

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA¹)

State-Level Complaint 2014:510
NW Colorado BOCES

DECISION

INTRODUCTION

This is a pro-se, state-level complaint (Complaint), filed April 23, 2014. The Complainants are the mother and father (Mother, Father, or collectively, Parents) of Student, who is identified as a child with a disability under the IDEA.

Based on the written Complaint, dated April 17, 2014, the SCO identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

PARENTS' COMPLAINT ALLEGATION

Parents' Complaint raised one allegation, summarized as follows:

Since March 17, 2014, the BOCES has denied Student a free appropriate public education (FAPE) by failing to hold an Individualized Education Program (IEP) team meeting in a timely manner upon Parents' request.

FINDINGS OF FACT

After a thorough and careful analysis of the entire record,³ the SCO makes the following FINDINGS:

1. At all times relevant to the Complaint, Student has lived with Parents within the boundaries of the BOCES and has attended School as a [grade level].

¹ 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.*

² 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).

³ The appendix, attached and incorporated by reference, details the entire record.

2. Student is eligible for special education and related services as a child identified with a disability and has an IEP, dated November 21, 2013.
3. In a number of emails from approximately the middle of November 2013 through the middle of April 2014, between Mother and School, District, and BOCES staff members, including Case Manager and Principal, Mother communicated her concerns about Student, specifically with regard to Student's challenges with attendance, completion of assignments, and failing grades.⁴
4. On February 3, 2014, Mother emailed Principal confirming Principal's conversation with Therapist about Student's difficulties.⁵ In subsequent emails between Mother and Principal, the subject is further discussed.⁶ In addition, Principal and Therapist meet weekly to discuss Student's current status.⁷
5. On March 7, 2014, Mother emailed Principal regarding the possibility of accommodating Student by modifying the academic requirements due to the difficulties Student was experiencing.⁸ On March 20, 2014, Principal and Mother attended a meeting with Therapist and, sometime shortly thereafter, Principal and/or Case Manager spoke to Student's individual teachers to discuss accommodations to modify the academic requirements for Student.⁹ In an email dated March 22, 2014, Executive Director inquired about Case Manager's conversations with Student's teachers to discuss the accommodations and modifications to Student's workload.¹⁰
6. On March 17, 2014, Mother requested an IEP team meeting to be held as soon as possible.¹¹ Case Manager proceeded to seek possible meeting dates in April with IEP team members.¹² On March 19, 2015, Executive Director indicated in an email of her availability to attend the IEP team meeting by telephone on April 22, 2014 or in person on May 13 or 15, 2014.¹³

⁴ Exhibit B.

⁵ Exhibit B13.

⁶ Exhibit B.

⁷ Interview with Therapist.

⁸ Exhibit B27.

⁹ Interviews with Principal, Case Manager, Mother, and Therapist and Exhibits B and 3, Page 129.

¹⁰ Exhibit 3, Page 129.

¹¹ Exhibit B28.

¹² Exhibit 3.

¹³ Exhibit 3, Page 133.

7. On March 20, 2014, Case Manager emailed Mother to suggest possible dates for the IEP team meeting, indicating that the necessary team members from School, District, and BOCES were only available to attend on May 13 or May 15, 2014.¹⁴ The email specified that the School, District, and BOCES team members included Executive Director, BOCES School Psychology Specialist, Resource Teacher, Principal, School Counselor, Case Manager, and a general education teacher to be determined later. The letter further requested that Mother clarify the reason for the meeting request. Mother responded by email later the same day, indicating that she would like the meeting to be held in April to address issues that are important for Student finishing the school year with passing grades.¹⁵ Mother again requested that the meeting be held as soon as possible.

8. On March 21, 2014, Principal emailed Mother that BOCES had provided the May 13 and 15, 2014 dates to them and that they would like to choose one of those dates and again asked about the reason for the IEP team meeting request.¹⁶ Mother responded that the BOCES needed to find an available date in April due to Student's change in needs, noting that the May dates would be futile in helping Student get through the remainder of the school year.¹⁷ Principal responded on March 29, 2014 that one of the May dates would be chosen so that all team members could attend.¹⁸ Mother responded the same day, again clarifying the need for an IEP meeting as soon as possible and that a meeting in May would be too late to address Student's needs.¹⁹ Principal expressed understanding of the request and of Mother's sense of urgency, reiterated that May 13 or 15, 2014 were the dates when all team members were available, and referred Mother to contact Executive Director.²⁰ On April 3, 2014, Mother emailed Case Manager and Principal, again clarifying the need for an immediate IEP meeting to discuss modifications to Student's classwork.²¹ On the same day, Mother also emailed Principal to request a meeting about Student's IEP.²²

¹⁴ Exhibit B29.

¹⁵ Ibid.

¹⁶ Exhibit B30.

¹⁷ Ibid.

¹⁸ Exhibit B30.

¹⁹ Ibid.

²⁰ Exhibit B33.

²¹ Exhibit B36.

²² Exhibit B38.

9. Principal explained to SCO that the reason for scheduling the IEP team meeting in May was solely due to Executive Director's schedule.²³ Principal admitted that Executive Director could have attended by telephone, but that Executive Director insisted on attending the IEP team meeting in person.²⁴ Principal further explained that Mother has a long history of requesting numerous IEP team meetings and that Principal and School staff have grown frustrated with the amount of time spent communicating with Mother and on lengthy and numerous IEP team meetings.²⁵

10. Executive Director explained to SCO that Principal indicated feeling harassed by Mother and that Principal indicated a strong preference for Executive Director's personal presence at the meeting.²⁶ Executive Director confirmed with SCO that she could have been available to attend the meeting by phone on April 22, 2014.²⁷ Executive Director admitted that a reasonable amount of time to hold an IEP team meeting upon parental request is generally a maximum of three weeks.²⁸

11. On May 15, 2014, more than eight weeks after Parents requested an IEP team meeting, the IEP team met to amend Student's IEP.²⁹ The amended IEP was provided to SCO and to Parents on June 3, 2014.³⁰ In summary, the amended IEP provides additional accommodations that bases Student's grades on quality of work versus quantity of work as needed or appropriate, weighting test scores higher than daily work, and allows for review of graded tests to provide for explanation of Student responses orally.³¹ Notes taken by Executive Director show that the IEP team is scheduled to reconvene on August 28, 2014.³²

²³ Interview with Principal.

²⁴ Ibid.

²⁵ Ibid. SCO notes that by a letter dated April 16, 2014, Superintendent advised Mother that her communications with School and District staff would be restricted to communication directed to Superintendent until the May 15, 2014 IEP meeting. Exhibit A.

²⁶ Interview with Executive Director.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Exhibit 9 and Interviews with Mother and Executive Director.

³⁰ Exhibit 9.

³¹ Exhibit 9, Page 6.

³² Exhibit 10, Page 4.

12. Student's final grade report for the 2013-14 school year indicates that Student failed three classes during the second semester.³³

CONCLUSIONS OF LAW

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

The BOCES failed to provide Student FAPE as required by the IDEA.

1. Parents allege that the BOCES failed to provide Student FAPE by failing to hold an IEP team meeting for more than two months after Parents requested a meeting to address their concerns about Student's needs. SCO agrees.
2. Under the IDEA, local education agencies such as the BOCES are required to provide eligible students with disabilities with a "free appropriate public education" (FAPE), by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an IEP developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. Reviewing and revising a child's IEP is a critical step in the IEP process and the changing needs of some students with disabilities may demand more frequent reviews and revisions to ensure FAPE is provided. Generally, there should be as many meetings in a year as any one child may need. The IDEA does not establish a specific requirement for convening an IEP team meeting at parental request. However, if the parents of a child with a disability believe that there is a problem with the child's current IEP, it would be appropriate for the parents to request an IEP team meeting and the public agency should grant any reasonable request for such a meeting.
3. In this case, beginning in or about the middle of November 2013 and continuing all the way through the middle of April 2014, Mother communicated with Principal and Case Manager that Student was experiencing some difficulties due to new developments related to Student's disability and that, as a result, Student was struggling significantly in school and in danger of failing a number of classes. Moreover, Principal and Therapist met weekly to discuss Student. Principal and Case Manager should have been well aware of Mother's concern about Student, and that Student was experiencing significant academic problems. It appears that some effort

³³ Exhibit 11.

was made by Principal and Case Manager to communicate with Student's individual teachers in order to accommodate Student's changing needs; however, when Mother requested an IEP team meeting to discuss amending the IEP, Principal and Case Manager were suddenly unaware of the reason for the request and completely unaccommodating. It is clear that School staff, particularly Principal and Case Manager, had grown frustrated by their communications with Mother, but delaying the IEP team meeting for more than two months is inexcusable, even according to Executive Director who admits that the **maximum** reasonable time for holding a meeting upon parental request is three weeks.

4. Principal's stated reason for not holding the IEP team meeting until the end of the school year and more than two months after Parents' request was solely due to the fact that Executive Director insisted on being physically present at the meeting and could not do so until May 13 or 15, 2014. Executive Director, however, stated that it was Principal who so urgently wanted Executive Director to be present and that Executive Director could have attended by phone on April 22, 2014. Either way, the delay was unjustifiable. In some instances, a two month delay in scheduling an IEP meeting might not be unreasonable. In this case, however, Mother requested the IEP team meet in order to address immediate concerns and to assist Student in getting through the remainder of the school year with passing grades. In the end, Student continued to struggle and ultimately failed three classes. When the IEP team finally did meet on May 15, 2014, Student's IEP was amended to address Parents' concerns and to provide accommodations to help support Student. Indeed, if the IEP team had met earlier, Student would have been provided with the accommodations the IEP team ultimately decided upon and may not have continued to struggle or fail classes.
5. Moreover, the IDEA allows school districts and parents to agree to use alternate means of meeting participation, such as videoconferences and conference calls. 34 C.F.R. § 300.328. Executive Director could have attended the meeting by phone or sent another BOCES representative in her place. However, it appears that, other than scheduling the meeting more than two months after Parents' request and at the end of the school year when it would be essentially useless to Student, no alternative meeting options were discussed at all. Accordingly, SCO finds that the BOCES failed to provide Student with FAPE when they failed to hold an IEP team meeting for more than two months after Parents' request.

REMEDIES

The SCO has concluded that the BOCES violated the following IDEA requirement:

Free appropriate public education (FAPE) requirements of 34 C.F.R. § 300.17.

To remedy these violations, the BOCES is ordered to take the following actions:

- 1) **By July 18, 2014**, the BOCES must submit to the Department a proposed corrective action plan (CAP) that addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the BOCES is responsible. The CAP must, at a minimum, provide for the following:
 - a. Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violations, no later than August 15, 2014.
 - b. Effective training must also be conducted concerning these policies and procedures for all District staff routinely involved in case management and instruction of students eligible for special education, including special education directors and intended designees, special education teachers, and special education case managers. Training must be provided no later than October 10, 2014.
 - c. Evidence that such training (s) have occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than October 31, 2014.
 - d. Student's failing grades for the second semester of the 2013-14 school year will be changed to "incompletes" and accommodations will be provided for those classes in accordance with the May 15, 2014 amendment to the IEP as soon as it is practicable and possible, and no later than the end of the first semester of the 2014-15 school year.
 - e. As previously agreed to on May 15, 2014, the IEP team will meet no later than August 28, 2014 to consider Student's current status and to ensure that appropriate accommodations are in place and that each staff member involved with Student (including Therapist and Day Treatment Teacher) is knowledgeable regarding the contents of Student's IEP.

The Department will approve or request revisions of the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the BOCES' timely correction of the areas of noncompliance. At the request of the BOCES, CDE is willing and able to provide the training specified above. Should the BOCES choose to request training from CDE, it must coordinate any such training with Joyce Thiessen-Barrett.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Joyce Thiessen-Barrett
1560 Broadway, Suite 1175
Denver, CO 80202-5149

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

CONCLUSION

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. 156, 46607 (August 14, 2006).

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

Dated this 19th day of June, 2014.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, pages 1-5.

- Exhibit A: April 16, 2014 Letter
- Exhibit B: Email correspondence
- Exhibit C: November 12, 2013 IEP
- Exhibit D: Assessment Reports

Response, pages 1-4.

- Exhibit 1: Copy of the District's entire file regarding Student for the 2013-14 school year.
- Exhibit 2: Copy of School's entire file regarding Student for the 2013-14 school year.
- Exhibit 3: Correspondence, including email correspondence, between District and School staff members and Parents.
- Exhibit 4: Copy of policies and procedures concerning prior written notice, IEP development, and parental requests for IEP meetings.
- Exhibit 5: Complete name, title, and contact information, including email addresses, for each District and School staff member who has knowledge of the facts underlying the Complaint allegations.
- Exhibit 6: Power School Grades and Attendance for the 2013-14 school year.
- Exhibit 7: March 10, 2014 Client DSM Diagnosis for Student.
- Exhibit 8: Case Manager's teacher kept documentation.

Reply, pages 1-4

- Exhibit F: March 20-21, 2014 email correspondence

Additional documentation requested from BOCES:

- Exhibit 9: May 15, 2014 Amendment to IEP
- Exhibit 10: Executive Director's notes from May 15, 2014 IEP meeting

Interviews with:

- Mother
- Executive Director
- Principal
- Case Manager/Resource Room Teacher
- Therapist