

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

State-Level Complaint 2014:504
Weld County SD 6

DECISION

INTRODUCTION

This third-party state-level complaint (Complaint) was filed on March 6, 2014, on behalf of two students each identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified two 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.

COMPLAINT ALLEGATION

The Complaint raised two allegations, summarized as follows:

1. The District is not providing speech language services in accordance with Student One's individualized education program (IEP).
2. The District is not providing speech language services in accordance with Student Two's individualized education program (IEP).

SUMMARY OF THE DISTRICT'S RESPONSE

The Special Education Director conducted an investigation into the Complaint allegations and concluded that the District could not document that it provided the speech language services required on each Student's IEP. For each Student, the District calculated the speech language

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).

services owed and scheduled a meeting with each Student's Parent to offer compensatory services equal to the services that had been missed.

SUMMARY OF REPLY

Although the Complainant acknowledged the District's offer to provide compensatory services to each Student, he asserted that the District failed to respond to repeated requests for these services made by various individuals, including him, special education professionals employed by the facility, and the assigned social worker from the county Department of Human Services (DHS).

FINDINGS OF FACT

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

Background:

1. At all times relevant to the Complaint, both Students had been placed in residential facilities with approved facility schools by the county Department of Human Services (DHS), an agency authorized by law to place a child in a facility with an approved facility school. At all times relevant to the Complaint, Parents of both Students retained parental rights and resided within the District. The District does not dispute that it is the administrative unit (AU) of residence for both Students.⁴
2. When a student who is eligible for special education services is placed into an approved facility school by a public agency, the AU of residence must arrange for services or personnel that are required by the student's IEP but not included in the approved facility school's tuition costs.⁵ In this case, the tuition costs application for each facility school that Students attended did not include the costs of a speech language therapist or specialist.⁶ Consequently, the District was responsible for sending a speech language therapist to provide these services or for making arrangements to contract with a qualified provider in the area. Whether the District provided the speech language services required will now be discussed for each Student, respectively.

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

⁴ Complaint; Response; Exhibits 1 and 3; CDE database inquiry for students in approved facility schools.

⁵ Tuition Costs are defined as the amount of expenditures for special education services over and above applicable revenues for a child with a disability who receives his or her special education services in an eligible facility. ECEA Rule 9.01(8). While the ECEA Rule Section governing this issue uses the term tuition costs, the term excess costs is also commonly used to refer to this issue. CDE Out-of-District Manual available at <http://www.cde.state.co.us/sites/default/files/00-FAC-OOD%20Manual.pdf>.

⁶ CDE records of excess cost applications for the 2013-2014 school year.

Speech Language Services for Student One:

3. Student was determined eligible for special education and related services on November 7, 2013, as a child with a speech or language impairment.⁷ According to the IEP, Student should receive 180 minutes of direct speech language services each month.⁸
4. On or around November 16, 2013, DHS transferred Student from Former Facility School to Facility School.⁹ There is no credible evidence that county DHS provided the District with written notification of this placement, as required by ECEA Rule 9.03(2)(a)(ii).¹⁰
5. On November 19, 2013, District Special Education Coordinator received an email from a special education teacher from Facility School regarding Student's services. Communication between District Special Education Coordinator and the Facility School Special Education Teacher continued for several weeks to discuss various options for locating an appropriate provider.¹¹ The Facility School informed the District that while it did not have a standing contract for a speech language therapist, it had contracted with a local school district to provide these services in the past. In addition, the District had staff qualified to provide speech language services who lived close enough to the Facility School that it wanted to explore providing these services through its own personnel.¹²
6. In mid-December 2013, the District informed Facility School that it was not able to locate a speech therapist for Student and requested that the Facility School consider contracting with a local school district, as had been previously discussed, and the District would pay for the services.
7. In January of 2014, the District received a contract from Facility School for tuition costs for speech language services. Although the District acknowledged responsibility for paying for the services, there was an apparent misunderstanding as to who would be arranging the services. When the District did not hear back from the Facility School regarding a contract with

⁷ Exhibit 1, p.5; Exhibit 6, p. 2.

⁸ Exhibit 1, p.5; Exhibit 6, p. 2.

⁹ The SCO left multiple messages with the county DHS case manager assigned to each Student requesting to interview her.

¹⁰ Special Education Director credibly stated that the District's Exceptional Student Services department was not notified by DHS regarding these Students. The SCO left multiple messages with the county DHS social worker assigned to these students requesting an interview. Although the District has not done so in this case, it could hold the public agency responsible for the tuition costs until the required notice is provided. ECEA Rule 9.03(2)(a)(ii).

¹¹ Response, p. 2.

¹² Interview with Special Education Director, Special Education Coordinator, and Facility School Special Education Director.

a local school district, the Special Education Director contacted the special education director of the local school district directly and arranged for speech language services to be provided.¹³

8. On March 14, 2014, the District contracted with a local school district to provide current and compensatory speech language services to Student. Student began receiving speech language services in accordance with her IEP on March 20, 2014.¹⁴ The Facility School Special Education Director confirmed that Student has been receiving speech language services in accordance with her IEP since March 20, 2014, and that arrangements are being made for compensatory services.¹⁵

9. The District admits that it failed to provide speech language services to Student from November 2013 to March 2014, resulting in a loss of approximately 9.75 hours of direct speech language services.¹⁶ Consequently, the SCO finds that the District failed to provide speech language services in accordance with Student's IEP.

10. On March 20, 2014, District Special Education Director met with Student's Parent and the Complainant to offer Student 9.75 hours of compensatory speech language services in an effort to remedy the violation. Parent agreed with the services offered and a schedule has been established.¹⁷ The District will submit services logs to the Department until all agreed compensatory services have been provided. As a result of the District's action, the SCO finds that this violation has been remedied as to Student One.

Speech Language Services for Student Two:

11. Student is eligible for special education and related services as a child with a serious emotional disability. According to the IEP, Student should receive 180 minutes of direct speech language services each month.¹⁸

12. From August to early November 2013, Student attended Former Facility School. Because Former Facility School did not keep service logs and the speech language therapist contracted to provide the services has since retired, the District was not able to confirm whether the required speech language services had been provided to Student during this time.¹⁹ Rather than contest the allegation regarding services during this time, Special Education Director elected to treat these services as having not been provided.²⁰ If documentation that

¹³ Interview with Special Education Director, Special Education Coordinator, and Facility School Special Education Director. The contract regarding speech language services for this Student is between the two school districts.

¹⁴ Interview with Facility School Special Education Director and District Special Education Director.

¹⁵ Interview with Facility School Special Education Director.

¹⁶ Exhibit 1.

¹⁷ Exhibit 6;Exhibit 8; and Interview with Special Education Director and Complainant. The SCO attempted to interview Parent regarding compensatory services, but Parent did not respond.

¹⁸ Exhibit 3, p. 2; Exhibit 7, p. 1.

¹⁹ Exhibit 6, p. 2.

²⁰ Response; Exhibit 7; Interview with Special Education Director.

these services were provided become available, the District may adjust the compensatory services offered.²¹

13. On or around November 6, 2013, county DHS transferred Student to Current Facility School.²² There is no credible evidence that county DHS provided the District with written notification of this placement, as required by ECEA Rule 9.03(2)(a)(ii).²³

14. On November 12, 2013, and December 18, 2013, the Facility School Special Education Director left a message with the individual she believed to be the District's out-of-district Coordinator to inform her that Student had been placed in Current Facility School and needed speech language services in accordance with his IEP.

15. On January 31, 2014, Facility School Special Education Director called the District's special education department and asked to speak with the Director because her calls to the out-of-district coordinator had not been returned. The department's secretary informed Facility School Special Education Director that the individual she had been contacting was no longer the out-of-district coordinator and gave her the contact information for Special Education Coordinator.²⁴ Although the individual Facility School Special Education Director had been contacting still worked for the District, she never notified Special Education Coordinator that Facility School had contacted her regarding services for Student.²⁵

16. For approximately the next three weeks, Facility School Special Education Director and Special Education Coordinator played phone tag until they were able to connect sometime in the beginning of March of 2014.²⁶ Once the two connected, arrangements were immediately made to provide appropriate services to Student.

17. On March 6, 2014, the District agreed to contract with a speech language provider and Student Two began receiving services on that same date.²⁷ The Facility School Special Education Director confirmed that Student has been receiving speech language services in

²¹ Exhibit 6; Interview with Special Education Director and Complainant. Parents signed the written offer of compensatory education indicating their agreement with the office--which included an adjustment of services owed if documentation should become available.

²² CDE database inquiry for students in approved facility schools.

²³ Special Education Director credibly stated that the District's Exceptional Student Services department was not notified by DHS regarding these Students. The SCO left multiple messages with the county DHS social worker assigned to these students. Although the District has not done so in this case, it could hold the public agency responsible for the tuition costs until the required notice is provided. ECEA Rule 9.03(2)(a)(ii).

²⁴ Reply, p. 3; Interviews with District Special Education Director, Special Education Coordinator, and Facility School Special Education Director.

²⁵ Interviews with Special Education Director and Special Education Coordinator.

²⁶ Reply, p. 3; Interviews with District Special Education Director, Special Education Coordinator, and Facility School Special Education Director.

²⁷ Exhibit 6, p. 2; Interview with Facility School Special Education Director.

accordance with his IEP since March 6, 2014, and a schedule has been established to provide compensatory services.²⁸

18. The District admits that it failed to provide speech language services to Student from November 2013 to March 2014, including the time Student attended Former Facility School for which the District could not confirm services were or were not provided. This failure resulted in loss of approximately 24 hours of direct speech language services.²⁹ Consequently, the SCO finds that the District failed to provide speech language services in accordance with Student Two's IEP.

19. On March 20, 2014, District Special Education Director met with Student's Parents to offer Student 24 hours of compensatory speech language services in an effort to remedy the violation. Parents agreed with the services offered and a schedule has been established.³⁰ The District will submit services logs to the Department until all agreed compensatory services have been provided. As a result of the District's action, the SCO finds that this violation has been remedied as to Student Two.

20. As detailed above, the District has admitted that it failed to provide the services required on each Student's IEP, and that it took too long to arrange for the services after it was notified that the services were not being provided.

21. Importantly, the District has taken the following actions to remedy the loss of services for these two Students, and other students who are in out-of-district placement, in an effort to prevent this situation from happening to other students who have been placed in facility schools by a public agency:³¹

- Conducted an internal file review of all students in out-of-district placement to ensure that the contracts in place match the services required on the IEP, and ensure such services are being provided;
- Requested that facility schools submit service logs for each student that document services being provided. The District has also shared the forms it uses as a model.
- Listed contact information for the out-of-district coordinator on its webpage so that accurate contact information is accessible to any facility school.³²

²⁸ Exhibit 8.

²⁹ Exhibit 1

³⁰ Exhibit 6 and Interview with Special Education Director and Complainant. The SCO attempted to interview Parent regarding compensatory services, but Parent did not respond.

³¹ Response; Exhibits 6 and 7; Interviews with Special Education Director, Special Education Coordinator, and both Facility School Special Education Directors. Response; Exhibits 6 and 7; Interviews with Special Education Director, Special Education Coordinator, and both Facility School Special Education Directors..

³² <http://www.greeleyschools.org/Page/91>

- Scheduled monthly meetings with leadership at county DHS to ensure better communication between the District and DHS and provide an opportunity to discuss what is and what is not working.

22. Based on the above-actions taken by the District, the SCO finds that systemic failures have been remedied.

CONCLUSIONS OF LAW

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

1. When a child with a disability is placed by an authorized public agency into an eligible facility with an approved facility school, the AU of residence is responsible for determining whether the facility where the child has been placed has the available special education and related services specified by the child's IEP. ECEA Rule 9.03(2)(a)(ii). If a student's IEP requires services that are not included in the facility's tuition cost rate, such as speech language services, the AU of residence must pay for or provide the required services. ECEA Rule 9.03(2)(a)(i).³³ When, as here, a child who is eligible for special education has been placed in a residential facility, she is considered to be a resident of the school district in which her parents live. ECEA Rule 2.02(1)(a). In this case, the District is the AU of residence for both Students because parental rights are intact and each Parent resides within the District. Consequently, the District was responsible for ensuring that each Student was receiving services in accordance with the IEP.
2. Under IDEA, local education agencies 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.*
3. In this case, the District admitted that it failed to provide speech language services in accordance with each Student's IEP, in violation of 34 C.F.R. § 300.17. After completing his own investigation, Special Education Director took immediate action to remedy the violation by meeting with each Student's Parents and offering compensatory services equal to the services missed. Each Parent agreed with the offer of compensatory services. Consequently, the violation has been remedied as to each Student.
4. Commendably, Special Education Director also took immediate action on a systemic-level in an effort to ensure that current and future students in out-of-district placement receive

³³ For further technical assistance and guidance on out-of-district placements, see the CDE Out-of-District Manual available at <http://www.cde.state.co.us/sites/default/files/00-FAC-OOD%20Manual.pdf>.

services in accordance with their IEPs. First, the District conducted a file review of all 23 students currently in out-of-district placement to ensure that the services on the IEP matched the services listed in the contract. The District further assured that these services were being provided. This action is a reasonable effort to ensure that other students in out-of-district placements are receiving the services to which they are entitled. Second, the District took action aimed at ensuring future students in out-of-district placements receive required services without lengthy delays. These actions included posting contact information for the out-of-district coordinator on the District's website, scheduling monthly meetings with county DHS leadership to discuss problems, and requesting that facility schools submit service logs.

5. Because Special Education Director has taken immediate and appropriate action to remedy the failure to provide services in accordance with the IEP on an individual and systemic level, there is no need to order further remedies or corrective action.

REMEDIES

The SCO has concluded that the District violated the following IDEA requirements:

- a) Failure to provide services in accordance with the IEP, in violation of 34 C.F.R. § 300.17

To remedy this violation, the District is ordered to take the following actions:

- 1) Because violations have been remedied, the District is only required to submit service logs to document that the compensatory services agreed to have been provided. Compensatory services must begin no later than May 1, 2014.

To document that these services have been provided, the District must submit service logs for each Student on the second Monday of every month until the services have been completed, but in any case no later than April 21, 2015.

- a) Agreed compensatory speech language services for Student One: 9.75 hours.
- b) Agreed compensatory speech language services for Student Two: 24 hours.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Joyce Thiessen-Barrett
1560 Broadway, Suite 1175
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above will adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department.

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 14th day of April, 2014.

Candace Hawkins

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-3.

Reply, pages 1-3.

Response, pages 1-2.

Exhibit 1: Student One's IEP.

Exhibit 2: Student One's service logs.

Exhibit 3: Student Two's IEP.

Exhibit 4: Student Two's service logs.

Exhibit 5: Contact information for District staff.

Exhibit 6: Letter to Student One's Parent.

Exhibit 7: Letter to Student Two's Parent.

Exhibit 8: Schedule for compensatory services.

Interviews with:

- District Special Education Director
- District Special Education Coordinator
- Complainant
- Facility School Special Education Director (Student One)
- Facility School Special Education Director (Student Two)