

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

**State-Level Complaint 2015:505
Lewis-Palmer School District 38**

INTRODUCTION

This state-level complaint (Complaint) was filed on April 16, 2015, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT ALLEGATION

Parent's Complaint raised one allegation, summarized as follows:

1. Beginning on or around April 16, 2014, the District has failed to consistently provide the accommodations identified on Student's IEP. Specifically,
 - a. Student was not provided with guided notes and study guides, including a list of terms and main ideas to study for finals, from April through December of 2014;
 - b. Student was not provided with extended time and writing technology for in-class assignments in October of 2014; and
 - c. Beginning on or around February 20, 2015, Student has not received guided notes, worksheets, assignments, and study guides in accordance with her IEP.

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

² Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

FINDINGS OF FACT

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

1. Student is [age] years of age and eligible for special education and related services as a student with a Specific Learning Disability (SLD).⁴ Student's learning disability impacts her reading and writing, academic fluency, and memory.⁵ To meet identified needs, the list of accommodations included guided notes and list of terms and main ideas to study prior to tests. The term "guided" was described in the IEP as "providing enough details to minimize the time searching for required information in text and lecture."⁶ The term "guided" is further defined by comments made by American History Teacher, as documented in the 2014 IEP, to include providing Student with page numbers for chapter review assignments.⁷ Because Student's writing is not fluent enough to take notes during lectures, she also needs a copy of essential notes and a list of terms and main ideas to study prior to tests."⁸ The IEP does not describe exactly when Student must be provided with a copy of notes, other than prior to tests.

2. Parent complains that Student has not received all of the accommodations identified on the IEP. Because Parent does not dispute whether the accommodations are appropriate to meet Student's needs, this investigation only addresses whether specific accommodations described in Student's IEP were provided. Moreover, Parent's allegation that Student was not provided with a guided study-guide to prepare for finals in April and December of 2014 is limited to two classes, Marine Biology and American History.⁹

3. Concerning accommodations in Marine Biology class, Parent complains that Student has not received guided notes or study guides in Marine Biology, in accordance with the IEP. The SCO does not agree. As described more fully below, Marine Biology Teacher had access to the IEP, was knowledgeable about the accommodations identified, could describe why Student needed the relevant accommodations, and credibly explained how they were consistently provided in her class.

4. At the beginning of the semester, Marine Biology Teacher was notified through the District's software programs, Infinite Campus and Alpine, that Student had an IEP. Marine Biology Teacher had access the complete IEP through the software program. In addition, Case

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

⁴ Exhibit 1, p. 2.

⁵ Exhibit 1, p. 4.

⁶ Exhibit 1, p. 9; Exhibit 2, p. 9. Accommodations identified on 2013 and 2014 IEPs are identical.

⁷ Exhibit 1, p. 3. Student's Social Studies Teacher is the same individual as American History Teacher.

⁸ Exhibit 1, p. 4.

⁹ Interviews with Parent, Student, School Assistant Principal, American History Teacher, Marine Biology Teacher, English 2 Teacher, English 3 Teacher, and Case Manager.

Manager sent a summary of Student's accommodations to all of Student's teachers, including Marine Biology Teacher, at the beginning of the semester.¹⁰

5. Student's primary need in Marine Biology class was for lecture notes. Marine Biology Teacher provided Student with lecture notes on a consistent and daily basis for most of the semester. In early October, however, Marine Biology Teacher admitted that she forgot to provide Student with notes for approximately two weeks. Student eventually mentioned this problem to Case Manager who immediately contacted Marine Biology Teacher to remind her that she must provide Student with lecture notes. After this reminder, Marine Biology Teacher provided Student with the lecture notes missing to date, and continued to provide them on a consistent basis for the remainder of the semester. Moreover, Student was provided with all lecture notes prior to her final exam. Consequently, the SCO finds that Student was provided with lecture notes, in accordance with her IEP, for Marine Biology class.¹¹

6. Although Student typically received lecture notes at the end of class, Student stated that she would have preferred to receive them prior to class. Because Student's IEP does not specify precisely when notes must be provided as long as they are provided before tests, the SCO does not find that the IEP required Marine Biology Teacher to provide the lecture notes prior to class.¹² Consequently, the SCO finds that Marine Biology Teacher provided the lecture notes in accordance with the IEP.

7. In addition, Parent alleges that Student had assignments in Marine Biology requiring her to color marine animals that should have been guided.¹³ The SCO does not agree. To comply with the accommodations identified on Student's IEP, assignments and study guides were to include enough details to minimize the time required for searching, i.e., provide page numbers where the information could be located. Because these assignments consisted of single-page descriptions of the animals to be colored, it would not have been possible to guide the assignment by offering page numbers. Consequently, the failure to provide page numbers or other details for these assignments does not mean that Student was denied the accommodation described on her IEP for guided assignments.

8. Parent also alleges that Student was not provided with guided assignments and study guides in American History class. Because interviews conducted as part of this investigation revealed that allegation 1(c), i.e., whether Student was provided with required accommodations from February 20, 2015, is limited to concerns about American History class, the SCO will address these allegations together.

¹⁰ Exhibit 9, pp. 104-201; Interviews with Marine Biology Teacher, Case Manager, Geometry Teacher, English Two Teacher, English Three Teacher, and American History Teacher.

¹¹ Interviews with Student, Parent, Marine Biology Teacher, Case Manager, and Assistant School Principal.

¹² There is no credible evidence that this issue was raised with Case Manager or at the IEP meeting in September of 2014. Interviews with Parent, Student, Case Manager, and Marine Biology Teacher.

¹³ Exhibit D.

9. As described more fully below, the SCO finds that Student was denied accommodations for one chapter review in both first and second semester of American History, for a total of two chapter reviews. Although Student was not provided with accommodations for these two assignments, there is no evidence that Student suffered educational harm as a result. Moreover, there is no evidence that these isolated occurrences were anything more than that. As discussed below, American History Teacher was fully and adequately informed of Student's accommodations and consistently provided her with those accommodations in his class.

10. American History Teacher had access to the IEP, was knowledgeable about the accommodations identified, could describe why Student needed the relevant accommodations, and credibly explained how they were consistently provided in his class with the exception of the two identified assignments. At the beginning of the semester, American History Teacher was notified through the District's software programs, Infinite Campus and Alpine, that Student had an IEP. American History Teacher had access the complete IEP through the software program. In addition, Case Manager sent a summary of Student's accommodations to all of Student's teachers, including American History Teacher, at the beginning of the semester.¹⁴ Notably, American History Teacher also participated in Student's IEP meeting in September of 2014 where he noted the importance of providing page-numbers to Student for chapter reviews as an accommodation.¹⁵

11. Student's primary need in American History class was to be provided with guided chapter review assignments that were intended to help students prepare for tests. According to the accommodations described on her IEP, Student should have been provided with page numbers next to the review questions in order to limit the amount of time required searching for the answers in the text.¹⁶ During the first semester of 2014-15 school year, the documentation submitted by both Parent and the District demonstrates that Student was provided with guided assignments, in accordance with her IEP, for all but one assignment, Chapter Nine.¹⁷ While Student received full credit for the assignment, she earned a score of 53.48% on the Chapter Nine quiz. Because Student's scores on quizzes/tests ranged from 52.77 to 91.11%, it is not possible to attribute this lower score to not being provided with the accommodation for this assignment.¹⁸ Furthermore, Student was still provided with a list of terms and main ideas to study for Chapter Nine through an in-class exercise called a "brain-

¹⁴ Exhibit 9, pp. 104-201; Interviews with Marine Biology Teacher, Case Manager, Geometry Teacher, English Two Teacher, English Three Teacher, and American History Teacher.

¹⁵ Exhibit 1, p. 3; Interviews with Case Manager and American History Teacher. Note that the same individual taught Social Studies and American History. For readability, the SCO labels this individual American History Teacher.

¹⁶ Exhibit 1.

¹⁷ Exhibit 9, pp. 202-274; Parent's Reply; Exhibit D; Interviews with American History Teacher, Case Manager, School Assistant Principal, Parent, and Student.

¹⁸ Exhibit 4, pp. 19-22.

blitz.” This exercise was intended as a review of each chapter and answers were provided in class.¹⁹

12. From the beginning of the second semester until Student withdrew from School in early March of 2015, the documentation submitted by both Parent and the District demonstrates that Student was provided with guided assignments, in accordance with her IEP, for all but one assignment, Chapter Fourteen, in American History.²⁰ Although Student did not receive a guided assignment, as required by her IEP, for the Chapter Fourteen review, she was receiving a B- in the class when Parent withdrew her to enroll in another school within the District. Consequently, there is no credible evidence that the failure to provide a guided assignment for the Chapter Fourteen review impacted Student’s academic performance.

13. Parent also alleges that Student was also not provided with a guided review for Chapter Seventeen. The SCO does not agree. Although American History Teacher initially failed to provide the page numbers for the Chapter Seventeen review assignment, he provided the numbers soon after being notified by School Assistant Principal that the page numbers were missing from the review guide.²¹

14. Finally, Parent alleges that Student was not provided with extended time and writing technology for in-class assignments in October of 2014. This allegation concerns a specific in-class assignment in English Three class.²² For the reasons described more fully below, the SCO does not agree.

15. Student’s IEP provides extended time for completing assignments and taking tests.²³ Like American History Teacher and Marine Biology Teacher, English Teacher was informed that Student had an IEP, had access to the complete IEP through District software, and had received an email from Case Manager summarizing Student’s accommodations at the beginning of the semester.²⁴

16. For an in-class assignment in October 2014, Student informed English Teacher that she was going to need extended time to complete the assignment. English Teacher informed Student that she would need to “think about that.” After class, Student informed Case Manager of the situation, and he immediately contacted English Teacher to clarify Student’s IEP requirements, specifically the accommodation for extended time. English Teacher informed

¹⁹ Interview with American History Teacher; Exhibit 9, pp. 202-208; Exhibit 11. The SCO does not agree with Parent’s assertion that Student’s IEP required that she be provided with the answer key for this exercise.

²⁰ Exhibit 11, pp. 1-25; Parent’s Reply; Exhibit D; Interviews with American History Teacher, Case Manager, School Assistant Principal, Parent, and Student.

²¹ Parent emailed School Assistant Principal and Case Manager to notify them that the review guide was missing numbers. Exhibits C and 7. Interviews with Parent, Student, Case Manager, American History Teacher, and School Assistant Principal.

²² Response; Reply; Interviews with Parent, Student, Case Manager, and English Three Teacher.

²³ Exhibit 1, pp. 4 and 9.

²⁴ Interview with English Teacher Three and Case Manager.

Case Manager that she meant she would need to think about the amount of time to provide for this assignment, not whether to provide the extended time. English Teacher assured Case Manager and Student that Student would be provided with extended time for this assignment. When asked about how this comment from English Teacher affected her, Student replied that she knew she was entitled to the extended time, so she just took it. Following this incident, Student received extended-time to complete this and all other assignments in English Three.

17. Student's IEP also requires that text be available in audio and that she have access to spelling/grammar checker and word prediction or dictation software.²⁵ The District has provided Student with a computer that has all of the software programs required on her IEP and provides access to audio books. Documentation submitted by the District shows that Student had access to these resources, in accordance with her IEP, during the time relevant to this Complaint.²⁶ Student admitted that she routinely accessed the audio texts but preferred her own personal computer to the one provided by the District. There is no evidence that Student did not understand how to use the software available on the computer provided by the District; rather, Student simply prefers to use her own device.²⁷ Consequently, the SCO finds that the District has provided access to audio text and software in accordance with Student's IEP.

CONCLUSIONS OF LAW

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

1. Under 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 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 District, must implement a student's IEP in its entirety. 34 CFR § 300.323(c). To satisfy this obligation, the District must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR § 300.323(d)(2).

2. In this case, Student's teachers were adequately informed of their responsibility for providing the accommodations identified on Student's IEP. As detailed in the findings, Parent's concerns were limited to accommodations provided in three classes during the 2014-15 school year: Marine Biology, American History, and English Three. All three teachers were notified that Student had an IEP, had access to the complete IEP, and were informed of all required accommodations by Case Manager at the beginning of each semester. Moreover, American

²⁵ Exhibit 1, p. 9.

²⁶ Exhibit 10.

²⁷ Interviews with Student, English Teacher, and Case Manager.

History Teacher participated in Student's IEP meeting in September of 2014 and helped define what it meant to provide Student with "guided" assignments.

3. In addition to informing teachers of their responsibilities regarding a student's IEP, the District must ensure that the IEP, including identified accommodations, is being implemented. 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. It follows that the failure to provide accommodations identified on a student's IEP, could result in a failure to implement the IEP.

4. In this case, Student was provided with accommodations in accordance with her IEP for Marine Biology and English Three. Marine Biology Teacher provided credible evidence that Student was provided with essential lecture notes on a consistent and timely basis, i.e., before tests. Although Parent argued that assignments requiring Student to color marine animals should have been guided, the SCO does not agree.

5. Concerning Parent's specific allegation that Student was not provided with extended time and writing technology for in-class assignments in October of 2014, the SCO concludes that the required accommodations were provided. This allegation is limited to English Three. Although English Teacher initially told Student that she would have to "think about" Student's request for an extension on this particular assignment, Case Manager immediately clarified Student's accommodation for extended time with English Teacher, and Student was provided with the required extension for this and all other in-class assignments. Student was also provided with access to the required writing software, i.e. grammar/spelling checker and dictation or prediction software through a District issued computer. The fact that Student preferred to use her own personal computer does not mean that the District failed to provide the accommodation when the required software was made available and Student knew how to use it. *C.B. v. Pittsford Cent. Sch. Dist.*, 54 IDELR 149 (W.D.N.Y. 2010). Accordingly, the SCO concludes that Student was provided with accommodations consistent with her IEP in both Marine Biology and English Class.

6. Finally, Student was provided with accommodations as required in American History class for all but two assignments. To prepare for tests, Student's IEP required that she be provided with guided assignments that provided enough details to minimize the time searching for required information in text and lecture. For American History class, Student should have been provided with a range of page-numbers where she could find the answers for chapter reviews intended to help students prepare for the final exam. Student was provided with guided assignments for all but one chapter during the first semester and another chapter during the second semester of the 2014-15 school year as required by her IEP. Although the failure to provide guided assignments for these two assignments is a technical violation, these were isolated occurrences or oversights and not systemic in nature. In fact, American History Teacher was fully and adequately informed of Student's accommodations and provided them

on a consistent basis. Consequently, there is no need for corrective action to address this matter.

7. 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. In this case, there is no evidence that the failure to provide these two guided chapter reviews resulted in educational harm. First, Student was still provided with a list of terms and main ideas for the missing chapters through an in-class exercise. Finally, Student's grades varied to such a degree that it is not possible to determine if a lower score was the result of the failure to provide the guided assignment. Consequently, the SCO concludes that the failure to implement Student's IEP in American History class was not material.

REMEDIES

Because the SCO has concluded that the District did not violate IDEA as alleged by Parent in this Complaint, no remedies are ordered.

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 3rd day of June, 2015.

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-8.

Exhibit A: 2013 IEP.

Exhibit B: 2014 IEP.

Exhibit C: Email correspondence.

Parent Reply.

Exhibit D: Miscellaneous documentation.

Response, pages 1-9.

Exhibit 1: 2014 IEP.

Exhibit 2: 2013 IEP.

Exhibit 3: District calendar.

Exhibit 4: Grade reports.

Exhibit 5: IEP progress reports.

Exhibit 6: Class Schedule.

Exhibit 7: Email correspondence.

Exhibit 8: Witness contact list.

Exhibits 9-11: Documentation supporting accommodations provided in various classes.

Interviews with:

- Parent
- Student
- School Assistant Principal
- Special Education Director
- Special Education Department Chair
- Special Education Case Manager
- Geometry Teacher
- Marine Biology Teacher
- American History Teacher
- English 2 Teacher
- English 3 Teacher