

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

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State-Level Complaint 2017:532  
Douglas County School District

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on December 7, 2017, by the mother (Mother) and father (Father) (Parents collectively) of a student (Student) who attends a charter school (School) in the Douglas County School District (School District). Student is currently identified as an eligible child with a disability under the Individuals with Disabilities Education Act.<sup>1</sup>

Based on the written Complaint, 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.<sup>2</sup> A decision was due on February 5, 2018. The parties initially attempted to engage in mediation to resolve their dispute and the timeline was tolled on two different occasions. On January 18, 2018, Parents' attorney informed the SCO that they no longer wished to proceed with mediation and would like the investigation to resume. The deadline for a decision is March 7, 2018.

**COMPLAINT ALLEGATIONS**

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

1. Failing to comply with remedies ordered in State Complaint decision 2017:509 (specifically failure to pay for the Independent Educational Evaluation (IEE) in the area of auditory processing and failure to ensure the attendance of specified School staff members);
2. Denying Parents meaningful participation (specifically by finalizing IEP outside of an IEP meeting and failure to issue sufficiently detailed Prior Notice and

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.*

<sup>2</sup> 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).

Consent for Reevaluation (Consent) and its corresponding Prior Written Notice (PWN).

### FINDINGS OF FACT

After a thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

1. This Complaint is the 2<sup>nd</sup> State Level Complaint filed by Parents. The first Complaint was filed on June 7, 2017. A decision (Decision) was issued on August 3, 2017 with findings of violations against the School District and corresponding remedies addressing identified violations. On September 19, 2017, the School District submitted their Corrective Action Plan (Plan) to the Colorado Department of Education (CDE). The Accountability Specialist assigned to monitor compliance of the decision accepted the Plan that same day.<sup>4</sup>

2. The first allegation in this Complaint pertains to one of the remedies ordered in that decision. The relevant section of the remedy states:

“The School District shall provide an IEE in all identified and suspected areas of disabilities. Within two weeks of the IEE completion but no later than October 3, 2017, the school shall convene an IEP to review and revise Student’s IEP, including transitional services if appropriate. The IEP shall be conducted by a neutral facilitator and ensure attendance by professionals who provided services to Student and must also include Vice-Principal, School Psychologist, Math teacher, Special Education Teacher for math, SLP and the private evaluator if possible.”<sup>5</sup>

3. At all times relevant to the Complaint, Student has been a resident of School District and enrolled in School. Student has been identified as a student with a Specific Learning Disability, eligible for special education and related services under the IDEA and ECEA.<sup>6</sup>

4. Student is currently in the 11<sup>th</sup> grade and is participating in School’s concurrent enrollment program and internship program.<sup>7</sup>

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>4</sup> Interview Mother, Accountability Specialist; Exhibit 1 and F.

<sup>5</sup> Exhibit 1.

<sup>6</sup> Interviews with Mother and Special Education Case Manager; Exhibit A and E.

<sup>7</sup> The application process to participate in these two programs began and was completed during the 2016-2017 school year. It was towards the end of this process that Parents and School identified problems with the proposed plan due to a lack of coordination between the concurrent enrollment program and the special education program. Interviews with Mother and Special Education Case Manager; Exhibit A.

5. For the 2017-2018 school year, Student is enrolled and attending Community College full-time through the concurrent enrollment program and as a result, does not attend any classes on School property. The IEP in effect, the one developed May 30, 2017 (May 2017 IEP) provides for 400 minutes monthly of direct services in the general education classroom. Since Student is not attending any general education class on School property, School has not provided any special education services.<sup>8</sup>

6. On August 15, 2017, to document the current status, School issued a Prior Written Notice which provides:

“[School] stands ready to implement [Student’s] May 30, 2017 IEP. However, the family’s choice to pursue a full-time concurrent enrollment schedule at [Community College] removes [Student] from all [School] courses, rendering him unavailable for the services called for by his IEP. As a result, the IEP will not be implemented at this time. The IEP will remain in place unless it is later amended or revised by an IEP team.”<sup>9</sup>

7. That same day, on August 15, 2017, Mother initiated communication with the School District regarding the remedy pertaining to the IEEs. On August 16, 2017, Special Education Director responded and requested that Mother let her know the areas she wanted assessed and provided Mother with a list of evaluators and the IEE request form. On August 17, 2017, Mother responded with the areas to be evaluated and provided the completed IEE request form. The areas identified for evaluation included an educational evaluation (Academic Evaluation), a speech/language evaluation (Speech Evaluation), and occupational therapy evaluation (OT Evaluation). These evaluations also included assessing Student in the areas of dysgraphia, dyslexia, and ADD (executive functioning). Special Education Director coordinated the finalization of the contracts and payment for the IEE evaluators selected by Mother.<sup>10</sup>

8. The Academic Evaluation was conducted by Academic IEE Evaluator on August 24, 2017 and a finalized report was provided on September 11, 2017. The IEE for Occupational Therapy was conducted by OT IEE Evaluator on September 1, 2017 and the final report was provided on September 21, 2017. On September 7, the IEE for Speech was conducted by SLP IEE Evaluator and the final report was provided on September 22, 2017.

9. On September 14, 2017, Special Education Director e-mailed Mother inquiring if Mother would like to have a Statewide Assistive Technology Augmentative and Alternative Communication (SWAAAC) evaluation completed and if there were “any other evaluations, outside of those being done by the IEE providers that [Mother]

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<sup>8</sup> Interviews with Mother, Special Education Director and Special Education Case Manager; Exhibit B.

<sup>9</sup> Exhibit F and B.

<sup>10</sup> Interviews with Mother and Special Education Director. Exhibit D and F.

would like [School District] to conduct.”<sup>11</sup> Mother responded in the affirmative regarding the SWAAAC evaluation and informed Special Education Director that she would like an evaluation in the area of Central Auditory Processing Disorder (CAPD). Special Education Director responded stating that School District was not ordered to provide an IEE in the area of CAPD but they would be willing to do it at the same time as the SWAAAC evaluation. Mother declined stating “we do not want to pursue a district evaluation simultaneous to a private evaluation at Able Kids. We believe it makes more sense to get a diagnosis from Able Kids first, and then if [Student] is diagnosed, consider the classroom-related impact of CAPD on his learning.”<sup>12</sup>

10. The SCO finds that School District complied with the remedy pertaining to conducting IEEs in all areas of identified and suspected disabilities. Mother identified the areas to be assessed and School District agreed. Mother’s list was reasonable and comprehensive based on the information available when the IEEs were selected.<sup>13</sup> Without delay, School District negotiated contracts with the identified IEE evaluators and arranged for payment. Once the IEEs were completed, the normal mode of operation resumed whereas School District resumed the right to conduct evaluations as a prerequisite to a publically funded IEE.<sup>14</sup>

11. In addition to the IEEs, the decision required “[w]ithin two weeks of the IEE completion but no later than October 3, 2017, the School shall convene an IEP to review and revise Student’s IEP, including transitional services if appropriate.”<sup>15</sup> Mother requested an extension of the October 3, 2017 deadline to allow for the CAPD evaluation to be completed. School District agreed to the request and sought an extension from the Accountability Specialist. The request was granted and School District was given until December 15, 2017 to convene the IEP meeting.<sup>16</sup>

12. On October 6, 2017, Mother notified Special Education Director of the need to finalize the Student’s IEP prior to December 1<sup>st</sup>, 2017 in order to submit a request to the College Board for the SAT test sessions. School District worked to schedule the IEP meeting accordingly. In the meantime, School District performed the SWAAAC evaluation on November 10<sup>th</sup>, 2017. The CAPD evaluation was completed on November 1, 2017 and a final report was issued on November 9, 2017.

13. The IEP meeting was scheduled for November 14, 2107. A Notice of Meeting was issued on November 3, 2017 stating the purpose of the meeting was “to review and update [Student’s] present levels of academic achievement and functional

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<sup>11</sup> Exhibit F.

<sup>12</sup> *Id.*

<sup>13</sup> Over the course of the last few years, Student had numerous evaluations that formed the basis for the IEEs chosen by Mother. Under a different scenario, School should be actively engaged with identifying areas of concern and areas to be evaluated.

<sup>14</sup> Interview Mother and Special Education Director; Exhibit F.

<sup>15</sup> Exhibit 1

<sup>16</sup> Exhibit F.

performance, needs, and goals and to develop a plan to provide special education and related services.”<sup>17</sup> Parents were provided a Draft IEP (2017 Draft IEP) on November 13, 2017.<sup>18</sup>

14. On November 14, 2017 Student's IEP was convened (November 2017 IEP Meeting). The meeting was facilitated by a facilitator through the Colorado Department of Education's Early Dispute Resolution Project. The meeting lasted approximately 2 hours, of which, a significant portion of the meeting was spent reviewing the IEEs. Parents allege the meeting was stopped due to time constraints not because the IEP meeting was completed. Specifically, they allege that they were denied meaningful participation because School issued a final IEP document (November 2017 Final IEP) three days later without their input as to Student's goals, services, and transition plan. School District denies Parents' allegation stating that the IEP meeting was concluded with everyone's agreement that more information was needed before being able to make changes to the IEP. As a result, the School District contends that they clearly communicated their offer of FAPE as those services contained in the May 2017 IEP and that it was understood that the meeting was concluded. School District asserts that issuing a final IEP at the conclusion of the November 14, 2017 Meeting was appropriate.<sup>19</sup>

15. The SCO finds that the School District finalized the 2017 IEP outside of an IEP meeting denying Parents the ability to meaningfully participate in its development. Once the evaluations were reviewed, School District suggested the need for additional evaluation data, specifically assessments to consider the educational impact of the diagnoses and concerns discussed in the IEEs. Additionally, School discussed considering the possibility of a more appropriate eligibility category. Mother agreed to additional evaluations assessing the educational impact and requested that School also assess Student for possible identification in the area of giftedness.<sup>20</sup>

16. During the discussion of additional evaluations, Mother attempted to talk about Student's Specific Learning Disability. School, however, responded stating that it needed the additional data before moving forward. Mother questioned why the team could not consider the testing that had just been completed to support Student's disability. The IEP team did not discuss Student's current disability or the provision of services. With approximately 15 minutes left in the meeting. Facilitator asked the IEP team how to proceed with setting up the needs and goals with the time remaining. School District Coordinator responded that they would need signed consent and then they would have 60 days from that time. Advocate responded by asking if the past IEP would be relied upon for services. Mother and Advocate attempted to discuss the provision of services and other possibilities for Student receiving services. Special

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<sup>17</sup> Exhibit C.

<sup>18</sup> Interview Mother; Exhibit F.

<sup>19</sup> Interview Mother, Special Education Director, Special Education Case Manager; Response, Reply, Exhibit F.

<sup>20</sup> *Id.*

Education Coordinator responded that the offer of FAPE would be the services in Student's current IEP (May 2017 IEP) and referenced the August PWN as the reason School District could not provide FAPE, along with the need to look at eligibility again. Special Education Director also responded stating that "[we] (the IEP team) really haven't determined what services [Student] would need today if we can't determine that without the eligibility. We do have a current IEP in place."<sup>21</sup> At no point did the IEP team engage in any discussion or consideration of Mother's or Advocate's request to discuss services or clearly communicate that the November 2017 IEP Meeting was completed.<sup>22</sup>

17. Near the end of the meeting, Facilitator summarized the plan stating "... this seems to be a stopping point to have these evaluations done...and then re-look at eligibility, and what FAPE would look like in another draft IEP...?"<sup>23</sup> Special Education Director responded, "I agree we should stop the meeting and reschedule." From that point, the IEP Team addressed Mother's concern regarding documenting an accommodation that was referenced in the neuropsychological evaluation pertaining to testing accommodations for the Student's upcoming SAT test. Facilitator wrapped up the conversation and stated "... okay so we'll pause this portion now to do the additional assessments, and then when you guys have that, and you schedule another meeting, we're happy to come back, and help work through the remainder of the list."<sup>24</sup> Facilitator also referenced the next meeting as a "continuation" when discussing School District requesting their services again.<sup>25</sup> School issued a final IEP (November 2017 Final IEP) dated November 14, 2017 that Special Education Case Manager e-mailed to parents on November 17, 2017.<sup>26</sup>

18. While School District is correct that there were numerous times they mentioned their offer of FAPE, the SCO finds that it was in the context of the May 2017 IEP remaining "current" pending the evaluations. According to School District, it was understood that by "generating" a Consent for Reevaluation a "new eligibility" IEP meeting would be held. Both Mother and Advocate state that they believed School would be coordinating another meeting in the near future to finish reviewing the November 2017 Draft. Furthermore, while the IEP team identified additional areas to evaluate, there was ample evaluative data to consider as it related to the draft goals, the accommodations, the transition plan, the appropriateness of the services and most importantly the delivery of such services pending the completion of the evaluations.<sup>27</sup> The lack of discussion or consideration around the delivery of services

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<sup>21</sup> Exhibit 12.

<sup>22</sup> Interviews Mother, Advocate, Special Education Director, Special Education Case Manager; Exhibit 12.

<sup>23</sup> Exhibit 12.

<sup>24</sup> *Id.*

<sup>25</sup> Referencing the May 2017 IEP.

<sup>26</sup> Exhibit 13 and Exhibit F.

<sup>27</sup> The verbal review of the IEEs during the meeting provided minimal new information than what was provided in the written summaries. Based on the evaluation reports, School drafted proposed goals, which included two new goals for self-determination. The applicability of those goals was not discussed and they did not appear on the finalized version.

was especially concerning given the fact that this Student, with an identified disability, was not receiving services and the likelihood he would not receive services for another 60 days.<sup>28</sup> Accordingly, the SCO finds there was no discussion of the IEP itself yet School issued a finalized IEP after a partial IEP meeting was conducted.

19. While the School District argues that their consideration of the IEEs led to a determination that a reevaluation was needed, the SCO finds School District went into the meeting wanting Parents' Consent to Reevaluate.<sup>29</sup> The SCO finds that School had possession of the completed IEEs for over seven weeks, wanted to reevaluate Student prior to the November 2017 IEP meeting and failed to make reasonable efforts to consider what, if anything could be done prior to November 2017 IEP meeting so that all the information was available and an IEP could be drafted that would meet Student's needs.<sup>30</sup> Accordingly, the SCO finds the family was denied meaningful participation in the IEP process.

20. As for the allegation regarding whether School District issued a sufficiently detailed Prior Notice and Consent for Reevaluation and its corresponding Prior Written Notice, the SCO finds that both the Prior Notice for Reevaluation and its corresponding Prior Written Notice are sufficiently detailed.<sup>31</sup> The relevant part of the Consent for Reevaluation provides:

"An annual review of [Student's] IEP was held. At the meeting, the team, including parents, agreed that additional evaluation data is required in order to determine any educational impact [Student's] diagnoses or challenges may present in the school setting. In the areas of General Intelligence, Communication, and Motor Abilities, a review of records only will be conducted. In the areas of social/emotional status, academic performance, and health, a review of records as well as additional testing may be conducted."<sup>32</sup>

The Prior Written Notice attached to the Notice for Consent provides:

"[Student] was evaluated through an independent educational evaluation, and these results were shared with the school staff. During [Student's] annual review of his IEP, concerns with attention were brought up as well as the educational impact of challenges that were identified within the IEE. The team would like to formally assess his social /emotional, health, and academic performance as well as review

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<sup>28</sup> During the meeting, Mother informed School that Student was doing well at Community College. The SCO did not find any indication that School obtained independent information regarding Student's progress. Student, in fact, was struggling and ended the semester with one F and one D. Interview with Mother. Exhibit 14, F and A.

<sup>29</sup> Exhibit F.

<sup>30</sup> Interview Special Education Director, Special Education Case Manager and Mother; Exhibit D and 13.

<sup>31</sup> The SCO is not making a determination as to whether the content of the Consent for Reevaluation was overbroad.

<sup>32</sup> Exhibit B.

records of previous evaluations that have been completed in order to accurately identify [Student's] educational needs.<sup>33</sup>

The section describing other options considered and rejected provided "[t]he team considered not reevaluating. This was rejected because [Student's] attention has not been formally evaluated in an educational setting and additional information is required in order to best determine [Student's] current educational needs."<sup>34</sup> The document stated that no other factors were considered by the team.

21. The Notice for and PWN provides sufficient detail to inform Parents what School intended to do. Specifically it identified the areas where School intended to do a review of records and areas where formal assessments would be conducted. Additionally, the PWN states the basis for conducting these assessments: to address concerns regarding attention and the educational impact that were identified within [Student's] IEE. The SCO finds, for the reasons stated above, that the Notice and corresponding PWN was sufficient. The information provided to Parent allowed them to consider the action proposed by School, the basis behind it and to respond to it.

22. Parents and School Case Manager exchanged numerous e-mails regarding the Notice and scope of the reevaluation. On December 14, 2017, Parents signed the Notice for Consent for Reevaluation. Since that time, School has been in the process of conducting the assessments. A Reevaluation meeting has been tentatively scheduled for March 26, 2018.<sup>35</sup>

23. On January 30, 2018, during the pendency of the investigation, the Accountability Specialist issued a closure letter providing in part "School District has completed all actions required by the State Complaint Officer. State Complaint 2017:509 is closed."<sup>36</sup> Upon investigation and as previously stated, the SCO finds School District compliant in the area of conducting an IEE in all areas of identified and suspected disabilities. As for the allegation pertaining to including the individuals specified in the 2017:509 Decision, the SCO accepts School District's admission regarding not having the necessary individuals at the November 2017 IEP meeting and their proposal to include these two individuals at the next meeting.<sup>37</sup>

## CONCLUSIONS OF LAW

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Interview with Mother and Special Education Case Manager. Exhibit F. Mother informed the SCO that the date of the Reevaluation may change to ensure the availability of the Special Education Teacher 1 who provided services.

<sup>36</sup> Reply

<sup>37</sup> SCO accepts the district's admission because though the district had an administrator in the meeting the administrator did not have knowledge of the concurrent enrollment program and could not earnestly contribute to the IEP meeting. Additionally, though there were a special education teacher present, the specific teacher with knowledge of student's writing needs was not, and not properly excused.



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

**Issue 1: Whether School District violated the IDEA and denied Student a free appropriate public education (FAPE) by failing to comply with remedies ordered in State Complaint Decision 2017:509 (specifically failure to pay for the IEE in the area of auditory processing and failure to ensure the attendance of specified School staff members):**

A State Educational Agency must ensure that when it identifies noncompliance with the requirements of this part by Local Educational Agencies (LEAs), the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. 34 C.F.R. §300.600(e). As it pertains to a State Complaint, "[w]hen a decision on a state complaint requires a district to take corrective action, the district should make every effort to remedy its noncompliance as soon as possible or by the deadline set in the decision, and certainly within a year of the (State Educational Agency) SEA's identification of the noncompliance." *Letter to Zirkel*, 116 LRP 37022 (OSEP 8/22/16).

Parents allege in their Complaint that School failed to comply with remedies ordered in State Complaint Decision 2017: 509, specifically by failing to pay for an IEE in the area of auditory processing and failing to have specified School staff members at the IEP meeting. As it pertains to the allegation regarding the IEE, the SCO disagrees. In accordance with the 2017:509 Decision, Parents and School District communicated about the IEEs to be completed. The list of IEEs was reasonable and fairly comprehensive based on the information they had when the IEEs were selected. The areas to be evaluated included an educational evaluation, speech/language evaluation, and occupational evaluations, which included addressing concerns in the area of Dysgraphia, Dyslexia and ADD (executive functioning). Upon completion of the evaluations, School District reached out to Mother to inquire about other evaluations in addition to those done as IEEs. Mother responded that she would like an evaluation in the area of Central Auditory Processing based on information obtained from the IEEs. Special Education Director offered to have School District Audiologist conduct an evaluation. Mother declined that offer wanting to first determine whether Student received a diagnosis. Once the IEEs were completed, any additional evaluations returned to the normal mode of operation i.e. the School District gets the first opportunity to conduct an evaluation. Accordingly, School District complied with the remedy requiring School District to provide IEEs in all areas of identified and suspected disability.

As for Parent's allegation that School District failed to include the individuals specified in the order, School District admits that the November 2017 IEP did not include two individuals as required by the 2017:509 Decision. School District asserts that it was an unintentional oversight and there was no educational harm and that they will ensure their attendance at the next scheduled IEP meeting. The SCO agrees

that in this circumstance, due to the 2017 IEP Meeting being partially completed, there was no educational harm. The majority of the meeting was spent detailing the outcome of the IEEs, the SWAAAC evaluation and the private CAPD evaluation. Due to time constraints, the IEP team was not able to have meaningful discussion around goals, services, and transition planning. While there was no educational harm due to the 2017 IEP Meeting not being concluded, the SCO finds that School District failed to comply with the remedy in Decision 2017:509 by not having the required individuals present and the 2017 IEP meeting and failing to obtain a written excusal permitting their absence.

**Issue 2: Whether School District violated the IDEA and denied Student a FAPE by denying Parents meaningful participation (specifically by finalizing IEP outside of an IEP meeting and failure to issue sufficiently detailed Prior Notice and Consent for Reevaluation and its corresponding Prior Written Notice).**

Under the IDEA, public school districts are required to provide children with disabilities with a “free appropriate public education” or (FAPE) by providing special education and related services individual tailored to meet the student’s unique needs, and provided in conformity with an individualized education program (or IEP) that is developed according to the IDEA’s procedures. 20 U.S.C. Sec. 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA contains extensive procedural requirements relating to the development of the IEP, including the requirements that the IEP be a written document, reviewed at least annually, and that it be developed by a team of individuals with knowledge about the child, including a representative of the public agency who is knowledgeable about the availability of resources for the public agency, and that it be based on the input of the IEP participants as well as evaluative data derived from valid, scientifically based assessments conducted in accordance with the IDEA’s requirements. See, e.g. 34 C.F.R. Sec. §§ 300.301-300.304; 300.320-300.324. The IDEA also provides that in the development of an IEP, parents must be afforded the opportunity to attend and participate and that the parents’ participation must be meaningful, including giving consideration to their concerns about their child and providing parents with a copy of the IEP. 34 C.F.R. §§ 300.321 (a)(1), 300.322(f), and 300.324(a)(ii). The U.S. Supreme Court has cited parental involvement as a priority in crafting IEPs, explaining that the “nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representative will fully air their respective opinions on the degree of progress of a child’s IEP should pursue.” *Endrew F. v. Douglas County Sch. Dist.* RE-1, 69 IDELR 174 (2017).

Here, School convened an IEP meeting on November 14, 2017 to consider all of the evaluations and to review and revise Student’s IEP. Among the items that were discussed were the IEEs, SWAAAC evaluation and the CAPD Evaluation. Discussion of these evaluations took the majority of the two-hour time allotted. At the conclusion of the meeting, the Facilitator asked if additional information was needed. School Case Manager responded that she thought that they needed additional assessments in

order to understand the educational impact in a classroom setting, among other things. The IEP team discussed this proposal and ultimately agreed that additional information was needed to assess some of the areas of concern discussed in the evaluations. However, at that point, it seems there was confusion as to what extent additional information was needed and the impact it might have on the development of the current IEP. Mother and Advocated attempted to address Student's current goal and provision of services. The IEP team did not discuss anything else in the IEP, including the current goal, the provision of special education service instruction and most importantly, how that instruction might be provided. This is also illustrated by the removal of two of the three proposed goals that were contained in the draft IEP without any discussion with the team during the IEP. The finalization of the IEP that began November 14, 2017 was premature and decisions were made outside of the November 2017 IEP Team Meeting. This resulted in denying Parents meaningful parent participation and a denial of Student's FAPE.

Next, the SCO turns to the issue of whether School District provided Parents with a Notice for Consent to Reevaluation and its corresponding PWN sufficient to meet the procedural requirements of the IDEA.

The IDEA provides that schools "must obtain informed parental consent in accordance with §300.300(a)(1), prior to conducting any reevaluation of a child with a disability." 34 C.F.R. §300.300(c)(i). Consent means "[t]he parent has been fully informed of all information relevant to the activity for which consent is sought..." 34 C.F.R. § 300.9. Furthermore, the IDEA provides that before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of a child with a disability, the school district must provide the parents with "prior written notice" (PWN) describing and explaining the basis for the school district's action. 34 C.F.R. § 300.503. The PWN must include:

- A description of the action (i.e., evaluation) that the district is refusing to do;
- An explanation of why the district refuses to conduct an evaluation;
- A description of each report the district used as a basis for refusing an evaluation;
- A copy of the procedural safeguards;
- Sources for parents to contact to obtain assistance in understanding the PWN;
- A description of other options considered and why those options were rejected; and
- A description of other factors relevant to the district's refusal.

34 C.F.R. § 300.503(b)(1)-(7).

As discussed above in paragraph 18 and 19, the SCO finds that the Notice for Consent for Reevaluation and its corresponding PWN were sufficient and met the IDEAs procedural requirements. While there was disagreement regarding the scope and purpose of the reevaluation, the information provided by School laid out School's understanding of the purpose, the steps they proposed taking and the basis for proposing the reevaluation. As previously stated, Parents ultimately signed the Consent.

### REMEDIES

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

1. Failure to provide meaningful participation to the child's parents in the IEP process. (34 C.F.R. §§ 300.322(f), 324, 300.501);
2. Failure to ensure the attendance of individuals at Student's IEP meeting as required by Decision or in the alternative, obtain a written excusal. (34 C.F.R. 300.321).

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

1. By no later than March 28, 2018, the School District must submit to the Department a proposed Corrective Action Plan (CAP) that addresses each violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the School District is responsible. The CAP must, at a minimum, provide for the following:
  - a. Submission of compliant, written policies and procedures and compliant forms that address the cited violation, as applicable, no later than April 23, 2018.
  - b. Provide compensatory services from November 14, 2017 through March 26, 2018 or until Student's reevaluation is completed based on the service delivery statement from the November 14, 2017 IEP meeting. Parents and School District must make every effort to complete the compensatory services in a timely manner but no later than August 1, 2018. Compensatory services shall be provided at School unless another location is mutually agreed upon. These services shall be provided at a mutually agreed upon time and manner, including the option of providing services virtually. The parties have the authority to develop an

alternative way of complying with this remedy as long as it is mutually agreed upon, documented and provided to CDE. Should Parents refuse services, such refusal should be documented and School District will not be found out of compliance. School District to provide documentation upon completion or no later than August 1, 2018.

- c. Effective training concerning relevant policies and procedures to address the cited violations must be conducted for School administrators, School's Special Education Coordinator, School's Special Education Case Manager and School personnel. Effective training in this case can be consultation with Special Education Director or Legal Counsel reviewing relevant policies. 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 April 30<sup>th</sup>, 2018.

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 School 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 by the School District to meet the timelines set forth above will adversely affect the School District's annual determination under the IDEA and will subject the School 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 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

Dated this 7<sup>th</sup> day of March, 2018.

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Jacqueline Esquibel, Esq.  
State Complaints Officer

## APPENDIX

### Complaint, dated December 7, 2017

- Exhibit 1: Decision dated August 3, 2017
- Exhibit 2: Draft IEP dated November 14, 2017
- Exhibit 3: Prior Notice & Consent for Reevaluation
- Exhibit 4: Notice of Meeting dated November 3, 2017
- Exhibit 5: CAP Evaluation Invoice dated November 2, 2017

### Response, dated January 30, 2018

- Exhibit A: All special education documentation for Student, including IEPs and any corresponding meeting notes and audio recordings, IEP amendments and meeting notes, eligibility determination for the 2017-2018 school year.
- Exhibit B: All prior written notices issued for the 2017-2018 school year.
- Exhibit C: All notices of meeting issued from the 2017-2018 school year.
- Exhibit D: All evaluation/assessment reports, service provider logs, And IEP progress monitoring data and reports for the 2016-2017 school year to present.
- Exhibit E: All requests for consent to evaluate issued from the 2017-2018 school year to present.
- Exhibit F: All correspondence between School staff, School District staff, IEP facilitator, Parents and advocate concerning the Complaint allegations.
- Exhibit G: All policies and procedures maintained by the School District relating to Concurrent enrollment, IEEs and reevaluations.

### Reply, dated

- Exhibit 6: "Transcription" of November 2017 IEP Meeting for Student
- Exhibit 7: E-mail between Mother and Accountability Specialist
- Exhibit 8: Occupational Therapy Evaluation
- Exhibit 9: E-mails between Parents and Special Education Case Manager
- Exhibit 10: Draft IEP dated November 14, 2017
- Exhibit 11: IEP dated December 13, 2016
- Exhibit 12: Information regarding Re-evaluation and Concurrent Enrollment Policy
- Exhibit 13: Recording
- Exhibit 14: Student's grades from first semester at Community College

**Interviews Conducted with:**

Mother  
Special Education Director  
Special Education Case Manager  
Special Education Coordinator  
School District Audiologist  
Special Education Teacher 2