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

**State-Level Complaint 2015:504**
**Jefferson County District R-1**

# DECISION

## INTRODUCTION

This is a state-level complaint (Complaint), properly filed on April 9, 2015. The Complaint was filed against Jefferson County School District R-1 (District) by Disability Law Colorado on behalf of Student, who is identified as a child with a disability under the IDEA, and Student's mother (Mother).

Based on the written Complaint, dated April 8, 2015, the SCO identified three issues subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

## COMPLAINT ALLEGATIONS

Complaint raised the following issues, in summary:

Whether the District, between November 18, 2014 and January 29, 2015:

1. Changed Student's placement without full IEP team involvement, in violation of 34 C.F.R. § 300.116;

2. Failed to provide Parents with prior written notice for a meeting regarding Student's educational placement, in violation of 34 C.F.R. § 300.503(a); and

3. Failed to conduct a manifestation determination review after Student's placement had been changed for more than ten days following a school conduct violation, in violation of 34 C.F.R. § 300.530(e).

To resolve the Complaint, Mother proposed, in summary, that the District provide all staff with training regarding discipline of students with disabilities who receive services under the IDEA; review its disciplinary policies to ensure that the threat assessment process is not encouraging or allowing District staff to usurp the procedural safeguards provided to students with disabilities under the IDEA; and that an IEP meeting be held for Student to ensure that there is a plan in place to move Student back to a neighborhood school when appropriate and considering Student's individual needs.

## DISTRICT'S RESPONSE

In the District's Response to the Complaint, dated April 27, 2015, District admitted that they changed Student's placement without holding an IEP meeting or providing parents with prior written notice, violating procedural requirements of the IDEA. The District proposed a corrective action plan for policy review and training consistent with Mother's proposed remedies and agreed to hold an IEP meeting at Mother's request at any time. However, the District denied that Student's change of placement was disciplinary and, as such, there was no requirement to conduct a manifestation determination review.

## PARENT'S REPLY

Mother's Reply, dated May 7, 2015, disputed the District's contention that Student's change of placement was not disciplinary and reasserted that the District was required to conduct a manifestation determination review.

## FINDINGS OF FACT

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

1. At all times relevant to the Complaint, Student lived in the District and was in the [grade]. Student is eligible for special education and related services as a child with an Emotional Disability.[1]

2. Student's IEP, dated January 13, 2014, provided that Student attend 36 school hours per week, that Student be educated inside the regular class at least 80% of the time, and indicated that Student was actually attending general education classes 99% of the time. The special education services listed on Student's January 13, 2014 IEP included two hours total of mental health services monthly and consultation with a special education teacher for fifteen minutes monthly. Student's IEP also noted that a behavioral intervention plan was in place to closely supervise and monitor Student's boundaries with peers, prompting breaks when frustrated, receiving praise for appropriate boundaries, positive relationship building with school staff and explicit instruction from the school psychologist related to appropriate boundaries and conflict mediation skills. From the beginning of the 2014-15 school year, Student attended School #1 within District. There is no dispute that the IEP was being appropriately implemented. [2]

3. On November 11th Student was transported from School to the emergency room after Student appeared to be vomiting blood, but which was later determined to be a self-inflicted wound to Student's tongue. On November 14th Student left class to visit the school social worker, at which time Student became angry, screamed and pounded fists on the counter at school personnel, and made statements that suggested the possibility of self-harm. Student was observed with a dilated pupil, indicating a possible seizure. Mother arrived to administer medication to Student and

[1] Complaint and Exhibit 2.
[2] Complaint, Reply, and Exhibit 2.

ultimately took Student to the emergency room when there was no improvement in Student's condition. On November 17th Student went to the main office of School #1 and asked for Mother to be called. Student yelled at school staff members and Mother and made statements about wanting to hurt people at School #1. Student was increasingly aggressive, unable to maintain composure, and was again observed with a dilated pupil. Mother took Student to the doctor and notified School #1 later that day that she was keeping Student home for a few days to monitor Student's stability.[3]

4. The staff at School #1 did not impose disciplinary measures in response to Student's behaviors. Rather, the next day, November 18th, out of concern for Student's safety and well-being, a building-level threat assessment meeting was held at School #1 to discuss safety concerns for Student and others after the three incidents. Mother and Student attended the threat assessment meeting with staff members from School #1. The threat assessment report reflected a concern that Student posed a high threat of potential violence to self and/or others.[4]

5. In order to address Student's stability and safety while additional information could be gathered, School staff decided that Student should be moved to Center for six hours per week on an interim basis. Center is a program that operates at several sites throughout the District and serves secondary age students who need some time away from the general education setting. Center offers Students the opportunity to continue to work on their current curriculum on an individualized basis with regular and/or special education teachers, as appropriate, and access to school-based mental health support. From December 9, 2014 to February 27, 2015, Student attended Center. [5]

6. The District admits that it violated the IDEA's procedural requirement concerning change of placement by failing to hold an IEP meeting before changing Student's placement on November 18, 2014. The District also admits that it failed to issue prior written notice to Mother relating to the change of placement.[6]

7. On January 29, 2015, an IEP meeting was held at which time the IEP team changed Student's placement to a smaller school setting which could provide Student with more structure, behavior support, and mental health support. The IEP team determined that the IEP could be appropriately implemented at School #2; Student began attending School #2 on February 27, 2015.[7]

## CONCLUSIONS OF LAW

### A. District unilaterally changed Student's placement on November 18, 2014 without convening an IEP meeting and without prior written notice, in violation of 34 C.F.R. §§ 300.116 and 300.503(a).

[3] Complaint and Exhibits 1 and D-1.
[4] Complaint, Response, and Exhibits 1 and D-1.
[5] Complaint, Exhibit 1, and Response.
[6] Response.
[7] Complaint, Response, and Exhibit D-2.

1. Any analysis of the appropriateness of an IEP must begin with the standard established by the United States Supreme Court in *Rowley v. Board of Education*, 458 U.S. 176 (1982), in which the Court set out a two-pronged analysis for determining whether an IEP has offered a free appropriate public education (FAPE). The first part of the analysis looks to whether the IEP development process complied with the IDEA's procedures; the second looks to whether the resulting IEP was reasonably calculated to confer some educational benefit upon the child. *Id*. at 207; *see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). If those two questions are satisfied affirmatively, the IEP is appropriate under the law.

2. It is well-settled that procedural violations of the IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). When determining the educational placement of a child with a disability, a school district must ensure that the placement decision is made by the IEP team and based on the child's IEP. 34 C.F.R. § 116. A school district must also give a parent prior written notice a reasonable time before it proposes or refuses to change the educational placement of a child. 34 C.F.R. § 300.503(a). Here, SCO concludes and District has admitted that they violated the IDEA's procedural requirement concerning change of placement by failing to hold an IEP meeting or provide Mother with prior written notice before changing Student's placement on November 18, 2014. This change of placement, made outside of the IEP process, denied Student a free appropriate public education.

**B. <u>District did not make or propose a disciplinary change of placement and, as such, there was no need to convene a manifestation determination review meeting pursuant to 34 C.F.R. § 300.530(e)</u>.**

3. The SCO next addresses the question of whether the District was required to convene a manifestation determination review pursuant to 34 C.F.R. § 300.530(e). A school district's disciplinary change in placement of a child with a disability triggers the manifestation determination requirements under the IDEA. A manifestation determination review is an evaluation of the student's misconduct to determine whether the misconduct was a manifestation of the child's disability. The IDEA requires that the manifestation determination review must take place within 10 school days of "any decision to change the placement of a child with a disability because of a violation of a student code of conduct." 34 C.F.R. §§ 300.530(e).

4. In this case, Mother argues that the change of placement from School #1 to Center, following the threat assessment meeting, amounted to a disciplinary change of placement. Mother contends

that although the District did not officially suspend or expel Student, the behavioral incidents prompted the District to effectively punish Student by changing Student's placement to Center. SCO disagrees.

5. The incidents described in the threat assessment form, as well as by Mother and District, do not at all indicate that the change in placement on November 18th was a disciplinary action. Although the effect was undoubtedly a change of placement, that does not change the undisputed reason for the change, which was safety. After three significant events during the course of a week in which Student was either medicated and/or taken for medical assistance, had self-inflicted injuries, indicated an inclination to inflict harm on self or others, and demonstrated lack of control over Student's own body or mind, school personnel determined that there was a significant concern that Student posed a high threat of potential violence to self and/or other school community members. School #1 staff decided that Student should be moved from School #1 to Center on an interim basis in order to ensure Student's stability and safety while gathering additional information. Center is a program that operates for exactly this need. It is clear that the decision to remove Student from School #1 was not at all a disciplinary action or a violation of a student code of conduct, but rather, an action to protect Student and the school community as a whole. As such, there was no need for a manifestation determination review. As previously discussed, District's error was made when they changed Student's placement without first holding an IEP meeting. Accordingly, SCO finds that the District did not violate Student's or Parents' rights by failing to hold a manifestation determination review meeting.

## REMEDIES

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

a. Failure to hold an IEP team meeting when determining the educational placement of a child with a disability, consistent with 34 C.F.R. § 300.116; and

b. Failure to provide parents with prior written notice a reasonable time before implementing a change in education placement, consistent with 34 C.F.R. § 300.503(a).

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

1) District has submitted a proposed corrective action plan (CAP)[8] which addresses each and every violation noted in this Decision. The CAP effectively addresses 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.

[8] Exhibit F

2) Conduct an IEP meeting before the beginning of the 2015-16 school year, but no later than August 7, 2015, to discuss placement.

The District shall provide the Department with documentation that it has complied with this requirement no later than August 14, 2015. Documentation must include proof of compliance with the procedural requirements set forth in the IDEA.

The Department will approve or request revisions of the CAP. Subsequent to 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: Joyce Thiessen-Barrett
1560 Broadway, Suite 1175
Denver, CO 80202-5149

**NOTE**: Failure by the District to meet the timeline 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 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 28th day of May, 2015.

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Lisa A. Weiss, Esq.
State Complaints Officer

## APPENDIX

**Complaint, dated April 8, 2015, pages 1-6**

Exhibit 1: Building Level Threat Assessment Form, dated November 18, 2014
Exhibit 2: IEP, dated January 13, 2014
Exhibit 3: IEP, dated January 29, 2015; Notice of Meeting on January 29, 2015

**District Response, dated April 27, 2015, pages 1-4**

Exhibit A: Email correspondence; Notice of Meeting on January 29, 2015; Attendance and Grade Report
Exhibit B: District's Policy documents
Exhibit D-1: Building Level Threat Assessment Form, dated November 18, 2014
Exhibit D-2: IEP, dated January 29, 2015
Exhibit F: Proposed Corrective Action Plan, dated April 27, 2015
Exhibit G: Certified Mail Receipt

**Parent's Reply, dated May 7, 2015, pages 1-3**