

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 2008:507**

Douglas County School District RE 1

**Decision**

**INTRODUCTION**

This Complaint dated August 20, 2008, was filed by Student's parents (hereafter, the "Complainants") and was received in the office of the State Complaints Officer on September 8, 2008. The Complaint was transmitted by certified mail to Douglas County School District RE 1 (hereafter, the "District") on September 17, 2008, and receipt thereof was acknowledged by the District. The transmittal also designated those issues to be investigated subject to the authority of the state complaint process.<sup>1</sup> The response of the District, with attachments, was timely received on October 7, 2008. On October 8, 2008, the State Complaints Officer transmitted the District's response to the Complainants and invited their reply.<sup>2</sup> Complainants' reply was received on October 24, 2008, and the record in this matter was closed on that date.

**ISSUES**

Whether the Individualized Education Program (IEP) team meetings held between September, 2007 and July 24, 2008, included all required members; whether moving the Student from track B to track D represents a change to the IEP that requires an IEP team decision; and whether the District responded to the Complainants' July, 2008 request for Students' records in a complete and timely manner.

**CONTENTIONS OF THE PARTIES**

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<sup>1</sup> The Complaint also alleged that the District's assignment of Student to a different school track would cause educational harm and deprive him of a free appropriate public education. The State Complaints Officer advised Complainant in a letter dated September 17, 2008, that such issues are beyond the scope of a state-level complaint and must be raised by a due process request.

<sup>2</sup> The transmittal letter is erroneously dated September 17, 2008.

The Complainants allege that Student's IEP team did not include a special education director or designee at meetings of the team held prior to July 25, 2008. Complainants also maintain that moving Student from track B to track D in the school's year-round schedule represents a change in [STUDENT'S] educational setting and placement and, as such, requires an IEP team decision to implement. Finally, the Complainants allege that as of the date of the Complaint, the District had not responded to their request for Student's educational records made prior to the IEP team meeting of July 25, 2008.

The District contends that [SPECIAL EDUCATION TEACHER] attended Student's IEP team meeting on September 24, 2007, in the capacity of [STUDENT'S] special education teacher, case manager, and as the District's special education designee. The District states that it responded to Complainants' request for records on September 17, 2008, sixty-eight calendar days after the request was communicated. The District contends that the timing of its response was affected by school and staff vacations, and suggests that Complainants "always had access to their child's records by scheduling a time when staff would be in session."

### **FINDINGS OF FACT**

1. Student is an [AGE] [GENDER] residing within the District and eligible for special education and related services in the categories of [PRIMARY DISABILITY] and [SECONDARY DISABILITY]. Student has been served as a child with a disability under Part B of the IDEA within the District since 2005.
2. Student's IEP team met on September 24, 2007, for an annual review. On September 5, 2007, and again on September 11, the District provided written notice of the pending meeting. The notices of meeting included statements of whom the District anticipated would attend the meeting. Neither notice lists the "Director of Instructional Support Services or designee" as a person who "may" attend the meeting.
3. At the meeting held on September 24, 2007, [SPECIAL EDUCATION TEACHER] attended and signed the IEP participant sheet in the capacities of Special Education Teacher and also Special Education Director/Designee. The meeting resulted in an IEP document that was agreed upon by the team and implemented for the Student.
4. There is no record of an IEP team meeting having been convened between September 24, 2007, and July 25, 2008.
5. On January 31, 2008, the principal at Student's school sent a written notice to all parents of fourth grade students informing them that pupils in the school would be subject to scheduling changes to different "tracks" in the upcoming year because of the opening of a new school in the District. Track "A" would be eliminated for the fifth grade and only one "B" track fifth grade class would be offered. The notice stated that the District's "strict" guidelines would be

followed in implementing the proposed changes, though affected families could voluntarily change from B track to the “C” or “D” tracks. Twelve or thirteen students were expected to be reassigned from B track. The January notice also included a form and instructions for requesting a track change.

6. On February 19, 2008, the principal at Student’s school sent a written notice to Complainants informing them that the school had determined that changing scheduling tracks for some of the students at the school was necessary to “equalize classes and continue to provide a positive learning environment for all the children.” The notice stated that Student was to be reassigned to track D” There is no indication in the record that this proposed reassignment was reviewed or decided upon by Student’s IEP team.

7. Student’s operative IEP document from September, 2007, reflected [STUDENT’S] assignment to track B in fourth grade. Complainants assert that track B is similar to a “traditional” school schedule whereas track D features more frequent and shorter breaks. There is no evidence in the record that the move to track D represented any change in terms of the nature or extent of special education services, modifications, or accommodations available to Student under [STUDENT’S] IEP document. Nor did the reassignment require Student to change school locations or special education staff.

8. In March, 2008, Complainants sent a request via electronic mail to Student’s principal to have Student remain on track B. The request cited Complainants’ concerns about Student’s need for a “consistent” schedule, the fact that an older sibling in another school was on a “traditional” calendar, and their desire that Student be scheduled with children from a neighboring family.

9. On March 26, 2008, the school principal responded via electronic mail that Complainants’ request would not be accommodated. The principal’s communication emphasized the strength of the teachers on the D track as well as the fact that the neighbor’s children had also been reassigned to D track. The parties engaged in voluminous correspondence back and forth on this issue thereafter but the District maintained that there was no space in the B track fifth grade class and its decision to change Student’s assignment to track D was not rescinded.

10. On July 25, 2008, Student’s IEP team convened by agreement of the Complainants and the District. The team discussed Student’s eligibility and modified it to include [SECONDARY DISABILITY] as a secondary category. The team also amended the list of accommodations and modifications available to Student and agreed upon a battery of assessments. Student’s track assignment was also discussed. Complainants, on the participation sign-in sheet, indicated their disagreement with the assignment to track D. The IEP document that resulted from the meeting reflected the reassignment to track D for the fifth grade. Complainants were provided prior written notice regarding these modifications as well as a copy of their due process rights.

11. On or about June 30, 2008, an advocate retained by the Complainants communicated the Complainants’ request for Student’s educational records to the District. The documents were

mailed to the advocate's address on September 22, 2008. This is a period of 84 calendar days between the request and the response.

### CONCLUSIONS OF LAW

1. An IEP team is comprised of the following essential members: 1) the parents of the child; 2) not less than one regular education teacher of the child (as applicable); 3) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; 4) a representative of the public agency (District) who is qualified to provide or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum and is knowledgeable about the availability of resources of the public agency; 5) an individual who can interpret the instructional implications of evaluation results; 6) additional participants at the discretion of the family or public agency; and 7) where appropriate, the child himself. 34 C.F.R. §300.321(a). The public agency may designate a person who is a member of the IEP team to serve as the agency representative so long as the qualifications of that position are satisfied. 34 C.F.R. §300.321(d).

Here, [SPECIAL EDUCATION TEACHER] attended the September 24, 2007, IEP team meeting in the dual capacity of special education teacher and public agency designee. (FF 3) The IEP team conducted its annual review and completed the programming of Student's special education for the coming year. While Complainants' contend that there was no administrative designee in attendance "with the authority to allocate district funds," the outcome of the meeting evidences that [SPECIAL EDUCATION TEACHER] possessed the requisite authority to identify and bind District resources necessary to meet the Student's unique educational needs. Moreover, Student's parents attended the meeting, as did [STUDENT'S] general education teacher who was also familiar with Student's assessment data. Accordingly, there is no indication in the record that the District failed to have the required members of the IEP team in attendance on September 24, 2007.

2. An IEP team is tasked with developing a written statement for each child with a disability that reflects the child's present levels of academic achievement and functional performance, annual academic and functional goals, how the student's progress toward those goals will be measured, the special education and related services to be provided to the child, the extent to which the child will be educated with non-disabled children in the regular class, any appropriate accommodations or modifications, the beginning date for such placement, and the anticipated frequency, location and duration of the identified services and modifications. 34 C.F.R. §300.320(a). An IEP team is also responsible for reviewing and revising, as appropriate, the IEP document for a child with a disability. 34 C.F.R. §300.324(b).

Special education placement decisions are to be made by an IEP team. 20 U.S.C. §1414(d)(1)(A)(i)(IV). Parents, in addition to being IEP team members, have the right to full involvement in decisions regarding educational placement of a child with a disability. ECEA

Rule 4.03(8). A special education placement has been historically referred to “points along the continuum of placement options available for a child with a disability, and ‘location’ as the physical surrounding, such as the classroom, in which a child with a disability receives special education and related services.” *Commentary* to 34 C.F.R. §300.116. In Colorado the “educational placement” of a special education student does not mean a specific place such as a specific classroom or school. ECEA Rule 4.03(8)(a). Decisions about where a child’s IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee. *Id.*

Here, there is no evidence that Student’s special education placement, as defined above, was subject to modification by the reassignment of him from track B to track D. None of [STUDENT’S] special education services, accommodations or modifications defined in [STUDENT’S] IEP was altered by the principal’s notice of reassignment. (FF 7) Nor did the reassignment alter the mode of delivery of such services, the amount of time he was educated with [STUDENT’S] non-disabled peers, or [STUDENT’S] access to nonacademic or extracurricular activities. The change in [STUDENT’S] schedule did not shift Student along the continuum of special education services defined in 34 C.F.R. §300.39 and therefore did not require IEP team action to initiate or implement. Ultimately, Student’s IEP team did re-convene to take up many aspects of [STUDENT’S] special education program, where the track change was also discussed. (FF 10) While the details of those discussions are not reflected in the record, that omission is not material. The District was within its authority to make the change for the reasons asserted in the various notices, notwithstanding Student’s status as a child with a disability.

3. Student’s parents must be afforded the opportunity to examine all educational records related to the identification, evaluation and placement of Student, as well as those related to the provision of a Free Appropriate Public Education (FAPE). 34 C.F.R. §300.501(a). In response to a request, a public agency must comply without unreasonable delay and before any meeting regarding an IEP, but in no case more than 45 days after the request has been made. 34 C.F.R. §300.613(a). The parents may have the records made available to their designated representative. 34 C.F.R. §300.613(b)(3).

Here, the IEP team meeting of July 25, 2008, addressed the issues of Student’s eligibility for special education, the nature and extent of services, accommodations and modifications necessary for him, as well as plans for future evaluations. (FF 10) Approximately 25 days prior to the meeting, Complainants’ representative communicated a request for Student’s educational records. (FF 11) The District did not comply with that request prior to the pending IEP meeting, nor within 45 calendar days. The District did not mail responsive documents to Complainants’ advocate until 84 days after the request.

The District’s contention that the Complainants bore the burden of ascertaining “when staff would be in session” is unconvincing. As established herein above, the District operates on a year-round schedule. It repeatedly responded to numerous electronic mailings from Complainants and their advocate subsequent to the request and convened an IEP team meeting

that included no fewer than eight District staff during this period. The Complainants could reasonably conclude that the District was “open for business” as it actually was. Thus, there is no justification for taking nearly twice the allowable time to respond to the request in a meaningful way. Complainants have established that the District substantially failed to comply with the authorities cited herein that permit timely and complete access to educational records.

### **REMEDY**

Complainant established that the District failed to comply with their rights to access Student’s educational records. As of the date of this decision the District has now furnished the requested documents, so individualized relief is not warranted. However, the District’s asserted basis for its actions issue is troubling and indicates no awareness of the clear and substantial nature of its noncompliance on this issue. Therefore, the District shall provide the State Complaints Officer with documentation of: 1) any policies and procedures in effect for responding to requests for records in this area; 2) all requests for educational records received from parents of children with disabilities or their designated representatives during the period January 1, 2008, to November 1, 2008; 3) the District’s response to such requests, including the date and the content of the response; and 4) measures to be taken by the District to ensure compliance with 34 C.F.R. §§ 501 and 613 in the future. The documentation shall be provided no later than December 19, 2008, and the State Complaints Officer reserves the right to craft further correction action to be implemented by the District on the basis of review of such documentation.

### **CONCLUSION**

This Decision shall become final as dated by the signature of the State Complaints Officer.

Dated this 7<sup>th</sup> day of November, 2008.

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Keith Kirchubel  
State Complaints Officer