

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

State-Level Complaint 2012: 514

Douglas County School District

DECISION

This is a pro-se, state-level complaint (“Complaint”) dated December 3, 2012. The Complainants are the mother and father (“Mother,” “Father,” or collectively, “Parents”) of a child (“Student”) who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). Parents bring this Complaint against School District, where they reside and where Student attends school.

Parents Complaint consisted of three separate complaints (Issues 1, 2 and 3), each relating to its own issue/claim for relief. The State Complaints Officer (“SCO”) treated the entire filing as a single complaint, because a complaint may contain multiple allegations or issues. Issues One and Two were not accepted by the SCO. The SCO accepted eight allegations set out in Issue Three as being subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

PARENTS’ COMPLAINT ALLEGATIONS

The SCO identified the following issues that were subject to the jurisdiction of the state-level complaints process under the Individuals with Disabilities Education Act (IDEA):

Since the beginning of the 2012-2013 school year, the District failed to implement the modifications in Student’s IEP because:

1. Student’s daily “back/forth” book (for communication between parents and school) has not been modified for Student’s needs;
2. The District did not send Student’s work home in the “Thursday folder”;
3. Student’s geography homework has not been modified for Student;
4. The District did not provide the Parents with weekly goal sheets or shared goals;

5. The District did not provide differentiated instruction to ensure Student's participation in general academic classes;
6. The District did not provide worksheets for Student with 1-2 questions per page with a 4 square answer grid;
7. The District failed to provide weekly progress reports for either math/literacy or [Grade] grade; and
8. The District failed to provide the appropriate assistive technology accommodations to Student in Tech class, as required by the IEP.

Summary of Proposed Remedies: The Parents requested a number of remedies including a mediated IEP; assurances that certain evaluators and staff members will attend future IEP meetings; a modified planner based upon a form provided by Parents; daily homework sent home in color copies and explanations of the way general education homework is to be modified; confirmation or "proof" provided by teachers and service providers that they have provided the services and accommodations in the IEP; compensatory services for any failure to provide services; weekly delivery of Student's work products to Parents; reassignment of certain School District staff; "inclusion training" for School District staff as well as training on how to plan for Student's academic lessons; and how to adapt lessons to ensure Student's inclusion and success.

THE DISTRICT'S RESPONSE

The School District denied all allegations except for Allegation #8, which it admitted. The School District provided examples of modified work samples, including worksheets with a 4-square grid and examples of back/forth communications with parents. With respect to Allegation #3, the School District explained that Student is not generally provided with or expected to complete homework in general education classes.

PARENTS' REPLY

The parents reiterated the allegations contained in the Complaint, and also pointed out that Student uses a communications/technology device on which Student's work may be stored, recorded and sent home, so there is no reason that the School District should not be able to provide proof of the services/programming that Student is receiving.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,¹ the SCO makes the following findings:

Background

1. Student is [Age] years old and lives with Parents in the School District. There is no dispute that Student is properly identified as a student with a disability who is eligible for special education and related services under the Individuals with Disabilities Education Act, under the Physical Disability and Vision Disability categories.² Student is in the [Grade] grade and attends School.
2. Student has a number of medical/physical conditions that impact Student educationally. Student suffers from cerebral palsy, shunted hydrocephalus (a tube in the brain to drain excessive cerebral spinal fluid in the ventricles of the brain); and epilepsy. Student experiences frequent seizures, including *grand mal* seizures (featuring loss of consciousness and extreme muscle contractions) as well as seizures described by school staff as “drifting” seizures, during which Student will lose focus and not respond to stimuli, but still remain conscious. The *grand mal* seizures are less frequent than the drifting seizures, which are fairly frequent.³ SLP noted that Student will often start to “drift” after 15 to 20 minutes of instruction, such that the drifting seizures often disrupt Student’s educational instruction.⁴ Student takes medication for seizures.
3. Student is triplegic, with the right arm and both legs impacted. As a result, Student uses a walker at school and a cane at home.⁵
4. Student also suffers from significant vision problems, as a result of atrophy of Student’s optic nerve. According to Mother, Student’s vision “goes in and out.” Student also has strabismus (a lack of alignment between the eyes which causes them to appear “crossed” or focused on different points) and nystagmus (a condition causing involuntary eye movement). Student has received vision therapy since birth to develop the vision that Student has, including weekly “vision teaching” provided by the School District.⁶

¹ The contents of the Record are listed in Appendix A.

² 10/30/2012 IEP.

³ Interview with Former SSN Teacher.

⁴ Interview with SLP.

⁵ Interview with Mother; Interview with Former SSN Teacher; Interview with Special Education Director; Interview with Current SSN Teacher; 10/30/2012 IEP.

⁶ Interview with Mother.

5. Mother reports that as an infant, Student suffered from a Grade 4 “brain bleed”⁷ at 8 days old, and that Student has a baseball-sized area of damage to the part of the brain that controls gross motor and language functions. Student is non-verbal and has impaired motor function.⁸
6. A formal or evaluative measure of Student’s cognitive functioning has never been obtained. Parents report that Children’s Hospital refused to conduct assessments to determine Student’s cognitive abilities or functioning because Student is non-verbal, and Parents have likewise refused to provide consent for the School District to conduct a comprehensive evaluation of Student, including cognitive assessments, by evaluators of the School District’s choosing.⁹
7. Student’s disabilities/medical conditions obviously have an enormous impact upon Student’s functioning, both educationally and otherwise. Throughout Student’s life, Student has received extensive therapies, including physical therapy, occupational therapy, speech therapy, hippo-therapy, feeding therapy, and swim therapy. As noted above, Student walks with a walker at school and uses a cane at home. Student requires assistance for feeding and other “life skills,” and requires “hand over hand” assistance to write, use a computer keyboard, or perform similar motor tasks.¹⁰
8. Because Student is non-verbal, [Student] uses an augmentative communication device to communicate basic concepts such as the desire to eat or to play. [Student] also communicates using gestures (e.g., pointing) and non-verbal vocalizations.
9. Socially, school staff reported that Student is a very happy and social child. [Student] has friends and is well-liked by both staff and other students.¹¹ Student enjoys and is motivated by being around other students.¹²

The 2012-2013 School Year and the October 2012 IEP

10. During the 2011-2012 school year, Student was home-schooled for half the year, and then starting in January 2012, dually-enrolled (home school plus some services in public

⁷ Brain hemorrhages in infants are rated or graded on a scale from 1 to 4, with 4 being the most severe and causing the most extensive damage. Grade 4 hemorrhages produce bleeding that presses on or leaks into the brain tissue. See, *Intraventricular Hemorrhage of the Newborn*, National Institutes of Health, U.S. National Library of Medicine, <http://www.nlm.nih.gov/medlineplus/ency/article/007301.htm>.

⁸ Interview with Mother.

⁹ Interview with Mother; Interview with Special Education Director.

¹⁰ Interview with SSN; Interview with SLP.

¹¹ Interview with SSN.

¹² Interview with SSN.

school).¹³ During the dual enrollment, Student was home-schooled for all academics; [Student] attended school only for lunch and “specials.”¹⁴

11. In May 2012, the School District convened an IEP meeting for Student’s triennial review. The IEP team limited its reevaluation to a file review, as the School District was not permitted to perform any formal assessments.¹⁵ The IEP team agreed that Student would be supported throughout the remainder of the dual enrollment period, and that the team would reconvene at the beginning of the 2012-2013 school year to “review and address parent requests.”¹⁶
12. After Student returned to school full-time for the 2012-2013 school year, the School District convened an IEP meeting on October 30, 2012. At that meeting, the team reviewed some limited evaluations that the parents had consented to at some point during the fall.¹⁷ Specifically, the School District was permitted to evaluate only in the areas of auditory processing and “inclusion.”¹⁸ The latter was more in the nature of a program evaluation rather than a true evaluation of Student.¹⁹
13. In terms of Student’s current academic functioning and performance, during the 2011-2012 school year and throughout the summer, Student experienced a number of medical problems and underwent extensive medical testing and treatment. As a result, during the 2011-2012 year academics were “not [] a huge priority at home given [Student’s] medical issues.”²⁰ During this time, Student’s academic performance regressed.
14. For example, whereas in August 2011 Student was able to answer comprehension questions and identify consonant letter sounds by pointing to the correct answer out of four picture choices in a grid, in August 2012 [Student] was only pointing to the lower left field when asked questions. “[Student] needs consistent and repetitive instruction in the area of letter sounds, sight words, and most importantly basic communication skills.”²¹ Similarly, in math, “[Student] struggled greatly with matching numerals to numbers” and avoided addition problems. “He pointed to the lower left visual field when asked to point to numbers, number words, and shapes. [Student] needs

¹³ 10/30/2012 IEP, Present Level of Academic and Functional Performance (“PLAFP”); Interview with Mother.

¹⁴ 5/18/2012 IEP, PLAFP.

¹⁵ 5/18/2012 IEP, PLAFP; Interview with Special Education Director.

¹⁶ 5/18/2012 IEP, Prior Written Notice.

¹⁷ Interview with Special Education Director.

¹⁸ Interview with Special Education Director.

¹⁹ Interview with SLP; Interview with Mother.

²⁰ 5/18/2012 IEP, PLAFP.

²¹ 10/30/2012 IEP, PLAFP.

consistent and repetitive instruction in the area of number recognition, basic number sense, and vocabulary such as more, less, equal.”²²

15. In terms of cognitive and language function, as noted above, Parents have not given consent for the School District to complete a comprehensive evaluation of Student by evaluators of the School District’s choosing. As such, there is no evaluative or assessment data measuring Student’s level of cognition. However, school staff who had worked with Student and were familiar with Student’s educational functioning gave credible estimates that Student is functioning cognitively at about the level of a toddler or preschool student.²³
16. SLP, who has also worked extensively with Student, estimated that in her professional judgment, Student is at a 1 or 2-year-old level in terms of language functioning.²⁴ With a structured setting or prompting, Student will respond to greeting by waving or saying “hi” or “bye.” Student knows a few letters of the alphabet; one of Student’s IEP goals is to learn the letters of [Student’s] name. Student is not able to combine words to make sentences, cannot write independently and is not literate.²⁵ SLP’s judgment regarding Student’s language/cognitive functioning is consistent with the extensive information provided in the IEP, Student’s IEP goals, and reports from Mother.²⁶
17. Under the 10/30/2012 IEP, Student receives direct “pull-out” instruction from a special education teacher for math and literacy. Student also receives some pull-out services for speech/language. The remainder of Student’s time in school is spent in the general education classroom with general education peers. In the general education classroom, Student receives 1:1 support for social skills and academics. The content is modified significantly so that Student may participate, and Student is assessed by [Student’s] IEP goals and objectives rather than being graded on the general curriculum.²⁷
18. In addition to the specific special education and related services identified in the IEP, the IEP also contains an extensive list of accommodations/modifications for Student to be able to participate in the general education curriculum.²⁸ The complaint allegations that were accepted by the SCO relate to the School District’s implementation of eight of these accommodations.

²² *Id.*

²³ Interview with SSN.

²⁴ Interview with SLP.

²⁵ Interview with SLP.

²⁶ 10/30/2012 IEP, PLAFP; Interview with Mother.

²⁷ Interview with Former SSN; Interview with Current SSN; Interview with Mother; 10/30/2012 IEP.

²⁸ 10/30/2012 IEP, P. 8, Accommodations/Modifications.

Home-School Communication

19. Four of the allegations in question involve modifications that relate not to Student's educational program, but to how Parents are to be kept informed about what Student is doing in school and the progress Student is making. Specifically, in the State Complaint, Parents allege that:

- a. Student's daily "back/forth" book (for communication between parents and school) has not been modified for Student's needs (Allegation #1);
- b. The District did not send Student's work home in [Student's] "Thursday folder" (Allegation #2);
- c. The District did not provide the Parents with weekly goal sheets or shared goals (Allegation #4); and
- d. The District failed to provide weekly progress reports for either math/literacy or [Grade] grade (*i.e.*, the general education classroom) (Allegation #7).

20. The IEP itself includes the following modifications relating to home-school communication:

Use of Thursday folder to send home school information.

Use of a modified daily planner to share academic goals of the week to go home each Friday including progress to be shared with the home.²⁹

21. The SCO notes that these modifications, as written, are extremely vague. For example, there is no detail or explanation as to what type of school information is to be sent home, how the daily planner is to be modified, or what level of detail must be provided to the parents. As for the purpose of these modifications, both Parents and School District personnel stated that they did not serve an instructional purpose for Student or relate to Student's educational needs as set out in [Student's] IEP goals; rather, they are for Parents to know what Student is doing in school.³⁰ Parents stated that they need extensive communication and information from school in order to "monitor compliance."³¹

22. These modifications are implemented via a three-ring binder that goes back and forth between home and school, and a student planner that is provided to all students at School. The binder includes notes, plans, calendar information (related to Student's medical and therapy appointments), and a seizure log. The "notes" section is where School staff and Parents (mostly Mother) communicate back and forth about what Student is doing, how Student fared on a particular day, scheduling communications,

²⁹ 10/30/2012 IEP, p. 8, Accommodations/Modifications.

³⁰ Interviews with Mother, Current SSN Teacher and Former SSN Teacher.

³¹ State Complaint, Issue 3, p. 5.

and other pieces of information that the parties exchange.³² The student planner, i.e., a spiral notebook that students at School receive in which they can write their assignments and homework, is also used in a similar fashion.³³ The planner contains communications between School staff and Mother, and is another means through which the parties exchange information about Student, [Student's] educational program, and [Student's] activities in school.³⁴

23. In addition to communicating via the three-ring binder, the State Complaint included copies of email communications between the parents and School personnel.³⁵ These communications cover a range of topics, from Student's homework, modifications to homework, goals and expectations for Student, and the like.³⁶ Parents also have the opportunity to observe Student's classroom, an opportunity they take advantage of.³⁷
24. The information provided in the back/forth book and other communications between Parents and the School District staff include information about Student's academic goals and progress. For example, when Student's class was working on a unit about volcanoes, Student's planner indicated that Student's goals would be to identify the different parts of a volcano.³⁸ There are also frequent notes about what Student is working on and how [Student] is doing.³⁹
25. Regarding the Thursday folder, the School District asserts that it is an "all school communication tool," and that it "is used to send general school information and was used as such for Student."⁴⁰ Contrary to Parents' allegation, the IEP does not require that the Thursday folder be used to send home Student's work; rather, it is to be used to send home "school information."⁴¹ As the School District points out, the nature of the instruction that Student receives, much of which is done on manipulatives or technology tools, limits the amount of paper-and-pencil type work samples that can be sent home, but in any event, the IEP does not require that work samples be sent home.⁴²
26. Parents complain that the back/forth book does not contain sufficiently detailed information, and point to a version of a back/forth book that was used when Student

³² Ex. D; *see also* School District Response to State Complaint; Interview with Mother; Interviews with Current and Former SSN Teacher.

³³ Ex. D; Interviews with Mother, Current SSN and Former SSN.

³⁴ Ex. D.

³⁵ Ex. B; Interview with Mother; Interviews with Current SSN and Former SSN.

³⁶ Ex. B; Interview with Mother; Interviews with Current SSN and Former SSN.

³⁷ Ex. A, pp. 4-9.

³⁸ Ex. D, p. 24.

³⁹ *See, e.g.*, Ex. D. pp. 5, 7, 11, 12, 13, 19, 21, 23, 24.

⁴⁰ School District Response to State Complaint, p. 9. Essentially, this IEP "modification" is simply a restatement of something that is already done for all students, and is thus superfluous.

⁴¹ *Id.*

⁴² *Id.*; Interviews with Current and Former SSN Teachers.

was in 5th grade.⁴³ The 5th grade back/forth book included a chart that set out Student's day by time, activity, educational objective/lesson, teacher, and had a section where the teacher or service provider provided notes about what Student had done that day.⁴⁴ Parents were thus provided with an extremely detailed breakdown of every aspect of Student's school day. Parents assert that such detail is necessary because Student is non-verbal and therefore cannot inform them [him/herself] of what happens in school.⁴⁵

27. Parents also allege that Student requires a modified planner for [Student's] own use, *i.e.*, to write down and record homework assignments. Parents claim that the planner is not properly modified for Student's use, and note that in previous years, Student wrote [Student's] assignments or homework in a daily planner.⁴⁶ Student's teachers, however, explained that Student cannot read or write, and that anything that Student "wrote" in a planner in previous years was with "hand-over-hand" assistance by a teacher or a paraprofessional.⁴⁷ Thus, any use of the planner was more for instructional purposes, such as helping Student learn letters or learn to read by reading [Student's] own writing, rather than as a reminder to do homework.
28. The SCO also notes that the IEP's requirement for a "modified planner" states that its purpose is "to share academic goals of the week to go home each Friday including progress to be shared with the home."⁴⁸ This implies that the planner is to be passed back and forth between the Parents and the teachers, rather than by Student for [Student's] own use. Accordingly, the SCO finds that the IEP does not require the School District to create a modified planner for Student's use.
29. Parents also complain about the level of detail in the progress notes they receive. Based upon the SCO's interview with Mother, the Parents appear to desire all data sheets taken by the teachers to record progress on Student's IEP goals and all worksheets completed by Students or other evidence to "prove" that Student is being provided instruction. Mother noted that she had received a progress report related to Student's progress on [Student's] IEP goals and objectives at the end of December 2012, but questioned the veracity of the report because she had not been provided with the data upon which the report was based.⁴⁹
30. The SCO finds, however, that the IEP modification requiring that Student's academic progress be shared via the back/forth book do not require that every piece of data taken

⁴³ Ex. E; Interview with Mother.

⁴⁴ Ex. E; Interview with Mother.

⁴⁵ State Complaint, Issue 3, p. 3, 5.

⁴⁶ State Complaint, Issue 3; Interview with Mother.

⁴⁷ Interviews with Former SSN Teacher and Current SSN Teacher.

⁴⁸ 10/30/2012 IEP, p. 8, Accommodations/Modifications; Interview with Mother.

⁴⁹ Interview with Mother; Parents' Reply.

by the School District teachers and staff be provided to the Parents via the back/forth book. The IEP states that Student's progress on [Student's] IEP will be reported to the Parents twice per school year.⁵⁰ To read the modification at issue to require the School District to provide the Parents with weekly data sheets and detailed progress notes about Student's progress on [Student's] IEP goals and objectives, where IEP progress reporting is only required twice per school year, would be to render the IEP self-contradictory and meaningless.

31. The SCO declines to read the IEP as containing meaningless or contradictory provisions, and instead reads the modification at issue in this State Complaint to require general information about what Student is working on and how [Student] is functioning.
32. The SCO understands that Parents desire as much information as possible about what Student does and works on during the day. The IEP, however, does not require the level of detailed reporting the Parents seek. The SCO finds that the communications in the back/forth book and the Thursday folder to be consistent with the IEP's requirements regarding home-school communication.

Differentiated Instruction and Modified Homework

33. The State Complaint also alleges that the School District failed to implement Student's IEP because:
 - a. The District did not provide differentiated instruction to ensure Student's participation in general academic classes (Allegation #5);
 - b. Student's geography homework has not been modified for Student (Allegation #3); and
 - c. The District did not provide worksheets for Student with 1-2 questions per page with a 4-square answer grid (Allegation #6).
34. The SCO considers the questions of the modified geography homework and the provision of gridded worksheets to be subsets of the more general question of whether Student's instruction was differentiated to ensure [Student's] participation in general academic classes, and will thus consider these issues together.
35. As noted above, for part of the school day, Student participates with [Grade] grade peers in the general education classroom. But because of Student's disabilities, including the fact that [Student] is non-verbal, has significant language deficits, and cannot read or write, the materials must be significantly modified in order for Student to participate. The teachers modify the academic goals that Student will be working on,

⁵⁰ 10/30/2012 IEP, Statement of Service Delivery, p. 8.

and rather than teach with textbooks or written worksheets, Student's teacher develops visual adaptations of the materials.⁵¹

36. For example, when Student's social studies class was learning about volcanoes, Student's modified goals were to be able to demonstrate an understanding of the different parts of a volcano.⁵² In order for Student to demonstrate this understanding, Student's teacher prepared a 4-square picture chart for Student to point out responses to questions.⁵³ Other visual tools for the volcano project were provided by the School District as well.⁵⁴ Both Current SSN Teacher and Former SSN Teacher provided credible descriptions of how they modify the general education content and thereby differentiate instruction to suit Student's individual needs.⁵⁵ The School District also provided plans for how Student's instruction in social studies would be differentiated for [Student], and how [Student's] IEP objectives would be incorporated into the unit.⁵⁶
37. Regarding the geography homework, Parents assert that Student is not receiving homework in geography or other general academic subjects, or that the homework is not appropriately modified for Student. As a student in the class, Parents believe that Student should receive and be expected to complete homework as other students are expected to do.⁵⁷
38. Specifically regarding the lack of modified geography homework, Parent points to a booklet entitled "Geography Glossary," which sets out geography lessons or tasks by week.⁵⁸ Because of Student's disabilities, [Student] is not able to read the questions or write out answers.⁵⁹
39. Former SSN Teacher explained that the Geography Glossary was provided to Parents as a way of providing them with information about what the class was working on, but that Student is not expected or required to do homework for [Student's] general education classes.⁶⁰ Student does get homework for [Student's] reading and literacy instruction, but it is not expected for [Student's] general education classes. As Former SSN Teacher explained, Student requires time after school for [Student's] various therapies, and to rest and play.⁶¹ Further, Student experiences cognitive fatigue in correlation with [Student's] seizures. As such, in the professional judgment of the School District

⁵¹ Interviews with Current SSN Teacher and Former SSN Teacher; School District Response.

⁵² State Complaint, Issue 3, Ex. D, p. 24; Interview with Mother.

⁵³ School District Response, p. 11.

⁵⁴ School District Response, pp. 12-13.

⁵⁵ Interviews with Current SSN Teacher and Former SSN Teacher.

⁵⁶ School District Response, pp. 15-18.

⁵⁷ Interview with Mother.

⁵⁸ Ex. B, pp. 5-9.

⁵⁹ Interviews with Former SSN Teacher and Current SSN Teacher; Interview with Mother.

⁶⁰ Interviews with Former SSN Teacher and Current SSN Teacher.

⁶¹ Interview with Former SSN Teacher.

teachers and service providers working with Student, the IEP goals are not served by assigning or requiring Student to do general education homework.⁶²

40. The SCO notes that there is no requirement on Student's IEP that [Student] be assigned or be required to complete homework in general education classes.⁶³ Rather, the decision to assign homework or not is an instructional/methodological choice to be determined by School District personnel.
41. Regarding the IEP modification that the School District create "worksheets with 1-2 questions per page with a 4 square answer grid," the School District's response included an example of a 4-square visual worksheet for Student to demonstrate understanding during the social studies volcano unit.⁶⁴ The School District notes that not every school activity is amenable to the creation of a 4-square worksheet. Indeed, numerous IEP goals state that Student will demonstrate skills by "pointing to the correct answer in [Student's] device, *or* pointing to the answer in a 4 square display board."⁶⁵ Further, both Former SSN Teacher and Current SSN Teacher explained how they use the 4-square worksheet into Student's instruction in both pull-out math and literacy work and the general education classroom.⁶⁶
42. The SCO does not read this IEP modification as requiring such a worksheet to be created for everything Student does in school. Based upon the documentation provided by the School District, as well as the credible information provided by both Former SSN Teacher and Current SSN Teacher during interviews, the SCO finds that the School District used 4-square worksheets as part of Student's instruction, as appropriate, consistent with the IEP.
43. Much of the Parents' argument on this point relates to a broader theme in Parents' State Complaint, as well as in their Reply to the School District's Response: namely, the Parents' assertion that the School District is not providing "proof" that they have done all of the various things the IEP requires them to do. However, in bringing this State Complaint, the burden of proof is on the Parents to demonstrate that the School District has *not* implemented the IEP. Further, other than the general home-school communication and the twice-yearly progress reporting required by the IEP, there is nothing in the IDEA or in the IEP that requires a school to provide parents with documentation or confirmation of everything that happens at school on a daily basis.

⁶² Interviews with Former SSN Teacher, Current SSN Teacher, and SLP.

⁶³ 10/30/2012 IEP.

⁶⁴ School District's Response, p. 11.

⁶⁵ 10/30/2012 IEP, Academic/Functional Goals and Objectives, p. 7-5 (emphasis added).

⁶⁶ Interviews with Current and Former SSN Teachers.

Assistive Technology Accommodations in Tech Class

44. One of Student's classes is a "tech class" that [Student] attends for 1 week per month. During the week that Student attended tech class in the month of October 2012, Student was not provided with the adapted keyboard/mouse [Student] requires. The School District does not dispute that the adapted keyboard or mouse were not provided that week, and therefore the SCO finds that the School District failed to provide the appropriate technology modifications required by Student's IEP.⁶⁷ The problem was subsequently corrected, however; the School District provided a technology plan detailing which technology is used for which classes, including tech class.⁶⁸
45. Notwithstanding the failure to provide an adapted keyboard for Student's use in tech class, Student was able to access the class material and content by using a regular keyboard.⁶⁹ Student requires hand-over-hand assistance to use either keyboard and was able to participate in class, as always, with assistance from Student's educational assistant.⁷⁰ The benefit of the adapted keyboard is that the buttons are bigger so Student can see them better. The goal is that Student will learn how to find keys on the keyboard with increasing independence, but currently, Student requires 100% assistance with both keyboards, and [Student] received that assistance during the week in October 2012 when [Student] did not have access to the modified keyboard.⁷¹

CONCLUSIONS OF LAW

1. Under the IDEA, local education agencies such as the School District are required to provide eligible students with disabilities with a free appropriate public education, by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19.
2. In this case, Parents make eight allegations detailing how, since the beginning of the 2012-2013 school year, the School District has failed to implement Student's IEP modifications. Clearly, where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. *Id.* However, not every deviation from an IEP's requirements results in a violation of the IDEA's requirements or mandates an award of relief to the parents of a disabled child. *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

⁶⁷ School District Response, p. 27.

⁶⁸ *Id.*, p. 28.

⁶⁹ Interview with Former SSN Teacher.

⁷⁰ *Id.*

⁷¹ *Id.*

not impact student's ability to benefit from special education program and 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)(same).

3. With respect to the IEP's modifications related to home-school communication, the SCO finds that the School District implemented those modifications and met the requirements of Student's IEP. (FF 23-32.) As noted above, the IEP's requirements with respect to the home-school communications read as follows:

Use of Thursday folder to send home school information.

Use of a modified daily planner to share academic goals of the week to go home each Friday including progress to be shared with the home.⁷²

4. Contrary to the Parents' claims, nothing in this language requires the School District to send home work samples or provide a detailed account of every aspect of Student's school day. Parents suggest in their Reply that the School District could use Student's assistive technology communication device to create worksheets or other "evidence" of Student's work, and that the device allows such created work product to be emailed home, thereby providing them with proof that the School District is doing what the Parents think should be done for Student.⁷³ The IEP, however, does not dictate the details of Student's work product in such a manner, does not require the communication device to be used in this manner, and does not require that Student's work product be sent home on a daily or even weekly basis.
5. Further, Parents question the information provided in the progress reports provided by the School District because they were not provided with the underlying data supporting the report. The IEP, however, does not require the School District to provide the Parents with every data sheet created or maintained by the teachers and service providers in the course of tracking Student's progress. The SCO finds that the notebook that was (and continues to be) used as a medium of communication between the Parents and the School District provides the Parents with information about what is going on at school, including the lessons or units that Student is working on and how [Student] fares generally from day to day and week to week. (FF 24-28.) In addition, the Parents use e-mail to obtain information that they seek about Student's educational program. (FF 23.) The SCO understands and appreciates the Parents' desire for as much information about Student's educational program as possible, particularly because

⁷² 10/30/2012 IEP, p. 8, Accommodations/Modifications.

⁷³ Parents' Reply; Interview with Mother.

[Student] is non-verbal. The amount of information and the level of detail they seek, however, are not required by the IEP. (FF 30-31.)

6. With respect to the Parents' allegation that the School District failed to differentiate Student's instruction, including the failure to modify geography homework or use a 4-square worksheet, the SCO finds that the School District implemented the IEP appropriately. (FF 33-43.) Both Current SSN Teacher and Former SSN Teacher explained in detail the manner in which Student's general education curriculum is modified or "differentiated" so that Student may access the content. (FF 36.) The 4-square answer grid has been used, and continues to be used, as appropriate. (FF 41-42.)
7. Regarding the provision of modified geography (or other general education) homework, the IEP does not require that Student be assigned homework in general education classes. Rather, that decision is an instructional or methodological decision that is left to the discretion of the educators. *Rowley v. Board of Education, supra*. Accordingly, the SCO finds no violation of the IDEA with regard to Allegation #3.
8. Finally, Parents allege that during the week of Student's monthly tech class, Student was not provided with the adapted keyboard/mouse [Student] requires. The School District does not dispute that the adapted keyboard or mouse were not provided that week.⁷⁴ The SCO finds that the School District violated the Student's IEP by failing to provide the appropriate technological modifications during that one week. (FF 44.)
9. A determination that the School District failed to implement one of Student's IEP modifications does not end the inquiry, however. Such a failure only gives rise to an IDEA violation if it amounts to a material failure to implement the IEP, or results in the student's inability to benefit from his special education program. *L.C. and K.C. v. Utah State Bd. of Educ. et al., supra; Van Duyn v. Baker Sch. Dist. 5J, supra*.
10. The SCO finds that in this case, the School District's failure to provide Student with the adapted keyboard/mouse for the week of tech class in October 2012 did not amount to a material failure to implement Student's IEP, nor did it deprive Student of the ability to benefit from Student's special education program. Student had access to a regular keyboard and to the hand-over-hand assistance of Student's educational assistant, which assistance Student would have required even with the adapted keyboard. Student was able to participate in and derive benefit from special education notwithstanding the lack of the adapted keyboard. (FF 45.) Further, the failure was for a very short duration – only one week. The School District quickly remedied the problem and now has a technology plan in place detailing which technology Student requires for [Student's] various classes, including tech classes. (FF 44-45.) Accordingly, there was no material failure to implement Student's IEP, and thus no denial of FAPE.

⁷⁴ School District Response, p. 27.

11. The SCO also notes that where, as here, parents have refused to allow a school district to conduct comprehensive evaluations by evaluators of its choosing, the parents lose any right to demand special education services or to complain about a denial of FAPE. FF 6, 12; *M.T.V. v. Dekalb County School District*, 446 F.3d 1153 (11th Cir. 2006)(where parents refuse to allow school district to conduct evaluations by evaluators of its choosing, parents/student lose entitlement to special education services; *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178-79 (5th Cir. 1995)(“if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation”); *Johnson by Johnson v. Duneland Sch. Corp.*, 92 F.3d 554, 558 (7th Cir. 1996); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987); *M.S. v. Mullica Township Bd. of Educ.*, 485 F. Supp. 2d 555 (D.N.J. 2007). In this case, Parents admit that they have never permitted the School District to conduct its own cognitive evaluations of Student,⁷⁵ and have allowed only limited assessments by the School District in other areas. (FF 12.) As such, they have effectively given up any entitlement to FAPE, or any claim of a denial of FAPE, on Student’s behalf.

REMEDIES

The SCO has found that the School District violated Student’s IEP by failing to have available the appropriate adapted technology devices for the week of Tech classes in October 2012. The School District corrected the issue, and provided a technology plan detailing which technology is used for which classes, including Tech class.⁷⁶ The SCO finds that the School District has sufficiently remedied the problem, such that no further remedy is ordered.

CONCLUSION

The Decision of the SCO is final and is 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 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

⁷⁵ Contrary to Parents’ assertions that Student is impossible to evaluate because [Student] is non-verbal, there are numerous accepted cognitive assessments for non-verbal students, such as the Comprehensive Test of Nonverbal Intelligence, 2nd Edition (CTONI-2) or the Test of Nonverbal Intelligence, 4th Ed. (TONI-4). See, e.g., *Psychological and Educational Publications, Inc.*, Cognitive Assessments, <http://www.psych-edpublications.com/cognitive.htm#ctoni>.

⁷⁶ *Id.*, p. 28.

This Decision shall become final as dated by the SCO's signature, below.

Dated this 30th day of January, 2012.

Wendy J. Armstrong, Esq.
State Complaints Officer

APPENDIX A - Record

Interview with Mother, January 8, 2013

Interview with School District's director of special education ("Special Education Director"), January 8, 2013

Interview with Student's current significant support needs teacher and case manager ("Current SSN Teacher"), January 8 and 17, 2013

Interview with Student's former significant support needs teacher and case manager ("Former SSN Teacher"), January 8, 17 and 24, 2013

Interview with Student's speech language pathology service provider and assistive technology specialist ("SLP"), January 8 and 15, 2013

State Complaint, Issue 3, filed December 3, 2012, and attached exhibits:

- Exhibit A – selected pages of 5/20/11 IEP; Observation emails; Historical summary of IEP goals;
- Exhibit B – Back/Forth Book, homework modification emails, [Grade] grade homework;
- Exhibit C – [Grade] grade teacher websites;
- Exhibit D – 2012-2013 Back/Forth information;
- Exhibit E – 2011-2012 samples of daily planners;
- Exhibit F – 2010-2011 Back/Forth book samples;
- Exhibit G – Emails regarding Back/Forth book for prior years;
- Exhibit H – Emails regarding usage of Back/Forth book;
- Exhibit I – Selected portion of transcript of 10/30/12 IEP meeting;
- Exhibit J – Emails from School principal;
- Exhibit K – Communications about Thursday folder;
- Exhibit L – Student's work product received by Parents; progress notes;
- Exhibit M – Selected portion of 10/30/12 IEP meeting transcript;
- Exhibit N – Emails regarding "specials" class.

School District Response, filed December 27, 2012

Parent's Reply, filed January 10, 2013, and attached exhibits:

- Exhibit AA – Student planner;
- Exhibit BB – Thursday folder;
- Exhibit CC – Emails and school website printouts;
- Exhibit DD – Printouts of School's online "parent portal";

- Exhibit EE – Information about Student’s augmentative communication device;
- Exhibit FF – Information about Student’s iPad device;
- Exhibit GG – Information about Student’s keyboard;
- Exhibit HH – Work sample and assessment report;
- Exhibit JJ – IEP meeting transcript section;
- Exhibit KK – Information about differentiation of instruction;
- Exhibit LL – Copy of schedule;
- Exhibit MM – Copy of assessment report;
- Exhibit NN – December 2012 IEP progress report;
- Exhibit OO – Information about iTeach project.

IEP dated May 18, 2012

IEP dated October 30, 2012