

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

**State Complaint 2013: 511
Mesa County Valley School District #51**

DECISION

INTRODUCTION

A state-level complaint was received on September 26, 2013. An Amended Complaint (Complaint) was properly filed with the Colorado Department of Education (Department) on October 1, 2013 by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

To comply with the federal privacy laws (i.e., the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))² and to protect the anonymity of the parents and their child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

- [Mother], Mother of Child, (“Mother” or jointly as “Parents”);
- [Father], Father of Child, (“Father” or jointly as “Parents”);
- [Student], Child of Parents, (“Student,” “he” or “his”);³
- Student’s age of [Age], [Age];
- [Sibling], Student’s sibling (“Sibling”);
- [Parents’ Advocate], Parents’ Advocate (“Parents’ Advocate”)
- [Parents’ Attorney], Parents’ Legal Counsel (“Parents’ Attorney”);
- Mesa County Valley, Grand Junction School District #51, (“District 51,”);
- [District 51 Superintendent], District 51 Superintendent of Schools (“District 51 Superintendent”);

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 FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent’s access to education records and to protect the privacy rights of students and their parents.

³ Although Student’s gender may be either male or female, in order to preserve anonymity, the SCO has arbitrarily elected to identify Student as a male in this Decision.

- [District 50 Superintendent], District 50 Superintendent of Schools (“District 50 Superintendent”);
- Mesa County Valley, De Beque School District #49-JT (“District 49”);
- [District’s Attorney], District Legal Counsel, (“District’s Attorney”);
- [Special Education Director], District Director of Student Services, (“Special Education Director”);
- [Executive Director of Equity], District 51 Executive Director of Equity, (“Executive Director of Equity”);
- [Special Education Coordinator #1], District 51 Special Education Coordinator, (“Special Education Coordinator #1”);
- [Special Education Coordinator #2], District 51 Special Education Coordinator, (“Special Education Coordinator #2”);
- [School Psychologist], District 51 School Psychologist (“School Psychologist”);
- [Former Special Education Teacher], Former School Special Education Teacher/Case Manager, (“Former Special Education Teacher”);
- [Present Special Education Teacher], Present School Special Education Teacher/Case Manager (“Present Special Education Teacher”);
- [Former School], (“Former School”);
- [Present School], (“Present School”);
- [District 51 Home School], (“District 51 Home School”);
- [District 50 School], (“District 50 School”);
- [District 50 Principal], District 50 Principal (“District 50 Principal”);

After carefully reviewing the Complaint and interviewing Mother on October 1, 2013, the State Complaints Officer (SCO) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process and its implementing regulations at 34 CFR §§ 300.151 through 300.153.⁴ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO is:

Whether District 50 failed to properly implement Student’s IEP and, if so, whether this failure resulted in Student being denied a free appropriate public education (FAPE).

On September 27, 2013, the SCO briefly interviewed Special Education Director by telephone.

On October 1, 2013 the SCO interviewed Mother by telephone.

⁴ 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).

On October 21, 2013 the District's Response and Exhibits A through S were timely received.

On November 4, 2013 the Parents' Reply and Exhibits 5 through 6 were timely received.

On November 4, 2013 the District's Supplemental Response and Supplemental Exhibits "A" through "U" were received.

On November 6, 2013 Parents supplied additional documentation, Exhibits 7 through 8.

On November 6, 2013 the SCO reviewed the District's Comprehensive Plan which was marked as Exhibit "V."

On November 7, 2013 the SCO interviewed Former Special Education Teacher and Special Education Director by telephone.

On November 8, 2013, the District's Attorney responded to SCO's inquiry concerning the 2013-2014 school year.

On November 11, 2013 the SCO closed the Record.

COMPLAINT, RESPONSE AND REPLY

Parents' Complaint allegation and claims, the District's Response and Parents' Reply are summarized as follows:

Complaint Allegation: Contrary to the December 18, 2012 IEP, during the 2012-2013 school year (i.e., January 8, 2013 to February 22, 2013) and continuously during the 2013-2014 school year (i.e., August 12, 2013 to present) District 50 has failed to provide Student with transportation to and from Present School.⁵

Response: During the Complaint timelines (i.e., January 8, 2013 to February 22, 2013 and August 12, 2013 to present):

- 1) District 50 has no obligation to provide Student transportation under the IDEA or ECEA. Parents filed enrollment paperwork at District 51 School on December 19, 2012. However that enrollment was deemed to be withdrawn or superseded by

⁵ In their Complaint, Parents claimed that District 50 failed to provide special education services, including transportation, for Student. However, in an October 1, 2013 interview, Mother clarified that the only service at issue was transportation inasmuch as District 51 had supplied Student with all of the other special education and related services contained in the December 18, 2012 IEP. Upon information and belief, the SCO concluded that, because District 50 is a member of the District 51 Administrative Unit, District 51 was the proper Respondent. Therefore, in a letter dated October 3, 2013, District 51 was directed to file a Response to the Complaint.

Student's subsequent enrollment at Present School pursuant to Colorado's inter-district school of choice law.

2) District 51 has no obligation to provide Student transportation under the IDEA or ECEA because:

a) The December 18, 2012 IEP contemplated transportation services to and from Parents' District 51 address and not transportation services to and from Parents' District 50 address;

b) Per C.R.S. § 22-32-113(1)(c), District 51 has no authority to provide Student transportation services without District 50's consent, which has not been provided; and

c) Per the District 51's "School of Choice" policy, transportation for school of choice students will not be furnished by District 51 unless that transportation is necessary for the District 51 to comply with state and federal law requirements for disabled students. District 51 knows of no state or federal law which compels it to deviate from its "School of Choice" policy in Student's case.

Reply: District 51's arguments concerning enrollment are irrelevant. Parents reiterated their claims and arguments. Student's December 18, 2012 IEP requires that transportation be provided. District 51 did provide transportation between Student's home in District 50 and Present School between February 25, 2013 and the end of the 2012-2013 school year. Parents "repeatedly requested an IEP to start the transition process and were told that District 50 could not talk to them until [Student] was enrolled." District 50 then intentionally delayed enrollment of Student within the District 50. Parents delivered Student's enrollment packet to the District 50 office on December 19, 2012.

Proposed Remedies: District 51, as the administrative unit: i) promptly begin supplying Student with transportation to and from Present School; ii) Parents be reimbursed for each day that they have provided Student's transportation to and from Present School at the rate of \$67.18 (i.e., 124.4 miles = two round trips each day, x .54 p/mile for a four-wheel vehicle or \$67.18 per day) for each day Student has attended Present School during the complaint timelines minus \$33.58; and iii) Parents be reimbursed \$67.18 for each day after October 1, 2013 that they supplied Student's transportation during the SCO's investigation.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁶ the SCO makes the following FINDINGS:

1. **Administrative Unit.** Upon information and belief, the SCO understood that District 50 was part of the District 51 Administrative Unit. Therefore, in conjunction with its Response to the Complaint, the SCO directed District 51 to supply “a copy of any operating agreement or contract that the District has with District 50 concerning its administrative unit status and/or the delivery of special education and related services under the IDEA.”⁷

2. In its Response, District 51 argued that a 2004 agreement between District 51 and District 50 established that “. . . each district remains an independent administrative unit with ‘autonomous authority’ for decisions pertaining to the provision of programs services for children within their respective districts.”⁸

3. The SCO does not agree. The 2004 agreement supplied by District 51 was not fully executed and, in any event, although the financial terms of that agreement may have been modified from time to time, no modified contract was produced.⁹ Furthermore, the Comprehensive Plan that District 51 supplied to the Department on August 24, 2012 provides that District 51 is the Administrative Unit (AU) for special education services for District 50 (and for District 49).¹⁰

Factual Background:

4. There is no dispute that:

- Since 1999, Student, [age] years of age, has been identified and served as a child with [a disability] who is eligible for special education and related services;
- Throughout the 2011-2012 school year (SY), Student and his Parents resided in District 51, where Student attended Former School; and
- The IEP in effect on January 6, 2012 provided that Student required special transportation on the Special Education Transportation bus because “[Student] is not aware of safety in traffic and is unable to foresee or predict danger.”¹¹

⁶ Appendix A, attached and incorporated by reference, details the entire Record.

⁷ October 3, 2013 letter to District’s Attorney.

⁸ Response, pg. 1 and Exhibit G.

⁹ *Id.*

¹⁰ Exhibit V, pg. 79.

¹¹ Exhibit AA, pg. 7.

5. **Parents' communications with District 50.** Parents allege that in July 2012, in conjunction with plans to purchase a residence in District 50, they spoke with District 50 Principal, who told them that:

- District 50 did not have the resources to educate a student with Student's level of disability;
- District 50 could not provide the services required in the Student's IEP;
- Typically, District 50 arranged for students such as Student to be educated at a school in District 51; and
- District 50 has an agreement with District 51 to bus students.¹²

Parents also claim that from August through October 2012, they went to District 50 School "in attempts to get an IEP on the calendar, they [sic] refused."¹³ District 51 denies the claims. Specifically, District 50 Principal states that:

- He was not working during the month of July 2012;
- He first met Parents during the week of August 6, 2012, in a hallway of District 50 School;
- The encounter was very brief, as a District 50 employee was giving Parents a tour of District 50 School;
- He has never told either Parent that District 50 did not have the resources to serve students with Student's level of disability or needs;
- He has never reviewed any IEP developed for Student;
- He has never been present when Student's IEP was discussed;
- He does not know what services Student requires or whether those services are available in District 50;
- He did meet with Mother in late November or early December 2012, at which time she asked whether District 50 would transport Student to a school in District 51; and
- He told Mother that her question could not be answered until Student was enrolled in District 50 and an IEP meeting was conducted at District 50 School to determine placement.¹⁴

The SCO finds the statements of District 50 Principal credible. It is not credible that a school administrator would ever make a determination about whether their school could provide for a student's needs under the circumstances described by Parents. Such a decision is made by an IEP team and not by an individual school administrator. Nor is there any evidence in the Record that Parents ever scheduled a formal meeting with District 50 Principal, supplied him

¹² Complaint, pgs. 2 and 5-6. Exhibit 5, pg. 1.

¹³ Complaint, pgs. 2 and 5.

¹⁴ Affidavit of District 50 Principal, Exhibit H, pgs. 7-9.

with a copy of Student's IEP, or ever sought to have District 50 participate in or conduct an IEP meeting.

6. In their Complaint, Parents claim that "[District 50] does not provide any special education services for its students at its own facilities and must rely on transporting those students to the schools in . . . District 51." This cannot be a true statement, as Parents' other child (i.e., Sibling) has been receiving special education services in District 50 School since November 28, 2012.¹⁵

7. On November 26, 2012, Parents met with and obtained District 51 Superintendent's agreement that Student could attend Present School (located in District 51) when the district's third quarter began in January 2013. There is no evidence in the Record indicating that District 51 Superintendent conferred with District 50 staff prior to making this agreement.

8. District 51 characterizes this as a "school of choice" agreement.¹⁶ Parents do not deny the characterization but argue that it is District 51's capacity as the AU and C.R.S. § 22-20-106(3)(a) that control.¹⁷ The SCO specifically finds that Parents' decision to have Student attend Present School was a "school of choice" determination and not made because District 50 could not supply FAPE.

9. On November 28, 2012, Sibling was enrolled in District 50 School and began attending the school the same day.¹⁸

10. There is conflicting information concerning the exact date that Parents moved from their residence in District 51 to their current address in District 50:

- Missing from the Complaint is a specific date that Student, Parents and Sibling began residing in District 50;
- Parents closed on the purchase of their District 50 house on September 12, 2012;¹⁹
- Mother claimed that the family began residing at the District 50 address "about one week after the date of closing;"²⁰
- However, District 51 records indicate that, between August 20th and November 9th, 2012, Student and Sibling rode the school bus to and from their District 51 residence and Former School (in District 51);²¹

¹⁵ Complaint, pgs. 2 and 5-6. Interview of Mother. Exhibits 5 and H, pgs.3-9.

¹⁶ Complaint, pg. 3 and Response, pg. 4.

¹⁷ Reply, pg. 4.

¹⁸ Interview of Mother, Complaint, pg. 6 and Response, pgs. 2-3.

¹⁹ Complaint, pg. 5.

²⁰ Interview of Mother, Complaint, pg. 5 and Exhibit J.

²¹ Exhibit K, pgs. 1-14.

- In a November 27, 2012 email, Special Education Coordinator #1 notified several staff (e.g., Special Education Director, School Psychologist #2 and District 50 Principal) that “although Parents recently moved into [District 50],” their request to have Student “transfer” into Present School in District 51 had been granted;
- However, subsequent emails indicate that staff were unclear about which district Parents and their children were residing;²²
- The December 18, 2012 draft IEP lists Parents’ residential address in District 51, while the finalized IEPs list Parents’ residential address in District 50;²³
- However, all three IEPs list Student’s “home district” and “service district” as District 51 and his “home school” as Former School;²⁴
- During the December 18, 2012 IEP meeting, Father stated that Parents “still owned the District 51 property . . . it was a legal address . . . ‘we’ll use the [District 51] address’ . . . [and Student] would not be coming to [District 50 School] but would instead [be] transferring to [Present School] . . . The IEP team did not question [Father’s] statement regarding residency and used the [District 51] address for the IEP . . . ”;²⁵
- Student continued to attend Former School until December 21, 2012, District 51’s last day of the first semester;²⁶ and
- On November 28, 2012, when Sibling was enrolled and began attending District 50 School, Parents listed their residence at the District 50 address.²⁷

Given the conflicting and contradictory information in the Record, the SCO finds that, by at least November 28, 2012 Parents, Student and Sibling were residing in District 50.

11. The December 18, 2012 IEP. The SCO specifically finds:

- The meeting was conducted at Former School by District 51;²⁸
- District 51 Special Education Coordinator #1 directed School Psychologist to attend the IEP meeting “as a [District 50] representative” because of the possibility that Student, like his sibling, would soon be enrolled in District 50;²⁹
- Although School Psychologist provides some services at District 50 School, she is employed by District 51;³⁰

²² Exhibit S, pgs. 1 and 3-4.

²³ Exhibit 1, pg. 1 (finalized) and Exhibit A, pgs. 1 (draft) and 29 (finalized). The SCO finds credible the District’s assertion that the address in the December 18, 2012 IEP was automatically changed by the District’s student data system to Parent’s District 50 address when Student was enrolled at Present School on January 11, 2013.

²⁴ *Id.*

²⁵ Affidavit of School Psychologist, Exhibit H, pg. 4, paragraph 8.

²⁶ Exhibits O, pg. 3 and F, pg.1.

²⁷ Exhibit H, pg. 4, paragraph 8.

²⁸ Exhibit B, pg. 1.

²⁹ Exhibit H, pg. 4, paragraph 9 and Reply, pg. 2.

³⁰ *Id.*, pg. 3, paragraph 1.

- The IEP Team was composed solely of District 51 staff;³¹
- When the December 18, 2012 IEP meeting was conducted, the location of the school Student would attend when the third quarter began in January 2013 (i.e., Present School in District 51) had already been determined by Parents and District 51 Superintendent (i.e., on November 26, 2012);³²
- District 51 Superintendent was not a member of the IEP Team and he did not attend the December 18, 2012 IEP meeting;³³
- During the meeting, Father claimed that their District 51 address “was legal” and made it clear that Student would be attending Present School and not District 50 School;³⁴ and
- The December 18, 2013 IEP provided that Student would “need Special Transportation, needed to be transported door to door, would not be able to navigate any distance safely and would not be able to walk in any traffic safely.”³⁵

12. On December 19, 2012, *the day following the IEP meeting*, Parents delivered enrollment documents to District 50.³⁶ On the same date, District 50 staff sent a facsimile to Former School, requesting that Student’s records be sent to the District 50 Registrar.³⁷ The SCO specifically finds that, contrary to Parents’ claims, District 50 did not delay in processing Student’s enrollment papers.

13. On December 20, 2012, School Psychologist spoke with Father by telephone, confirmed that Student’s District 50 enrollment papers had been received at District 50 School and that an IEP meeting concerning Student’s placement and programming needed to be scheduled. Father advised School Psychologist that Student would not attend District 50 School and would instead be going to Present School. Father added that the only reason they had dropped off District 50 enrollment papers was to obtain payment of transportation expenses for Student’s attendance at Present School.³⁸

14. On January 11, 2013, Student began attending Present School in District 51.

15. On January 18, 2013, School Psychologist spoke with Parent’s Advocate. School Psychologist stated that she believed District 50 School could provide Student with an appropriate program. Parents’ Advocate suggested that a meeting be held to discuss this.

³¹ Exhibit A, pgs. 28 and 51.

³² Interview of Mother, Complaint, pgs. 5-6, Response, pg. 4 and Exhibit H, pg. 11.

³³ Exhibit A, pgs. 30 and 52.

³⁴ *Id.*, pg. 4, paragraph 10.

³⁵ Exhibit A, pg. 36.

³⁶ Exhibits H, pgs. 4-5 and N, pgs. 1 and 4-7. *Compare:* In SCO’s Interview of Mother, she stated that she told District 50 Principal she would come in and enroll Student in District 50 the day before the [12/18/2012] IEP meeting was scheduled.

³⁷ Exhibits N, pg. 1, and H, pgs. 4 and 8-9

³⁸ Affidavit of School Psychologist, Exhibit H, pgs. 4-5.

However, Parents later advised Executive Director of Equity that they did not want Student to attend District 50 School and were only interested in transportation to and from the District 50 residence.³⁹

16. There is no dispute that between January 11, 2013 and October 1, 2013, District 51 continuously provided all special education and related services listed in Student's December 18, 2012 IEP, except for transportation services.⁴⁰

17. In February 2013, Superintendents of Districts 50 and 51 had discussions about Parents' request for transportation services between their District 50 address and Present School. A written agreement was reached on or about February 21, 2013. Relevant recitals in the Transportation Services Contract between District 51 and District 50 provided:

- District 51 Superintendent agreed that, beginning in January 2013, Student could attend Present School in District 51 as a school of choice student;
- Student and his Parents moved into District 50 in December 2012;
- Neither district was required to provide Student with transportation in connection with a school of choice enrollment;
- Between February 25, 2013 and June 30, 2013, District 51 agreed to supply Student with transportation between his District 50 residence and Present School;
- District 50 agreed to reimburse District 51 per monthly invoices for actual expenses incurred in conjunction with that transportation; and
- The agreement "does not constitute an admission by either [district] that the Child or his parents is entitled to transportation to or from [Present School] at public expense or that [District 50] is or would be unable to provide a [FAPE] to the Child in the event he was enrolled in a [District 50] school."⁴¹

The SCO specifically finds that neither district agreed to reimburse Parents for transportation they supplied between January 11, 2013 and February 22, 2013.

18. A meeting between Mother and District 51 staff was conducted on March 12, 2013 for the purpose of amending various provisions in Student's December 18, 2012 IEP. (None of the meeting topics are relevant to the Complaint). There is no evidence in the Record that any District 50 staff member was invited to attend that meeting.⁴²

19. On July 30, 2013, Parents were notified that neither District 50 nor District 51 would consent to supplying transportation in order for Student to attend Present School during the

³⁹ Exhibit H, pg. 5, paragraphs 13-17.

⁴⁰ Interview of Mother.

⁴¹ Exhibit I, pgs. 1-2.

⁴² Exhibit A, pg. 24.

2013-2014 SY. Nevertheless, during the 2013-2014 SY, Parents voluntarily elected to enroll Student in Present school and have transported him to and from their residence in District 50.⁴³

20. Given the credible information in the Record, the SCO specifically finds that:

- Contrary to Parents claims, District 50 has never refused to put an IEP meeting on the calendar;⁴⁴
- Parents have supplied no evidence establishing that District 50 could not provide Student with a FAPE;⁴⁵
- Parents did not invite any District 50 staff (e.g., District 50 Principal, Counselor or Special Education Teachers) to the December 18, 2012 IEP meeting, although Parents and Student were then residing in District 50;⁴⁶
- Parents first notified District 50 that Student was residing in the District on December 19, 2012, *the day after the December 18, 2012 IEP meeting* had been conducted;⁴⁷
- Student began attending Present School in District 51 on January 11, 2013;⁴⁸
- Although Parents and Student have resided in District 50 since at least November 28, 2012, an IEP meeting has never been conducted to determine whether District 50 could provide Student the special education and related services detailed in the IEP;⁴⁹ and
- The SCO specifically finds that Parents preferred that Student attend Present School rather than District 50 School.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact (FF), the SCO enters the following CONCLUSIONS OF LAW:

21. **Administrative Unit.** One of the purposes of the IDEA is to ensure that all children with disabilities have available to them a Free Appropriate Public Education (FAPE). § 300.1(a). Local education agencies are required to provide eligible students with a FAPE by providing special education and related services, tailored to the student's unique needs, in conformity with *the student's IEP*. 34 C.F.R. § 300.17(d) and ECEA Rule 2.19.

22. The term "local education agency (LEA)" means a *public board of education* or other public authority *legally constituted within a State for either administrative control or direction of, or to perform a service function for,* public elementary or secondary schools in a city, county,

⁴³ Complaint, pg. 3 and Exhibit H, pgs. 19-20.

⁴⁴ See Finding of Fact #6, above.

⁴⁵ *Id.*

⁴⁶ See Finding of Fact #s10 & 11, above.

⁴⁷ Exhibit N, pgs. 1 and 4.

⁴⁸ Exhibits 7, pg. 1 and 8, pg. 1.

⁴⁹ See Finding of Fact #13, above.

township, school district, or other political subdivision of a State, *or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.* 34 C.F.R. § 300.28. (Emphasis added).

23. Colorado law defines “administrative unit” as a school district . . . that is providing educational services to exceptional children and that is responsible for the local administration of these [ECEA] Rules.” ECEA Rule 2.02. Every school district that provides services to children with disabilities is either an administrative unit or is part of an administrative unit:

(a) Districts that do not meet the qualifications of an administrative unit shall enter into an operating agreement to become part of an approved administrative unit . . . *Multi-district administrative units shall have signed operating agreements entered into by the administrative units with its member districts.* Such operating agreements shall clearly set out the special education responsibilities of the administrative unit and each member district and shall be binding throughout the period of the operating agreement . . . The operating agreement shall also address the special education fiscal arrangement between the AU and its member districts.

(b) The administrative unit shall provide special education services to all children with disabilities within its responsibility as defined in Section 8.00 of the Rules.

ECEA Rule 3.01(2). (Emphasis added). An AU’s duties and responsibilities include child find, referral, evaluation, planning and delivery of services in accordance with the IEP. ECEA Rule 8.01(1)(e).

24. Although the Complaint was filed against District 50, the SCO directed District 51 to respond to the Complaint based upon the understanding that District 51 was the Administrative Unit for Districts 50 and 49. (FF #1). Despite District 51’s arguments to the contrary, consistent with ECEA Rules 3.01(2) and 8.01(1)(e), District 51 is the Administrative Unit (AU) for District 50 (and for District 49). (FF #3).

25. **District of Residence vs. District of Attendance.** When determining which public entity is responsible for providing special education services to children between the ages of 3 and 21 years, Colorado law provides that it is the child’s district of residence, *i.e.*, where the child and his or her parents reside, that is responsible for providing that child with a public education, including any special education and related services that the child may require. C.R.S. § 22-102(1). “For purposes of [the ECEA], the *district of residence* of a child with a disability is the school district in which such child lives on a day-to-day basis . . .” C.R.S. § 22-20-107.5(1). (Emphasis added).

26. Student and Parents have been residing in District 50 since November 28, 2012. (FF #9). Consistent with C.R.S. § 22-20-107.5(1), since that date, District 50 has been Student’s district

of residence. Since January 11, 2013, Student has been attending Present School in District 51, (district of attendance). (FF #13).

27. Colorado law does, however, allow students to attend public school outside of their district of residence under the Public Schools of Choice Act, C.R.S. § 22-36-101. Where a student (or his parents) elect to attend school outside of the home district under the Schools of Choice Act, however, the parents are obligated to provide the student with transportation to and from school unless the affected school districts otherwise agree. Without considering the issue of FAPE, in Colorado an adjoining school district has the option of voluntarily agreeing to pay for a student's out of district transportation:

(1) The board of education of a school district *may furnish* transportation:

...

(c) To and from public schools for any reasonable classification of pupils enrolled in the schools of the district who are resident of any other school district, if the district of residence is adjacent to the district of attendance, *and if the board or other governing body of the district of residence shall consent to such transportation . . .*

...

(4) A board *may reimburse* a parent or guardian for the expenses incurred by such parent or guardian in furnishing transportation to and from a public school or designated school vehicle stop for his or her child or children and for other pupils enrolled in the schools of the district; but *the board may not reimburse any person for transportation furnished to a pupil resident in another school district without the consent of the board or other governing body of the district of residence*. The amount and payment of such expenses shall be as determined by the board paying such expenses.

C.R.S. § 22-32-113(1)(c) and (4). (Emphasis added). The statutory language “may provide” is permissive. The statute does not mandate (e.g., use ‘shall provide’ language) that a district of residence pay the transportation costs for parents who, through a school of choice election, have their child attend school outside the district of residence.

28. Student's December 18, 2012 IEP provides that, due to his disability, Student needs special transportation door-to-door because he would not be able to navigate any distance safely or walk in any traffic safely. (FF #10). The term “related services” in an IEP means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. § 300.34. “Transportation” means travel to and from school. § 300.34(b)(16). If an IEP Team determines that a disabled student needs transportation to benefit from special education, the transportation must be specified in the IEP as a related service and provided at no cost to the student or parents. *Letter to Hamilton*, 25 IDELR 520 (OSEP 1996).

29. In this situation, however, Student's entitlement to transportation as a related service is complicated by the fact that Student resides in District 50 and is attending Present School in District 51 under the School of Choice Act. As noted above, neither District 50 (the district of residence) nor District 51 (the district of attendance) is required to provide special transportation or reimburse transportation expenses when a parent chooses, out of a preference, to send their child to a school out of district. C.R.S. § 22-32-113(1)(c) and (4).

30. The Superintendents of Districts 50 and 51 discussed Parents' first transportation request. In a written Transportation Services Contract, consistent with C.R.S. § 22-32-113(1)(c), it was agreed that, between February 25, 2013 and June 30, 2013, District 51 would supply Student with transportation services and, subject to billing, District 50 would reimburse District 51 for its actual expenses. However, the agreement made no provision for reimbursement of Parents for transportation that they had supplied between January 11, 2013 and February 22, 2013. (FF # 16).

31. In July 2013, consistent with C.R.S. § 22-32-113(1)(c), the superintendents considered Parents' request for transportation during the 2013-2014 SY. However, Parents were notified that neither district would consent to supply transportation in order for Student to attend Present School during the 2013-2014 SY. Despite this notification, Parents enrolled Student at Present School and have supplied his transportation from August 12, 2013 to present. (FF # 18).

32. Neither District has agreed, pursuant to consistent with C.R.S. § 22-32-113(4), to reimburse Parents for transportation costs they have incurred during the 2013-2014 SY.

33. Further, the federal courts have held that where a student with a disability attends school outside of the home district because of parental preference, there is no absolute entitlement to publicly funded transportation, even if the child's disability requires special transportation as a related service. For example, the Court of Appeals for the Eight Circuit has held that when the district of residence was providing FAPE but the student wanted to go to another school for reasons of parental preference, establishment of a special bus route for a single student places an undue burden on the school district. *Timothy H. v. Cedar Rapids Community Sch. Dist.*, 178 F.3d 968 (8th Cir. 1999); *see also Fick v. Sioux Falls Sch. Dist.* 49-5, 337 F.3d 968 (8th Cir. 2003)(where a student with a disability elects, out of a personal choice and not due to a disability, to attend a school in a district other than the neighborhood school the child would normally attend, the district of residence is not required to provide transportation to out-of-district school).

34. In this case, Parents have supplied no evidence establishing that District 50 could not provide Student with a FAPE. Nor has an IEP meeting been conducted to determine whether District 50 could provide Student the special education and related services detailed in the IEP. (FF #19). Here, given the evidence, it was determined that Parents merely preferred that

Student attend Present School rather than District 50 School (FF #19). Accordingly, Student is not entitled to transportation from the district of residence (District 50) to a school in District 51.

35. There being no violation of the IDEA or ECEA, no remedies are ordered.

36. If Parents believe that District 50 School would be an inappropriate placement they can request an IEP meeting so that the IEP Team can make a determination about FAPE at District 50 School. 34 C.F.R. § 300.324(b)(1).

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).

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

Dated this 20th day of November, 2013.

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A

Parents' 10/01/2013 Complaint, pages 1 through 7.

Exhibit 1: 12/18/2012 IEP

Exhibit 2: Mapquest, from [City], Colorado to Present School

Exhibit 3: District's 11/29/2012 Notice of Meeting

Exhibit 4: District's 12/19/2012 ESY Data Determination

District's Response, pages 1 through 9.

Exhibit A: 12/18/2012 draft IEP and 12/18/2013 Current IEP & 03/12/2013 Amendment

Exhibit B: 11/29/2012 Notice of Meeting

Exhibit C: 12/18/2012 IEP Meeting Participants

Exhibit D: 04/30/2012 Prior Written Notice

Exhibit E: Staff having knowledge of facts relevant to Complaint

Exhibit F: 2012-2013 and 2013-2014 District & District 50 Calendars

Exhibit G: 2003 and 2004 Operating Agreements

Exhibit H: Phone messages, Affidavits of District School Psychologist and District 50 Principal, assorted emails and notes

Exhibit I: 02/21/2013 Transportation Services Contract

Exhibit J: 09/12/2012 Warranty Deed

Exhibit K: District Transportation Logs, 08/20/2012 to 12/21/2012

Exhibit L: Transition Meeting Trip Logs, 12/04/2012 to 12/12/2012

Exhibit M: 02/15/2013 Letter to Father and 02/13/2013 to District 50 from Father

Exhibit N: 12/19/2012 District 50 enrollment papers

Exhibit O: District enrollment papers: 2011-2012 SY and 08/20/2012 to 12/21/2012; and 05/23/2012 District Special Transportation Request to begin 08/20/2012

Exhibit P: District enrollment papers: 01/08/2013 and 08/15/2013

Exhibit Q: District Enrollment History 2011-2012 to 2013-2014 SYs

Exhibit R: District School of Choice policies

Exhibit S: Staff string emails, 11/27/2012 to 12/20/2012

Parents' Reply, pgs. 1 through 6.

Exhibit 5: 10/31/2013 Letter from Father to Parents' legal counsel

Exhibit 6: 2012-2013 school attendance report & School calendar

Additional Parent documentation considered:

Exhibit 7: Affidavit of Mother

Exhibit 8: Affidavit of Father

District's Supplemental Response, pgs. 1 through 8.

Exhibit A, pgs. 51-52: Typed lists of staff meeting participants

Exhibit AA: IEP of 01/06/2012, pgs. 1-25.

Exhibit BB: Meeting notice to Parents for 01/06/2012 IEP meeting
Exhibit CC: 01/06/2012 sign-in sheet and typed sheet of staff meeting participants
Exhibit C, pg. 2: Typed list of 12/18/2012 meeting participants
Exhibit D, pgs. 3-6: Ex. Spec. Ed. Coordinator job description, 05/04/2012 Sped. Dir. Meeting notes and 11/10/2012 string email re: Student
Exhibit E: Revised list of staff having knowledge of facts relevant to the Complaint
Exhibit G, pgs. 12-13: District 50's 2012 & 2013 Oct. counts and District's 2012 & 2013 Dec. counts.
Exhibit T, pgs. 1-5: Student's 2012-2013 & 2013-2014 District attendance records
Exhibit U, pgs. 1-6: Siblings 2012-2013 & 2013-2014 attendance records

Additional District Documentation Considered:

Exhibit V, pgs. 1-81: District's 8/24/2012 Comprehensive Plan

Interviews of:

Mother, Former Special Education Teacher and Special Education Director.