

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

State Level Complaint 2008:506

Aurora Public Schools

Decision

INTRODUCTION

This complaint dated August 19, 2008, was filed by Student's parent (hereafter, the "Complainant") and was received in the office of the State Complaints Officer on September 2, 2008. The Complaint was transmitted by certified mail to Aurora Public Schools (hereafter, the "District") on September 12, 2008, and receipt thereof was acknowledged by the District. The transmittal also designated those issues to be investigated subject to the authority of the state complaint process.¹ The response of the District was timely received on September 18, 2008. On September 26, 2008, the State Complaints Officer confirmed with the Complainant that she had received the District's response. The Complainant's reply to the District's response was received on October 14, 2008.

The Complainant's reply to the District's response included new allegations and the State Complaint's Officer confirmed with the Complainant that she wished to amend the Complaint. The amended Complaint was transmitted by certified mail to the District on October 22, 2008, and receipt thereof was acknowledged by the District. The transmittal designated those issues to be investigated subject to the authority of the state complaint process.² The Complainant and District were advised that the decision time-lines would be extended for investigation of the new allegations. The District contacted the State Complaint Officer requesting an extension of time to file its response. The response of

¹ The Complaint also alleged that Student's educational program required a full day [GRADE LEVEL] program which requires a determination of the child's unique educational needs and a judgment on which educational setting is most appropriate to meet those needs. The State Complaints Officer advised Complainant in a letter dated September 12, 2008, that such issues are beyond the scope of a state-level complaint and must be raised by a due process request.

² The new allegations alleged that a District administrator harassed and threatened the Complainant and stole the Complainant's property. The State Complaints Officer advised the Complainant in a letter dated October 22, 2008, that such an issue is beyond the scope of a state-level complaint and would not be investigated.

the District to the amended Complaint was received on November 17, 2008. The Complainant's reply to the District's response was received on December 8, 2008, and the record in this matter was closed on that date.

ISSUES

1. Whether speech therapy services have been provided as specified in the Student's Individualized Education Program (IEP) between August 12, 2008 and October 17, 2008;
2. Whether the independent educational evaluation (IEE) ordered in case 2008:505 was timely completed; and
3. Whether the District conducted an evaluation of the Student without parental consent.

CONTENTIONS OF THE PARTIES

1. Whether speech therapy services have been provided as specified in the Student's IEP between August 12, 2008 and October 17, 2008.

The Complainant alleges that speech language services have not been provided to the Student in accordance with the Student's IEP. Complainant maintains the classroom teacher informed her that the speech services would not be provided because there was no speech language pathologist to provide the services. Complainant further maintains that despite requests to the District to meet with the service provider she has not been contacted.

The District acknowledges that there is a vacancy for the speech language position at Student's elementary school, but maintains that it has a qualified interim speech/language pathologist providing services while they seek a candidate to fill the opening. The District maintains that speech language services have been provided to the Student on four occasions for 30 minutes and for a 10 minute introductory period. The District acknowledges the deficit in services and maintains that it plans to provide the Student 2 hours of speech/language services per week (1.5 hours per the student's IEP and .5 as compensatory services until the deficit time is completed).

There is no dispute that speech/language services had not been provided to Student and that the interim speech therapist had only been providing .5 hours of speech/language services per week. The Complainant contends the interim speech therapist was unaware of the 1.5 hours of speech/language services in the Student's IEP, was unable to tell the Complainant which days she is scheduled to be at the elementary school, and would not

answer any questions about the Student's speech therapy goals. The Complainant further maintains that despite her requests, the District has not provided a schedule for services or any substantial evidence that the Student is receiving the services according to the IEP.

2. Whether the IEE ordered in case 2008:505 was timely completed.

Complainant alleges that only one of four parts of the IEE was conducted by Children's Hospital, but the evaluation had stalled due to lack of payment by the District.

Complainant maintains that Children's Hospital billed her for the completed portion of the evaluation and that the bill had been submitted to the District, but payment was not timely remitted. Complainant maintains that Children's Hospital would not continue the three remaining parts of the evaluation until payment was received.

The District contends that the IEE had been paid directly to Children's Hospital on August 7, 2008. The District maintains that it had received a copy of the IEE "in the area of suspected disability (i.e. speech and language)" on September 17, 2008, and the District is currently in the process of conducting the educational evaluation.

The Complainant alleges that according to a letter from the District dated June 16, 2008 evaluations in the areas of cognitive, social/emotional, physical and educational had been marked as approved. The Complainant contends that after the Children's Hospital conducted the speech language evaluation, the District informed her that the remaining assessments in the areas of cognitive, social/emotional, physical or education would not be funded as part of the IEE.

3. Whether the District conducted an evaluation of the Student without parental consent.

Complainant alleges that during the meeting a meeting on September 17, 2008, she specifically requested that no further evaluations be conducted by the District until the IEE was completed. The Complainant maintains that the District told her that it would not continue with the IEE and that it would perform the additional assessments. The Complainant alleges that she disagreed with the District and reiterated her request for no further evaluations with an emailed letter, a phone message for the special education teacher, and a letter to the school. There is no dispute that on September 17, 2008, the Complainant sent an email with an attached letter requesting no further evaluations be conducted by the District. The Complainant also maintains that her advocate also wrote a letter to the school on September 18, 2008 at 2:00 P.M. repeating the request that no evaluations be conducted.

The District contends that in the meeting on September 17, 2008, all parties agreed that the District would conduct the evaluations, and that the District would determine if additional testing had been approved. The District maintains that on September 18, 2008, it contacted Complainant's advocate expressing confusion with the Complainant's email

from September 17, 2008 because a sense of urgency had been expressed regarding the assessments. The District maintains that based on email communications, the Complainant's advocate "gave the green light for testing." The District also maintains that on September 18, 2008, the Student's father and Complainant's ex-husband sent them an email apologizing for the confusion caused by Complainant and requesting that in the future all release forms have both parental signatures. The District contends that it was not until September 19, 2008, when it received an email from the Complainant's advocate, that consent to evaluate was revoked. The District maintains that the assessments it conducted on the Student were administered prior to September 19, 2008, the time the Complainant revoked consent to the evaluations.

FINDINGS OF FACT

1. Student is a [AGE] [GENDER] attending [GRADE LEVEL] and residing within the District and eligible for special education and related services in the category of speech/language impairment. Student has been served as a child with a disability under Part B of the IDEA since August, 2006.
2. Student has an IEP dated February 7, 2008. The IEP Service Delivery table indicates 1.5 hours of special education services per week by a Speech/Language Pathologist with a projected ending date of service as February 7, 2009. From August 12, 2008 to October 17, 2008, the student received 2 hours of speech language services.
3. The District's 2008 – 2009 Calendar indicates that the first day of school for [GRADE LEVEL] Students was August 12, 2008.
4. In the District's response in an earlier related State Level Complaint 2008:505 dated April 29, 2008, the District stated that it has provided four options for a formal outside evaluation to be paid by the District in response to Complainant's request for an IEE. One of the options was the Children's Hospital.
5. The material portions of the decision in the earlier State Level Complaint 2008:505 dated June 6, 2008, ordered the District to provide prior written notice of its response to the Complainant's request for reevaluation and that such notice shall include the offer set forth in the District's response in 2008:505 to fund an independent complete evaluation (i.e. in all areas of suspected need). The decision also ordered the evaluation to occur as soon as possible in order to permit the results to be used for the planning of Student's educational program for the 2008-09 school year by [STUDENT'S] IEP team.
6. The Complainant provided consent to evaluate on July 23, 2008. The "Consideration/Permission for Reevaluation" form signed by the Complainant indicates

the need for formal assessment in cognitive, social/emotional, communicative, and educational areas.

7. A copy of a bill from Children's Hospital to Complainant dated August 7, 2008 for services rendered on August 2, 2008, was stamped approved by the District. Although the date paid is obscured, it appears payment was remitted to Children's Hospital on August 18, 2008.

8. On September 17, 2008 at 11:12 PM, Complainant emailed a letter to the District dated September 17, 2008, that states "I am not authorizing [Special Education Teacher] to perform any test/evaluations on [Student]." The letter further states "I refuse to authorize anyone to perform any evaluations on [Student] without my prior consent from me." In addition, the letter states that any professional requesting an evaluation must first (a) provide professional qualifications to perform intended evaluations/services; (b) hold an active license with the State of Colorado; (c) provide the name of tests/evaluation intended to be performed; (d) the purpose of the test/evaluation; (e) what the professional is measuring by performing the test; (f) how long will the evaluation take; (g) what day and time [was the evaluator] planning [to conduct the evaluation].

9. On September 18, 2008 at 8:06 AM, the District emailed the Complainant's advocate saying it was confused by the Complainant's email. At 12:16, the advocate emailed the District requesting a schedule of the dates/times the District planned to evaluate the Student. The advocate also noted the "time crunch" and requested evaluation results to be provided by September 29 or 30, 2008.

10. On September 18, 2008 at 1:45 PM, the District emailed IEP team members saying "We have received a green light from [Complainant's] advocate so we will move forward."

11. On September 18, 2008, the Student's father and Complainant's ex-husband emailed the District apologizing for the confusion caused by Complainant's email and requesting that future requests for consent be signed by both parents.

12. On September 19, 2008 at 2:38 PM, Complainant's advocate emailed the District stating that all evaluations will be completed by Children's Hospital in accordance with the decision in case 2008:505, and that via this email, Complainant is officially rescinding consent for assessments/evaluations by the District.

13. The Students IEP Evaluation report dated October 1, 2008, shows the Young Child Achievement (sic) Test (YCAT) was administered on September 19, 2008, and the Behavior Assessment System for Children – Preschool (BASC) was administered on September 17, 2008.

14. On September 22, 2008, the District sent a letter dated to the Complainant stating it is authorizing Children's Hospital to conduct an "independent educational evaluation" of Student in all areas of suspected disability to include educational and psychological testing but to exclude gross and fine motor assessments. The letter also states that the YCAT had been administered by the District and confirms that the Speech Language Pathology evaluation had been administered by Children's Hospital on August 2, 2008. The letter further states that each of the batteries has been completed and need not be administered as part of the "complete independent educational evaluation."

15. On October 13, 2008, the District emailed the Complainant stating that a full-time Speech Language Pathologist will be in place at Student's school as of October 20, 2008.

CONCLUSIONS OF LAW

1. Whether speech therapy services have been provided as specified in the Students IEP.

An IEP contains a statement of the special education and related services to be provided to the child, or on behalf of the child.³ The Student's IEP states that the Student will receive 1.5 hours of direct services by a speech language pathologist (Finding of Fact 1).⁴ The District concedes that the Student did not receive speech language services at the beginning of the school year and indicates that Student will receive 2 hours of speech/language services per week (1.5 hours per the IEP and .5 as compensatory services) until the deficit in services is satisfied. Other than the District's response in which it acknowledges the services in the Student's IEP and delineates a plan to provide additional speech language services to address the deficiencies in service provision, no other evidence has been provided to demonstrate the Student has received speech language services. The District's email to the Complainant dated October 13, 2008 states that a full-time speech language pathologist will be in place as of October 20, 2008 (FF 15) which suggests that speech language service provision has not changed significantly since this Complaint was filed. During the time period of August 12, 2008 to October 17, 2008, the District was to provide the Student with 10.5 hours of speech language services pursuant to the February 7, 2007 IEP (FF 4). In its response the District documented that 2 hours of speech language services were actually provided. Accordingly, the Complainant established that the District has not provided the Student with the speech language services specified in the Student's IEP.

2. Whether the independent educational evaluation ordered in case 2008:505 was timely completed.

³ 34 C.F.R. 300.320(a)(4)

⁴ Hereinafter Findings of Fact will be referenced by FF.

In resolving a complaint in which the State Education Agency (SEA) has found a failure to provide appropriate services, the SEA pursuant to its general supervisory authority under Part B of the IDEA must address the failure to provide appropriate services including corrective action appropriate to address the needs of the child.⁵ In State Complaint Case 2008:505, the State Complaints Officer ordered the District to provide prior written notice of its response to the Complainant's request for reevaluation and that such notice shall include the offer set forth in the District's response in 2008:505 to fund an independent *complete* evaluation (i.e. in all areas of suspected need) (FF 5). This order is consistent with the IDEA requirement that in evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.⁶ The order from that decision also states that the evaluation shall occur as soon as possible in order to permit the results to be used for the planning of the Student's education program for the 2008-09 school year by the IEP team.

The District's permission to evaluate signed by the Complainant on July 23, 2008 (FF 6), is evidence that a complete evaluation of the Student would include formal evaluation in areas of suspected need which included cognitive, social/emotional, communicative, and educational areas. However, following the initial formal evaluation for speech language conducted by Children's Hospital, the District has construed an independent "*complete*" evaluation to be an evaluation only in the area of the Student's "*suspected disability*" (FF 14).⁷ Although the District paid Children's Hospital for the formal speech language evaluation, the District has since stated that no other evaluation is necessary. However, the District subsequently continued to assess the student in the other areas that were described in the permission to evaluate from July 23, 2008 demonstrating that the independent evaluation was not complete.

The District calendar for 2008-09 shows that [GRADE LEVEL] students began school August 12, 2008 (FF 3). The speech language evaluation conducted by Children's Hospital on August 2, 2008, and the Complainant was billed for the evaluation on August 7, 2008 (FF 7). However, the District did not remit payment to Children's Hospital until August 18, 2008; a week into the school year. The District then conducted assessments on September 17 and 19, 2008 (FF 13). By that date, the Student had been in school for over a month and the independent complete evaluation was still incomplete. The evidence supplied establishes that the Student's independent evaluation was not timely completed.

⁵ 34 C.F.R. 300.151(b)(1)

⁶ 34 C.F.R. 300.304(c)(6)

⁷ 34 C.F.R. 300.304(c)(4) requires each public agency to ensure the child is assessed in all areas related to the *suspected disability*, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. Decisions regarding the areas to be assessed are determined by the *suspected needs* of the child. IDEA Preamble, Fed. Reg. August 14, 2006, 46643.

3. Whether the District conducted an evaluation of the Student without parental consent.

A public agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability.⁸ The granting of consent is voluntary on the part of a parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).⁹ Parent means a biological or adoptive parent of a child.¹⁰

The Complainant is the biological parent of the Student and consented to reevaluation of the Student on July 23, 2008. Although the Complainant's emailed letter dated September 17, 2008 (FF 8), does not explicitly use the terms "revoke" or "rescind," she used the term *authorize* the definition of which includes "to give permission."¹¹ The Complainant clearly stated she was *not* authorizing and *refused* to authorize continued evaluations by the District. Not only does the Complainant refuse to authorize continued evaluations, the Complainant states several specific preconditions for requests to evaluate including providing her with the qualifications and licensure of the evaluator; the specific instruments to be used and their purpose; and when the evaluation would be conducted and how long it would take. Upon receiving the letter, the District contacted the Complainant's advocate via email (FF 9). In the email, the District expressed confusion about the Complainant's request because it was inconsistent with the urgency previously expressed for the completion of the evaluation. The District's recognition of this inconsistency suggests the District understood the nature of the Complainant's request. Because the Complainant's letter states a refusal to authorize continued evaluation and includes several provisions that equate to a request for new consent to be obtained by any professional seeking to conduct an evaluation, the Complainant effectively revoked consent to evaluate the evening of September 17, 2008.

The District cites the Complainant's advocate's emails dated September 19, 2008 (FF 12) as evidence of consent for continuing assessments and the subsequent rescission of the consent to evaluate. The evidence shows the advocate's email requested a schedule for evaluation and that the results of evaluations be provided within a certain time-frame. Although the advocate's email notes a "time crunch," this evidence is ambiguous and there is nothing in the advocate's email that expressly gives the "green light" for the District to continue with its evaluations contrary to the Complainant's request. Most importantly, the Complainant's advocate is not the Student's parent under the IDEA nor permitted by law to act on the parent's behalf as an attorney, therefore the advocate cannot give nor rescind consent to evaluate.

⁸ 34 C.F.R. 300.304(c)(1)

⁹ 34 C.F.R. 300.9(c)

¹⁰ 34 C.F.R. 300.30(a)(1)

¹¹ The American Heritage College Dictionary, 3 ed. (1997)

The District also cites the email of the Student's father and Complainant's ex-husband as support of continued consent for evaluations (FF 11). Although one parent can consent to the Student's evaluation, this evidence is also ambiguous. While he apologizes for confusion caused by the Complainant's emailed letter dated September 17, 2008, and requests joint consent for future releases, nothing in the email can be construed to grant the necessary consent or contradict the Complainant's revocation of consent from September 17, 2008.

The evidence establishes that the Complainant exercised her right as a parent to revoke consent for evaluation as of September 17, 2008, and thus the YCAT assessment (FF 13) administered after that date was conducted without parental consent.

REMEDY

Complainant established that Student was entitled to, but did not receive, the speech language services in accordance with Student's IEP during the period from August 12, 2008 to October 17, 2008. During this period, the Student should have received 10.5 hours of speech language services. The evidence in the record demonstrates the District provided 2 hours of speech language services during that period. The Student has been shorted 8.5 hours of speech language services. Moreover, the District concedes in its response that Student needs the entire quantity of these services to compensate for the time period when none were provided.

Accordingly, the District shall create a corrective action plan no later than January 9, 2009, whereby Student shall receive compensatory education equal to the amounts stated above, in addition to those services [STUDENT] normally receives under [STUDENT'S] IEP. The compensatory services shall be delivered on a schedule and in a manner that are appropriate to Student's unique educational needs and reasonably convenient to [STUDENT'S] family. All compensatory services shall be provided by April 10, 2009. The corrective action plan shall be submitted to the State Complaints Officer no later than January 23, 2009. Documentation that all compensatory education services have been provided shall be submitted no later than May 11, 2009.

Complainant has also established that the independent complete evaluation was not conducted in a timely manner. The District is hereby ordered to fund the independent educational evaluation in the remaining areas of cognitive, social/emotional and education. The District shall create an evaluation plan, provide this plan to the Complainant and obtain consent to evaluate by January 16, 2009. The independent evaluation must be conducted within 4 weeks after parental consent is obtained. The

results of the independent evaluation must be reviewed and considered by the Student's IEP team within two weeks of the date the evaluation is completed.

Complainant has established that the District conducted a formal assessment of the Student without parental consent. The District is ordered to remove the YCAT assessment administered on September 19, 2008 from the Student's records and must not consider its results in the development of the Student's IEP. The District is further ordered to demonstrate that it has an express policy in place to obtain parental consent for evaluations that reflects the IDEA definition of parent and that when consent is revoked that no further evaluations occur.

CONCLUSION

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

Dated this 12th day of December, 2008.

Stephanie Lynch
State Complaints Officer