

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

State-Level Complaint 2009: 511

BOULDER VALLEY SCHOOL DISTRICT RE-2

Decision

INTRODUCTION

This state-level complaint (Complaint), dated 10/13/2009, was filed on 11/05/2009.

The Complainant is [GAL], the *guardian ad litem* (GAL) of a child with a disability who was appointed by Denver District Court on 09/29/2004.¹ Hereafter, the Complainant is referred to as “GAL” and the child is variously referred to as “Student” and “Child.”

The State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA).

The overriding issue, and therefore, the scope of the investigation identified by the SCO, between the dates of 11/06/2008 and 11/05/2009, is:

Whether the District denied [Student] a free appropriate public education (FAPE) by failing to provide the special education and related services (i.e., occupational therapy (OT), speech/language (S/L) or affective education (AE)) to which [Student] was entitled, in violation of IDEA, 20 U.S.C. § 1400 *et seq.* and its implementing regulations, 34 CFR Part 300.

The Boulder Valley School District RE-2 (District) was notified of the GAL’s allegations in a letter dated 11/06/2009. The letter included a complete copy of the Complaint and supporting documentation (i.e., the 03/18/2009 Individualized Education Program (IEP)). In conjunction with the Response, the District was specifically directed to supply the SCO with all supporting documentation substantiating the District’s Response and to include:

- All IEPs in effect for the student from 11/06/2008 to present;
- All documentation, including service logs, showing that specified services were provided from 11/06/2008 to present;
- Documentation of any conversations with [School] staff, the GAL or [Student’s] Foster Parent;

¹ The GAL supplied the SCO with a legible copy of Order of Appointment on 11/13/2009.

- A Prior Written Notice (PWN) associated with the 03/18/2009 IEP or any other documentation addressing the allegation that AE services had been dropped from the 03/18/2009 IEP without discussion at the IEP Team meeting; and
- Any other documentation the District deemed necessary or useful for the Department to consider in the investigation.

The District's Response, through the District's legal counsel, Melissa Mequi, consisting of a seven page cover letter and supporting documentation (i.e., Exhibits A (1-4) through L) was timely received on 11/24/2009.

In a letter dated 11/24/2009, the GAL was supplied with a complete copy of the Response and supporting documentation and advised that any reply (Reply) was due within 10 days of receipt of the Response. The GAL's Reply and accompanying documentation (i.e., e-mails dated 07/10/2009 and 07/13/2009) were timely received on 12/04/2009 and a copy was sent to the District by certified mail the same date.

On 12/09/2009, District supplemented the District's Response with exhibits M-P, as had been previously noted in the original Response. Copies of Exhibits M-P were simultaneously supplied to the GAL.

At the SCO's request, on 12/15/2009, the District supplied an index of all District Exhibits, copies of the 2008-2009 and 2009-2010 [School] calendars, legible copies of the 02/02/2009 Re-Evaluation, pages 13 and 33-35, and a typed list of the names and titles of all persons attending IEP meetings held in conjunction with the 03/18/2009 IEP. The District also supplied the GAL with copies of all supplemental information.

On 12/16/2009, upon receipt of the final requested documentation from District, the SCO closed the record.

THE GAL'S COMPLAINT ALLEGATIONS

The GAL's Complaint, as summarized in relevant part, makes the following allegations:

Allegation #1: Between the dates of 11/06/2008 and 11/06/2009, the District failed to implement [Student's] IEPs.

Allegation #2: Affective Education (AE) was a part of the Student's special education services in effect prior to the 03/18/2009 IEP, but AE services were improperly omitted from the 03/18/2009 IEP without discussion or agreement.

THE DISTRICT'S RESPONSE

The District's combined Response to Allegations #'s 1 and 2, are summarized as follows:

Allegation #1:

AE Services: The District argued that [Student] was supplied with AE services of two hours per week as part of [Student’s] day treatment programming between 11/06/2008 and 11/05/2009.

SLP and OT Services: The District admitted that although both the 04/01/2008 and 03/18/2009 IEPs required provision of 15 minutes of Speech Language (SL) services services per week and 15 minutes of Occupational Therapy (OT) services per week, no provider was retained in order to deliver the required services during the 2008-2009 and 2009-2010 school years. The District opined that, given [Student’s] “trajectory of progress and success” while attending [School], “[Student] is receiving clear benefit from the educational services provided.”

ESY – 2009 Program: The District asserted that [Student] received “approximately 2.0 to 2.5 hours of compensatory SLP services” during the [2009] Extended School Year (ESY) program.

Compensatory Services: The District claimed that during the ESY program, [Student] received a total of 4.0 hours of OT compensatory services over a period of four days.

Allegation #2: Although the 03/18/2009 IEP does not list AE services, this was a clerical oversight and, in fact, [Student] did receive two hours per week of AE services from 03/18/2009 through 11/05/2009.

THE GAL’S REPLY

In reply to the District’s Response, the GAL states in relevant part as follows:

Allegation #1:

OT and SLP Services: The GAL argued that the District’s failure to supply the requisite OT and SLP services constituted a material failure.

ESY Services: The GAL also acknowledged that [Student] may have received “a few hours of compensatory OT and SLP services during the [2009] ESY summer.”

Allegation # 2: The GAL accepted the District’s explanation that omission of AE services from the 04/01/2009 IEP was merely a clerical oversight.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS:

² Appendix A, attached and incorporated by reference, details the entire record (Record).

Allegation #1: Failure to Implement IEPs

Background:

- 1) [Student] is a [Age] year-old child eligible for special education and related services on the basis of [disabilities]. GAL has continuously represented [Student] through court appointment since 09/29/2004. [Student] has lived with [Foster Parents] over two years and resides with them within the jurisdictional boundaries of [District], the administrative unit of residence. ECEA Rule 2.02(1)(c).
- 2) According to the most recent IEPs,³ [Student] has been continuously enrolled in day treatment in order to address [Student's] social, emotional, behavioral, and academic needs.
- 3) The District placed [Student] at [Day Treatment Facility], located in [District #2], which [Child] has attended continuously since the beginning of the 2008-2009 school year. Consequently, [District #2] is the administrative unit of attendance. ECEA Rule 2.02(2).
- 4) Between 08/14/2008 and 03/31/2009, [Day Treatment Facility] was a private eligible facility approved by the Colorado Department of Education. Effective 03/31/2009, the eligible facility closed. Between the dates of 04/01/2009 and 06/03/2009, District and [District #2] entered into a contractual relationship in which [District #2] agreed to assume responsibility for supplying [Student] "all services stated on the current (i.e., 03/18/2009) IEP." See, District Exhibit A.1. The Record is silent concerning any contractual relationship between District and [District #2] during the ESY program time periods, 06/22/2009 to 07/16/2009. Effective 08/19/2009 and continuing until 05/27/2010, District and [District #2] entered into a contractual relationship in which [District #2] agreed to assume responsibility to supply [Student] "academic, mental health and AE services. Other related services [i.e., OT and SL] will be addressed on a case by case basis. These additional related services, if delivered by [District #2], will be at an additional cost to the daily tuition rate." District Exhibit A.2. The Record is silent concerning any further contractual agreement(s) that District had with [District #2] to supply related services, particularly OT or SL services.
- 5) Given the evidence in the Record, the SCO specifically finds:
 - a) Between 11/06/2008⁴ and 03/31/2009, the District was responsible for ensuring compliance with the IDEA, including the provision of a FAPE to [Student]. See, 34 CFR § 300.325(c) ("Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the [State Education Agency])." See also, ECEA Rule 3.02(1)(a)(iv).
 - b) Between 04/01/2009 and 06/03/2009, [District #2] contractually agreed to provide [Student] a FAPE.
 - c) Between 06/22/2009 and 07/16/2009, the ESY program period, District remained solely responsible for providing [Student] with a FAPE.

³ The most recent IEPs were 04/01/2008 and, following a triennial re-evaluation on 03/18/2009, a current IEP dated 03/18/2009.

⁴ The date of 11/06/2008 is 12 months retroactive from the date of the Complaint. 34 CFR § 300.153(c).

- d) Between 08/19/2009 and 11/05/2009, (i.e., the date of the complaint), [District #2] was responsible for providing [Student] a FAPE as it related to AE services and IEP reviews. However, during this time period, District remained solely responsible for providing [Student] a FAPE as it related to SL and OT services.⁵

The 04/01/2008 IEP:

- 6) According to the 04/01/2008 IEP, [Student] was to receive the following special education and related services each week: 29 hours of special education; 15 minutes of SL; 15 minutes of OT; and 2.0 hours of AE. [Student] was eligible for ESY services due to “regression (behavioral and academic) of lengthy (sic) recruitment (sic) period after breaks.”

The 03/18/2009 Triennial Reevaluation

- 7) A triennial reevaluation was conducted 03/18/2009. The following persons attended the triennial reevaluation as a Multidisciplinary Team: [GAL]; [Foster Parents]; [Day Treatment Facility Special Ed. Director]; [Special Ed. Teacher]; [Therapist]; [Placement Worker]; [Placement Worker #2]; [GAL]; and [District Supervisor] (by telephone). As a result of that review, the team determined that [Student] continued to have multiple disabilities and to be eligible for special education and related services.

- 8) Relevant portions of the [Special Ed. Teacher’s] 2009 File Review contained within the Triennial Reevaluation indicate that [Student] has:

[T]rouble with articulation and pronunciation; trouble saying some sounds and blends; trouble with syntax and grammar; often mixes up word order; knows some short vowel sounds; struggles with math; can rote count to twenty with several prompts; has trouble recognizing numbers and the order the numbers go in; has a hard time connecting a group of objects to the number; still needs to work on articulation, oral language skills, [and] academic skills with a focus on reading, writing and hands on math; needs to continue to decrease negative attention getting behaviors; is very distractible; has a hard time staying on task; and works best with a 1:1 paraprofessional.

District’s Exhibit C, pg. 10.

The 03/18/2009 IEP Meeting

- 9) Immediately following the triennial evaluation, an IEP Team meeting, consisting of all members of the Multidisciplinary Team, was conducted. As a result of the 03/18/2009 IEP

⁵ The GAL’s Complaint and Reply only allege violations by the District. The District’s Response is also silent concerning any violations that may have been committed by [District #2]. Consequently, this Decision will only address violations which were alleged to be committed by the District. If the GAL wishes to pursue separate allegations and seek remedies concerning alleged violations that may have been committed by [District #2] during those dates when [District #2] had contractual responsibilities (i.e., 04/01/2009 to 06/03/2009 and 08/19/2009 to the new filing date), a separate Complaint must be filed against [District #2].

meeting, the team concluded that [Student] would receive the following special education and related services each week: 31 hours of special education; 15 minutes of SL services; and 15 minutes of OT services. AE services were neither discussed nor noted in the IEP. A Behavior Intervention Plan (BIP) was implemented in conjunction with the 03/18/2009 IEP. This IEP Team also authorized ESY services:

[Student] did attend summer school last year. Although there has not been a significant regression of IEP goals, [Student's] has worked very closely with staff. Staff feel that a more significant amount of time away from the school environment could potentially lead to a regression in progress made over the school year.

District's Exhibit E, pg. 15.

10) The parties agree and the SCO finds that, during the 03/18/2009 IEP meeting, there was no discussion concerning AE services that were supplied during the 2008-2009 school year, or concerning the continuation of AE services. Furthermore, the GAL's Complaint put the District on notice concerning whether [Student] received *any AE services during the 2008-2009 school year*. However, the District has supplied no evidence (i.e., service logs, affidavits, letters, etc.) whatsoever to document that [Student] received any AE services between 11/06/2008 and 06/02/2009. Therefore the SCO can only conclude that, between 11/06/2008 and 06/02/2009, [Student] received no AE services.

11) **Compensatory Services:** During the 03/18/2009 IEP meeting, it was revealed that during the past school year, (i.e., 2008-2009), [Student] was not provided with any SL services or OT services. As a result, the District agreed to supply [Student] with compensatory services of 9.25 hours of SL services and 9.25 hours of OT services over the summer of 2009. These compensatory services were noted in the 03/18/2009 IEP. District's Exhibit E, pg. 1.

12) During the ensuing months, there was some discussion back and forth about when and where the compensatory services would be delivered. The credible evidence in the Record reflects that, in a 05/27/2009 email, the GAL, [Case Worker], and [Case Manager] clearly communicated the following: *In order for [Student] to benefit from the compensatory services, the services would need to be spread out over the entire summer and not just delivered during the 2009 ESY programming*. District Exhibit F, pg. 1 (emphasis added).⁶ Additionally, in a reply email [District Representative] notes:

I will be meeting with the speech language pathologist and occupational therapists in the next couple (sic) weeks to confirm their schedules. Thank you for the information about consolidating services being too overwhelming for [Student]. I will work with the SLP and OT accordingly to try to best meet [Child's] needs.

⁶ In this e-mail, the GAL also inquired about [Student's] placement in the fall, 2009 and indicated that, if there were other possible placements for [Student] within the District, "we would be interested in exploring these options." The GAL also suggested that "Perhaps a staffing should be held to discuss these issues with [District] and [Student's] team?" Clearly this written request should have been treated as a request for an IEP meeting to discuss placement in the 2009-2010 school year. The Record is silent on whether a placement meeting was ever held or PWN prepared as a result of the GAL's request.

District Exhibit F, pg. 3.

13) **ESY Program Services.** Between 06/22/2009 and 07/16/2009, [Student] received 3.5 hours of ESY program each day at [Day Treatment Facility]. However, there are no service records or other evidence in the Record which would substantiate that, during the ESY program, [Student] continued to receive SL, OT or AE services in order to ensure that the [Child] would not regress in [Student's] previously learned skills over the summer.⁷ The SCO specifically finds that during the ESY program, [Student] received no related services for AE, SL or OT. Furthermore, contrary to [GAL's] explicit request that services be spread out over the entire summer (i.e., Finding of Fact 12, above),⁸ while attending the ESY program, [Student] received 4.0 hours of compensatory OT services in 60 minute increments over a period of four days (i.e., 06/25/2009; 07/01/2009; 07/09/2009; and 07/16/2009). District's Exhibit H, pgs. 1-2.

14) Although the District contended that [Student] received approximately 2.0 – 2.5 hours of compensatory SL services during the 2009 ESY program, there is no credible evidence in the Record to substantiate this claim. For example, the 07/10/2009 e-mail from the [Summer SLP] to the [District Representative] noted confusion, based upon discussions she had with [Foster Parent], about when she was to deliver SLP services to [Student] during the summer of 2009. The [Summer SLP] noted that she was “available to see [Student] during the summer school *this week* if we want to try and provide [Student] some therapy during this time” (emphasis added). GAL's Exhibit B.2. Furthermore, in a 08/03/2009 e-mail the [Summer SLP] noted that she had relocated to Iowa, had written down the dates for documentation, “but they are packed at the moment. . . I have a meeting this morning, but will fill out my time sheets and send them in along with those documented calls.” District's Exhibit K. District has not supplied any such documentation. Instead, District supplied a progress report dated 09/30/2009 which indicated “[Student] was seen for individual speech-language therapy (during ESY program) within the classroom working with both therapist – brought & classroom curricular materials. . . .” This progress report was not signed by [Summer SLP] but another (signature illegible) provider. District Exhibit O. The SCO specifically finds that the credible evidence in the Record is that [Student] never received any of the SL compensatory services that the District agreed to supply for the complete omission of SL services during the 2008-2009 school year.

15) The District claimed that, because [Foster Parent] declined any additional compensatory SL or OT services during the summer of 2009, [Student] was not supplied with additional compensatory services during the summer of 2009. The GAL questioned the veracity of the SLP, hired over the summer of 2009 [Summer SLP], concerning her communications with [Foster Parent] in which [Foster Parent] purportedly refused any compensatory services outside of the 2009 ESY program. The GAL noted that, per the written understandings that the GAL, [Caseworker] and [Case Manager] had with [District Representative], [Student] was to receive OT and SL compensatory services over the entire summer and did not. The GAL noted that, [Summer SLP] failed to return two telephone calls to [Foster Parent]. Thereafter, pursuant to a

⁷ The SCO notes that District supplied “Personal Care Services” logs for 07/06/2009 through 07/16/2009 reflecting 210 minutes per day of “safety monitoring/dangerous behavior” but this log neither identifies nor describes the services as AE services. District Exhibit H, pg. 3.

⁸ Hereafter Finding of Fact will be denoted as “FF.”

08/03/2009 e-mail, [Summer SLP] had moved out of state and would not have been available to supply [Student] any SL services for the remainder of the summer of 2009. District's Exhibit K. The SCO finds that the credible evidence in the Record is that any failure to supply [Student] with SL or OT compensatory services during the summer of 2009 is attributable solely to actions of the District and not attributable to any actions of [Foster Parent].

16) In Response to the Complaint, the District specifically admitted that, contrary to the 04/01/2008 and 03/18/2009 IEPs, [Student] was not supplied with any OT or SL services during either the 2008-2009 nor the 2009-2010 school years. District argued that, despite "diligent efforts," neither an SL pathologist nor an OT provider could be located to deliver the services. The SCO specifically finds that District's argument is irrelevant and specious. The [Student] was entitled to all of the specific related services contained in the 04/01/2008 and 03/18/2009 IEPs to ensure educational benefit and, therefore, there was a duty to supply those services.

17) The District also asserted that delivery of SL and OT services were "complicated by the fact" that [Student] had missed three weeks of school during the 2009-2010 school year. The SCO specifically finds that, under the circumstances, whether [Student] was ill during any portion of the fall of 2009 is simply irrelevant. The fact is that the District had a duty to supply OT and SLP services. The services were not provided due to the *District's failure* to retain the requisite professionals rather than any failure by [Student] to attend school due to illness. In other words, regardless of [Student's] absences, the District was not ready, willing and able to provide the pertinent services.

18) The District argued that, consistent with the 04/01/2008 IEP, between 11/06/2008 and 04/01/2009, [Student] received two hours per week of AE services. The District also argued that omission of the AE services from the 03/18/2009 IEP was a clerical error and, in fact, [Student] was supplied 2.0 hours of AE services per week continuously between 03/18/2009 and 06/02/2009, when the school year ended. The District was specifically directed to supply, in conjunction with any response, "all documentation, including service logs, showing that specified services were provided from 11/06/2008 to present." However, the SCO was supplied absolutely no service records or other documentation which would substantiate the District's claim that AE services were delivered to [Student] between 11/06/2008 and 06/02/2009, the end of the school year. The SCO concludes that between 11/06/2008 and 06/02/2009, [Student] was supplied with no AE services.

19) The District did supply *some evidence* of the delivery of 41.25 hours of AE services "between the beginning of [09/2009] and [11/05/2009]." See District's Exhibit D, 11/24/2009 letter from [School Social Worker].⁹

20) The [Day Treatment Facility's] relevant school calendars are as follows:

- The 2008 to 2009 school year ran from 08/14/2008 to 06/02/2009;
- The ESY Program ran from 06/22/2009 to 07/16/2009; and

⁹ The SCO notes that this letter was prepared after GAL filed her Complaint and the same day (i.e., 11/24/2009) that the District's Response was delivered to the SCO.

- The 2009 to 2010 school year runs from 08/19/2009 to 05/27/2010.

21) The SCO concludes that the credible evidence is that, between 11/06/2008 and 11/05/2009, [Student] was entitled to but did not receive the following related services from the District:

2008/2009 SY	ESY Program	2009/2010 SY	TOTAL HOURS DUE
11/06/08 - 03/31/09:	06/22/09 - 07/16/09:	08/19/09 – 11/05/09:	
34.0 hrs. AE	10.0 hrs. AE	5.0 hrs. AE	49.0 AE hrs.
4.15 hrs. OT	1.0 hrs. OT	3.0 OT	8.15 OT hrs.
4.15 hrs. SL	1.0 hrs. SL	3.0 SL	8.15 SL hrs.

Additionally, the SCO notes that, since the date of the Complaint, there has been a continuous and ongoing failure by the District to supply [Student] with SL and OT services to which [Student] is entitled.

Allegation #2: Improper Omission of AE Services from 03/18/2009 IEP

22) There is no dispute that the District’s failure to include AE services in the 03/18/2009 IEP was a clerical oversight that has been corrected with the 12/01/2009 IEP Amendment providing for 2.5 hours of AE services per week, retroactive to 03/18/2009.

23) The SCO concludes that the second allegation concerning omission of AE services from the 03/18/2009 IEP has been remedied, thereby rendering this allegation moot.

CONCLUSIONS OF LAW

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

1) Under IDEA and the corresponding Colorado law, the Exceptional Children’s Educational Act (ECEA), students with disabilities have the right to a FAPE. (20 U.S.C. 1400 *et seq.*; ECEA Rule 2220-R-1.00 *et seq.*)¹⁰ The relevant IDEA regulation defines a FAPE to mean special education and related services that are: a) provided to a student at no cost to the parents; b) meet the standards of the State Educational Agency (i.e., Colorado Department of Education); and c) *provided in conformity with the student’s IEP.* (34 CFR § 300.17; ECEA Rule 2.19) (emphasis added).

2) In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of an IEP. *Garcia v. Board of Educ.*, 520 F.3d 1116, 1125 (10th Cir. 2008). Next, the court looks at whether the special education

¹⁰ Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

3) Implicit in determining whether a district has complied with the requirements of an IEP is whether the IEP, as written, was in fact implemented. Contrary to the [Student's] IEPs (including the 12/01/2009 Amendment) and *District promises to supply compensatory services*, between 11/06/2008 and 11/05/2009, the District failed to supply [Student] with the related services detailed in FF #21, above.

4) The District argued that since the start of the 2008-2009 school year it has made "diligent efforts" to secure qualified SL and OT providers. This argument is neither convincing nor relevant. A lack of resources, whether in terms of staffing, facilities or finances, is never an excuse for failing to provide services under the IDEA. See, e.g., *In re Child with Disabilities*, 21 IDELR 624 (SEA CT 1994). See also, *Letter to Thurmond*, 18 IDELR 1306 (OSERS 1992) (regardless of budgetary constraints, a school district remains bound to the requirements of FAPE and LRE for each child with a disability).

5) Citing *Van Duyn ex. Rel. Van Duyn v. Baker School District 5J*, 47 IDELR 182 (9th Cir. 2007), the District also argued that there is no statutory requirement to perfectly adhere to the IEP. Here the issue is not 'perfect adherence' but, rather, any adherence whatsoever with the IEP.

6) In *Van Duyn*, the 9th Circuit found that the implementation failures were not material. Accord, *Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000) (a de minimis failure to implement an IEP does not amount to a denial of FAPE). However, a district violates the IDEA when it fails to implement an "essential" element of a child's IEP. *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003). The related services detailed in FF #21, above, were essential services. The failure to deliver these services resulted in a material violation of the IDEA, constituting a denial of a FAPE.

REMEDIES

1) **Compensatory Services for Failure To Implement [Student's] 04/01/2008 and 03/18/2009 IEPs:** The SCO has reviewed the [Student's] IEPs and is mindful of the child's multiple disabilities and severe needs as well as the lack of service logs or measurable documentation concerning the specific services that were to be delivered. Consequently, in order to adequately compensate for the educational harm caused by the District's material failure to provide [Student] a FAPE through delivery of the related services specified in the 04/01/2008 and 03/18/2009 IEPs, the District shall provide [Student] with ALL of the related services detailed in FF #21, including: 49 hours of AE services; 8.15 hours of SL services and 8.15 hours of OT services. **These compensatory services shall be in addition to any services [Student] currently receives or will receive, that are designed to advance [Student] toward the current IEP goals and objectives.** In other words, the compensatory shall be delivered IN ADDITION TO [Student's] regular school day, either before or after the regular school day, on weekends and or holidays. Additionally, the compensatory services shall be provided at a time and place

reasonably convenient to [Student] and the [Student's] family. In order to promptly implement these compensatory services, **no later than 01/29/2010, the District shall:**

- a) Reconvene an IEP Team meeting which shall include, at a minimum, each of the service providers who will be providing AE, SL and OT services to [Student];
 - b) At this meeting the team shall determine the specific AE, SL and OT services that the provider recommends and the Team agrees must be delivered to [Student], **including any compensatory services concerning related services which District has not delivered to [Student] since 11/05/2009;**
 - c) Write measurable and appropriate stand alone goals which are specific as to the AE, SL and OT services needed by [Student] and that the relevant related services providers will deliver;
 - d) Write an amended service delivery statement (i.e., Section 13 of IEP) which accurately details the specific AE, SL and OT services to be provided;
 - e) Implement the amended IEP and, additionally, begin providing the compensatory services detailed in FF #21 and paragraph 1(b), above;
 - f) The provider of each related service (i.e., AE, SL and OT) shall provide written weekly service logs which verify i) exactly what direct services were provided to [Student] during the past week; and ii) exactly what indirect services were provided, including all activities performed and persons with whom provider consulted. These weekly service logs shall be supplied to: [Foster Parent], the GAL and Mary Greenwood, (CDE Supervisor), General Supervisory Team, by the third calendar day following the last day of school each week;
 - g) In scheduling of all compensatory services, the District shall ensure that the provider communicates by conference telephone call, with both the [Foster Parent] and [GAL]. **All of [Student's] compensatory education under this paragraph #1 and any shortages of SL and OT services which have continued to occur since 11/05/2009, shall be completed no later than 12/15/2010.** The District shall supply the SCO and CDE Supervisor with written documentation of full compliance with this remedy no later than the close of business on 12/29/2010; and
 - h) Supply a complete copy of the amended IEP, including detailed team meeting notes and verification of items a-g, above, to the CDE Supervisor by the close of business on 02/05/2010.
- 2) The District must correct the cited noncompliance as soon as possible but, in any event, no later than 02/13/2010. Consequently, on or before the close of business on 01/30/2010, the District must submit to the SCO and General Supervisor a proposed Corrective Action Plan (CAP) that effectively addresses how the cited noncompliance will be corrected so as not to recur as to [Student] and all other students with disabilities for whom the District is responsible. See, 34 CFR § 300.151(b). The [CAP] must specifically address how the District will ensure

that, regardless of the placement, student's are supplied with the related services to which they are entitled and in accordance with their IEP and ECEA Rule 3.03.

The Department will review and then either approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance. The enclosed sample templates provide suggested formats for the CAP and include sections for "improvement activities" and "evidence of implementation and change."

Please submit the CAP and other documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Leadership Unit
Attn.: Jeanine M. Pow, State Complaints Officer
1560 Broadway, Suite 1175
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above will adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department.

The Decision of the SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a due process complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).

CONCLUSION

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

Dated this 30th day of December, 2009.

Jeanine M. Pow,
State Complaints Officer

Appendix A
2009:511 Record

GAL's Complaint, pgs. 1-3 and Exhibit:

A. IEP of 03/18/2009

District's seven page Response and Exhibit List:

- A.1 Contract for Educational Services 08-09-[District #2]
- A.2 Contract for Educational Services 09-10-[District #2]
- A.3 8/28/08 letter to [Facility] from [Special Education Director], [District], and 5/26/09 letter to [District #2] from [Special Education Director]
- A.4 2/23/09 letter from [Controller], [Facility]
- B IEP dated 04/01/2008
- C Triennial Reevaluation dated 03/18/2009
- D 11/24/09 letter from [School Social Worker], [District Program]
- E IEP dated 3/18/09
- F Emails from May 2009
- G Email dated 7/10/09
- H OT/PT Services-summer 2009
- I 3/18/09 [Asst. Director, Special Education] Meeting Notes
- J IEP additional information 5/15/09
- K Email 8/3/09
- L Progress Reports:
 - 2nd quarter Progress Report
 - Report Card 1/14/09
 - 3rd quarter Progress Report
 - Report Card 3/19/09
 - 4th quarter Progress Report
 - Report Card 6/2/09

District's Supplemented Exhibits of 12/09/2009:

- M IEP Amendment dated 12/1/09
- N Attendance 08-09
- O Annual Goals and/or Objectives dated 3/18/09
- P Attendance 09-10

GAL's three page Reply and Exhibit:

- B Four e-mails:
 - 07/10/2009 email from [Service Provider] to [Jefferson County Case Worker]
 - 07/13/2009 email from [Jefferson County Case Worker] to GAL and
 - 07/13/2009 email from GAL to [Jefferson County Case Worker] and

- 07/13/2009 email from [Case Manager] to GAL and [Jefferson County Case Worker]

2008-2009 [Day Treatment Facility] School Calendar

2009-2010 [Day Treatment Facility] School Calendar