

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 2009:503**

Cheyenne Mountain School District 12

**Decision**

**INTRODUCTION**

This Complaint was dated March 21, 2009 and was received in this office on March 24, 2009. The Complaint was filed by the parent (Complainant) of a [GENDER] child with a disability (Student).

The Complainant had previously filed a Due Process Complaint (DP 2008:114) on behalf of the Student on October 24, 2008 and a decision was issued by an Impartial Hearing Officer (IHO) on January 20, 2009. As the State-Level Complaint repeated issues that had been previously decided in the due process hearing and because the decision on such issues is binding in a State Level Complaint Investigation,<sup>1</sup> the Complaint was initially rejected on April 1, 2009.

The rejection of the Complaint was reconsidered. The undersigned State Complaints Officer (SCO), reexamined the Complaint and determined that there were allegations that were closely related to, but had not been decided in DP 2008:114 that were subject to the state level complaints process. The Complainant was notified via email and the District was notified via fax of the decision to investigate the Complaint on April 22, 2009.

The District response was received on April 29, 2009. The reply to the District's response was received on May 8, 2009.

The SCO interviewed the District by telephone on May 13, 2009. In the telephone interview, the District was asked to submit additional information which was received by fax on May 14, 2009.

In a series of emails on May 12 - 13, 2009, the SCO requested a telephone interview with the Complainant. The Complainant requested that the SCO provide interview questions in advance of the telephone interview and the interview questions were emailed to the Complainant on May 13, 2009. The Complainant responded to those questions via email on May 17, 2009.

The SCO contacted the Complainant by telephone on May 18, 2009 and conducted a brief telephone interview and confirmed that the Complainant wished to include the May 17, 2009 email response as part of the telephone interview.

The SCO closed the record as of the end of the day on May 18, 2009.

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<sup>1</sup> 34 CFR 300.152(d)(i)

## ISSUES

The issues raised in the Complaint that are subject to the jurisdiction of the SCO are as follows:

- I. Whether qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day is required content under 34 CFR 300.320(a)(4);<sup>2</sup> and if so, whether the Student's Individualized Education Program dated 9/18/2008 (IEP) included the required content.
- II. Whether the accommodation of "Voice Machine" assistive technology was properly documented on the Student's IEP.
- III. Whether parent counseling and training was identified and properly documented as a related service on the Student's IEP.

The Complaint also repeatedly alleged violations of § 300.327 Educational Placements; and IDEA regulations § 300.324(a)(4)(ii) and § 300.324(a)(6) pertaining to IEP Amendments. However, the background information and supporting documentation submitted by the Complainant did not suggest that the educational placement decision was improper because it did not involve the parents pursuant to § 300.327; or that the IEP was improperly amended in violation of § 300.324(a)(4)(ii). Therefore, these issues were not investigated.

**ISSUE I      Whether qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day is required content under § 300.320(a)(4); and if so, whether the Student's IEP included the required content.**

### A. COMPLAINANT'S ALLEGATIONS

The Complainant has made the following allegations:

1. The Student's IEP did not adequately address the qualifications, training, and experience of the general education teacher, special education teacher, speech language therapist, occupational therapist, and paraprofessional.
2. The Student's IEP did not adequately address the degree and extent of paraprofessional support to be provided to the Student. Specifically –
  - a. The IEP should have fully disclosed the necessity for the Student to have constant paraprofessional or teacher support.
  - b. The IEP did not indicate the necessity for a "full time 1 on 1 para-professional trained and experienced to work with [Student's disability] (not to deliver all instruction, but to keep the Student on task)."
  - c. The IEP did not reflect paraprofessional support on page 12 – "Plan Requirements" or on page 13 – "Accommodations/Modifications and Participation in State and District Assessments."

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<sup>2</sup> Hereinafter IDEA regulations will be cited as follows § 300.000.

3. The Student's IEP did not address specific reporting of Student's attendance in general and special education attended during each day in daily communication logs provided to Complainant. Specifically, because the IEP indicated that a specific number of minutes per week of direct services in the general classroom and outside of the general classroom, the number minutes in each setting should be reported to track compliance. Such reporting did not occur in the daily communication logs.

#### **B. THE DISTRICT'S RESPONSE**

The District responds as follows:

1. There was no requirement under the IDEA that the qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day be included in an IEP.
2. The regulations provide, "Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required in this section." § 300.320(d)
3. The issue with regard to specific reporting of general and special education attended each day in daily communication logs was previously addressed by the Independent Hearing Officer (IHO) in the Due Process Complaint Decision (Specific Findings 13-14).

#### **C. THE COMPLAINANT'S REPLY**

The Complainant replies that the determination in the initial rejection of the Complaint and the conclusion of the IHO in Due Process case 2008:114 are not relevant. Further, the Complainant was not prepared to defend the argument to the IHO at the time of the Due Process Hearing for case 2008:114.

#### **D. FINDINGS OF FACT AND CONCLUSIONS**

1. At all times relevant to this Complaint, Student was a child with a disability with an IEP. Student was enrolled in and attended the Special Education Program [Program] at Elementary School [School] until Complainant withdrew [Student] from the School in October 2008.
2. On January 20, 2009, the IHO in DP 2008:114 made the following findings relevant to this Complaint<sup>3</sup> which the SCO adopts and incorporates into this decision:
  - a. The Program at the School was specifically designed for students who require constant supervision.<sup>4</sup>
  - b. While in the program the Student received 100% supervision throughout the day in all settings by either the special education teacher or a paraprofessional.<sup>5</sup>

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<sup>3</sup> Complaint Attachment (Att.) 1

<sup>4</sup> Complaint Att. 1, p. 4. (IHO Finding 3)

<sup>5</sup> Complaint Att.1, p.6 (IHO Finding 10)

- c. While in the Program, the Student received one-to-one supervision at all times, but the paraprofessionals working with the Student were intentionally rotated.<sup>6</sup>
  - d. While attending the Program at the School, the Student made significant progress in academics, speech, occupational therapy skills, social skills and behavior skills.<sup>7</sup>
  - e. The District provided the Student with a free appropriate public education (FAPE) in the Program with the assignment of multiple paraprofessionals on a rotational basis.<sup>8</sup>
3. The Student's IEP indicated the following:
- a. The Student would receive 650 minutes per week of direct services by special education staff in the general class room.<sup>9</sup>
  - b. The Student would receive 720 minutes of direct services outside the general classroom.<sup>10</sup> These direct services included:
    - i. 60 minutes with a Speech Language Therapist,
    - ii. 60 minutes with an Occupational Therapist, and
    - iii. 600 minutes special education with special education primary providers.<sup>11</sup>
  - c. "Based on [Student's] educational needs, a combination of direct, consult, and targeted case management services [would] be provided in accordance with the [District's] calendar. Support [would] be provided in the general education classroom based on instructional need."<sup>12</sup>
  - d. "[Student] [would] have special education support services for accommodations/modifications needed in order for [Student] to be successful."<sup>13</sup>
4. Although one-to-one paraprofessional support was not specifically indicated in the IEP on page 12 – "Plan Requirements," page 13 – "Accommodations/Modifications and Participation in State and District Assessments"<sup>14</sup> or elsewhere in the IEP, the service delivery table indicates that the student would be provided with direct special education services both inside and outside of the classroom by special education service providers.<sup>15</sup>
5. For this Student, "direct service" meant that a special education service Provider was with the Student providing direct individual or small group instruction.<sup>16</sup>

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<sup>6</sup> Complaint Att.1, p.9 (IHO Finding 27)

<sup>7</sup> Complaint Att. 1, p. 10 (IHO Finding 34)

<sup>8</sup> Complaint Att. 1, pp 16 (IHO Decision Issue 2)

<sup>9</sup> Complaint Att. 2, p. 10; Response Appendix (App.) A, p.10; Response App.B

<sup>10</sup> Complaint Att. 2, p. 11; Response App. A, p.11

<sup>11</sup> Response App. B.

<sup>12</sup> Complaint Att. 2, p.12; Response App. A, p.12

<sup>13</sup> Complaint Att. 2, p.12; Response App. A, p. 12

<sup>14</sup> Complaint Att. 2, pp 12-13; Response App. A, pp 12-13

<sup>15</sup> Complaint Att.2, p.11; Response App.A, p.11

<sup>16</sup> Telephone Interview with District 5/13/09.

6. The service provision by multiple paraprofessionals on a rotating basis deemed by the IHO in DP 2008:114 to provide a FAPE was adequately reflected in the IEP as direct services by special education primary service providers.

### **E. ANALYSIS**

Under the IDEA, a child's individualized education program must include:

A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child to enable the child to –

- (i) Advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

34 CFR 300.320(a)(4)

Nothing in this section shall be construed to require –

- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
- (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

34 CFR 300.320(d)

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

OSEP Letter to Copenhagen (1994)

The qualifications, training and experience of general education and special education service providers; and daily reporting or tracking of the number of minutes the Student spent in general education and special education each day are additional information that is beyond what is explicitly required in the Act and therefore was not required IEP content.

The degree and extent of paraprofessional support was adequately documented in the IEP because the assignment of multiple paraprofessionals to the Student on a rotational basis is reflected in direct special education services provided by special education primary service providers [FF 6]. Although the IEP did not specifically indicate one-to-one paraprofessional support on the "Plan Requirements" or on the "Accommodations/Modifications and Participation in State and District Assessments" pages [FF 4], paraprofessional support for the Student was contained under other components of the Student's IEP [FF 3(a-d), FF 4].

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Accordingly, the SCO finds no violation of the IDEA on Issue I.

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**ISSUE II      Whether the accommodation of Voice Machine Assistive Technology was properly documented on the IEP.**

**A. COMPLAINANT'S ALLEGATIONS**

The Complainant has made the following allegations:

1. The Student's IEP does not adequately document accommodations and modifications through the use of a Voice Machine.
2. The Student's IEP does not indicate the number of minutes, and the extent in total the Student will utilize a Voice Machine.
3. There was an agreement between the Complainant and the Student's special education service providers to prompt the Student while using the Voice Machine.

**B. THE DISTRICT'S RESPONSE**

The District responds that the Voice Output device (Voice Machine) is listed as an accommodation on the "Curricular Accommodations and Modifications" page of the IEP, and the use of the Voice Machine is embedded throughout the IEP.

**C. COMPLAINANT'S REPLY**

The Complainant did not reply to the District's Response to this allegation.

**D. FINDINGS OF FACT**

1. The Present Level of Academic Achievement and Functional Performance on the Student's IEP described the use of the Voice Machine/Assistive technology as strengths in the areas of math and communication, as well as needs in the areas of reading, writing, math, communication, and self help.<sup>17</sup>
2. The use of the Voice Machine/Assistive Technology was embedded in the goals and short term objectives for annual goal #1 and annual goals #4 – 6 in the Student's IEP. The details of the specific skills and the settings in which the Student would work on the skills using the Voice Machine were documented in the goals and short term objectives.<sup>18</sup>
3. The Student's IEP indicated "Voice Output Device" on the Curricular Accommodations and Modifications page.<sup>19</sup>

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<sup>17</sup> Complaint Att. 2, pp. 2-4; Response App. 1, pp. 2-4

<sup>18</sup> Complaint Att. 2, pp.4-5, 7-9; Response App. 1, pp. 4-5, 7-9

<sup>19</sup> Complaint Att. 2, p.14; Response App. 1, p.14

4. On October 13, 2008, the Complainant requested, and the District agreed to periodically prompt the Student to say a word verbally in conjunction with using the Voice Machine.<sup>20</sup> The SCO finds that such prompting is reflective of a method of instruction.

#### **E. ANALYSIS**

According to the IDEA;

Each public agency must ensure that assistive technology devices, as defined in §300.6, are made available to a child with a disability if required as part of the child's

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- (1) Special education under §300.39;<sup>21</sup>
- (2) Related services under §300.34; or
- (3) Supplementary aids and services under §§300.38 and 300.114(a)(2)(ii)

34 CFR 300.105(a)

A child's individualized education program must include:

A statement of measurable annual goals, including academic and functional goals designed to –

- (A) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
- (B) meet each of the child's other educational needs that result from the child's disability.

34 CFR 300.320(a)(2)(i)

A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child to enable the child to –

- i. Advance appropriately toward attaining the annual goals;
- ii. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
- iii. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

34 CFR 300.320(a)(4)

Nothing in this section shall be construed to require –

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<sup>20</sup> District Supplement, App.G, p.1 Complainant email 5/17/09.

<sup>21</sup> 34 CFR 300.105(a) incorrectly cross references §300.36 "Secondary School." The correct cross reference for Special Education is §300.39.

(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or

(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

34 CFR 300.320(d)

If an IEP team determines that specific instructional methods are necessary for the child to receive FAPE, the instructional methods *may* be addressed in the IEP. [However,] there is nothing in the Act that requires an IEP to include specific instructional methodologies.

Fed. Reg. Vol. 71, No. 156, Aug. 14, 2006, p. 46665 (IDEA Preamble)(emphasis added).

The extent of the use of the assistive technology of Voice Output Device was extensively documented in the Student's IEP as special education in the annual goals and short term objectives [FF 2], as well as an accommodation [FF 4]. The agreement for the Student to be prompted to say a word verbally in conjunction with the use of the assistive technology is an instructional methodology and was not required IEP content [FF 3]. No further detail regarding the use of the assistive technology is required under the IDEA.

Accordingly, the SCO finds no violation of the IDEA in Issue II.

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**ISSUE III    Whether parent counseling and training was identified and properly documented as a related service on the Student's IEP.**

**E. COMPLAINANT'S ALLEGATIONS**

The Complainant has made the following allegations:

1. The Student's IEP does not address parental training to support the implementation of Student's IEP.
2. Although Complainant remembers being offered information regarding parental rights, Complainant "has no recollection" if information was offered concerning the Student's disability.
3. Parent Counseling and Training is "most effectively accomplished through direct observation." The District requested that the IHO in DP case 2008:113,<sup>22</sup> order that Complainant's requests for classroom visits be submitted to the School 24 hours in advance of a proposed visit, and such a procedure would violate the parent counseling and training related service requirements.

**F. THE DISTRICT'S RESPONSE**

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<sup>22</sup> A previous Due Process Case filed by the Complainant on behalf of the Student's sibling attending the same Program at the School.

The District responds as follows:

1. The District offered information to the parent about the child's disability and their parental rights. [Assistant Special Education Director] gave the [Complainant] the District's parent rights and program information in August 2008, prior to student's initial attendance.
2. Information offered about the child's disability or regarding parent counseling and training included:
  - a. School personnel met several times with parents to address Student's progress and concerns.
  - b. IEP states "daily two way communication via verbal consult, email or communication log will occur" and "parents [were] offered information regarding their child's disability."
3. Parents were sent the "Special Education Connection" newsletter to inform them of "CIMP Advisory Council (CAC)" meetings and training in August 2008.
4. Multiple District wide parent trainings were held including "Parent Supporting Parent Groups," the "CIMP Advisory Council", and "CAC Parent Trainings."
5. Staff sent handouts of all parent training sessions to the Complainants when requested by the Complainants.
6. There was no interest shown by the Complainant for a home visit to provide training, despite an offer to do so.<sup>23</sup>

#### **G. COMPLAINANT'S REPLY**

Complainant replies as follows:

1. In its response, the District omitted:
  - a. The Complainant's interest in observing the Student in the classroom because Student was coming home from School bruised.
  - b. The Complainant's interest in observing the Student due to the School's placing of the Student in a room alone; and
  - c. The District's demand that the Complainant obtain prior approval to visit the class 24 hours in advance.
2. The offer to perform a home visit is immaterial as it constitutes one of 40 hours of academic instruction per week. Further, the Complainant was confident that the Speech Language Pathologist was performing competently and that there were few reports of trouble during the Speech Language Pathologist's direct instruction to the Student.
3. The training the Complainant attended and information sent to the Complainant were useless with specific regard to the Student's disability and the poor quality of academic instruction Student received.

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<sup>23</sup> Referencing testimony from DP 2008:113; A Due Process case filed by Complainant on behalf of the Student's sibling attending the same Program at the School.

## **H. FINDINGS OF FACT**

1. On page 12, *Plan Requirements*, in the Student's IEP, the parent training and counseling field stated "Parents are offered information regarding their child's disability along with their parental rights." The IEP also indicates "Parent and Follow-up activities will be provided as directed by the teacher and/or provider." The IEP further states that daily two way communication, via verbal consult, email or communication log will occur as needed.<sup>24</sup>
2. Although the Complainant stated that training was most effectively accomplished through direct observation, other training to support the implementation of the Student's IEP was offered by the District to the Complainant via a home visit. The Complainant did not show interest in the offer of a home visit for training.<sup>25</sup> The Complainant repeatedly stated that the home visit would be insufficient to address the Complainant's concerns around the methodologies and interventions used during the other hours of instruction of the Student in the Program at the School.<sup>26</sup>
3. The Complainant further acknowledged that the purpose of observing the Student while in the Program was in the interest of Complainant's concerns that the Student was being physically harmed and that the Student was being placed in a room alone for lengthy periods of time.<sup>27</sup>
4. The District submitted documentation that trainings in special education processes and behavior supports, as well as providing opportunities for parents of children with specific disabilities to connect with other parents of children with similar disabilities were made available to the Complainant. The District supplied Complainant with hand-outs from trainings upon Complainant's request.<sup>28</sup> The Complainant acknowledged that he attended some of the trainings and received the hand-outs provided by the District.<sup>29</sup>

## **I. ANALYSIS**

With regard to parent counseling and training, the IDEA provides:

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes ... parent counseling and training.

§ 300.34(a)

Parent Counseling and training means –

- (i) assisting parents in understanding the special needs of their child;
- (ii) providing parents with information about child development; and

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<sup>24</sup> Complaint Att.2, p.10; Response App.A, p.11.

<sup>25</sup> Response App.F, p.3-4

<sup>26</sup> Complainant Reply, Telephone Interview with Complainant 5/18/2009

<sup>27</sup> Complaint, p.9; Complainant Reply

<sup>28</sup> Response, App.D and App.F.

<sup>29</sup> Complainant Reply

(iii) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

§ 300.34(c)(8)

An LEA only is responsible for providing parent counseling and training if a child's IEP team determines that it is necessary for the child to receive a FAPE.

IDEA Preamble. p.46573

Nothing in the Act or in the definition of related services requires the provision of a related service to a child unless the child's IEP team has determined that the related service is required in order for the child to benefit from special education and has included that service in the IEP.

IDEA Preamble. P.46569

Parent counseling and training was identified and properly documented in the Student's IEP dated 9/18/09. [FF 1]. However, the crux of the Complainant's allegation was whether observation of the Student while in the Program at the School was parent counseling and training that required documentation in the IEP. The Complainant's admitted purposes for observing the Student while in the Program at the School [FF 2-3] do not fall within the definition of parent counseling and training and therefore the observation was not required to be in the Student's IEP.

Accordingly, the SCO finds no violation of the IDEA in Issue III.

### **REMEDY**

As no violations were found, no remedies are hereby ordered.

### **CONCLUSION**

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

Dated this 20<sup>th</sup> day of May, 2009.

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Stephanie Lynch, Esq.  
State Complaints Officer