

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

**State-Level Complaint 2015:517
Brighton School District 27J**

DECISION

INTRODUCTION

The Complainant is the father (“Father”) of student (“Student”), who is identified as a child with a disability under the IDEA. Father properly filed a pro-se, state-level complaint (“Complaint”) on October 21, 2015. The SCO determined that the Complaint identified seven allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT ALLEGATIONS

Father’s Complaint raised seven allegations, summarized as follows:

1. Since October 2014, the charter school where Student attends, and which is authorized by the School District, has denied Student a free appropriate public education (“FAPE”) by refusing to modify the curriculum for Student, pursuant to a policy set out in the charter contract between the School District and the School;
2. A reevaluation conducted by the School District in Spring 2015 violated IDEA because the School District relied on improper formal assessments and was erroneous;
3. The May 2015 determination that Student was not eligible for extended school year (“ESY”) services was erroneous, thereby denying Student a FAPE;
4. Subsequent to determining that Student was not eligible for ESY, the School District refused Father’s request to convene another IEP meeting to address the ESY issue further, as well as other issues, and has failed to properly communicate with Father, denying him his right to meaningful participation in the IEP process;

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).

5. During the 2014-2015 school year, the School District failed to provide accommodations required by Student's IEP;
6. On May 22, 2015, the School District refused to allow Parent sufficient access to Student's special education file;
7. During the 2014-2015 school year, Student was not provided with the special education services he was entitled to because of teacher absences.

Summary of Proposed Remedies: To resolve the Complaint, Father requested reimbursement for education expenses, teacher training, and provision of Student's educational file to Father.

SUMMARY OF THE SCHOOL DISTRICT'S RESPONSE

The School District denied all of the allegations. In further response to the first allegation, School District acknowledged that the charter contract between the School District and School contains language stating that School does not allow for the modification of its academic standards or curriculum, but rejected the claim that the language alone was the basis for denying Father's request for a modified curriculum. School District further argued that Student was provided with appropriate accommodations based on the needs determined by the IEP team.

In further response to the second allegation, School District argued that Father was provided with the required notice and that Father provided consent to assess Student using the results from previously administered assessments. School District also asserted that Father requested and was granted an Independent Education Evaluation ("IEE"), which was reviewed at a September 21, 2015 IEP meeting, at which point the IEP team determined that the results and recommendations were in alignment with the previous IEPs and reflected in the resulting IEP.

In further response to the third allegation, School District asserted that the IEP team considered Student's need for ESY services at both the October 23, 2014 and May 15, 2015 IEP meetings.

In further response to the sixth allegation, School District asserted that Father was provided with complete copies of Student's cumulative file and confidential IEP folder and that after Father indicated that documents were missing, Father was asked which documents were missing, but that Father never responded. School District also asserted that Father was provided with the opportunity to inspect the cumulative files and confidential IEP folder, but that Father refused to do so.

In further response to the seventh allegation, School District asserted that Special Education Teacher's absences were covered by licensed teachers in all but eight instances when a substitute was not available, at which time the special education services were provided by a paraprofessional under the supervision and direction of Special Education Teacher. School District further asserted that appropriate instructional delivery for Student was ensured by Special Education Teacher through regular communication with substitutes.

SUMMARY OF FATHER'S REPLY³

With regard to the School District's response to the first allegation, Father noted that School District admitted that it is required to consider curriculum modification as a potential accommodation in order to provide a FAPE to students with disabilities.

With regard to the School District's response to the third allegation, Father argued that the School District should have performed a more individualized analysis in determining the need for ESY services.

With regard to the School District's response to the sixth allegation, Father argued that the School District made it impossible for Father to discuss Student's file with relevant personnel by referring Father to School's attorney.

With regard to the School District's response to the seventh allegation, Father argued that School District admitted that special education services were not delivered by appropriately credentialed personnel.

FINDINGS OF FACT

1. At all times relevant to the Complaint, Student has lived with Father within the boundaries of the School District and currently attends School, a charter school authorized by the School District.
2. Student has been identified as a student with a disability, eligible for special education and related services under the IDEA and ECEA.

Student's October 23, 2014 IEP

3. According to the October 2014 IEP, Student was to receive 100 minutes of direct, specialized, and individualized instruction time in literacy and math to be delivered by a

³ SCO notes that although Father filed the Complaint pro-se, the Reply to School District's Response was prepared and submitted by legal counsel.

fully qualified special education teacher, in accordance with 34 C.F.R. § 300.18 and ECEA Rule 3.04. Student was scheduled to attend the first and last class periods of the day in Special Education Teacher's resource room in order to make progress on IEP goals and to better access core curriculum classes.⁴

4. From November 18, 2014 until May 14, 2015, Special Education Teacher was absent a total of 41 days, as well as 22 additional class periods when Student was scheduled to be in the resource room receiving special education services.⁵ Based on a thorough review of the documentation provided, as well as numerous interviews with credible witnesses, SCO concludes that (a) specific support for Student in content area classes was provided by general education teachers and not by Special Education Teacher;⁶ (b) during Special Education Teacher's frequent absences, the resource room was not always covered by a qualified special education teacher, but was oftentimes managed by general education substitutes or only a paraprofessional; (c) that Special Education Teacher continued to be the contact for Father and Student's teachers in her absence, communicating by email; and (d) that all substitutes and School staff members working with Student were "operating under Special Education Teacher's direction and supervision."⁷
5. Student's October 2014 IEP also details a variety of accommodations, including, in summary: extended time on assignments, homework, and exams; peer tutoring when available; access to resource room for support on assignments, homework, and test taking; allow Student to correct errors for one half partial credit for assignments and tests (Student must request accommodation in order to receive it);⁸ sequence instruction/directions one step at a time; Student may carry a daily check form; and test-taking in alternative environment with prompting by special education teacher.⁹
6. Based on a thorough review of the documentation, as well as numerous interviews with credible witnesses, SCO concludes that (a) Student's teachers provided accommodations to the best of their ability;¹⁰ (b) Student was provided with additional supports, i.e., scheduling meetings and communicating by email with Father and Student regularly, offering extra credit opportunities, offering full credit rather than half credit for

⁴ Exhibit A and Interviews with Principal, Dean of Students, School Counselor, and Special Education Teacher.

⁵ Response Exhibit 23.

⁶ Interview with Special Education Teacher and Response Exhibit 24.

⁷ Interviews with Principal, Special Education Teacher, Dean of Students, Teacher #2, Teacher #1, and Father; Response; Response Exhibits 23 and 24.

⁸ SCO notes that Father felt that Student's teachers should be responsible for Student utilizing the accommodations. Interviews with Teacher #2, Teacher #1, Special Education Teacher, Dean of Students, and Father.

⁹ Exhibit A.

¹⁰ SCO notes that on one occasion just prior to winter break, Student was unable to correct errors on an exam due to Student's absence from School, however, Student was allowed to correct the errors upon returning to school after winter break and Student's grade was amended. Interviews with Father and Dean of Students.

corrections, and opportunities for individual academic instruction almost daily; (c) Student lacked motivation and sporadically utilized the accommodations or additional supports, i.e. Student took final exams in a separate room or resource room, used extra time to complete assignments and exams, corrected some assignments for half credit, and met with a peer tutor; and (d) Student struggled academically for much of the 2014-15 school year.¹¹

April 23, 2015 Meeting

7. At Father's request, a "service provider" meeting was held on April 23, 2015 to discuss Student's accommodations and his current academic performance, as Student was currently failing three classes. Based on a thorough review of the documentation provided, as well as numerous interviews with credible witnesses, SCO concludes that (a) previously conducted assessments were fully reviewed at that meeting; (b) at Father's request, they agreed to update Student's evaluations in specific areas of concern, identifying executive functioning, social emotional issues, task completion and attention as areas to assess; (c) they agreed they did not need to perform formal academic or cognitive assessments; (d) the areas to be evaluated were noted in meeting notes and in the Consent for Evaluations, which Father signed on the same day;¹² and (e) Father requested modifications in content areas in which Student has demonstrated difficulties due to his disability, which School staff explained would not be considered based on the charter school contract which states that School does not modify its curriculum, providing Father with a copy of the provision of the charter contract.¹³

May 15, 2015 IEP meeting

8. An IEP meeting was held on May 15, 2015. SCO concludes, based on a thorough review of the documentation provided, as well as numerous interviews with credible witnesses that (a) the IEP team fully reviewed and discussed the Evaluation Report at the meeting; (b) that all areas they agreed to review or reassess on April 23rd were completed;¹⁴ (c) the IEP team reviewed and updated Student's IEP, agreeing to hold another IEP meeting at the beginning of the 2015-16 school year so that content area teachers could give input regarding goals; (d) the IEP team discussed the Student's need for paraprofessional support and agreed that it was not warranted; (e) Father again

¹¹ Interviews with Teacher #2, Teacher #1, Dean of Students, Special Education Teacher, and Father; email correspondence; Exhibit A.

¹² Response; Consent; Meeting notes; Interviews with Principal, Dean of Students, Father, Special Education Teacher and District Coordinator.

¹³ Exhibit A.

¹⁴ Exhibits 5 and 6; Interviews with Principal, Dean of Students, Special Education Teacher, Teacher #2, School District Coordinator, and Father. SCO notes that the original Evaluation Report contained a few typographical errors which were corrected in a subsequent version of the Evaluation Report, but that the errors did not notably change the findings of the report.

requested modifications to curriculum, which was not considered based on the charter contract;¹⁵ (f) ESY services were not discussed at the IEP meeting because the it had been determined at the October 2014 IEP meeting and School and School District team members believed nothing had changed to warrant re-consideration.

9. After the meeting, Special Education Teacher created a schedule to ensure that accommodations were provided for Student's final exams, including a schedule for corrections. Student failed two classes in the second semester and was enrolled in and attended summer school to recover credits. Summer school curriculum was modified specifically for Student based on Student's IEP and individual needs. Student successfully earned passing grades in both classes.¹⁶

IEP meeting request, request for records, and IEE

10. On May 20, 2015, Father requested another IEP team meeting be held. SCO concludes, based on a review of the documentation and numerous interviews with credible witnesses that because the team had just met only five days earlier for a full review of the updated evaluation and IEP and because there was no indication that there was any new information for the team to discuss, Father's request was denied.¹⁷
11. On May 22, 2015, Father requested copies of Student's cumulative file and IEP file from School. Principal provided complete copies of the files. Father indicated to Principal that there were documents missing from the files he was given, but never indicated specifically which documents were missing, despite Principal's attempt to obtain the information. Father was also offered the opportunity to personally inspect the files, but never did so.¹⁸
12. Father requested an IEE, which School granted.¹⁹ The IEP team met on September 21, 2015. SCO concludes, based on a thorough review of the documentation provided, as well as numerous interviews with credible witnesses, that (a) the IEE indicated that Student exhibits a learning disability in math, as well as difficulties with executive functioning and memory, and recommended modified curriculum; (b) results of the IEE were reviewed and goals and services were changed to incorporate some of the recommendations of the IEE; (c) Father again requested modifications and the IEP team determined that no modifications to curriculum or standards would be provided for

¹⁵ Interviews with Principal, Dean of Students, Special Education Teacher, Science Teacher, District Coordinator; Exhibit A.

¹⁶ SCO notes that Student received private tutoring throughout the 2014-15 school year, as well as during summer school, which was beneficial. Interviews with Father, Principal, Dean of Students, School Counselor, Summer School Special Education Teacher, and Summer School Principal.

¹⁷ Exhibit A.

¹⁸ Interviews with Father and Principal and email correspondence.

¹⁹ Exhibit B.

Student;²⁰ and (d) the IEP team discussed ESY services, which Father advocated should have been provided for Student, but Director of Student Services explained that Student's disability was not one that required ESY services.²¹

CONCLUSIONS OF LAW

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

A. School District failed to properly develop Student's IEP, specifically in the areas of modifications and ESY services, resulting a denial of Student's right to a FAPE. (Allegations 1 and 3)

1. The IDEA requires local education agencies such as the School District to provide eligible students with disabilities with a FAPE, by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized educational program ("IEP") developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's procedural requirements for developing, reviewing, and revising the IEP require a school district to timely convene an IEP meeting with the required participants (including the child's parents) in order to review the student's progress, new evaluative information, parent concerns, etc., in order to develop a current education plan. In the development of an IEP, parents must be afforded the opportunity to attend and meaningfully participate, which includes giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1), 300.324(a)(ii) and 300.501(b).

2. In the seminal *Rowley* case, the Supreme Court explained that the IDEA established a procedure that would involve full participation of all concerned parties, including parents, at every stage of the process. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 at 205-206 (1982). The IDEA thus requires educational agencies, teachers, and parents to jointly prepare and update an IEP tailored to the unique needs of the child, specifying the child's present educational performance, annual goals, required services, and criteria for evaluating progress. *Id.* at 181. The IDEA's procedural

²⁰ SCO notes that the IEP team agreed that modifications would be discussed at a later date if Father requests a discussion based on Student's academic performance.

²¹ Exhibit A; Interviews with Principal, Teacher #2, School District Coordinator, Dean of Students, Director of Student Services, and Father.

requirements for developing a student's IEP are specifically designed to provide a collaborative process that places particular importance on parental involvement.

[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrate[s] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

Rowley, 458 U.S. at 205-206.

3. Typically, contemplation of the two prong analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley, supra* at 206-207. “[The inquiry in cases brought under IDEA] is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?” *Id.* It is well-established, however, that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process, the result is a “per se” denial of FAPE. See, e.g., *O.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6th Cir. 2004); see also, 34 C.F.R. § 300.513(a)(2)(ii) (“In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child...”).
4. School in this case is a charter school, authorized by the School District. The development and review of IEPs by charter schools is governed by the ECEA

rules, which provide that when the charter contract between a charter school (School) and its authorizer (School District) allows the charter school to provide the special education services and to conduct the meetings required by the ECEA Rules, the charter school shall be responsible for meetings to initially develop and subsequently review the IEP in compliance with Section 4.03 of the Rules. ECEA Rule 8.06(1)(d). ECEA Rule 4.03 provides that the requirements for the development, review, and revision of the IEP shall be consistent with 34 C.F.R. § 300.324. Ultimately, responsibility for ensuring that IEP planning and related meetings comply with the requirements of ECEA Rule 4.03 rests with the administrative unit (School District) of the charter school.

5. Members of Student's IEP team, including Father, met on April 23, 2015 and again on May 15, 2015, agreed to conduct an updated evaluation, reviewed the updated evaluation, and reviewed and updated Student's IEP. At both of these meetings, Father requested that curriculum be modified for Student. School and School District team members, citing the charter contract between School and the School District, even providing Father with a copy of the relevant provision of the contract which states that School does not modify its curriculum for students, refused to consider modifications for Student on that basis. In its Response to the Complaint, School District asserted that the provision of the charter contract was not the only reason that the IEP team did not consider modifications, but that the decision was based on Student's needs. Based on a thorough review of the documentation and numerous interviews with credible witnesses, however, SCO finds no support for School District's claim. Accordingly, SCO finds that the IEP team failed to consider Student's individual needs for curriculum modifications in the development of Student's IEP, resulting in a per se violation of Student's right to a FAPE.
6. SCO next considers Father's allegation that the IEP team failed to consider Student's need for ESY services at the May 15, 2015 IEP meeting. The IDEA provides that ESY services must be provided only if a child's IEP Team determines, on an individual basis and in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2); ECEA Rule 5.01(1)(f). ESY services are defined as special education and related services that are provided beyond the normal school year and in accordance with the child's IEP, at no cost to the parents. 34 C.F.R. § 300.106(b). Consistent with all special education and related services, ESY

services are not intended or required to maximize a student's educational benefit. *Cordrey v. Euckert*, 17 IDELR 104 (6th Cir. 1990), *cert denied*, 499 U.S. 938 (1991). Rather, ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010); see *CDE School Year Determination: Using Predictive Factors*, available at http://www.cde.state.co.us/cdesped/webinar_esy_powerpoint for more CDE guidance on ESY determinations.

7. The October 2014 and May 2015 IEPs both indicate that the IEP team addressed the issue of ESY services. Father alleges that ESY services were not discussed at the May 15, 2015 meeting. School District asserts that ESY services were discussed and decided upon at the October 23, 2015 IEP meeting and that ESY services were not discussed at the May 15, 2015 IEP meeting because nothing had changed to warrant re-consideration of the issue. Moreover, interviews with credible witnesses lead SCO to conclude that the IEP team failed to consider ESY services for Student based on Student's disability category and not on Student's individual needs in the September 21, 2015 IEP meeting. Accordingly, SCO agrees with Father that the IEP team failed to consider Student's individual needs for ESY services at the May 15, 2015 IEP meeting, resulting in a per se violation of Student's right to a FAPE.

B. Implementation of Student's October 23, 2014 IEP. (Allegations 5 and 7)

8. The IDEA defines FAPE as special education and related services that: are provided free of charge; meet State standards; include an appropriate preschool, elementary school, or secondary school education; and are provided in conformity with a properly developed IEP. 20 USC § 1401(a)(9); 34 CFR 300.17. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a material failure to implement an IEP can also result in a denial of FAPE. *Id.*; see also *K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9th Cir 2007), *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003). Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9th Cir.

2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement “essential” element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE). This means that a finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry. Rather, the SCO must also determine whether the failure was material.

9. Student’s October 23, 2014 IEP provided for special education services to be delivered by a fully qualified special education teacher, in accordance with 34 C.F.R. § 300.18 and ECEA Rule 3.04. With regard to qualifications of a special education teacher providing services, under the ECEA Rules, the special education teacher must hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education and be highly qualified, consistent with Section 2.20. ECEA Rule 3.04(1)(a)(i). Father alleges that these services were not always provided by a qualified special education teacher due to the frequent and extended absences of Special Education Teacher. School District admits and a thorough review of the documentation and numerous interviews with credible witnesses lead the SCO to agree with Father and, moreover, that services at times were not even provided by a teacher at all, but by a paraprofessional. Although School District argues that services were always appropriately provided to Student under the supervision of Special Education Teacher in her absence, there is simply no provision in the regulations for delivery of services in this manner. Accordingly, SCO finds that Student’s right to a FAPE was denied. In order to determine whether this denial of FAPE was material, SCO next considers Father’s allegation that the accommodations in Student’s October 23, 2014 IEP were not appropriately implemented.
10. Throughout the 2014-15 school year, Student struggled academically, failing two classes in the second semester. While this information on its own could demonstrate that accommodations were not provided for Student in conformity with the October 23, 2014 IEP, SCO concludes that not only did School staff provide Student with the accommodations, they also offered additional supports outside of the IEP, but none were consistently utilized by Student. Although Father argues that School staff was responsible for ensuring that Student avail himself of the accommodations in the IEP, Father’s argument lacks support in

the IEP document itself. While SCO acknowledges the possibility that the lack of qualified special education teacher support could have factored into Student's misuse of accommodations,²² the evidence is also overwhelmingly indicative that Student's lack of motivation, sporadic and limited use of the available accommodations and additional supports offered outside of Student's IEP, were the primary factors in Student's lack of success.

C. School District neither relied on improper formal assessments in an updated evaluation nor refused to allow Father sufficient access to Student's special education file. Moreover, School District did not violate Father's procedural rights in its refusal to grant his request for an IEP meeting. (Allegations 2, 4, and 6)

11. Finally, SCO considers Father's allegations that the School District relied on improper formal assessments in completing updated evaluations, prevented Father from accessing Student's special education file, and refused to convene an IEP meeting upon his request, all resulting in violations of Father's procedural rights.
12. Father's allegation that the team relied on improper assessments is based on Father's conclusion that specific educational assessments were not conducted in the updated evaluation process. After a thorough review of the documentation and numerous interviews with credible witnesses, SCO concludes otherwise. On April 23, 2015 the IEP team, including Father, fully reviewed assessments previously conducted and agreed to update Student's evaluations in specific areas of concern. School District noted the areas in meeting notes and in Consent for Evaluations, which Father signed on the same day. Assessments were then conducted and an Evaluation Report was prepared, which the IEP team fully reviewed and discussed at a May 15, 2015 IEP team meeting. SCO notes that the original Evaluation Report contained a few typographical errors which were corrected in a subsequent version of the Evaluation Report, however, there is nothing to indicate that any part of the updated evaluation was improper. To the contrary, the Evaluation Report shows that all of the areas

²² In the area of Student Needs and Impact of Disability, Student's October 23, 2014 IEP notes that completing and turning in assignments was a goal in Student's previous IEP and that Student needs to show growth in the area of self-advocacy, i.e., Student needs to ask for clarification and ask to use the extended time/corrections accommodations. The IEP also notes that Student tends to "check out" of class if the content is too difficult. See Exhibit A.

the team decided to review or reassess were completed. Moreover, when Father disagreed with the Evaluation Report and requested an IEE, the School granted his request and an IEE was obtained. Accordingly, SCO concludes that there was no violation in the May 2015 evaluation.

14. SCO turns next to Father's allegation that he was denied sufficient access to Student's educational records. The regulations provide that parents must be afforded with an opportunity to inspect and review all educational records. 34 C.F.R. § 300.501(a). Here, Father requested copies of Student's records, which Principal confirmed with Father consisted of the cumulative file and IEP file from School. School provided Father with complete copies of the files. After reviewing the documents, Father indicated to Principal that there were missing documents, but never indicated specifically which documents were missing, despite Principal's attempt to obtain the information. Father was then offered the opportunity to personally inspect the files, but never did so. Although Father contends that he was intimidated when he was ultimately directed to communicate with School's attorney regarding the records, there is no indication at all that Father was prevented access. Accordingly, SCO concludes that Father was provided with access to Student's educational records.
15. SCO lastly considers Father's allegation regarding the School District's refusal to convene an IEP meeting at his request. 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. The IDEA provides that in the development of an IEP, parents must be afforded the opportunity to attend and participate, and that the parents' participation must be meaningful, including giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1), 300.324(a)(ii) and 300.501(b). 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, 34 C.F.R. § 300.345(a)(1), however, if the parent 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.
16. In this case, the IEP team met on May 15, 2015, at which time they engaged in a thorough discussion of the updated evaluations, as well as a full review and

update of Student's IEP.²³ Five days later, having learned that Student failed two classes, Father requested another IEP team meeting be held. Because the team had just met for a full review of the evaluation and IEP and because there was no indication that there was any new information for the team to discuss, Father's request was denied. While SCO notes that it seems likely that there was some confusion and possibly miscommunication about legal and educational terms and concepts between Father and Principal, SCO does not conclude that denying Father's IEP meeting request was an unreasonable decision. Accordingly, SCO finds that the School District's denial of Father's request for a meeting was not unreasonable, nor was it a violation of his rights.

REMEDIES

The SCO has concluded that the School District committed the following violations of IDEA:

- a. Failure to develop an IEP according to the procedural requirements and the unique needs of a child with a disability. 34 C.F.R. §§ 300.320 and 300.324.
- b. Failure to provide Student with special education services in conformity with the IEP. 34 C.F.R. § 300.17(1)(a)(i).

To remedy these violations, the School District is ordered to take the following action:

1. By no later than January 22, 2016, the School District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every violation 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 School District is responsible. The CAP must, at a minimum, provide for the following:

Effective training concerning relevant policies and procedures to address the cited violations must be conducted for School administrators and special education case managers at School. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department

²³ SCO notes that the issues of ESY and modification during the IEP team meeting have been discussed fully in a previous section and that, although SCO concludes that the team failed to consider Student's individual needs, School and School District team members believed at the time that all issues had been fully discussed and agreed upon.

no later than February 26, 2016.

2. Conduct an IEP meeting at the beginning of the second semester of the 2015-16 school year, but no later than January 15, 2016, to discuss modifications and ESY services. The IEP team must create a plan for addressing any deficiencies that is consistent with its consideration of these issues.

These compensatory services shall be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory education services will be provided, with special consideration to Student's needs, stamina, cooperation, and schedule.

The School District shall provide the Department with documentation that it has complied with this requirement no later than December 18, 2016.

Documentation must include the service logs for providing compensatory services.

3. Compensatory Education Services for Failure to Provide Student with FAPE. School District shall reimburse Father for the cost he incurred for summer school fees, as well as costs Father incurred for private tutoring from June 10 through 24, 2015 in the amount of \$560 for Student during summer school.²⁴ Reimbursement must be made no later than January 15, 2016.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the School District's timely compliance with this Decision. Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn: Heidi Derr
1560 Broadway, Suite 1175
Denver, CO 80202-5149

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

CONCLUSION

²⁴ See Exhibit 20.

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.

This 18th day of December, 2015.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated October 19, 2015, pages 1-19

- Exhibit 1: Excerpt from sections 5.5 and 5.6 of School contract with District
- Exhibit 2: Meeting notes, dated April 23, 2015
- Exhibit 3: Email correspondence, dated June 17, 2015
- Exhibit 4: Prior Notice and Consent for Evaluation, dated April 23, 2015
- Exhibit 5: Evaluation Report, dated May 15, 2015
- Exhibit 6: Evaluation Report with handwritten notes, dated September 26, 2013
- Exhibit 7: Correspondence, dated June 8, 2015
- Exhibit 8: Page 10 of IEP with highlighted sections, dated May 15, 2015
- Exhibit 9: Email correspondence, May 22-June 9, 2015
- Exhibit 10: Email correspondence, dated June 8-9, 2015
- Exhibit 11: Email correspondence, dated June 10, 2015
- Exhibit 12: Email correspondence, dated June 11, 2015
- Exhibit 13: Email correspondence, dated June 17, 2015
- Exhibit 14: Prior Notice of Special Education Action, dated May 21, 2015
- Exhibit 15: Addendum to Student Transfer Meeting for Student, dated August 23, 2013
- Exhibit 16: Independent Educational Evaluation, dated August 18, 2015
- Exhibit 17: BLANK
- Exhibit 18: Email correspondence, dated December 20, 2014
- Exhibit 19: IEP, dated September 21, 2015
- Exhibit 20: Printout of tutoring services received by Student during summer school provided upon SCO request

Reply, dated November 23, 2015, pages 1-6

Response, dated November 10, 2015, page 1-9

- Response Exhibit 1: Excerpt from sections 5.5 and 5.6 of School contract with District
- Response Exhibit 2: Page 1 of IEP, dated September 21, 2015
- Response Exhibit 3: Page 1 of IEP, dated May 15, 2015
- Response Exhibit 4: Page 1 of IEP, dated October 28, 2014
- Response Exhibit 5: Page 10 of IEP, dated September 21, 2015 and Meeting notes, dated September 30, 2015
- Response Exhibit 6: Written statements from Algebra Teacher and Spanish Teacher
- Response Exhibit 7: Email correspondence, dated September 29, 2015
- Response Exhibit 8: Page 10 of IEP, dated October 28, 2014 and page 12 of IEP, dated May 15, 2015
- Response Exhibit 9: Page 11 of IEP, dated September 21, 2015
- Response Exhibit 10: Page 11 of IEP, dated May 15, 2015
- Response Exhibit 11: Prior Notice of Special Education Action, dated May 21, 2015
- Response Exhibit 12: Email correspondence, dated May 19-20, 2015

- Response Exhibit 13: Email correspondence, dated May 26, 2015
- Response Exhibit 14: Special Education Contact Log with handwritten notes and highlights, August 1, 2013 through October 28, 2015
- Response Exhibit 15: Sections 4 and 5 of IEPs, dated October 27, 2014, January 9, 2015, May 15, 2015, and September 30, 2015,
- Response Exhibit 16: Page 9 of IEP, dated October 28, 2014
- Response Exhibit 17: Email correspondence, dated May 22, 2015
- Response Exhibit 18: Email correspondence, dated November 9, 2015 and May 26, 2015
- Response Exhibit 19: Email correspondence, dated May 28, 2015
- Response Exhibit 20: Email correspondence, dated June 8, 2015
- Response Exhibit 21: Email correspondence, dated June 10, 2015
- Response Exhibit 22: Email correspondence, dated June 17-18, 2015
- Response Exhibit 23: Special Education Teacher leave request document
- Response Exhibit 24: Written statement of Special Education Teacher
- Response Exhibit 25: Progress Reports, dated December 19, 2014, March 6, 2015, May 22, 2015, and September 21, 2015
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- Exhibit A: IEPs, dated September 21, 2015, May 15, 2015, and October 28, 2014; Notices of Meeting, dated September 8 and 21, 2015, April 29, 2015, September 23, 2014; Sections 4 and 5 of IEP, dated September 21 and 30, 2015, January 9, 2015, May 15, 2015, April 23, 2015, and October 27, 2014; Prior Notices of Special Education Action, dated September 30, 2015, July 21, 2015, May 20 and 21, 2015; Progress Reports, dated September 21, 2015 and October 10, 2014; Meeting Notes, dated September 30, 2015, May 15, 2015, October 28, 2014, January 9, 2015, April 23, 2015; Written statements; Prior Notice and Consent for Evaluation, dated April 23, 2015; Student Portfolio Report
- Exhibit B: Independent Educational Evaluation with handwritten notes, dated August 18, 2015
- Exhibit C: Progress Reports, dated December 19, 2014, March 6, 2015, May 22, 2015, September 21, 2015, and October 10, 2014; and Student's School Transcript, dated October 28, 2015
- Exhibit D: *See Exhibit A*
- Exhibit E: Contact Log, August 10, 2014 through October 28, 2015; Email correspondence; Prior Notice of Special Education Action, dated May 21, 2015
- Exhibit F: List of individuals with knowledge of the Complaint allegations
- Exhibit G: School charter contract
- Exhibit H: CDE's 2015-16 Colorado Instructional Accommodations Manual; Email correspondence
- Exhibit I: Email correspondence provided by Director of Student Services and Teacher #2 upon SCO's request

Exhibit J: Email correspondence and Student's Infinite Campus printout provided by District upon SCO's request

Interviews with:

Father
Principal
Teacher #1
Teacher #2
Special Education Teacher
School District Coordinator
School Counselor
Dean of Students
Director of Student Services
Summer School Special Education Teacher
Summer School Principal