved into this group home he transferred from Charter School, an accredited, alternative education charter school within Denver Public Schools that serves male youth with targeted and significant needs, including youth involved in the juvenile justice system, to another Colorado school district (Transfer District). *Response* at 2; *Ex. 17* at 18.
4. From May 9 to October 9, 2018, Student attended school and received special education and related services in Transfer District.
5. In early October, Student experienced such significant physical clashes with other youth living in the same group home that he was removed from his foster care placement within Transfer District and was placed, for a brief time, in a staff secure residential setting. *Interviews with GAL and Social Worker*.

² "Student in foster care" is synonymous with "student in [an] out-of-home placement." C.R.S. 22-32-138(1)(h). For readability, the term "foster care" will be used consistently throughout this decision.

6. Student did not attend school in Transfer District, or any other school district, from on or around October 9 through November 8, 2018. *Interviews with GAL, Social Worker, and CWEL.*

7. On or around November 8, 2018, Student was placed by County Department of Human Service (DHS) in Group Home, an eleven bed home serving male youth between the ages of 14 and 18, located within the District's boundaries. *Complaint* at 3.

8. This Complaint concerns whether the District denied Student a FAPE when it did not provide educational services between Student's enrollment in District in November of 2018 and Student's transfer to Regional Youth Services Center in January of 2019. Because this Complaint involves a student in foster care, it is first helpful to explain various provisions in state and federal law that are intended to ensure educational stability for youth in foster care.

Provisions Promoting Educational Stability for Students in Foster Care:

9. State and federal regulations, apart from IDEA, provide mechanisms to ensure educational stability for students in foster care. To provide context for understanding the challenges associated with Student's transfer into District, the SCO briefly describes the relevant process and procedures that apply when a student in foster care changes homes or placements.

10. As the first consideration for promoting educational stability, a student in foster care who moves from one home to another must remain in their school of origin, unless doing so would not be in their best interests. *12 CCR 2509-4, 7.301.241(D)*. Prior to any school move resulting from a change in placements, then, the county DHS must determine if it is in the student's best interest to change schools.³ A best interest determination (BID) meeting is the vehicle for determining whether a proposed change in schools would be in the student's best interest. The county DHS is the entity responsible for convening and facilitating the BID meeting to determine, in collaboration with the school district, whether it is in the student's best interest to remain in the same school or attend another appropriate school. Factors relevant in making this determination include the student's wishes; the student's safety; how the school of origin will meet the student's academic and nonacademic needs, as well as the potential of the new school to meet the student's academic and nonacademic needs; how the decision impacts permanency goals; and length of travel and impact on the student. *12 CCR 2509-4, 7.301.241(D)*.

11. If the county DHS determines that it is not in the student's best interest to remain in the same school, the new school district shall *immediately*, on the date designated in the best interest determination, enroll the student in a new school, even without the records normally required for enrollment. *12 CCR 2509-4, 7.301.241(D)(6)*. This requirement is commonly referred to as "immediate enrollment." If the county DHS determines that it is not in the

³ A BID meeting need not occur only when remaining in the school of origin poses a specific documented threat to the youth's safety.

student's best interest to remain in the same school, the BID must also include the specific date when the student will change schools, presuming that it is in the student's best interest to be in the least restrictive environment and transfer at natural transitions such as the beginning of the school year or academic term. *12 CCR 2509-4, 7.301.241(D)(4)(b)*.

12. Finally, and perhaps most importantly, collaboration between the county DHS and the education agency is essential to ensure educational stability when a student in foster care is changing schools. To that end, state law requires each school district to identify a Child Welfare Education Liaison (CWEL) as a single point of contact to facilitate prompt and appropriate placement, transfer, and enrollment of students in foster care within the school district. C.R.S. 22-32-138(2). For a student changing schools, the county DHS is therefore required to notify the new school district's point of contact, i.e., the school district's CWEL, that there has been a BID that a student in foster care will be transferring into the school district. Because it is the responsibility of the CWEL to coordinate with child placement and welfare agencies to facilitate prompt enrollment, it is essential that county DHS immediately notify the CWEL of the BID. *Id.*

13. Applying the procedures above, County DHS should have conducted a BID meeting to determine if it was in Student's best interests to change schools, and immediately following the BID, it should have notified the District's CWEL of the determination. While this determination was being made, Student should have remained in Transfer District. As described below, however, this is not what happened.

Student's Transfer into District in November of 2018:

14. On or around November 14, 2018, County DHS Case Manager contacted Assistant Principal to inform her that Student was residing at Group Home and would be enrolling in the District. County DHS Case Manager further informed Assistant Principal that Student was IDEA eligible as a student with SED who also used hearing aids. Notably, County DHS Case Manager reported that Student had not been in school since the middle of October. *Ex. 9* at 4. Pre-enrollment information was submitted to the District on November 15, 2018. *Ex. 3* at 1. DHS Case Manager did not convene and facilitate a BID meeting prior to enrollment, in accordance with required procedure and protocol.

15. Assistant Principal immediately contacted Special Education Staffing Coordinator to share the information about Student and schedule a time to meet to prepare for Student's arrival. This meeting was tentatively scheduled for November 27, 2018. *Ex. 9* at 8. In consideration of the delay between the notice of enrollment and the date proposed for this initial meeting, the SCO notes that the District was closed from November 19-23 for Thanksgiving break, with the first school day after break being November 26. *Ex. 19*.

16. Following notification from Assistant Principal that Student was enrolling in High School, Special Education Staffing Coordinator *immediately* requested Student's special education file,

including the most recent IEP. The District received Student's IEP from Transfer District on November 27, 2018. *Ex. 18* at 1; *Interview with Special Education Staffing Coordinator*.

17. On or around November 15, Special Education Staffing Coordinator also notified the District's CWEL of Student's enrollment, and CWEL immediately attempted to contact the County DHS Case Manager to obtain additional information and request that the BID meeting between Transfer District and District be scheduled. *Ex. 9* at 3. Connecting with the County DHS Case Manager was delayed because the CWEL did not initially have a last name for that specific County DHS contact or case manager. *Ex. 9* at 3; *Interview with CWEL*.

18. CWEL did not hear back from County DHS Case Manager until November 26, 2018, the day before the meeting was scheduled. At this time, the District learned that the meeting on November 27 was not a BID meeting; instead, this meeting had been scheduled as an intake meeting with Group Home. *Response* at 2. Upon learning that the upcoming meeting was not a BID meeting, CWEL asked Special Education Coordinator to schedule an intake/BID meeting within the next couple of days. *Id.* According to the District, and as further corroborated by email correspondence, County DHS Case Manager did not promptly respond to requests to schedule the meeting. Indeed, the BID meeting was never scheduled. *Id.*; *Exhibit 9*, pp. 1-8.

19. On December 5, 2018, Group Home Parent contacted Special Education Staffing Coordinator, Assistant Principal, and County DHS Case Manager, among others, to request that an intake meeting be held as soon as possible. In her email, Group Home Parent stated that she believed County DHS Case Manager was out of town, but that she had "called several times to get the meeting scheduled with no result." Group Home Parent closed her email by expressing her concern that it had been 3 weeks, and Student was still not in school. *Ex. 2* at 8.

20. In response, CWEL emailed Special Education Staffing Coordinator, stating "[c]an you please just get a meeting scheduled and whomever can appear in person or by phone can participate [*sic*] but at this point we need to get [Student] into school and cannot delay any longer for those others." *Ex. 8* at 8.

21. On December 6, 2018, the District convened a meeting to "prepare for Student's attendance at [High School]." *Response* at 2; *Ex. 8* at 1. This was not an IEP meeting. Participants included Student, Group Home Parent, Special Education Coordinator, Special Education Facilitator, Assistant Principal, Guidance Counselor, School Social Worker, Affective Needs teacher, and DHS Caseworker. *Ex. 2* at 1.

22. During this meeting, the District rejected Student's August 2018 IEP from Transfer District. The prior written notice and consent to evaluate, dated December 6, 2018, explained that "the IEP cannot be implemented as written; therefore, a reevaluation is needed to make the necessary changes." *Ex. 2* at 1. Comparable services offered by the District pending reevaluation included the following:

- Specialized instruction in the affective needs program for one class period per day, amounting to 4 hours/week of direct instruction;
- Co-taught instruction in the general education classroom for English, Math, Science, and Social Studies, amounting to 8 hours/week of direct instruction;
- Indirect support from the Teacher of the Deaf and Hard of Hearing, amounting to .5 hours/month of indirect services;
- Direct and indirect services for emotional support from a counselor, school social worker, or psychologist, amounting to .5 direct and .5 indirect/month; and
- Audiological services, as needed.

Ex. 4 at 2.

23. Although comparable services were determined on December 6, 2018, the District did not offer to provide these services, or otherwise allow Student to start attending High School, until January 7, 2019, the first day of the spring semester. Further, the SCO finds that the District could have reasonably determined comparable services by November 27, 2018, a day after school resumed following Thanksgiving break, and the date by which it had Student’s IEP from Transfer District.

24. As one explanation for the delay, the District asserts that it could not develop an appropriate class schedule for Student until it received transcripts from Transfer District, which it had not yet received. *Response at 3.* According to the District, it is essential to receive transcripts/transfer grades whenever a student transfer in the middle of the semester to ensure that the student can be placed in the same or similar classes. *Response at 3; Interviews with CWEL, Special Education Director, and Special Education Staffing Coordinator.* Ensuring that a student is enrolled in similar classes between the previous and current school in a mid-semester transfer is important for maintaining credit for prior work and ultimately staying on track to graduate. *Id.* Although transcripts provide information critical for educational continuity, particularly for a mid-semester transfer, CWEL emphasized that a lack of records would not be a permissible barrier to enrollment. *Interview with CWEL.* This statement concerning immediate enrollment is consistent with the District’s agreement with El Paso County DHS addressing students in foster care, the document that serves as the District’s policy and procedure. *Interviews with Special Education Director, Special Education Staffing Coordinator, and CWEL.*

25. As further explanation for the delay, the District noted that the week of December 10 was the last week of classes at High School before the end of the fall semester, and consequently, students would be “reviewing old material” to prepare for final exams scheduled for the following week, from December 17 through 19. *Id.* Following finals, winter break began on December 20, 2018. *Ex. 19.* The District expressed concern that Student would not be able to successfully or meaningfully participate in classes due to the timing, and given Student’s history and challenges, attendance would likely have led to disciplinary consequences. *Interviews with CWEL and Special Education Director.*

26. From the date the District offered educational services on January 7, Student attended three class periods at High School before he was transferred to a Regional Youth Services Center for conduct that occurred while he was residing at Group Home. Student received no other educational services from the District from November 27, the date it reasonably should have determined comparable services, to January 8, 2019, the date Student was removed from Group Home. During this time, there were 17 available school days. *Ex. 19; Interview with GAL.*

27. As a result of continued involvement in the juvenile justice system, Student was returned to a Regional Youth Services Center operated by the Colorado Department of Youth Services (DYS) where he currently receives educational services. Student's commitment at DHS expires in February of 2021. *Correspondence with DHS Director of Special Education.* According to GAL, Student is currently receiving appropriate educational services through DHS. *Interviews with GAL and Social Worker.*

CONCLUSIONS OF LAW

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

Conclusion to Allegations One and Two: Although the District was not yet obligated to develop a new IEP, Student was denied a FAPE when the District failed to offer comparable services until January 7 of 2019.

"Children and youth in foster care represent one of the most vulnerable student subgroups in this county." *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, 116 LRP 27371 (EDU/HHS 06/23/2016). Compared to their peers, children in foster care experience significantly higher levels of educational instability, including unplanned changes in schools, which may result in academic difficulties and delays. *Id.* To promote educational stability and success for children in foster care, federal and state legislation has incrementally been passed to require greater collaboration between county welfare and local education agencies. In 2008, the *Fostering Connections Act* was passed to promote educational stability by ensuring that a student could remain in the same school when her foster home changed, if remaining in the same school was in her best interest. In 2013, Congress passed the *Uninterrupted Scholar's Act* to better facilitate data sharing between child welfare and education agencies as another critical way to improve educational stability for students in foster care. And most recently, Congress reemphasized the importance of collaboration between child welfare and educational agencies in passing the *Every Student Succeeds Act* (ESSA) in 2015.

Consistent with federal law, Colorado has also passed legislation that requires collaboration between county welfare and local education agencies intended to increase educational stability and protect the educational rights of children in foster care, to include provisions related to the designation of a child welfare education liaison, best interest determination, and transfer of

records. C.R.S. 22-32-138. The relevant provisions stemming from these legislative efforts are described more specifically in FF# 9-13.

Similar to state and federal law to promote educational stability for students in foster care, IDEA also has specific provisions intended to ensure continuity in educational services when a student receiving special education and related services transfers from one school to another. Predictably, students in foster care are often students subject to IDEA's transfer provisions, and in 2013, the Education Department's Office of Special Education and Rehabilitation Services (OSERS) issued a Dear Colleague Letter (DCL) regarding the unique educational needs of highly mobile children with disabilities, such as children in foster care. *Letter to State Directors of Special Education*, 61 IDELR 202 (OSERS 7/19/2013). This OSEP letter highlighted the importance of timely evaluations, as well as the timely provision of comparable services, in ensuring educational stability when a student transfers into a new school district. *Id.*

Although the state and federal legislation intended to promote educational stability impacts IDEA-eligible students in foster care, the CDE's authority to resolve disputes through the state complaint process rests solely in IDEA. In its Response, the District argued that it did not violate IDEA because the County DHS failed to follow state law by not conducting a BID meeting to decide whether it was in Student's best interest to remain in Transfer District or enroll in District. More specifically, the District argues that Transfer District was presumed by law to be the best placement for Student until a BID meeting determined otherwise, and that it was the responsibility of the County DHS to convene and facilitate the BID meeting, which it did not do. According to the District, any delays in "developing a transfer IEP or offering a FAPE to Student was the result of the failure of [County DHS] to perform the requisite acts mandated by state and federal laws relating to the educational stability of foster children." *Response* at 4.

Contrary to the District's argument, nothing in IDEA, or the state and federal regulations that address educational stability for youth in foster care, excuses the District from providing a FAPE to an IDEA-eligible student because the county DHS failed to follow proper procedure.⁴ *Montrose County School District RE-1*, 102 LRP 21273 (SEA CO 5/15/02) ("[T]he fact that [County DHS] failed to comply with its collaborative obligations under [state law] and the Interagency Agreement does not alter in any way the District's obligations to comply with the IDEA.") In *Montrose County School District RE-1*, the district argued that it was not liable for the timely provision of special education and related services to a student in foster care when the county DHS had failed to follow state law in notifying and collaborating with the school district when

⁴ When, as happened here, a student in foster care is enrolled without notification that the county DHS has held a BID, the CDE recommends that: 1) the CWEL call the county DHS to inquire about the BID, and 2) if the CWEL does not get an acceptable answer within one business day, call CDE and Colorado Department of Human Services (CDHS) for help contacting the county. CDE FAQ: Understanding the BID process in Colorado, available at <http://www.cde.state.co.us/dropoutprevention/fcbestinterestdeterminationfaqforschools>. There is no evidence that the CWEL contacted the CDE for assistance. While the CWEL did immediately attempt to contact County DHS Case Manager to obtain additional information, there is no evidence that she contacted the CDE for further assistance when she did not receive an adequate response.

making the placement decision. *Id.* In consideration of the District’s argument, the Administrative Law Judge concluded that “[a]lthough the District was not the only entity at fault in this matter, equitable principles indicate that the Student, who was not to blame . . . should receive compensatory education to make up for the special education he did not receive . . . as a result of the District’s IDEA violations. *Id.* Moreover, regardless of the action, or as in this case, inaction of the county DHS, federal and state law requires immediate enrollment even without educational information and records. 42 U.S.C. § 675(1)(G); C.R.S. 22-32-138(4)(a). Consequently, this dispute must be resolved by determining whether the District violated IDEA, not whether the County DHS failed to follow federal and state requirements that contributed to the delay in Student receiving educational services.

Because Student transferred from one Colorado school district to another within the same school year, the SCO relies on IDEA’s intrastate transfer provisions to resolve the two allegations accepted for investigation: 1) whether the District failed to convene an IEP team to review/revise Student’s IEP, and 2) whether the District failed to provide special education and related services.

As to allegation one, the SCO concludes that the District was not yet required to convene an IEP Team to develop a new IEP for Student. For students with IEPs in effect who transfer from one school district to another within the same school year, IDEA’s transfer provisions require that the new public agency, in consultation with parents, provide FAPE (including comparable services) until the school district adopts the IEP developed by the previous school district or develops, adopts, and implements a new IEP that meets the applicable requirements for developing an IEP. 34 CFR § 300.323(e). Neither Part B of the IDEA nor the regulations implementing Part B of the IDEA establish timelines for the new public agency to adopt the child’s IEP from the previous public agency or to develop and implement a new IEP. However, consistent with 34 CFR § 300.323(e), the new public agency must take these steps within a reasonable period of time to avoid any undue interruption in the provision of required special education and related services. *Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations*, 111 LRP 63322 (OSERS 09/01/11). Here, the District rejected Student’s IEP from another Colorado school district on December 6, 2018, and requested consent to conduct its own evaluation. Given the Thanksgiving break, this was a reasonable time after Student enrolled on or around November 15, 2018 to request consent for evaluation. Because IDEA does not require that the District convene an IEP meeting to determine comparable services, and the District had just requested consent to conduct its own evaluation, it was not yet required to convene an IEP Team to develop a new IEP.

As to allegation two, the SCO concludes that the failure to timely offer comparable services in accordance with 34 C.F.R. § 300.323(e) resulted in a denial of FAPE. As described more fully in FF # 17-25, the District could have determined Student’s comparable services by November 27, 2018, and could have offered these services immediately. While the SCO recognizes that offering educational services was more challenging given that it was the end of the semester,

the District could have offered services through online courses/instruction and/or by providing homebound services until the start of the new semester. What it could not do, however, was leave Student without any educational services for the 17 available days between November 27 of 2018 and January 7 of 2019.

In this case, a showing of educational harm is not required to conclude that Student is entitled to compensatory services. Instead, it is sufficient to consider the timely provision of educational services, comparing the services Student should have received to the services Student actually received. *See 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, comparable services could have been determined and offered by November 27, 2018. And, although the District determined services by December 6, 2018, it did not offer services until January 7, 2019. If the District had provided the comparable services it identified between November 27 and the end of the semester, Student would have received approximately 24 hours of direct instruction in English, Math, Science and Social Studies; 16 hours of specialized instruction in affective needs; and .5 indirect and .5 direct services from a counselor. Instead, Student received no educational services during this time. The difference between what should have been provided and what was is sufficient to demonstrate educational harm in this case. Consequently, the SCO concludes that Student is entitled to compensatory education services to remedy the denial of FAPE.

Further, the fact that Student is no longer attending school within District does not extinguish the District’s obligation to provide compensatory services. *D.F. v. Collingswood Borough Board of Education*, 59 IDELR 211 (3d Cir. 2012); *Montrose County School District RE-1*, 102 LRP 21273 (SEA CO 5/15/02)(“Logically, school districts must be subject to awards for compensatory relief even after aggrieved students have moved away in order to prevent districts from intentionally refusing services as a means of encouraging students to seek educational services elsewhere.”). Accordingly, the SCO concludes that Student is entitled to compensatory services, even though he is no longer enrolled in District.

Compensatory education is an equitable remedy intended to place a student in the same position they would have been, if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Calculating compensatory education is not an hour-for-hour calculation. Instead, compensatory services should be calculated to help Student make the progress he would have made, if not for the violation. Based on a review of the comparable services identified by the District, as well as consultation with DYS Special Education Director, CDE consultants and GAL concerning Student’s current needs and treatment plan, the SCO concludes that Student is entitled to 10 hours of compensatory services in core academic areas.

REMEDIES

The SCO concludes that the District has violated the following IDEA requirements:

- a) Timely provision of comparable services pursuant to IDEA's intrastate transfer provision at 34 CFR § 300.323(e).

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

- 1) **By August 12, 2019**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the 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) Review of this Decision by Special Education Director, Special Education Staffing Coordinator, CWEL, and any other District staff deemed appropriate by the District because they are in a position to facilitate the transfer of a student in foster care. Signed assurances that this review has occurred must be submitted to the CDE by September 9, 2019.
- 2) **Compensatory Education Services for Failure to Provide Student with a FAPE.**
 - a) The District shall provide Student with 10 hours of direct, one-to-one tutoring in core academic courses. To document the provision of these services, the District must submit service logs to CDE by the second Monday of each month until the services have been completed, and no later than August 29, 2020. Each log must be signed by the Special Education Director or designee to assure the services have been provided.
 - b) Within 10 days of receipt of this Decision, the District must contact Principal of Regional Youth Services Center to schedule the compensatory services to ensure that the schedule does not interfere with Student's treatment plan. These compensatory services shall begin immediately and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student towards IEP goals and objectives. The District must submit the schedule to the Department no later than September 16, 2019.
 - c) The services shall be provided at Regional Youth Services Center, a secured detention facility. Consequently, the District must contract with a provider that is licensed to provide educational tutoring and approved by Regional Youth Services Center to enter and provide services in the facility. Approved contractors are available by contacting the Director of Special Education for DYS or the Principal at Regional Youth Services Center.

- d) If Student's guardian with educational decision making does not consent to the provision of these services, she must contact the Department by August 15, 2019.
- e) If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason, the District fails to provide a tutor for a scheduled compensatory education session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with the Principal of Regional Youth Services Center, as well as notify the Department of the change in the monthly service log. If Student paroles early, or otherwise changes placement before the 10 hours of compensatory services have been provided, the District must arrange to provide any remaining compensatory services, and notify the Department of the change in the monthly service log.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Michael Ramirez
1560 Broadway, Suite 1175
Denver, CO 80202-5149

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

CONCLUSION

The Decision of the SCO is final and is 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.

Dated this 29th day of July, 2019.

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-6

Exhibit A: IEP and evaluation report dated February 2018

Response, pages 1-8

Exhibit 1: IEP dated August 2018

Exhibit 2: Prior written notice and consent for evaluation

Exhibit 3: Pre-enrollment information sheet

Exhibit 4: Transfer IEP dated December 2018

Exhibits 5-7: No documents responsive to request

Exhibits 8 and 9: Email correspondence

Exhibit 10: District policies and procedures

Exhibit 11: Contact information for witnesses

Exhibit 12: Delivery Confirmation

Exhibit 13: Safety Plan dated December 2018

Exhibit 14: Class Schedule

Exhibit 15: Attendance record

Exhibit 16: Request for confirmation of enrollment

Exhibit 17: IEP dated May 2018

Exhibit 18: Contact log

Exhibit 19: District calendar for 2018-19 school year

Exhibit 20: Transfer IEP

Exhibit 21: Individual supervision plan

Exhibit 22: Correspondence related to records request obtained by SCO following interview with District staff.

Reply, pages 1 -4

Interviews:

- Guardian ad Litem
- Social Worker with Guardian ad Litem's Office
- Special Education Director
- Special Education Staffing Coordinator
- Child Welfare Education Liaison/Special Education Facilitator

Note: County DHS Caseworker did not respond to request for interview.

Consultation:

- CDE State Coordinator for Foster Care Education
- DYS Special Education Director