

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

State-Level Complaint 2013: 502
Larimer County School District, Poudre

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed on January 17, 2013, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹ Parent brings this Complaint against School District.

Based on the written Complaint and a telephone interview with Parent on January 16, 2013, the State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

PARENT'S COMPLAINT ALLEGATIONS

Parent's Complaint raises four allegations, summarized as follows:

1. From February 1, 2012, to present, Student's behavioral intervention plan has not been properly implemented at school. Specifically, the individuals responsible for implementing Student's behavioral intervention plan have not utilized the antecedent strategies described in the plan, as illustrated by the incident on February 1, 2012.
2. From August 31, 2012, through October 2012, Student's behavioral intervention plan was not made accessible to the individuals supervising [Student's] two internships through the District's ACE program, in violation of 34 CFR § 300.323 (d).

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

² Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

3. From August 31, 2012, through October 2012, the accommodations, modifications, and supports identified in Student's IEP, including the behavioral intervention plan, were not implemented at Student's internships through the ACE program.
4. For the 2012-2013 school year, Student has not made progress on [Student's] IEP goals because:
 - a. Student's IEP is not being properly implemented by [Student's] general education teachers; and
 - b. Student is not receiving adequate accommodations in the classroom.

Summary of Proposed Remedies. To resolve the Complaint, Parent proposed that Student be removed from School and placed in an educational facility that could address [Student's] specific disabilities and provide a free appropriate public education.

SUMMARY OF THE DISTRICT'S RESPONSE

Denying allegation one, the District asserted that the District has consistently and properly implemented all three of the behavioral intervention plans (BIP) in place for Student since February 1, 2012. As evidence that it has implemented Student's IEP, the District provided documentation showing that Student's teachers had all received a copy of Student's BIP and that Case Manager provided support to Student's teachers following behavioral incidents or concerns.

Concerning allegations two and three, the District asserted that Student's IEP, including the BIP, had not been shared with the training sponsor for [Student's] Alternative Cooperative Education (ACE) internships because sharing this information would have violated Student's privacy, as protected by the Family Educational Rights and Privacy Act (FERPA). Further, the District asserted that the ACE Teacher did discuss Student's individual needs, including behavioral challenges, and strategies for addressing those needs with the sponsors of the first and second internship placements. The District asserted that it did not have an obligation to discuss Student's behavioral challenges with the third internship placement because it had never been formally accepted by the ACE program, and the training sponsor was already familiar with Student.

Denying allegation four, the District asserted that Student's IEP is being properly implemented in [Student's] general education classes, and that [Student] is receiving adequate accommodations in the classroom. Contrary to the Parent's allegation that the lack of progress demonstrates improper implementation of IEP accommodations, the District asserted that the lack of progress is related to Student's refusal to attend class. The District has and continues to address Student's attendance problems through the IEP process, including recent modifications to Student's BIP.

SUMMARY OF PARENT'S REPLY

Concerning allegation one, Parent reiterated that Former Paraeducator did not follow Student's BIP on February 1, 2012. Specifically, Parent asserted that Former Paraeducator did not immediately contact a special education teacher when Student displayed disruptive behaviors that day, and that Student did not receive instruction to process what had happened and re-teach appropriate behavior, as required by [Student's] BIP.

Concerning allegations two and three, Parent asserted that while the supervisor at the first internship may have been aware of Student's behavioral challenges, he was not the individual who was most often working directly with Student. Parent also asserted that the second and third internships failed because the ACE Teacher inappropriately relied on Student to accomplish tasks she should have known Student could not adequately perform as a result of [Student's] specific disability.

Concerning allegation four, Parent asserted that the District failed to submit any evidence, such as sign-off sheets or lesson plans, to prove that Student's general education teachers were familiar with [Student's] IEP and have provided the required accommodations. Parent noted that the evidence submitted by the District failed to show that Student's two physical education teachers were provided with Student's IEP at the beginning of the 2012-2013 school year. Parent further noted that Student had failed both physical education classes.

FINDINGS OF FACT (FF)

After thorough and careful analysis of the entire record,³ the SCO makes the following FINDINGS:

1. Student is seventeen years of age and lives with [Student's] Parents in the District. Student is in the eleventh grade and attends School. Student is eligible for special education and related services as a child with an emotional disability.⁴

2. Historically, Student has exhibited behaviors which have a negative impact on [Student's] learning and on the learning of others, such as refusing to work; failing to complete classroom assignments; interrupting instruction; failing to comply with classroom rules and norms; exhibiting defiant and disrespectful behavior towards adults/teachers; exhibiting verbal aggression; and using derogatory language towards others.⁵

³ The appendix, attached and incorporated by reference, details the entire record.

⁴ Exhibit 1, p. 42.

⁵ Exhibit 1, pp. 7, 23, 47, 50, and 97.

3. Because this behavior impedes learning, Student's IEP teams have consistently determined that [Student] needs a behavioral intervention plan (BIP). Relevant to this Complaint, Student has had three BIPs, dated March 2011, March 2012, and November 2012.⁶ Each BIP was written and incorporated into Student's IEP.

4. Parent alleges that the District has not properly implemented Student's BIP since February 1, 2012. She does not allege, however, that Student's BIPs were inappropriate.

Implementation of March 2011 BIP

5. Based on behavioral assessments, Student's March 2011 IEP team concluded that Student exhibited disrespectful and defiant behaviors, such as refusing to work and interrupting instruction, as a way to "gain more power and control in a given situation and to escape/avoid certain expectations or classwork [sic]."⁷ The March 2011 BIP, in place on February 1, 2012, included several antecedent strategies, i.e., strategies intended to decrease the likelihood that targeted behavior would occur. These antecedent strategies were described as follows:⁸

- Student will be confronted in a non-confrontational manner by paraeducators and teachers;
- Student will receive 1:1 confrontations away from the classroom setting;
- If off-task, Student will be given one redirect from the paraeducator and/or classroom teacher;
- Paraeducator and/or teacher will periodically check-in and ensure Student understands and completes expectations;
- Paraeducator will ensure expectations are clear and understood;
- Student will be responsible for work that is not completed and will make-up work [Student] chooses not to complete;
- Student will receive direct instruction in strategies for accepting feedback, following instructions, and determining when it is appropriate to disagree or to make a comment; and
- Student will be instructed in self-modulation and self-monitoring techniques.

6. In addition, there was a graduated plan for addressing disruptive behavior in the classroom. If Student displayed disruptive behavior in the classroom, the paraeducator was

⁶ Exhibit 1, pp. 23-27 (March 2011 BIP), pp. 50-54 (March 2012 BIP), and pp. 97-100 (November 2012 BIP).

⁷ Exhibit 1, p. 23.

⁸ Exhibit 1, p. 24.

directed to first meet with Student 1:1 outside of the classroom to process the situation and reteach appropriate behavior.⁹ If Student continued to display disruptive behavior, the IEP directed the paraeducator to contact Case Manager or Social Worker, who would in turn remove Student from class and reteach appropriate behavior.¹⁰

7. While Case Manager and Social Worker provide direct social skill instruction to Student and provide training and support to Student’s teachers and paraeducators, it is the paraeducators who directly implement the BIP on a routine and daily basis in the classroom.¹¹ The delivery service statement on Student’s IEP states that Student “will receive direct services in the general education environment through the direction of a special education para, under the guidance of a case manager,” and further specifies that it is the paraeducator who will be “providing behavioral strategies, corrective teaching, and processing to enable [Student] to access the general education curriculum.”¹² Former Paraeducator, who has worked exclusively with students identified as having emotional disabilities since 2007, was the paraeducator dedicated as Student’s 1:1 from November 2011 to February 1, 2012. Former Paraeducator was properly trained and supervised by Case Manager in implementing Student’s BIP.¹³

8. On February 1, 2012, Student pushed Former Educator, resulting in harassment charges and disciplinary action against Student. The conflict began when Former Paraeducator asked Student to start working on a specific essay assignment. Student refused. In response, Former Paraeducator left the classroom to consult with Case Manager about the situation. Case Manager instructed Former Paraeducator to give Student another assignment instead. When Former Paraeducator returned to the classroom, Student made a sarcastic statement and then told Former Paraeducator to find [Student] a pencil. When Former Paraeducator responded that he didn’t have a pencil, Student again told him to find one. Former Paraeducator told Student to find [Student’s] own pencil—which Student did by going to look for one on the Social Worker’s desk. Because students are not allowed unsupervised access to staff cubicles, Former Paraeducator followed Student to Social Worker’s desk. While there, Former Paraeducator calmly informed Student that “there is no reason for you to be disrespectful to me”. Student responded by pushing Former Paraeducator into the file cabinet. Former Paraeducator then warned Student that [Student] did not want to push him again. Student pushed Former Paraeducator again, with less force, and asked “what are you doing to do about it?” Former Paraeducator left the classroom to inform Case Manager of the situation. Case Manager discussed the incident with Student and determined that Student should be taken to administration.¹⁴

⁹ Exhibit 1, p. 24.

¹⁰ Exhibit 1, p. 24.

¹¹ Exhibit 1, pp. 23-27; Interviews with Former Paraeducator, Case Manager, Social Worker, Special Education Director, English Teacher, and History Teacher.

¹² Exhibit 1, p. 21.

¹³ Interviews with Former Paraeducator, Case Manager, and Special Education Director.

¹⁴ Exhibit 3, pp. 14-23; Interviews with Former Paraeducator and Case Manager.

9. Parent alleges that it was the failure of Former Paraeducator to follow the antecedent strategies in Student's BIP that caused Student to exhibit physical aggression. To support her allegation, Parent asserts that Former Paraeducator approached Student in a confrontational manner when he told Student "there is no reason for you to be disrespectful to me" and "you don't want to push me again."¹⁵ Parent further asserts that Former Paraeducator should have asked Case Manager to directly intervene when Student refused to get out the designated essay assignment because the BIP requires that 1:1 confrontations outside the classroom be conducted directly by the Case Manager, not a paraeducator.¹⁶ Finally, Parent alleges that Case Manager did not process the incident with Student to reteach appropriate behavior, as required by the BIP. The SCO does not agree with these assertions.

10. First, Former Paraeducator did not approach Student in a confrontational manner when he informed Student that there was no need to be disrespectful or when he instructed Student not to push him. Rather, Former Paraeducator was following the antecedent strategies described in the BIP that required him to ensure that Student understood and would adhere to classroom expectations, expectations that specifically included being respectful to others.¹⁷ Clearly and calmly informing Student that [Student's] current behavior was unacceptable, and there was no need for it, did not make the exchange confrontational. Likewise, the fact that Former Paraeducator followed Student to Social Worker's desk did not make the exchange confrontational when Student was not allowed unsupervised access to Social Worker's desk and the exchange took place out-of-view of other students.

11. Second, the BIP does not require that all 1:1 confrontations occurring outside the classroom be conducted by the Case Manager directly. Reading the services delivery statement with the BIP, the SCO finds that initial 1:1 confrontations are to be conducted by the paraeducator, who is under the supervision of the Case Manager.¹⁸ The BIP does not require that 1:1 confrontations be conducted by the case manager directly *unless* the disruptive behaviors continue even *after* the paraeducator has met with Student 1:1 outside the classroom.¹⁹ In this case, Former Paraeducator consulted with Case Manager as soon as Student exhibited disruptive behavior, followed Case Manager's guidance, and immediately contacted Case Manager when the disruptive behavior continued after the 1:1 confrontation. Following the incident, Case Manager met with Student to discuss what had happened and what Student could have done differently, a method commonly referred to as "processing."²⁰ Based on the above, the SCO finds that Student's BIP was properly implemented on February 1, 2012.

¹⁵ Complaint, p. 2. Reply, p. 1.

¹⁶ Reply, p. 1.

¹⁷ Exhibit 1, p. 24; Interviews with Former Paraeducator, Case Manager, and Social Worker.

¹⁸ Exhibit 1, pp. 21 and 24

¹⁹ Exhibit 1, pp. 21 and 24; Interviews with Special Education Director, Case Manager, and Former Paraeducator.

²⁰ Exhibit 3, pp. 15-22 and 96; Interview with Case Manager and Former Paraeducator.

12. The paraeducators assigned to Student following the incident on February 1, 2012, were properly trained and supervised in the implementation of Student's BIP. In support of this finding, the SCO notes that Case Manager keeps a handwritten log to document his communications with School staff concerning Student. These notes are typically made at the end of the school day or the following morning. The handwritten communication log maintained by Case Manager provides credible evidence that he consistently checks-in with Student's teachers and paraeducators to review Student's progress on IEP goals and address any questions and concerns.²¹ In addition, Case Manager promptly responds to questions and concerns from teachers and paraeducators.²² For example, on March 26, 2012, a paraeducator contacted Case Manager for guidance because she was frustrated that Student was refusing to follow directives, refusing to do work, and sleeping in class. Case Manager discussed the paraeducators concerns with her that day, reminding her to closely follow the BIP and bring Student to him whenever Student refused redirection.²³

13. Aside from the incident on February 1, 2012, Parent has not referred to any specific incidents as evidence that Student's BIP was not properly implemented at School. Further, the credible evidence supports a finding that Student's teachers and paraeducators were knowledgeable and trained in implementation of Student's BIP through access to [Student's] plan and regular contact with Student's Case Manager. Accordingly, the SCO finds that District properly implemented Student's March 2011 BIP during the time relevant to the Complaint.

Implementation of the March 2012 BIP

14. On March 27, 2012, the District convened a properly constituted IEP team for Student's annual IEP review.²⁴ Student's IEP team again determined that Student needed a BIP to address behaviors that continue to impede learning and incorporated the written plan into [Student's] IEP. With the exception of the two differences noted here, the March 2011 and March 2012 BIPs essentially employ the same antecedent and behavior teaching strategies.²⁵ First, the March 2012 BIP adds a new initial step in the graduated plan for handling disruptions in class. Under the new BIP, the teacher or paraeducator is directed to sit next to Student when [Student] first displays disruptive behavior in "hopes that proximity will change the behavior".²⁶ Second, the March 2012 IEP team determined that Student no longer needed a paraeducator to support [Student] in all general education classes, though [Student] would continue to receive that support in some classes. Accordingly, the March 2012 BIP indicated that a teacher or

²¹ Exhibit 3, pp. 25-43 and 342-52. (Documentation covers 2/2011 -12/2012 and shows consistent pattern of contact with teachers and paraeducators concerning Student's progress).

²² Interviews with Case Manager, Former Paraeducator, English Teacher, and History Teacher.

²³ Exhibit 3, p. 111.

²⁴ Exhibit 3, p. 42.

²⁵ Comparing Exhibit 1, p. 24 with Exhibit 1, pp. 51-52.

²⁶ Exhibit 1, p. 51.

paraeducator (if placed in the classroom setting) would implement the identified behavioral strategies.²⁷

15. There is no evidence supporting Parent's allegation that Student's March 2012 BIP was not properly implemented at School during the remainder of the 2011-2012 school year. There is, however, credible evidence that Student's paraeducators and teachers had access to Student's BIP, and were routinely contacted by Case Manager to discuss behavioral progress and concerns. Between April 2 and April 6, 2012, Case Manager met with Student's teachers and paraeducators to discuss Student's new IEP, including the BIP, and asked them to contact him with questions or concerns.²⁸ Between May 14 and May 15, 2012, Case Manager again met with Student's teachers and paraeducators to discuss Student's progress on [Student's] new goals and to discuss any behavioral concerns.²⁹ Further, the email exchanges between Parent and Case Manager between April 3, 2012 and May 24, 2012, demonstrate that Case Manager was regularly consulting with Student's teachers concerning Student's homework assignments, behavioral concerns, and IEP modifications/accommodations, including plans to complete missing work.³⁰

16. Based on the credible evidence described below, the SCO also finds that Student's March 2012 BIP was properly implemented at School during the 2012-2013 school year. Student's general education teachers, ACE Teacher, and paraeducators were advised of Student's IEP, including [Student's] BIP, through access to the IEP and/or regular communication with Case Manager. In August of 2012, Case Manager provided Student's first quarter general education teachers and ACE Teacher with a snap shot of Student's IEP, which included [Student's] complete BIP, IEP accommodations, and a summary of strengths and needs.³¹

17. Because Student was not enrolled in [Student's] two physical education (PE) classes until second quarter, Student's PE teachers were not included in the August 2012 email.³² On or around October 18, 2012, the beginning of second quarter, Case Manager discussed Student's behavioral challenges and BIP with Student's PE teachers, discussions which included making arrangements for Student to have a designated locker in an effort to decrease the anticipated anxiety associated with dressing-out for PE class.³³

18. In addition to documentation that Student's teachers had access to and/or were advised of [Student's] IEP, there is extensive and credible documentation showing that Case Manager consistently consulted with Student's general education teachers and paraeducators

²⁷ Comparing Exhibit 1, p. 24 with Exhibit 1, pp. 51-52.

²⁸ Exhibit 3, p. 350 (Case Manager's handwritten notes); Interview with Case Manager.

²⁹ Exhibit 3, p. 351; Interview with Case Manager.

³⁰ Exhibit 3, p. 182-242.

³¹ Exhibit 6, p. 1; Interviews with Math Teacher, English Teacher, ACE Teacher and Case Manager.

³² Exhibit 19; Interview with Case Manager.

³³ Exhibit 3, pp. 294-299; Interview with Case Manager. In general, students are not provided with a locker for PE class. Interview with Case Manager.

concerning the implementation of Student's BIP and progress on Student's IEP goals on a monthly-basis.³⁴ Finally, the frequency and content of email communication between Parent and Case Manager further support Case Manager's assertion that he regularly communicated with Student's general education teachers, including PE teachers, concerning Student's progress in class and any behavioral concerns.³⁵

Implementation of November 2012 BIP

19. Although Student had occasionally skipped classes during the second semester of the 2011-2012 school year, [Student] started doing so with increasing regularity at the beginning of the 2012-2013 school year.³⁶ From August 20, 2012, through November 15, 2012, Student had already skipped a total of 59 class periods.³⁷ While Student's previous BIPs focused on disruptive and disrespectful classroom behavior and work avoidance, Student's attendance problems were quickly becoming the primary behavioral concern for both Parent and School.³⁸

20. On November 6 and 15, 2012, Student's IEP team met to discuss [Student's] BIP, attendance problems, placement in the ACE program, and progress at School.³⁹ Based on teacher reports and observation, the IEP team determined that Student's target behaviors had changed, but the function of the behavior, power and control over [Student's] environment, remained the same. As a result of these meetings, the IEP team modified Student's BIP to address attendance.

21. While the BIP maintained the antecedent and behavior teaching strategies designed to address Student's disruptive, defiant, and disrespectful behaviors, the November 2012 BIP included new antecedent strategies for addressing attendance. These antecedent strategies included allowing Student to choose [Student's] classes and off periods, and giving [Student] choices within the classroom setting to work independently, with a paraeducator, or in the resource room.⁴⁰ As an additional antecedent strategy, the IEP team determined that Case Manager would no longer remind Student to go to class or escort Student to class as the team felt these reminders were having a negative impact on [Student's] attendance and [Student's] willingness to seek support from Case Manager and Social Worker.⁴¹ Finally, the IEP team determined that Student would be subject to the District's attendance policies, including in school suspension (ISS) for three absences for one class period.⁴² Unlike other students,

³⁴ Exhibit 3, pp. 24-358.

³⁵ Exhibit 3, pp. 206-307.

³⁶ Exhibit 13 (Student's attendance records); School calendar for 2012-2013 school year (available at http://www.psdschools.org/webfm_send/935).

³⁷ Exhibit 13, p. 9; Exhibit 14, pp. 1-5; Exhibit 1, p. 97..

³⁸ Exhibit 1, p. 97; Interviews with Case Manager, Parent, and Special Education Director.

³⁹ Exhibit 1, pp. 94-117; Interviews with Parent, Special Education Director, Case Manager, Social Worker, History Teacher, and Integrated Services Coordinator.

⁴⁰ Exhibit 3, p.353-56; Interviews with ACE Teacher, Math Teacher, English Teacher, and Case Manager.

⁴¹ Exhibit 1, pp. 97-114; Interviews with Special Education Director, Case Manager and Social Worker.

⁴² Exhibit 1, p. 98.

however, Case Manager would notify Student and Parent that Student had received ISS and would allow Student to reschedule ISS one time if [Student] missed a scheduled ISS.⁴³

22. On or around November 16, 2012, Case Manager met with Student and paraeducators to discuss Student's new BIP.⁴⁴ While there is no written documentation demonstrating that Student's teachers were provided with the November 2012 BIP until the start of second semester, this does not prove that Student's BIP was not properly implemented during this time. As described directly above, the changes to Student's BIP primarily involved strategies for dealing with Student's failure to attend class. The change in the BIP allowing Student to complete work in a quiet place, such as the resource room, or with a paraeducator, were already familiar to Student's teachers because they were accommodations provided in [Student's] IEP.⁴⁵ (FF 27-28.) The other changes involved consequences for missing classes and were the sole responsibility of Case Manager, not teachers or even paraeducators.⁴⁶ Accordingly, the SCO finds that the evidence does not support a finding that School failed to appropriately implement Student's November 2012 IEP.

23. Parent asserts that Student's November BIP is not being properly implemented because the School does not know where Student is at all times during the school day. As evidence, Parent notes that Student has texted her that [Student] is not in class during times she has not been notified by School that [Student] is absent and that she sometimes does not receive email notification that Student has missed classes until the end of the day.⁴⁷ The SCO notes that School is an open-campus where students are permitted to leave the campus for lunch and other off periods.⁴⁸

24. Parent's assertion, even if true, does not demonstrate that the School is failing to properly implement Student's November 2012 BIP because the BIP does not require that Student be escorted to class, that [Student's] whereabouts be continuously monitored, or that Parent be immediately notified when Student has missed a class period. Rather, the BIP requires only that Case Manager notify Parent when Student has earned ISS, when ISS has been rescheduled due to Student's failure to attend a previously scheduled ISS, and when [Student] misses a rescheduled ISS.⁴⁹ Email correspondence between Parent and Case Manager demonstrate that the notifications required by Student's BIP are being provided.⁵⁰ Further, the November 2012 team concluded that following Student between classes for purposes of reminding [Student] to go and/or escorting [Student] to class was not only ineffective, it was

⁴³ Exhibit 1, p. 98.

⁴⁴ Exhibit 3, p. 67 and interview with Case Manager.

⁴⁵ FF 27-28.

⁴⁶ Exhibit 1, p. 98.

⁴⁷ Interview with Parent.

⁴⁸ Interview with Parent and Special Education Director.

⁴⁹ Exhibit 1, pp. 98-99.

⁵⁰ Exhibit 3, pp. 310-337.

having a negative impact on [Student's] attendance. In fact, Student has actually left classes right after being escorted to them by Case Manager.⁵¹

25. While Student's attendance has improved slightly since implementation of [Student's] November 2012 BIP, [Student's] persistently poor attendance has negatively impacted progress on IEP goals and grades.⁵² School continues to address Student's attendance problems through the IEP process, convening IEP meetings on two dates in January and one in March of 2013 where Student's attendance and what it will take to get [Student] to attend class have been discussed.⁵³

Student's progress during the 2012-2013 school year.

26. Parent alleges that Student has not made progress during the 2012-2013 school year because Student's IEP is not being properly implemented by [Student's] general education teachers and [Student] is not receiving adequate accommodations. Specifically, Parent complains that the School has not provided proof, such as "lesson plans" or "sign-off sheets," that Student's general education teachers are familiar with [Student's] IEP and providing the required accommodations.⁵⁴ In bringing this Complaint, however, the burden of proof is on Parent to demonstrate that the School District has *not* implemented the IEP. Further, other than the quarterly progress reporting required by Student's IEP, there is nothing in the IDEA or in the IEP that requires School to provide Parent with documentation or confirmation of everything that happens at School, such as sign-off sheets showing that Student has received an accommodation.

27. Based on the credible evidence in the record, it is more likely than not that Student's general education teachers have properly implemented [Student's] IEP by providing the required accommodations. For the first semester of the 2012-2013 school year, Student had four general education teachers: English Teacher, History Teacher, and two PE Teachers.⁵⁵ Since the beginning of the 2012-2013 school year, Student's general education teachers have had access to and/or been advised of the requirements in Student's IEP, including accommodations.⁵⁶ In addition, Case Manager checks-in with Student's general education teachers on a regular basis to discuss progress on IEP goals, classroom assignments, behavioral concerns, and needed modifications.⁵⁷

28. In addition to having access to Student's IEP and support from Case Manager, both History Teacher and English Teacher credibly demonstrated that they were knowledgeable of

⁵¹ Exhibit 3, p. 301.

⁵² Exhibit 14; Interview with Case Manager and Parent.

⁵³ Interviews with Parent, Special Education Director, Special Education Coordinator, Case Manager, Social Worker, and History Teacher.

⁵⁴ Reply, p. 3; Interview with Parent.

⁵⁵ Exhibit 19. Student's other classes are through the credit recovery program and supervised by Case Manager.

⁵⁶ Exhibit 6; Interviews with English Teacher, History Teacher, and Case Manager.

⁵⁷ Exhibit 3, pp. 36-44; Interviews with Case Manager, History Teacher, and English Teacher.

Student's IEP accommodations by providing illustrations of specific accommodations that they regularly provided to Student. For example, English Teacher provided Student with extended time to complete assignments, access to a quiet area for completing assignments and taking tests, preferential seating, and oral assessment, in accordance with the accommodations described on Student's March 2012 and November 2012 IEPs.⁵⁸ History Teacher reported that Student regularly received extended time to complete assignments and could turn in work late without penalty, had larger assignments "chunked" into smaller tasks, and had access to a quiet place to complete assignments. In accordance with the March 2012 IEP, History Teacher also provided Student with the opportunity for hands-on learning by allowing Student to build a Civil War-era witness stand and World War II-era trench for extra-credit points. Notably, Student also had paraeducator support in both History and English classes to assist [Student] in organizing assignments and workload, and provide redirection for staying on-task.⁵⁹

29. Although Student was provided with accommodations consistent with [Student's] IEPs and paraprofessional support in both classes, Student earned a D in English and an F in History.⁶⁰ History Teacher and English Teacher each reported that Student's grade was the result of [Student's] failure to attend class and turn-in assignments.

30. As evidence that Student's IEP is not being properly implemented, Parent also notes that Student failed both second quarter PE classes, Advanced Weight Training and Team Sports.⁶¹ Student did not exhibit disruptive behaviors or have difficulty meeting performance expectations in either class when [Student] chose to attend and to dress-out.⁶² Rather, Student regularly chose to skip these two classes or to not dress-out when [Student] did attend class.⁶³ Student has missed 11 out of approximately 25 Team Sport classes and 12 out of 26 Advanced Weight Training classes--close to half of the class periods scheduled for each PE class.⁶⁴ Student's failing grades in both PE classes were the direct result of [Student's] lack of attendance and do not support a finding that the grades were the result of a failure to implement [Student's] IEP.⁶⁵

31. Similarly, Student has made minimal or unsatisfactory progress on [Student's] four IEP goals.⁶⁶ Student's IEP goals address the ability to follow directives, increase on-task behavior in class, improve self-advocacy skills, and research possible community college programs. Consistent with attendance data and the concerns of the November 2012 IEP team, the reports noted that Student's progress on goals related to following directives, on-task behavior, and

⁵⁸ Exhibit 3, pp. 61 and 110; Interview with English Teacher.

⁵⁹ Interviews with History Teacher, English Teacher, and Case Manager.

⁶⁰ Exhibit 9, p. 22.

⁶¹ Reply; Interview with Parent.

⁶² Exhibit 3, pp. 298, 301, 307,310-13; Interview with Case Manager, statements from PE teachers.

⁶³ Exhibit 3, pp. 296-301, 310,313,315-16, and 319.

⁶⁴ Exhibit 14.

⁶⁵ Exhibit 3, pp.313, 316, and 328-329; Interview with Case Manager and written statements from both PE teachers reporting that Student failed the course due to attendance, not performance.

⁶⁶ Exhibit 9, pp. 6-9.

self-advocacy has been negatively impacted because Student is more likely to avoid working on these goals by skipping class.⁶⁷

32. Parent alleges that Student's lack of progress on IEP goals and failing grades demonstrate that [Student's] general education teachers are not providing the required accommodations. While the SCO agrees that Student has made minimal or unsatisfactory progress, she disagrees about the likely cause.

33. The SCO finds it more likely than not that the lack of progress and failing grades are the result of Student's poor attendance for the 2012-2013 school year. From August 20, 2012, through January 24, 2013, Student has skipped a total of 114 class periods. In consideration of how Student's lack of attendance has impacted [Student's] grades in [Student's] four general education classes and progress on IEP goals for first semester of the 2012-2013 school year, the SCO notes that Student skipped approximately 13 out of 51 History classes; 6 out of 46 English classes; 12 out of 26 Advanced Weight Training (PE) classes; and 11 out of 25 Team Sport (PE) classes.⁶⁸ Each class meets for 80 minutes, three times a week, representing a significant loss in instruction time for each class Student misses.

34. School has appropriately responded to Student's attendance problems through the IEP process, including amending Student's BIP in November 2012 to specifically address attendance. Further, School moved-up the date of Student's triennial evaluation by three-months to conduct evaluation/assessment concerning, among other things, Student's attendance problems.⁶⁹

Implementation of Student's IEP at vocational internships.

35. Parent alleges that three internship opportunities provided to Student through the ACE program failed because Student's IEP, specifically [Student's] BIP and accommodations, was not provided to the training sponsors. Parent further alleges that the supports provided in Student's IEP, including the BIP, accommodations, and paraeducator, should have been provided to Student at the internships, but were not.

36. To build vocational experience and post-secondary transition skills, Student was enrolled in the Alternative Cooperative Education (ACE) Program, a vocational program in the District that provides work experience, related classroom instruction, and vocational transition planning for students with special needs or who are at-risk. Students participating in the ACE internship program begin by attending an internship class where they complete surveys to determine vocational interests, build resumes, and practice interview skills.⁷⁰ The ACE teacher

⁶⁷ Exhibit 9, pp. 6-9; Interview with Case Manager.

⁶⁸ Exhibit 13, p. 9; Exhibit 14, pp. 1-5.

⁶⁹ Although the District began evaluating Student in December of 2012, the triennial IEP was continued and rescheduled multiple times due to Parent and staff availability and Parent's request for further evaluation. Reply; Interviews with Parent, Special Education Director, and Case Manager.

⁷⁰ Response, p. 9; Interviews with Special Education Director, ACE Teacher.

then identifies internships that match the student's interest. Once a potential internship is identified, the ACE teacher, student, and on-site supervisor ("training sponsor") meet to discuss what kind of work the student would be doing at this internship. The student may shadow the training sponsor to determine if the actual work experience matches the student's expectation and vocational interests. If all agree that the internship is a good fit, the student, training sponsor, and ACE teacher meet to discuss the student's individual needs.⁷¹

37. Between August 22, 2012, and October 8, 2012, Student was provided with three internship opportunities. While Student participated in the first internship opportunity for approximately two-weeks before requesting a different internship, [Student] did not formally participate in the other two. The second opportunity was taken off the table by the training sponsor when Student failed to show-up for two scheduled meetings. The third internship ended before it was even approved by the ACE Program.

38. Because Student has gone through two internships in less than a month, ACE Teacher informed Student that [Student] would need to invest more in [Student's] experience in the ACE Program by working to find a third internship. In response, Student requested that [Student] be allowed to intern where [Student's] Father worked. ACE Teacher informed Student that [Student] would need to share the required paperwork with the potential internship sponsor and provide her with a contact person. She further explained that the internship would not be approved until the paperwork was completed and she had talked with the contact person. Student agreed.⁷²

39. On October 8, 2012, Student reported to the internship at [Student's] Father's shop, even though [Student] had been told the internship would not start until [Student] had turned in the required paperwork to ACE Teacher. At some point during the shift, an employee asked Student to use the company car to run an errand. Student does not have a driver's license. Further, the contract for unpaid work experience used by the District for ACE internships states that students are not permitted to drive vehicles for a training sponsor during their internships.⁷³ Student signed this agreement on August 31, 2012, in conjunction with [Student's] first internship.⁷⁴ While driving the company car, Student had an accident and fled the scene. As a result of this incident, Student was charged with traffic violations and had to appear in court.⁷⁵ Following this incident, Student was removed from the ACE program.

40. Parent believes that Student would have experienced success in these internships, and would never have had the accident at the third internship, if School had provided support consistent with [Student's] IEP, including paraprofessional support, BIP strategies, and accommodations. While the District concedes that the training sponsors were not provided

⁷¹ Interviews with ACE Teacher and Special Education Director.

⁷² Interview with ACE Teacher.

⁷³ Exhibit 4, p. 3; Exhibit G, p. 8.

⁷⁴ Exhibit G, p. 8.

⁷⁵ Complaint; Interview with Parent.

with a copy of Student's IEP, it asserts that doing so would have violated FERPA. The District also asserts that Student and ACE Teacher discussed behavioral challenges with the training sponsor at the first internship, but that such a discussion was not possible or necessary for the second and third internships.

41. Based on the credible evidence, as described more fully below, the SCO finds that the District was not permitted to provide the training sponsors with access to Student's IEP without parental consent and was not obligated by Student's IEP to seek parental consent for such a disclosure. Further, Student's IEP did not require the District to implement Student's BIP or other IEP supports, such as paraprofessional assistance, while [Student] was at the internship. Consistent with Student's IEP and the ACE Program, the District did make support available to Student through the ACE program, Case Manager, and Social Worker, to work on transition skills.

42. The ACE program training sponsors are employees (or owners) of the businesses that are providing the internship opportunity. Training sponsors are not employed by the School District, nor are they under the control or supervision of the School District. Because the training sponsors are not District employees, or individuals under the direct control of the School District, providing a copy of Student's IEP to them without written consent from Parent would have violated the privacy rights provided by FERPA. The District did not have, or request, Parent's written consent to share educational records, such as Student's IEP, with any of the internship training sponsors.

43. The March 2012 IEP, the IEP in effect during Student's vocational internships, did not require the District to request parental consent for the purposes of sharing the IEP with training sponsors or require the District to otherwise implement the IEP at the internship sites. When this IEP was drafted, the IEP team anticipated that Student would be attending Community College for some of the school day during the 2012-2013 school year. As a result, Student's IEP specifically references programs, accommodations, and services that would not be implemented if Student was at Community College, including [Student's] BIP, direct support from a paraeducator, and some accommodations.⁷⁶

44. Towards the end of the 2011-2012 school year, Parent and School decided that Student would not be attending Community College.⁷⁷ This joint decision was based on Student's behavior during the last couple months of school, including skipping classes and exhibiting disruptive behavior in class.⁷⁸ At the beginning of the 2012-2013 school year, Student was enrolled in the internship class to build vocational skills.

45. For the reasons explained below, the SCO finds that the expectations and environment of Community College are analogous to those of the ACE internships, meaning that the

⁷⁶ Exhibit 1, pp. 54, 61, 66, and 69.

⁷⁷ Exhibit 3, pp. 195-96; Interviews with Parent and Case Manager.

⁷⁸ Exhibit 3, pp. 195-96; Interviews with Parent and Case Manager.

supports and services that Student's IEP indicated would be provided while [Student] was attending Community College are the same for purposes of considering what supports Student's IEP would require at the internships.

46. The IEP service delivery statement provided that if Student attended Community College in the fall of 2012, [Student] would have minimal support, i.e., [Student] would not have a paraeducator, and would therefore need to "take advantage of the support offered at school through [Student's] case manager and social worker" to discuss behavioral issues that may arise while [Student] is on campus.⁷⁹ Student's BIP specifically stated that it would not be implemented at Community College. Regarding accommodations, the IEP stated that the accommodations described as extra time on assignments and allowing work and tests completion in an alternate setting could be implemented at Community College if approved by the college, but the other accommodations listed on Student's IEP would not be implemented.⁸⁰

47. The purpose of the ACE internships is to provide students with an opportunity to experience various work environments to see if the actual environment matches their expectations.⁸¹ It also provides transition age students with the opportunity to further develop the self-advocacy and behavioral management skills they will need to be successful at work or in college, after they graduate. Student, who is 17 and expected to graduate next year, will not have a behavioral intervention plan or paraprofessional support in the community college or job setting. Rather, [Student] will need to manage [Student's] behavior and advocate for [him/herself] without these supports. Both the Community College class and the ACE internships were intended to expose Student to the expectations [Student] would soon be facing, while still providing some support through Case Manager, Social Worker, and the ACE class. In fact, the service delivery statement in Student's November 2012 IEP, developed after Parent and School decided Student would not attend Community College, provides that Student may be placed in an internship class where [Student] would be expected to follow the same expectations as other students; would have minimal support, i.e., no paraprofessional services; and, would need to "take advantage of the support offered at the high school through [Student's] case manager and social worker."⁸²

48. Because the Community College and ACE internship environments are analogous, the SCO finds that Student's IEP does not require that the BIP, paraprofessional support, and accommodations be provided at the internships.

49. Consistent with Student's March 2012 IEP, District has provided behavioral support at School for the internships through the ACE Teacher, Case Manager, and Social Worker. Prior to the start of Student's first internship, Student and ACE Teacher met in-person with the training

⁷⁹ Exhibit 1, p. 66.

⁸⁰ Exhibit 1, p. 61. Interview with Case Manager and Special Education Director.

⁸¹ Interview with ACE Teacher and Special Education Director.

⁸² Exhibit 1, p. 111.

sponsor to discuss Student's individual needs. At this meeting, the training sponsor was informed that Student would sometimes need additional information to understand what was expected, would require constant supervision and positive reinforcement, and may need a break when [Student] is frustrated. And when Student decided [Student] no longer was interested in this particular opportunity, ACE Teacher requested that Student contact the training sponsor directly to explain [Student] would no longer be participating, as would be expected of an employee who had decided to quit. Based on these facts, the SCO finds that Student was provided with behavioral support consistent with [Student's] IEP at the first internship.

50. And although Student did not actually participate in the second and third internship opportunities, the SCO finds that School continued to provide support consistent with Student's IEP for these opportunities. During the time Student participated in the ACE program, Student had support available through the ACE Teacher, Case Manager, and Social Worker, to discuss any behavioral or internship related concerns and discuss strategies for how to handle certain situations. ACE Teacher, Case Manager, and Social Worker, at various times discussed the expectations of the internships with Student and provided input on what [Student] could have done differently.⁸³ Case Manager's log notes further document his efforts to meet with Student and discuss expectations for the internships.⁸⁴ The support that Parent believes should have been provided to Student's for these internships was not required by [Student's] IEP.

CONCLUSIONS OF LAW

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

Allegations one and four: The School District has properly implemented Student's IEP, including [Student's] BIP and accommodations.

1. Under the IDEA, local education agencies such as the District are required to provide eligible students with disabilities with a free appropriate public education (FAPE) 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. 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.* Where Student's BIP was written and incorporated into [Student's] IEP, a failure to implement it could result in a denial of FAPE. *See id.*

2. However, not every deviation from an IEP's requirements results in a denial of FAPE. *E.G., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations

⁸³ Interviews with ACE Teacher, Case Manager, and Social Worker.

⁸⁴ Exhibit 3, pp. 45-52 (Case Manager log notes documenting meetings with Student); Interviews with ACE Teacher, Case Manager, and Social Worker.

from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE).

3. In allegation one, Parent asserts that the District has not properly implemented Student's BIP since February 1, 2012. As evidence that the District failed to implement Student's BIP, Parent specifically refers to an incident occurring on February 1, 2012. On this date, Parent asserts that Former Paraeducator did not follow the antecedent strategies identified in Student's BIP when he failed to approach Student in a non-confrontational manner, initially met with Student himself rather than request that Case Manager meet with Student, and failed to process the incident with Student. While Student's BIP required that Student be approached in a non-confrontational manner, Former Paraeducator's exchange with Student was not confrontational in nature. Rather, Former Paraeducator was following the BIP's antecedent strategies by ensuring that expectations for appropriate behavior were clear and understood when he informed Student that [Student's] behavior was disrespectful and that there was no need for it. Further, Former Paraeducator was not confrontational or did not otherwise violate Student's BIP when he followed Student to Social Worker's desk to conduct a 1:1 meeting concerning Student's behavior because Student was not permitted unsupervised in Social Worker's cubicle and the space was not in view of other students. (FF 4-13.)

4. Contrary to Parent's assertion, Student's BIP did not require that initial 1:1 confrontations be conducted directly by the case manager. Rather, Student's IEP specifically provided that paraeducators would be the staff responsible for directly and routinely implementing the BIP, including antecedent strategies, and would do so under the supervision of the case manager. Student's BIP required that the Case Manager conduct 1:1 confrontations *only* when Student continued to exhibit disruptive behavior following the initial confrontation with the paraeducator. On February 1, 2012, Former Paraeducator followed the BIP when he initially met with Student 1:1 and then requested assistance from Case Manager when Student continued to be disruptive. Finally, Case Manager did process the incident with Student in accordance with [Student's] BIP following the incident. Accordingly, the SCO concludes that the District properly implemented Student's BIP on February 1, 2012. (FF 4-13.)

5. Aside from the incident on February 1, 2012, the only evidence Parent has provided to support the allegation that the School District has not properly implemented Student's BIP is that School does not always know where Student is during the day and do not always notify her when [Student] has skipped classes. Even if true, these assertions do not show that the District is failing to implement Student's BIPs because Student's BIPs do not require that Student be escorted to class, monitored or followed at all times during the day, or that Parent receive notification each time [Student] has skipped a class. In addressing attendance, Student's

November BIP only required that Parent and Student be contacted by Case Manager whenever Student has earned ISS, when ISS has been rescheduled, and when Student misses a rescheduled ISS. The credible evidence in the record demonstrates that the District has implemented these provisions of Student's BIP. (FF 13-18, and 21-26.)

6. Overall, the credible evidence in the record demonstrates that School has properly implemented all three of Student's BIPs from February 1, 2012 to present. First, Student's paraeducators are properly trained, supervised, and supported in the implementation of Student's BIPs by Case Manager. Case Manager's written case log provides credible documentation that he regularly and frequently meets with Student's teachers and paraeducators to discuss Student's progress on IEP goals and grades, and to address behavioral concerns. Accordingly, the SCO concludes that the District has properly implemented Student's three BIPs, from February 1, 2012, to present. (FF 4-25.)

7. In allegation four, Parent asserts that Student's IEP, specifically accommodations, has not been implemented by [Student's] general education teachers for the 2012-2013 school year. As evidence of a failure to provide required IEP accommodations, Parent notes that Student has not made progress on [Student's] IEP goals and has failing grades. Parent also notes that the District has not provided evidence that they are providing these accommodations, such as sign-in sheets or service logs. (FF 26.)

8. The District has provided credible evidence that Student's general education teachers had access to [Student's] IEP, including accommodations, and that Case Manager checked-in with Student's general education teachers at least once a month, to discuss Student's progress on [Student's] IEP goals, class assignments, and grades. Although Student had a paraeducator in both [Student's] English and History class to provide direct support, both teachers demonstrated familiarity with Student's accommodations and were able to provide illustrations of specific accommodations they regularly provided to Student. Because there is no requirement in the IDEA or Student's IEP that the District provide documentation of the accommodations Student has been provided, a lack of such documentation does not prove that the accommodations have not been provided. Rather, the burden of establishing that the accommodations have not been provided rests with the party bringing the Complaint, i.e., Parent. Parent has not met this burden. (FF 26-31.)

9. Parent also alleges that Student has not made progress during the 2012-2013 school year because [Student's] IEP has not been properly implemented in the general education classroom. While the SCO agrees that Student has made minimal progress on [Student's] IEP goals and has failing grades, she disagrees with Parent as to the cause of Student's poor performance. Rather than demonstrating a failure to properly implement Student's IEP, the SCO found that Student's poor progress and failing grades were more likely due to truancy. In the fall of 2012, Student began skipping classes at an increasing rate. By January 2013, Student has missed approximately 114 class periods. Student's four general education teachers reported that [Student's] grade was the result of poor attendance and/or missing work. For

example, Student missed nearly half of the scheduled classes for both PE courses and often refused to dress-out when [Student] did come to class. Similarly, Student's minimal progress on [Student's] IEP goals more likely reflects significant amount of instruction time lost by skipping class. Accordingly, the SCO concludes that Student's lack of progress during the 2012-2013 school year does not establish Parent's allegation that [Student] has not received the support and accommodations required by [Student's] IEP. (FF 26-34.)

10. Because truancy is a behavior that impedes learning, Student's attendance problems could have resulted in liability under IDEA if the District had ignored or otherwise failed to address this behavior through the IEP process, but it has not done so. Rather, the School District has actively worked with Parent to address this concern, including amending Student's BIP to address attendance. The District continues to address Student's truancy and is in the process of completing Student's triennial evaluation, where Student's truancy remains a primary focus. And when it comes to a seventeen-year old student who refuses to go to class, or remain in class after being escorted, a school is limited in what it can do. Accordingly, the SCO concludes that Student's IEP has been properly implemented in the general education class, that [Student's] lack of progress is more likely the result of truancy, and that the District has taken appropriate steps to address Student's truant behavior through the IEP process. (FF 26-34.)

Allegations Two and Three: The District was not obligated to implement Student's IEP at the internships or share it with the internship training sponsors.

11. Parent has alleged that Student's IEP, including [Student's] behavioral intervention plan and paraprofessional support, was not made available and, consequently, was not implemented at internships Student participated in through the ACE program. A student's IEP must be made accessible to each general education teacher, special education teacher, related service providers, and "any other service provider who is responsible for the implementation" of the IEP. 34 CFR § 300.323 (d)(1). Further, the public agency must ensure that each teacher and service provider responsible for implementation of a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR § 300.323 (d)(2). Therefore, the District would be required to provide an internship training sponsor with access and instruction concerning Student's IEP if the training sponsors were responsible for its implementation.

12. Here, the School District was not required to provide the internship training sponsors access to Student's IEP, pursuant to 34 CFR § 300.323 (d)(1), because the training sponsors were not responsible for its implementation during the internship. The internship training sponsors were private business owners or employees who had agreed to provide School students with an internship opportunity through the ACE program and were not employees or under the direct control of the District. Because they were not employees of the District, providing the internship training sponsors with Student's IEP without written parental consent

would have violated federal privacy laws under FERPA. *See* 34 CFR § 99.31. That said, ACE Teacher, with Student’s participation, did discuss behavioral concerns and strategies with the first and second internship training sponsors. Such discussion was not had with the training sponsor of the third internship because the opportunity ended before it was formally accepted. (FF 36-43.)

13. Finally, the School District provided support and services for the three internship opportunities in a manner that was consistent with Student’s IEP. Although Student’s IEP did not specifically reference the support that Student would be receiving during an off-campus internship such as the ACE program, the SCO found that the IEP provisions regarding how Student’s IEP would be implemented in a community college setting were analogous to an internship setting. Because Student’s IEP did not require that [Student’s] BIP, paraprofessional support, and accommodations other than extended time be provided at community college, the District was not required to provide these supports during [Student’s] internship. Rather, Student was to receive behavioral support for [Student’s] internships through the ACE class, ACE Teacher, Case Manager, and Social Worker. These supports were made available in a manner consistent with [Student’s] IEP throughout the ACE internships. Accordingly, the SCO concludes that the District did not violate the IDEA when it did not implement Student’s BIP or provide paraprofessional support at the internship site. (FF 42-50.)

14. Concerning allegation one, the SCO concludes that the District has properly implemented Student’s BIP at School for the time relevant to the Complaint, including the incident on February 1, 2012. Concerning allegation two, the SCO concludes that the District was not required to provide training sponsors at Student’s internships with access to [Student’s] IEP and that doing so would have violated federal privacy laws. Concerning allegation three, the SCO concludes that the District provided support consistent with Student’s IEP when it did not implement [Student’s] BIP or provide paraprofessional support at the internships but offered support through the ACE program, ACE Teacher, Case Manager, and Social Worker. Concerning allegation four, the SCO concludes that Student’s lack of progress on IEP goals and poor grades for the 2012-2013 school year are more likely the result of [Student’s] truancy than a failure of [Student’s] general education teachers to provide the required accommodations. The School District is actively addressing Student’s truant behavior through the IEP process.

REMEDIES

Because the District has not violated the IDEA, no remedies are 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

CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 15th day of March, 2013

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-7.

Exhibit A: 2009 Letter from private physician.

Exhibit B: March 2012 IEP.

Exhibit C: February 2012 letter from School staff dated.

Exhibit D: March 2011 IEP.

Exhibit E, F, and H: Email correspondence between Parent and various School staff.

Exhibit G: Documentation concerning vocational internship program.

Exhibit I: IEP progress reports dated 10/2012.

Exhibit J: District psycho-educational evaluation.

Exhibit K: IEP progress reports dated 12/2012.

Reply, pages, 1-5.

Exhibit L: Email correspondence.

Exhibit M: Notice of meeting dated 12/2012.

Exhibit N: Addendum to educational report by School Psychologist dated 2/2013.

Response, pages 1-17.

Exhibit 1: Student's IEPs dated 3/2011, 3/2012, and 11/2012, including meeting notes.

Exhibit 3: Progress data sheets, disciplinary reports, February 2012 incident report, communication logs from Student's Case Manager.

Exhibit 4: ACE contracts, policies, and procedures.

Exhibit 5: Parent handbook and District policies and procedures.

Exhibit 6: District calendar for the 2012-2013 school year.

Exhibit 8: 2011-2012 grades and progress reports.

Exhibit 9: 2012-2013 grades and progress reports.

Exhibit 11: 2011-2012 assessments.

Exhibit 12: 2012-2013 assessments.

Exhibit 13: 2011-2012 attendance records.

Exhibit 14: 2012-2013 attendance records.

Exhibit 15: Contact information for District and School staff with knowledge of facts relevant to complaint allegations.

Exhibit 16, 17, and 18: Email correspondence between Parent and District.

Exhibit 19: Student's schedule for the 2012-2013 school year.

Interviews with:

- Special Education Director
- Special Education Coordinator
- Case Manager
- School Social Worker
- Former Paraeducator
- ACE Teacher
- English Teacher
- History Teacher
- Parent
- Parent's Advocate