

Colorado Department of Education
Decision of the State Complaints Officer (“SCO”)
Under the Individuals with Disabilities Education Act (“IDEA”)¹

State-Level Complaint 2016:516
Jefferson County School District R-1

DECISION

INTRODUCTION

This pro-se, state-level complaint (“Complaint”) was properly filed on July 1, 2016 by the mother (“Mother”) of a child (“Student”) identified as a child with a disability under the IDEA. Mother brings this Complaint against Jefferson County School District R-1 (“School District”).

The SCO determined that the Complaint, dated June 29, 2016, identified a single issue 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

Mother’s Complaint raised the following issue, in summary:

Whether the School District failed to determine an appropriate educational placement for Student on April 27, 2016.

Summary of Proposed Remedies. To resolve the Complaint, Mother proposed, in summary, that Student attend a high school within two and half miles of the family’s home. Mother further proposed that Student attend the same number (or greater) of general education classes in high school as Student did in middle school, receive the same level of para-educator support, and choose classes like all high school students.

RESPONSE

In its Response, the School District denied the allegation and asserted that Mother does not contest the substance or placement in Student’s April 27, 2016 individualized education program (“IEP”), but rather, challenges only the location where the School District proposed to implement Student’s IEP.

REPLY

In her Reply, Mother denied that placement had been determined by the IEP team on April 27th and asserted that the IEP team’s intention was that Student’s time in general education classes would continue to increase.

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 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).

FINDINGS OF FACT

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

Background

1. At all times relevant to the Complaint, Student has lived with Mother within the boundaries of the District. Student is eligible for special education and related services as a child identified with multiple disabilities.³

2. Student's developmental delays in the areas of communication, motor, and academics impact Student's ability to participate in activities within general education classes without functional academics and adult supports. Student needs support to communicate, follow directions, transition between activities, self-regulate, develop fine motor skills, and learn new concepts. Student also requires adult supervision throughout the entire day for daily living activities and safety due to health needs.⁴

3. Student's November 19, 2015 IEP provided that Student would be educated in the general education environment 56.7% of the time. The November 2015 IEP included 700 minutes of direct special education services outside of the general education classroom; 200 minutes of speech/language therapy outside of the general education classroom; 90 minutes per month of occupational therapy services outside of the general education classroom; and 120 minutes per year of occupational therapy consultation. The IEP provided that these services were to be delivered primarily within Student's separate class setting using a multidisciplinary approach, including occupational therapy, speech/language therapy, and special education services. Student's November 2015 IEP also provided for instruction using extended evidence outcomes and modifications to the complexity of assignments, grading scale, and test formatting.⁵

4. Student's November 2015 IEP was implemented at Middle School, which has a significant support needs ("SSN") program. Student successfully participated in four general education classes with paraprofessional support, work that was significantly modified by Special Education Teacher and Mother, and regular consultation and collaboration between Special Education Teacher, Mother, service providers, and general education teachers in order to make Student's time in general education meaningful. Special Education Teacher consulted often with all of Student's general

³ Response

⁴ Exhibit A

⁵ Ibid

education teachers and as often as four times per week with Mother. Special Education Teacher also stated that the speech language pathologist who worked with Student was in and out of the classroom regularly.⁶

5. With the intention of furthering Student's social and emotional growth within their community, Mother wished for Student to attend Neighborhood High School as Student transitioned into high school in the fall of 2016. Neighborhood High School is a traditional high school without an SSN program.⁷

April 27, 2016 IEP

6. On April 27, 2016, Student's IEP team met and discussed Student's program at length, considering whether Student's needs could be met in a high school without the specialized support of an SSN program. The IEP team members discussed Student's success at Middle School and the supports provided through Middle School's SSN program. In terms of Student's needs and the supports required, the IEP team agreed that Student's April 2016 IEP would be nearly identical to the November 2015 IEP.⁸

7. Neighborhood High School Representative, a special education teacher, was present at the April 27th meeting and described the supports available at Neighborhood High School. The team discussed the differences between the supports available at Neighborhood High School versus School District high schools with SSN programs. Special Education Teacher stated that it became clear to her during the conversation that special education teachers in SSN programs had a "different level of expertise" than special education teachers at traditional schools and that the team was leaning toward placement at a high school with an SSN program. The team decided to reconvene the next week to continue the discussion.⁹

8. In the first weeks of May 2016, Student's IEP team reconvened and continued their discussion of Student's needs and what could be provided at a Neighborhood High School versus School District high schools with SSN programs. Together they created lists and charts to assist them in making a decision about placement. Ultimately, the team agreed that Student could not be appropriately supported in order to meaningfully participate in general education classes in a high school without an SSN program.¹⁰

9. Special Education Director and Mother discussed the School District high schools where Student's IEP could be implemented. Mother requested that Student attend High School #1, which is in the family's immediate community; however, there was no

⁶ Complaint; Exhibit A; Interviews with Mother and Special Education Teacher

⁷ Interviews with Mother, Special Education Teacher, Special Education Partner, and Special Education Director

⁸ Exhibit A; Interviews with Mother, Special Education Teacher, and Special Education Partner

⁹ Interviews with Special Education Teacher and Special Education Partner

¹⁰ Exhibit A; Interviews with Mother, Special Education Director, Special Education Partner, and Special Education Teacher

availability for Student at that time as High School #1's SSN program was over capacity. Special Education Director and Mother discussed High Schools #2 and #3 as options, both of which Mother opposed. Special Education Director determined at that time that Student's IEP would be implemented at High School #4.

10. Mother continued to advocate for Student's IEP to be implemented at a high school in the family's immediate community, including High School #1, contending that High School #1 can "fulfill the social and emotional growth [Student] came to experience in middle school."¹¹ On July 25th, an opening became available for Student at High School #1. In early August 2016, Special Education Director and Mother agreed that Student would attend High School #1 where Student has since been enrolled.¹²

CONCLUSIONS OF LAW

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

1. Mother alleges that School District failed to determine an appropriate placement in Student's April 27, 2016 IEP. SCO respectfully disagrees.
2. 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 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).
3. 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 requirements for developing a student's IEP

¹¹ Complaint; Interviews with Mother and Special Education Director

¹² Response; Interviews with Mother and Special Education Director

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.

4. Typically, contemplation of the two pronged 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.*

5. Generally, a student’s “placement” means the provision of special education and related services provided in the student’s IEP, not the physical location in which the IEP is implemented. Although placement is not specifically defined in the IDEA, the term refers to a point along the student’s continuum of placement options, while location is the where the child receives the services, such as a particular school or classroom. 71 Fed. Reg. 46588 (Comments to the 2006 federal IDEA regulations).

6. In Colorado, a decision concerning the location, i.e., the specific school, classroom, or teacher, where a Student’s IEP will be implemented is not an element of “placement” and is one that can be made unilaterally by the District. The ECEA specifically provides that:

The terms “placement” or “educational placement” are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child’s IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee.

ECEA Rule 4.03 (8)(a).

7. After a thorough review of the entire record, including interviews with credible witnesses, it is evident to SCO that the April 27th IEP team agreed on Student's needs and the supports necessary in order to enable Student to meaningfully participate in general education classes. It is also evident that the IEP team spent a great deal of time at two separate meetings considering whether Student's IEP could be appropriately implemented at Student's neighborhood high school and that they determined that it simply could not. Although the IEP team agreed that Student has progressed and look forward to planning for Student's continued success and further progress, they also agreed that Student's needs continue to require the specialized supports that are only available through one of the School District's high school SSN programs. The decision that Mother disagreed with was not one of placement, but rather, location. At the time of the discussions, the high school with an SSN program in the family's immediate community was not available, however, it has since become available and Student has been enrolled. In the Complaint, Mother herself agrees that this school is an appropriate place to implement Student's IEP and can "fulfill the social and emotional growth [Student] came to experience in middle school."

8. Accordingly, the SCO finds that Student's April 27th IEP, including placement, was based upon Student's individual needs and abilities and was reasonably calculated to provide Student with meaningful education benefit. Moreover, Student has been enrolled in a high school that can appropriately implement Student's IEP and foster Student's continued social and emotional growth in the family's immediate community.

REMEDIES

Because the SCO has concluded that the School District has not violated the IDEA, no remedies are ordered.

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.

This 25th day of August, 2016.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated June 29, 2016, pages 1-5

- Exhibit 1: IEP, dated April 27, 2016
- Exhibit 2: Correspondence, dated May 24, 2016
- Exhibit 3: Colorado School Grades report
- Exhibit 4: Documents created by Mother regarding Student

Reply to School District's Response, dated June 2, 2016

Response, dated , 2016, pages 1-7

- Exhibit A: IEP, dated April 27, 2016; IEP, dated November 19, 2015; IEP, dated April 7, 2015; Notices of Meetings
- Exhibit C: Email correspondence
- Exhibit D: List of Individuals with Knowledge

Interviews with:

Mother
Special Education Director
Special Education Partner
Special Education Teacher