STATE OF COLORADO **OFFICE OF ADMINISTRATIVE COURTS** 633 17th Street, Suite 1300 Denver, Colorado 80202	
IN THE MATTER OF A COMPLAINT AGAINST, **ADAMS COUNTY SCHOOL DISTRICT 50** Respondent/Appellant	▲ **COURT USE ONLY** ▲ **CASE NUMBER:** **EA 20070002**

AGENCY DECISION UPON STATE LEVEL REVEIW

This is a state level review of a decision of a Federal Complaint Officer (FCO) issued pursuant to the Individuals with Disabilities Education Act (IDEA), 20 United State Code (U.S.C.) 1400 *et seq.*, 20 U.S.C.§ 1415(b)(6), 34 Code of Federal Regulations (C.F.R.) § 330.660-662 and the Colorado Department of Education (CDE) Procedure for Resolving Complaints About Programs Funded Under the Individuals with Disabilities Education Act Administered by CDE (CDE Federal Complaints Procedure). In this appeal, the Student is represented by his father, [PARENT]. The Adams County School District 50 (District) is represented by Darryl L Farrington, Esq. of Semple, Miller, Mooney & Farrington, P.C.

PROCEDURAL HISTORY

On March 12, 2007, FCO Keith Kirchubel received a complaint letter filed by the Student's father (Complainant) against the District. The District filed a written response to Complainant's complaint on April 19, 2007. Complainant filed a reply on April 30, 2007.

The FCO reviewed the documents and written arguments submitted to him by the parties and conducted an investigation but did not hold a hearing concerning the complaint.

Following this review, the FCO issued a decision on May 18, 2007. In his May 18 decision, the FCO identified the following issues:

1. Whether the District complied with the schedule established for the second semester of the 2006-07 school year in the Student's October 17, 2006 Individualized Education Program (IEP);

2. Whether the District prohibited contact between the Student's parents and his teachers;

3. Whether the District failed to convene a requested IEP team meeting after Complainant's request on January 17, 2007;

4. Whether the District unilaterally changed the Student's IEP placement on January 17, 2007; and

5. Whether the District overruled decisions of the IEP team without involvement of the team.

The FCO found that the Complainant had failed to establish facts to substantiate Issue Nos. 1, 4, and 5. The FCO further found:

> As to Issue No. 2, Complainants established that the District failed to ensure effective parental participation via access to information from Student's teachers. However, this failure appears to be connected to the unique circumstances related to Student's transition from the fall to spring semesters and, as such, is not systemic. The District shall and is hereby Ordered to permit reasonable communication related to Student's educational program between his parents and the District personnel, including administration, teachers, counselors and special education staff. If pursuant to a clearly stated policy, the District deems it necessary to regulate such communication in the future, the District shall ensure that some viable alternative means of parent participation through communication is offered and, in fact, implemented.
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> As to Issue No. 3, Complainant established that the District failed to timely and with appropriate notice convene an IEP team meeting as requested. The record in this matter supports the conclusion that the District is unfamiliar with the legal requirements of convening IEP team meetings. Accordingly, within thirty (30) days of the District's certified receipt of this Decision shall submit to the Federal Complaints Officer a written statement that the District recognizes and accepts as valid the violation found as to Issue No. 3. This statement shall be accompanied by a corrective action plan developed to effectively address the violation found so as to prevent its recurrence not only as to this Student but as to all students with disabilities for whom the District is responsible. The Federal Complaints Officer reserves the right to request revision of the corrective action plan to the extent it is found to be insufficient. The District's written statement shall further assure than any corrective action to be taken by the District will be completed as soon as practicable, but not later than August 15, 2007. Upon timely completion of its corrective actions, the District shall notify the Federal Complaints Officer in writing describing the

corrective actions taken and completed, and the dates of completion. This written notification shall be provided to the Federal Complaints Officer no later than September 14, 2007.

On June 20, 2007, pursuant to 34 C.F.R §300.660(a)(ii) and CDE Federal Complaints Procedure, the District appealed the FCO's Decision with respect to Issue Nos. 2 and 3 only. Pursuant to that appeal, a state level review proceeding has been conducted by the undersigned Administrative Law Judge (ALJ). The parties have filed briefs in support of their positions. No additional oral argument was requested or determined to be required. And neither party requested that the ALJ consider any new evidence. The evidentiary record reviewed by the ALJ is the same record that was reviewed by the FCO. In this instance, where the ALJ did not receive any additional evidence or testimony, the ALJ accepts the Findings of Fact of the FCO that are supported by the record.

SCOPE AND STANDARD OF REVIEW

The decision of the ALJ on state level review of the decision of the FCO is to be an "independent" one. In the context of court reviews of state level decisions under the current and prior versions of the IDEA, such independence has been construed to require that "due weight" be given to the administrative findings below, *Board of Education v. Rowley*, 458 U.S. 176, 206 (1982); *Roland M. v. Concord School Committee,* 910 F.2d 983 (1st Cir. 1990); *Doe v. Board of Education of Tullahoma City Schools*, 9 F.3d 455 (6th Cir. 1993), while still recognizing the statutory provisions for an independent decision and the taking of additional evidence, if necessary. *Doyle v. Arlington County School Board*, 953 F.2d 100 (4th Cir. 1991); *Blackmon v. Springfield R-XII School District*, 198 F.3d 648 (8th Cir. 1999). It is appropriate to apply this standard by analogy at the state FCO administrative review level. Thus, in this proceeding the ALJ gives "deference" to the FCO's findings of fact, *see Jefferson County School District R-1*, 19 IDELR 1112, 1113 (SEA Colo. 1993) (addressing the deference to be given on state level review to the findings of an impartial hearing officer), and accords the FCO's decision "due weight," while reaching an independent decision based on a preponderance of the evidence. *Sioux Falls School District v. Koupal*, 526 N.W.2d 248 (S.D. 1994).

ISSUES ON REVIEW

On appeal, the issues before the ALJ are: (1) Whether the District violated provision of the IDEA or the Exceptional Children's Education Act (ECEA) when it limited parental communication to a designated contact person; (2) Whether the District violated any provision of the IDEA or the ECEA by failing to show that an alternative means of effective communication was put in place to permit parental participation; and (3) Whether the District violated any provision of the IDEA or the ECEA by failing to convene an IEP meeting when the parents requested a meeting.

For reasons discussed below, the ALJ determines that the FCO's conclusions that the District violated the law when it limited parental communication to a designated contact person and when it failed to convene an IEP meeting at the parents' request are not supported by the evidence or the laws governing this appeal.

FINDINGS OF FACT

Based on the record as certified by the FCO, the ALJ makes the following findings:

1. The Student is a [AGE] male. He was born on [DOB]. He lives with his parents within the boundaries of the District. The Student is eligible for special educational services in the category of [DISABILITY], which renders him a student with disabilities eligible to receive related services under the IDEA.

2. At all times relevant to this decision, the Student was enrolled in the [GRADE] at [SCHOOL].

3. On October 17, 2006, the Student's IEP team convened and created a program of special education instruction and services for him. The IEP documented the Student's special education needs in the areas of communication and cognition, a set of two annual goals with five corresponding objectives, as well as appropriate accommodations and modifications to the Student's instruction. The Student's parents fully participated in the IEP meeting and consented to the implementation of the October 17 IEP.

4. No provision of the October 17, 2006 IEP addressed the Student's spring semester schedule or mandated his placement in a particular mathematics or social studies class with a designated instructor during the 2006-07 school year.

5. There was no evidence presented to the FCO or the ALJ that the Student failed to progress towards his special educational goals between October 17, 2006 and January 17, 2007.

6. Just prior to January 17, 2007, the Student's parents learned that the Student's spring semester scheduled had changed from that of his fall semester schedule. Specifically, in January 2007, the Student was moved into a new math class, second-semester AlGeo 2, with a new instructor during a different period of the day.

7. On January 17, 2007, the Student's father, Complainant, sent an electronic message (e-mail) to [ASSISTANT PRINCIPAL], the Assistant Principal at [SCHOOL] expressing his concern and confusion regarding his son's second semester math class. Specifically, Complainant stated, "[the Student] needs to take AlGeo 2-2 this semester. As a special ed accommodation it was arranged in October that he would do so with [TEACHER] second semester." Complainant further stated, "If you do have objections

to the previously approved special ed IEP accommodations let me know by noon Thursday. If you would like a meeting to discuss this, then consider this email an IEP meeting request. If we do need an IEP meeting it should take place no later than Friday so [the Student] doesn't get further behind in an already challenging class."

8. Beginning on January 18, 2007, the Student's parents started writing more urgent e-mails to the District's special education staff, school administrators, counselors and teachers trying to get the Student's spring semester schedule altered and their concerns about his teacher assignments addressed.

9. On January 24, 2007, Complainant sent an e-mail to [SPECIAL EDUCATION COORDINATOR], Special Education Coordinator for the District; [SPECIAL EDUCATION TEACHER], Special Education Teacher; [DIRECTOR OF SPECIAL EDUCATION]; and [OTHER ASSISTANT PRINCIPAL], requesting an IEP meeting as soon as possible. The purpose of the meeting is stated as, "[w]e need to address support services, accommodations and IEP issues."

10. On January 24, 2007, [PRINCIPAL], the Principal at [SCHOOL], sent a letter to Complainant informing him that all future correspondence was to be addressed directly to [PRINCIPAL]. [PRINCIPAL] would review each request and respond appropriately. [PRINCIPAL] also informed Complainant that the meeting Complainant had requested was set on Monday, January 29, 2007 at 9:00 a.m. in [PRINCIPAL]'s office. Complainant was advised to contact [PRINCIPAL] with an alternative time to meet if January 29 did not work.

11. On January 25, 2007, [SPECIAL EDUCATION COORDINATOR] sent a letter to the Student's parents requesting information about their concerns on the specific goals, objectives, accommodations, etc. in the Student's IEP. She further stated, "[t]he Special Education Coordinator and Casemanager will then schedule a review meeting. This will allow for the team to fully prepare for the discussion and present data regarding your specific requests, as well as make any necessary changes during the meeting."

12. On January 26, 2007, Complainant attempted to clarify the purpose of the meeting scheduled on January 29, 2007. [PRINCIPAL]'s only documented response was that he would see Complainant in his office at 9:00 a.m.

13. There is no evidence that Complainant ever contacted [PRINCIPAL] to suggest an alternative date to the January 29 date proposed by [PRINCIPAL], that Complainant responded to [SPECIAL EDUCATION COORDINATOR]' January 25 letter, or that the January 29, 2007 meeting ever took place.

14. Despite [PRINCIPAL]'s request that Complainant direct all his communication to [PRINCIPAL], Complainant continued to contact some of the Student's teachers and counselors about the his son's second semester schedule.

15. In an e-mail dated February 6, 2007, [PRINCIPAL] renewed his request that Complainant direct all his questions to only [PRINCIPAL]. [PRINCIPAL] further stated, "I am again requesting a meeting with you to discuss concerns that you may have. You have not scheduled a meeting. The use of email is not conducive to proper explanations. It is imperative that you schedule this meeting. We must sit down and talk!"

16. There is no evidence that Complainant ever responded to [PRINCIPAL]'s February 6 e-mail request regarding the scheduling of an IEP meeting.

17. On February 13, 2007, [PRINCIPAL] notified Complainant by e-mail that a meeting had been scheduled to address classroom accommodations with the special education team for Friday, February 16, 2007 at 3:00 p.m.

18. On February 14, 2007, Complainant accepted [PRINCIPAL]'s offer for an IEP meeting. It is unclear from Complainant's February 14 e-mail whether he intended to accept the meeting that was set on February 16, 2007 or that he simply intended to accept [PRINCIPAL]'s offer for an IEP meeting. In any event, there is no evidence that the February 16 meeting ever took place.

19. In an e-mail dated February 16, 2007, Complainant suggested to [PRINCIPAL] that the meeting be held sometime during the week of February 26 – March 2. In a March 5, 2007, e-mail, [PRINCIPAL] informed Complainant that the District had sent Complainant another letter regarding the scheduling of a meeting; the letter was the District's third attempt to schedule the meeting.

20. The meeting was finally set on March 15, 2007. The Student's parents and the rest of the IEP team were present at that meeting.

21. Between January 17, 2007 and March 15, 2007, the Student's second semester remained unchanged. The Student suffered no educational harm during this period as a result of his unaltered schedule.

DISCUSSION

The IDEA provides certain procedural and substantive to rights to parents of children with disabilities. In addition, it requires state educational agencies such as the CDE to establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education (FAPE). 20 U.S.C.§1415(a).

District's Limitation on Parental Communication

In his decision, the FCO found that the District violated its obligation of providing parental communication by instructing the Student's parent(s) to communicate with only

[PRINCIPAL], the school's principal, to address their complaints with the Student's second semester schedule. As a remedy for this violation, the FCO ordered:

> The District shall and is hereby Ordered to permit reasonable communication related to Student's educational program between his parents and District personnel, including administration, teachers, counselors and special education staff. If pursuant to a clearly stated policy, the District deems it necessary to regulate such communication in the future, the District shall ensure that some viable alternative means of parent participation through communication is offered and, in fact, implemented.

(FCO Decision, Remedy, page 7).

The District argues that the FCO exceeded his jurisdiction by ruling that the District inappropriately limited the parents' communication to a single contact person because the limitation was not a violation of any requirement of the IDEA. The IDEA, is a comprehensive federal education statute which grants disabled students the right to a public education, provides financial assistance to states to meet their educational needs, and conditions a state's federal funding on its having in place a policy that ensures that a FAPE is available to all children with disabilities. 20 U.S.C. §1412(a)(1); *Weber v. Cranston School Committee*, 212 F. 3d 41 (1st Cir. 2000). The IDEA requires the District to provide each child with a disability with a FAPE, tailored to the unique needs of the child through the establishment of an IEP. 20 U.S.C. §1401(8); 20 U.S.C. §1412(a)(1); 20 U.S.C. §1414(d).

The first question that must be answered is whether the District's instruction to Complainant that he was to communicate directly with only [PRINCIPAL] is a procedural violation of the IDEA. In terms of procedural safeguards, the law provides that parents are to be given an opportunity to examine records, educational materials and be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child. (See 34 C.F.R. § 300.501). However, there is no requirement that the parents' of a student on an IEP be granted unfettered access to all the student's teachers, counselors or all members of the administration. The ALJ can find no provision in the IDEA or the ECEA that prohibits a District from limiting parental communication to a single administrator or any other person employed by the District.

In his decision, the FCO determined that the District's limitation on the Student's parents' ability to communication with the Student's teachers and counselors improperly impaired the parents' meaningful participation in the special education process and that the District failed to provide that the limitation was warranted. Yet, the facts found by the ALJ show that despite the District's instructions to the contrary, Complainant continued to communicate with members of the staff and administration about his son's second semester schedule. More importantly, as found by both the FCO and the ALJ, the District's limitation on parental communication did not cause the Student to suffer

any educational harm or keep him from progressing towards his special education goals. (FCO Decision, Findings of Fact #5 and #18, pgs. 3 and 4). The Student's accommodations and modifications in the October 17, 2006 IEP are stated in general terms and do not obligate the District of offer any particular mathematics placement for the spring semester. "[T]he Student's spring semester did comport with the substance of the October 17, 2006 IEP." (FCO Decision, Conclusions of Law, # 1, pg. 4). Further, the Student's parents were included in the October 17, 2006 IEP meeting and consented to the implementation of the October 17, IEP. (FCO Decision, Finding of Fact #3, pg. 2). The evidence establishes that despite the communication limitation requested by the District in January 2007, the Student's parents had meaningful participation in the Student's special education process and the Student was receiving a FAPE.

Procedural violations of the IDEA must have caused harm, either in the form of denying adequate educational benefits to the child or restricting that parents' right to participate in developing the IEP, to warrant relief. *Gwinnett County School Dist. V. J.B. ex rel. D.B.*, 398 F.Supp2d 1245 (2005). In *Weiss v. School Board of Hillsborough County*, 141 F.3d 990, 996 (11th Cir. 1998), the court held, "[f]or the Weisses to prove that [the child] was denied a FAPE, they must show harm to [the child] as a result of the alleged procedural violations. Violation of any of the procedures of the IDEA is not a *per se* violation of the Act." In *Board of Education v. Rowley*, 458 U.S. 176, 201, 102 S. Ct. 3034, 73 L. Ed 2d 690 (1982), the United States Supreme Court set forth a two-pronged inquiry for determining whether a state has provided a FAPE: "First has the State complied with the procedures set forth in the Act? And second, is the individualized education program developed through the Act's procedures reasonable calculated to enable the child to receive educational benefits?" *Id.* at 206-07. With respect to the first prong, the United State Court of Appeals for the Eleventh Circuit has consistently required a showing of harm flowing from the procedural violation. *Gwinnett* at pg. 5, citing *Weiss v. School Board of Hillsborough County*, 141 F.3d 990, 996 (11th Cir. 1998). In the instant case, the ALJ finds that the record fails to establish that the District's limitation on parental communication caused the Student educational harm or prevented the parents from participation in the development of the October 17, 2006 IEP. Therefore, as related to Issue No. 2 in the Notice of Appeal, there is no basis for the conclusion that the District violated the law and no basis for the imposition of a remedy.

<u>District's Failure to Set an IEP Meeting When Requested by Parents</u>

The FCO concluded that the District violated the ECEA by failing to hold an IEP meeting when Complainant requested one in January 2007. The District appeals this conclusion and argues that under the IDEA it is not required to schedule an IEP meeting upon parental request. Specifically, in its appeal brief, the District states:

> Under the IDEA, a "district is not required to schedule an IEP meeting upon parental request. . . [However,] [t]he public agency should grant any reasonable request for such a meeting. *Notice of Interpretation*, Appendix

> C to 34 C.F.R. Part 300, Question 11 (*1999 regulations*). . .We emphasize there that the FCO's purview is limited to violations of legal requirements and does not extend to citing school districts for failing to following [sic] recommendations.[1]

The District further points out that while the IDEA does not require school districts to convene an IEP meeting pursuant to parental request, state law may include it as a requirement; however, Colorado has not. Under 34 C.F.R. § 300.322, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting. Each public agency must ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. 34 C.F.R. § 300.324(b)(i). The statute distinguishes an IEP meeting from informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. An IEP meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. 34 C.F.R. § 300-501(b)(3). Under 1 CCR 301-8, Rule 4.02(1)(c), meeting to review and/or revise a child's IEP and determine the child's placement shall be initiated and conducted periodically, at least once a year. Rule 4.02(1)(d) permits additional meetings at any time throughout the school year at a mutually convenient time at the request of the parent(s), the child and/or the administrative unit or eligible facility, but it does not require them.

In his decision, the FCO concluded that the District violated the ECEA by not convening a meeting when the Student's parents requested one. In so concluding, the FCO found that Rule 4.02(2)(a) requires the District to convene a meeting to review an IEP in a timely manner following a request for such a meeting. (FCO Decision, Conclusion of Law #3, pgs 5 and 6.) Rule 4.02(2)(a) reads, in pertinent part:

> If the determination is made that the child has a disability and is eligible for special education, all meetings to initially develop or to subsequently review the child's individualized educational program (IEP) shall be the responsibility of the administrative unit of attendance which shall timely invite the administrative unit of residence to participate as an IEP team member. . .

The District argues that the FCO has misinterpreted the meaning of Rule 4.02(a). That the ECEA permits the District to convene an IEP meeting upon the parents' request, but that the District is not obligated to hold such a meeting when there is no new information or changed circumstances that impact the goals, objectives, or service plan in the existing IEP. The ALJ agrees that the plain language of Rule 4.02(2)(a) does not require the District to convene a meeting whenever a meeting is requested by the Student's parent(s). Further, in this case, the evidence establishes that the contemplated change in the Student's second semester schedule "did not alter the

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[1] District's Appeal Brief, page 8.

amount of type of special education services he received, the amount of time he was educated with his non-disabled peers, nor his access to nonacademic or extracurricular activities. . .Complainant has not established that Student's IEP was changed without the required involvement of the IEP team." (FCO Decision, Conclusions of Law # 4, #5, pg 7.) And, when the District requested Complainant to provide information about the concerns on the specific goals, objectives, and accommodations in the Student's IEP, the Complainant failed to respond.

Encouraging parental participation in the IEP process is an important safeguard for ensuring that the child is receiving a FAPE under the Act and the ALJ is not unsympathetic to the Student's parents' attempts to convene a meeting to discuss their [STUDENT'S] second semester schedule; however, the evidence shows that the parents had a full and fair opportunity to participate in developing the IEP that was in place at the start of the Student's second semester. It is also apparent that the District made several attempts to get dates from Complainant to set up a meeting. Neither party was particularly responsive to the other's request(s), which is, in part, what prevented the scheduling of a meeting prior to March 15, 2007.

As stated above, the October 17, 2006 IEP provided the Student a FAPE, which remained unchanged during the Student's second semester. In order to find a violation of the Act and grant relief to the Complainant, the District's actions must have caused harm, either in the form of denying adequate educational benefits to the child or restricting the parents' right to participate in developing the IEP. The ALJ finds insufficient evidence to conclude that the District violated the IDEA or the ECEA by failing to convene an IEP meeting at the time the Student's parents requested one. The October 17 2006 IEP met the Act's substantive requirement that the IEP be reasonably calculated to enable the Student to receive educational benefit. The substantial evidence in the record supports the conclusion that the District's actions did not result in a loss of educational opportunity for the Student.

ALJ'S DECISION AND ORDER

The Administrative Law Judge determines and orders as follows:

1. The District did not violate the IDEA or the ECEA by limiting parental communications to one designated contact person within the District.

2. The District did not violate the IDEA or the ECEA by failing to convene an IEP meeting with the parents requested a meeting.

3. This decision made upon a state level review shall be final except that either party has the right to bring a civil action in an appropriate court of law, either federal or state, if all administrative remedies have been exhausted.

DONE AND SIGNED
June ____, 2008

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MICHELLE A. NORCROSS
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above **Agency Decision Upon State Level Review** was served by placing same in the U.S. Mail, postage prepaid, at Denver, Colorado addressed to:

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