

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

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**State Complaint 2012: 512**  
**Arapahoe 5, Cherry Creek School District**

**DECISION**

**INTRODUCTION**

This pro-se, state-level complaint (Complaint) was properly filed with the Colorado Department of Education (CDE) on November 27, 2012 by the parents of a child presently identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))<sup>2</sup> and to protect the anonymity of the parents and their child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

- [Mother], Mother of Child, (“Mother” or “Parent”);
- [Father], Father of Child, (“Father” or “Parent”);
- [Student], Child of Parents, (“Student,” “she” or “her”);<sup>3</sup>
- Student’s age of [Age], [Age];
- Arapahoe 5, Cherry Creek School District, (“District”);
- [Special Education Director], Executive Director of Student Achievement Services, (“Special Education Director”);
- [Present School], (“Present School”);
- [Former School], (“Former School”);
- [Principal], Former School Principal, (“Principal”);

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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 CFR § 300.1, *et seq.*

<sup>2</sup> FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent’s access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

<sup>3</sup> Although Student’s gender may be either male or female, in order to preserve anonymity, the SCO has arbitrarily elected to identify Student as a female in this Decision.

- [Teacher], Former School General Education Teacher (“Teacher”);
- [SLP], Speech-Language Provider (“SLP”); and
- [School Nurse], Former School Nurse (“School Nurse”).

A State Complaint, signed by both Parents, was received on November 27, 2012. After carefully reviewing the Complaint and speaking with Mother on November 29, 2012, the State Complaints Officer (SCO) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>4</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.<sup>5</sup>

The overriding issue and, therefore, the scope of the investigation identified by the SCO is:

Whether the District committed procedural violations of the IDEA and, if so, whether the procedural violations resulted in Student being denied a free appropriate public education (FAPE).

On November 29, 2012, the SCO conferred with Mother by telephone.

On December 13, 2012 the District’s Response was timely received.

On December 19, 2012, the Parents’ Reply was timely received.

On December 21, 2012, the SCO conducted face-to-face interviews with Principal and Teacher.

On January 15, 2013, the SCO conducted a face-to-face interview with SLP and a telephone interview with School Nurse.

On January 16, 2013 the SCO closed the Record.

### **PARENTS’ COMPLAINT ALLEGATIONS**

Parent’s Complaint allegations are summarized as follows:

Allegation #1: The District failed to initiate an initial evaluation of Student in early January 2012 despite Parents’ request. Mother was asked to come in and sign what she

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<sup>4</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).

<sup>5</sup> The remainder of Parents’ Complaint allegations (i.e., allegations concerning: No Child Left Behind and Student’s giftedness) were rejected as being matters not providing protections under the IDEA and therefore outside the SCO’s jurisdiction.

thought was a “consent to evaluate.” Student was “informally” evaluated on January 25, 2012. Parents expected the request to evaluate to result in a determination of eligibility meeting. Until July 20, 2012, Mother did not understand that the form she had signed was for an “informal consent to evaluate.”

Allegation #2: The District failed to supply Parents with prior written notice (PWN) when it determined that an initial evaluation was not necessary.

Allegation #3: The District failed to initiate a child find evaluation despite receiving sufficient information in conjunction with the Informal Speech-Language Screening to suspect that Student might have a disability.

**Parent’s Proposed Remedies:** The District supply training to all District staff in the identification of children with disabilities.

### **THE DISTRICT’S RESPONSE**

The District’s Response is summarized as follows:

Allegation #1: The District denied the allegation. Consistent with Mother’s request, as evidenced by the fully executed January 12, 2012 Consent for Informal Screening form, the District conducted an informal screening.

Allegation #2: The District denied that it had a duty to supply PWN. Because Mother did not request an initial evaluation, the District had no duty to supply PWN that it refused to conduct an initial evaluation.

Allegation #3: The District denied the allegation. Given the informal screening results as well as Student’s progress in Targeted Level - response to intervention (RtI) strategies, the District had no reason to suspect that Student might have a disability and be in need of a special education or related services.

### **PARENTS’ REPLY**

Parents’ Reply is summarized as follows:

Allegation #1: The difference between an Informal Screening and an evaluation was not explained to Mother. Mother went to School with the intention of signing a Consent to Evaluate but that form was not offered. Mother was offered only one option - an informal screening of Student. The informal screening was accepted not by choice, but because it was the only option offered.

Allegation #2: Parents reiterated that the District failed to supply Parents with PWN explaining why the evaluation Mother had requested would not occur.

Allegation #3: The fact that Teacher supplied Student with accommodations buttresses Parents' claim that the District recognized that Student had needs but, nevertheless, failed to initiate its child find obligations.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>6</sup> the SCO makes the following FINDINGS:

#### **Factual Background:**

1. At all times relevant to the Complaint, Student, [age] years of age, was a resident of the District.
2. During the Complaint time period (i.e., January 2012 through the end of the 2011-2012 school year) Student was not identified as being eligible for special education and related services.<sup>7</sup>
3. On the last day prior to Christmas break 2011, Mother contacted Teacher and reported that Student had not yet finished a project that was due. Additionally, Teacher had observed that Student had difficulty expressing herself orally. Teacher discussed with Mother Response to Interventions (RtI) accommodations that she would implement. The universal RtI accommodations Teacher implemented consisted of:
  - Giving Student extra time to complete homework assignments; and
  - Giving Student extra time in class to communicate orally.

With implementation of these accommodations, Student completed homework assignments on time but continued to have difficulty expressing her thoughts orally. Consequently, Teacher recommended that Mother talk to someone in special education about Student's oral difficulties.<sup>8</sup>

4. Towards the end of the 2011-2012 school year, Student was accepted for attendance at Present School for the 2012-2013 school year. Present School is a magnet school for high

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<sup>6</sup> Appendix A, attached and incorporated by reference, details the entire Record.

<sup>7</sup> There is no dispute that, as of November 12, 2012, Student was identified as being eligible for special education (i.e., having a physical disability and being in need of special education and related services).

<sup>8</sup> Interview of Teacher.

achieving students. Upon acceptance at Present School, Student's motivation to complete school projects and homework dropped. Teacher reported this to Mother and surmised that because Student knew she would soon be attending Present School she had simply quit working in Teacher's class. Teacher and Mother strategized on jointly communicating to Student that, while she was attending Former School, she was still expected to complete homework and school projects.<sup>9</sup>

**Allegation #1: The District failed to initiate an initial evaluation of Student in early January 2012 despite Parents' request.**

5. Parents allege that Mother requested an initial evaluation while the District claims that Parent requested and consented to an informal Speech-Language screening. Given the credible evidence in the Record, the SCO specifically finds:

- In early January 2012, Mother telephoned Principal and expressed concerns regarding Student's speech-language (S-L) skills;
- Mother indicated that she wanted Student "tested" but was unsure of what type of testing she wanted done;
- During the telephone conversation Mother made no mention of requesting an "evaluation," "special education services" or "an IEP;"
- Given Mother's concerns regarding Student's speech, Principal advised Mother that SLP would be contacting her to initiate the paperwork;
- Subsequent to Mother's telephone call, Principal contacted SLP and advised that Mother had requested "testing;"
- Had Mother requested "an initial evaluation," "an IEP" or "special education services" Principal would have communicated this to SLP;
- Because it was unclear what sort of testing Mother was requesting, Principal left it to SLP to clarify what Mother wanted;<sup>10</sup> and
- Regardless of whether a parent requests an informal screening or an initial evaluation, a member of the District's special education team contacts the parent to determine the parent's concerns, and, consistent with what the parent is requesting, to obtain written consent for an informal screening or an initial evaluation.<sup>11</sup>

6. Shortly thereafter in early January 2012, SLP conferred with Teacher and telephoned Mother. Given the credible information in the Record, the SCO specifically finds:

- Mother never requested that SLP conduct an initial evaluation nor request that Student have an IEP or special education services;

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<sup>9</sup> *Id.*

<sup>10</sup> Interview of Principal.

<sup>11</sup> Interviews of Principal and SLP.

- Had Mother requested an initial evaluation, IEP or special education services SLP would have had Mother sign a consent form for an initial evaluation;
- Mother advised SLP that her concerns were Student's: choppy, slow speech; and difficulty formulating thoughts which impacted her fluency;
- Mother advised SLP that Student was on the waiting list to be evaluated by JFK and she anticipated that, like her sibling, Student would be diagnosed with Asperger's Spectrum Disorder (ASD);
- Based on Mother's concerns, SLP advised her that the best first step would be for SLP to do a S-L screening;
- As a result of their conversation, SLP filled out a consent form for an informal screening by SLP which was then supplied to Mother for her signature;
- On January 12, 2012, Mother signed the consent form for Student to be informally screened by SLP;
- The top of the consent form lists in large letters "Informal Screening" and, directly above the signature block is a check mark next to the sentence "I give my permission to have my child screened by the discipline/s (i.e., S-L therapist had been circled) requested;"<sup>12</sup>
- Consistent with Mother's concerns and the consent form, on January 25, 2012, SLP conducted an informal S-L screening consisting of administration of select subtests of the Social Language Development test, recording information obtained from Mother and Teacher, conducted informal observations of Student and initiated a conversation with Student;<sup>13</sup>
- In her written report SLP noted that Student was able to repeat words and sentences with relative accuracy although the rate was sometimes slow and deliberate, she was able to make appropriate inferences from pictures presented and she was able to take the perspective of others;
- However, in her report SLP noted that Student demonstrated: slow and fragmented speech, difficulty processing and retrieving information, "unique social behaviors" consisting of decreased eye contact and flat affect, and she became more disfluent if questions required more thought and problem solving;
- SLP concluded her report by recommending that i) Teacher continue to use universal RtI accommodations (i.e., extended time to process and respond to information); ii) SLP monitor Student's speech, social awareness skills and anxiety as needed; and iii) once the JFK evaluation was completed, that Parents share the results with the school Student was then attending.<sup>14</sup>
- SLP met with Mother sometime in March 2012 and reviewed her report and recommendations;

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<sup>12</sup> Interview of SLP and Exhibit A.

<sup>13</sup> Interview of SLP and Exhibit #1.

<sup>14</sup> Exhibit #1.

- Mother appeared to agree with the recommendations and did not voice any concerns or questions; and
- At the conclusion of the meeting Mother was supplied with a copy of SLP's report.<sup>15</sup>

7. Nor can SCO ignore the fact that Parents were familiar with the District's procedures concerning requests for an initial evaluation. In November 2011, after receiving the results and recommendations of an evaluation conducted by JFK, Parents requested that Student's sibling have an initial evaluation. As a result of that request, the District: conducted a meeting with Parents and several District staff; discussed the areas Parents wanted the initial evaluation to cover; checked the appropriate boxes on the form regarding areas to be evaluated; had Parents sign the consent form for an initial evaluation; and supplied them with a copy of the Procedural Safeguards. Additionally, between November 2011 and the end of the school year, Parents conferred closely with an advocate.<sup>16</sup>

8. Student was evaluated by JFK on July 11, 2012. The evaluation consisted of extensive testing and written psychological, S-L and occupational therapy reports. The psychological report notes that one of the purposes of the evaluation was to "provide recommendations for the home and school setting[s]." The JFK psychological report noted that Student's "history and clinical presentation are consistent with a diagnosis on the autism spectrum."<sup>17</sup> The report listed several recommendations and noted "Because a medical diagnosis of an [ASD] is different from an educational identification of [ASD] school staff will need to determine whether [Student] meets criteria for an educational identification of ASD."<sup>18</sup> Additionally, the JFK S-L report notes "[Student] recently had a speech language *screening* through [Former School] on January 25, 2012."<sup>19</sup> The quoted language further supports SCO's finding that as of July 11, 2012 Parents had not requested that District conduct and initial evaluation.

9. In summary, Parents' arguments that they expected their January 2012 request to result in a special education determination meeting and that they did not understand the difference between an informal screening and an initial evaluation are unsupported by the Record. Parents' argument is also contradicted by procedures that District followed in conjunction with Parents' November 2011 request for an initial evaluation of Student's sibling.<sup>20</sup> Contrary to Parents' allegation, Mother first requested an initial evaluation on July 20, 2012 and, consistent with that request, she was supplied with a consent form for an initial evaluation which she signed on the same date.<sup>21</sup>

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<sup>15</sup> Interview of SLP.

<sup>16</sup> See the Decision in Parents' State Complaint, 2012: 509.

<sup>17</sup> Exhibit E, pgs. 1 and 7.

<sup>18</sup> Id., pg. 8.

<sup>19</sup> Id., pg. 13 (emphasis added).

<sup>20</sup> Complaint pg. 3, Reply pg. 1 and State Complaint 2012: 509.

<sup>21</sup> Complaint, pg. 3.

**Allegation #2: The District failed to supply Parents with prior written notice (PWN) when it determined that an initial evaluation was not necessary.**

10. Mother requested and consented to an informal screening. Consistent with Mother's consent, the District conducted an informal screening. (FF #6). Parents were familiar with the District's procedures concerning initial evaluations and knew the difference between an informal screening and an initial evaluation. (FF #'s 7 and 9). If Parents wanted an initial evaluation they should have requested and consented to an initial evaluation.

**Allegation #3: The District failed to initiate a Child Find evaluation despite receiving sufficient information in conjunction with the Informal Speech-Language Screening to suspect that Student might have a disability.**

11. The District argues that there was no reason to suspect that Student had a disability and was in need of special education services in order for her to access the general education classroom. Given the information contained in SLP's report, Teacher's continued use of the universal Rtl accommodations addressed Student's needs and she was progressing in school.<sup>22</sup>

12. Throughout the school year, Student: had friends in class; always actively participated in classroom discussions; was a leader in class; and her academic performance was consistently "proficient" or "advanced" in all subjects.<sup>23</sup>

13. Contrary to Parents' Complaint, during the spring of 2012, Student was not seen with increasing frequency by a school nurse complaining of stomach aches and other ailments due to anxiety in the classroom.<sup>24</sup> During the 2011-2012 school year, Student was seen by School Nurse on six occasions. On three occasions of those occasions Student complained of having a stomach ache. On two occasions Student received basic first aid for a bump on the head and a slightly swollen eye lid. The sixth log entry merely noted immunization information.<sup>25</sup> School Nurse did not view these six visits as establishing a pattern or cause for concern.<sup>26</sup> Conversely, between August 15, 2012 and December 17, 2012, while Student was attending Present School, Student was seen by a school nurse on 17 occasions. During that time period, Student was seen on nine occasions complaining of a stomach ache, nausea and/or vomiting.<sup>27</sup>

14. SCO concludes that, SLP's screening and report did not provide information which would lead the District to suspect that Student had a disability and needed special education and related services. SLP did not conclude that Student had a disability. She did conclude that

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<sup>22</sup> Response, pgs. 4-5, Exhibits #1 and G.

<sup>23</sup> Interview of Teacher and Exhibit G.

<sup>24</sup> Complaint, pg. 3.

<sup>25</sup> Exhibit I, pg. 1.

<sup>26</sup> Interview of School Nurse.

<sup>27</sup> *Id.*

Teacher's continued use of the universal Rtl accommodations were sufficient to address Parents' concerns and to meet Student's needs.<sup>28</sup> This was consistent with Teacher's beliefs. Teacher did not believe that Student had a disability and needed special education. With use of the universal Rtl accommodations, "Student's work was always at the top of the class."<sup>29</sup>

### **CONCLUSIONS OF LAW**

Based on the foregoing findings of fact (FF), the SCO enters the following CONCLUSIONS OF LAW:

#### **Allegation #1: The District failed to initiate an initial evaluation of Student in early January 2012 despite Parents' request.**

15. Either a parent of a child or a public agency, here the District, can initiate a request for an initial evaluation to determine whether the student is a child with a disability. § 300.301(b) and Rule 4.02(3)(a)(i) - (ii). When a parent requests an initial evaluation the district must:

- Provide the parent with [prior] written notice a reasonable time before the district proposes to initiate an evaluation (§ 300.503(a) and Rule 4.02(3)(b));
- Obtain the parent's informed written consent before conducting the initial evaluation (§ 300.300(a) and Rule 4.02(3)(c)(ii));
- Provide the parent with a copy of the procedural safeguards notice (§ 300.504(a)(1) and Rule 4.02(3)(b)); and
- Conduct the evaluation within 60 days of the date that a parent signed consent for the evaluation (§ 300.301(c)(1)(i) and Rule 4.02(3)(c)).

16. However, in early January 2012 Parents did not request an initial evaluation. Mother expressed her concerns and consented to an informal screening. (FF #s 5-6). These findings are buttressed by the distinct procedures that the District followed in conjunction with Parents' recent (i.e., November 2011) request for an initial evaluation of Student's sibling (FF #7). Additionally, information contained in the JFK evaluation also buttresses the conclusion that Parents had requested that District conduct an informal screening and not an initial evaluation. (FF # 8). Parents first requested that the District conduct an initial evaluation on July 20, 2012. (FF # 9). There being no violation of the IDEA, no remedy is ordered.

#### **Allegation #2: The District failed to supply Parents with prior written notice (PWN) when it determined that an initial evaluation was not necessary.**

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<sup>28</sup> Interview of SLP and Exhibit #1.

<sup>29</sup> Interview of Teacher.

17. A district must supply parents with PWN a reasonable time *before the district refuses to initiate an evaluation*. § 300.503(a)(2)(emphasis added). 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.

Section 300.503(b)(1)-(7).

18. Because Parents never requested an initial evaluation it follows that the District had no duty to supply them with PWN. (FF #'s 6 and 9). Parents understood the difference between an informal screening and an initial evaluation. (FF #7). If they wanted an initial evaluation they should have requested and provided written consent for an initial evaluation.

19. Furthermore, the IDEA does not require PWN when a parent requests an informal screening. The relevant regulation provides “[t]he screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.” § 300.302(emphasis added). Consistent with Mother’s concerns and written consent, the District conducted an informal screening with SLP. (FF #6).

20. There being no violation of §§ 300.503 or 300.302, no remedy is ordered.

**Allegation #3: The District failed to initiate a Child Find evaluation despite receiving sufficient information in conjunction with the Informal Speech-Language Screening to suspect that Student might have a disability.**

21. Even if a parent has not requested an initial evaluation, a district has child find duties that are triggered when the district has reason to suspect that a student has a disability *and* is in need of special education and related services. § 300.111(a)(1)(i) (emphasis added) and Rule 4.02(2)(a).

22. Eligibility under the IDEA is a two prong analysis. A student is not eligible for special education services unless i) she has one of the disabilities recognized under the IDEA *and*, ii) *as a result of that disability, she needs special education and related services*. § 300.8(a)(emphasis

added). *See E.J. v. San Carlos Elem. Sch. Dist.*, 803 F. Supp.2d 1024 (N.D. Cal 2011)(district had no reason to suspect the student, who had an anxiety disorder, needed special education to receive educational benefit since student earned above-average grades with the modifications the district supplied her in general education classes).

23. Incidents of bullying can also raise a “red flag” that either the student being bullied or the student perpetrating the bullying might be a student with a disability and in need of special education thus triggering child find duties. *See Rose Tree Media Sch. Dist.*, 111 LRP 6194 (SEA PA 12/05/10)(district that knew the student had been prescribed ADHD medications, had significant anxiety and social skills deficits and often complained of being taunted by peers violated its child find obligations when it determined that student was ineligible for special education). Throughout the school year Student was a class leader who had friends in the classroom. (FF #12). Nowhere in their Complaint did Parents claim that Student had been bullied.

24. Given the credible information in the Record, including SLP’s screening and report, the District had no reason to suspect that Student had a disability and was in need of special education and related services. (FF #s 12-15). There being no violation of the IDEA, no remedy is ordered.

### **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).

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

Dated this 24th day of January, 2013.

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Jeanine M. Pow, Esq.  
State Complaints Officer

## **Appendix A**

### **Parent's Complaint, pages 1 through 5.**

- Exhibit 1: 1/25/2012 Informal S-L Screening
- Exhibit 2: 11/9/2010 Individual Student Report
- Exhibit 3: GT Personalized Learning Plan

### **Parents' Reply, pages 1 through 4.**

- Exhibit 4: 2/20/2007 Out of State S-L Initial Evaluation
- Exhibit 5: 5/2/2012 String emails re: [Student] and anxiety
- Exhibit 6: 11/12/2012 IEP

### **District's Response, pages 1 through 5.**

- Exhibit A: 01/12/2012 Parent Consent for Informal Screening of [Student]
- Exhibit B: Blank
- Exhibit C: Blank
- Exhibit D: District Staff contact information for persons with knowledge re Complaint allegations
- Exhibit E: July 2012 JFK Evaluation
- Exhibit F: Colorado Multi-Tiered Model of Instruction & Intervention
- Exhibit G: Former School 2011-2012 Report on Student's Progress
- Exhibit H: SLP file notes

### **Additional Documentation:**

- Exhibit I: Health Clinic log entries for Student, 06/01/2011 to 12/17/2012

### **Interviews with:**

- School Principal and Teacher on 12/21/2012
- SLP and School Nurse on 01/15/2013