

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

Federal Complaint 2007:515

Aurora Public Schools

Decision

INTRODUCTION

This Complaint dated November 19, 2007, was filed by Student's mother (hereafter, the "Complainant") and was received in the office of the Federal Complaints Officer on November 26, 2007. The response of Aurora Public Schools (hereafter, the "District") was timely received on December 27, 2007. The District's response attached Student's March 21, 2007 Individualized Education Program ("IEP") document including a Behavior Support Plan for the Student as well as documentation of services provided during the fall semester. The response was transmitted to Complainant on January 3, 2008, and a reply was timely received from Complainant on January 25, 2008.¹

ISSUE

Whether the District implemented Student's special education program as specified in his March 21, 2007 IEP document during the period August 20, 2007, to December 12, 2007.

CONTENTIONS OF THE PARTIES

The Complainant alleges that Student's IEP, including the provisions of a Behavioral Support Plan, was not fully and consistently implemented from the time Student entered first grade, through the date of the Complaint. Complainant requests that Student's IEP team re-convene, that Student undergo a complete reassessment, and that compensatory education services be awarded to Student for lost educational time.²

¹ Complainant requested and was granted additional time to complete her reply due to extenuating circumstances. On January 25, 2008, the State Complaints Officer advised the parties that the timeline for decision in this matter was extended to February 1, 2008, in accordance with 34 CFR 300.152(b).

² Whether Student requires a full reassessment is beyond the authority of the State Complaints Officer to determine and will not be resolved as an issue in this case. It may be raised by a due process request.

The District acknowledges that there were time periods when Student did not receive special education services due to staffing issues, but maintains that—as of the date of the District’s response—Student “is receiving educational services and is succeeding within the regular setting.”

FINDINGS OF FACT

1. Student is a [AGE] year-old attending [GRADE] at a charter school in the Aurora Public School District. Student is eligible for special education and related services in the category of [DISABILITY].
2. On March 21, 2007, Student’s IEP team convened and created a program of special education instruction and services for him. The relevant portions of the IEP provide that Student is to receive 1.5 hours per month of mental health support outside of his regular education classroom, 0.5 hours per week of speech-language therapy outside of the classroom, 1.22 hours per month (provided weekly) of occupational therapy in the classroom, and 0.4 hours per week of special education instruction in the classroom.³ Student’s IEP document also specifies 19 curricular and instructional accommodations and modifications as part of his special education program, including noise buffers/headphones to block out distracting stimuli and a picture schedule to predict daily activities in transition. The IEP documents Student’s difficulties in the areas of following directions, social interaction with peers, hyperactivity and transition.
3. Student’s IEP also includes a Behavioral Support Plan which further documents his needs in the areas of following adult directives, transitioning between activities, and hyperactivity as well as how these difficulties can disrupt the class and Student’s own learning. The Plan features a list of environmental changes and supports designed to help Student achieve goals and objectives related to behavior. These are consistent with the provisions of the IEP.
4. The March 21, 2007 IEP was in force when Student entered [GRADE] on August 20, 2007. Student’s school was closed for two weeks during October for a scheduled fall break. During all other periods, Student was to benefit from the services and accommodations set forth in the IEP.
5. Through service logs attached to its response, the District established that Student received occupational therapy services as specified in his IEP during the weeks of August 27, September 10, September 17, September 24, October 1, November 12, and November 30, 2007. There is no evidence of occupational therapy services having been provided during the remainder of the fall semester. Given that the school was closed for

³ The District’s characterization of “consultation by the special education teacher .5 hours weekly” is inconsistent with page 19 of the IEP which specifies 0.1 hours of consultation and 0.4 hours of direct services by the special education teacher.

two weeks in October, the District failed to provide such services to Student during six weeks of the semester totaling 1.5 hours.

6. The District established that speech language services were provided to Student during five weeks of the semester, leaving eight weeks when such services were omitted.

7. Student's special education teacher, [TEACHER], retired on October 30, 2007. A replacement was not hired until December 10, 2007. Prior to October 30, 2007, [TEACHER] only documented one session of direct services with Student, on October 10, 2007. There is no evidence establishing that any other part of these services were provided as specified in the IEP.

8. The extent to which mental health services were provided to Student is not well documented. However, in an e-mail attached to the Complaint, Complainant states that the provider has developed a positive rapport with Student in sessions outside of the classroom. Additionally, there is no mention that these services were not provided in the Complaint or Complainant's reply. Complainant did not establish that mental health services were not provided as specified.

9. Complainant's reply raises specific allegations about classroom accommodations, including visual schedules and headphones, not having been provided. Although the initial Complaint raised the issue of implementation of the IEP as a whole, these allegations were not stated at that time. For that reason, the District did not make any reference to accommodations and modifications in its reply and no finding is made in that regard.⁴

10. Complainant established that the District's failure to implement the IEP as written resulted in educational harm to Student in the form of decreased academic performance and increased behavioral problems.

CONCLUSIONS OF LAW

It is well established that a school district must provide special education services that comport with a student's IEP as one element of a free appropriate public education. *Board of Educ. Of the Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982). Here, Complainant contends that the District did not implement the program set forth in the March, 2007, IEP. This allegation is supported by Findings of Fact No. 5 through 9. Specified services in the areas of speech and language, occupational therapy, and special education instruction were furnished on a sporadic basis at best. In the case

⁴ Implementing the accommodation/modification portion of the IEP is nonetheless integral to Student's special education program. Since the District will be required by this Decision to develop and institute a corrective action plan demonstrating compliance with Student's IEP, provision of the specified accommodations and modifications will be monitored from this point forward.

of [TEACHER], it is clear that the situation was exacerbated by her retirement, but there was also very little evidence of her having provided services to Student before then. Moreover, there is no evidence that this retirement came as a surprise to the District. Typically, an employee coordinates her retirement with her employer prior to the date of her departure. As there is no contention that this coordination did not take place in this instance, the District was able to plan for this event prior to October 30, 2007. With regard to the other service providers, there is no explanation from the District for the failure to deliver the services described in the IEP. Accordingly, there is no evidence to mitigate the District's responsibility for the failure to implement the IEP.

It is logical to conclude that direct services which both sides agree were appropriate for Student were also necessary to permit him to advance toward attainment of his goals and objectives. Thus, the failure to provide such services must have adversely affected Student's educational progress. (Finding of Fact No. 10) In summary, the services provided to Student from August 20, 2007, to December 12, 2007, did not comport with the substance of the March, 2007 IEP.

REMEDY

Complainant established that the District did not properly implement Student's March 21, 2007 IEP during the fall semester of the 2007-08 school year. Student was deprived of 1.5 hours of occupational therapy services, 4.0 hours of speech language services, and 5.6 hours of direct special education instruction. Accordingly, the District shall create a corrective action plan no later than February 25, 2008, whereby Student shall receive compensatory education equal to the amounts stated above, in addition to those services he normally receives under his IEP. The compensatory services shall be delivered on a schedule and in a manner that are appropriate to Student's unique educational needs and reasonably convenient to his family. All compensatory services shall be provided by the conclusion of Student's first grade year, or during an extended school year session at the option of Complainant. In addition, the District shall submit documentation to the State Complaints Officer that Student's special education program is being implemented in its entirety—inclusive of the Behavior Support Plan and accommodations and modifications—during the spring semester. This documentation and the corrective action plan shall be submitted no later than March 21, 2008. Documentation that all compensatory education services have been provided shall be submitted no later than August 29, 2008.

CONCLUSION

This Decision shall become final as dated by the signature of the Federal Complaints Officer. A copy of the appeal procedure is attached.

Dated this 1st day of February, 2008.

Keith J. Kirchubel
State Complaints Officer