

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

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**State-Level Complaint 2016:514**  
**Mesa County Valley School District 51**  
**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on June 6, 2016, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

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.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATIONS**

1. The IEP developed on May 12, 2016 is not appropriate and denies Student a free appropriate public education (FAPE) because:
  - a. The IEP Team refused Parent's request to review and revise Student's annual IEP goals and accommodations;
  - b. The IEP does not provide direct specialized instruction necessary to meet Student's unique needs and allow her to make progress towards her academic goals;
  - c. The IEP team refused Parent's request to review and revise Student's behavioral intervention plan (BIP); and

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<sup>1</sup> 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.*

<sup>2</sup> 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).

- d. The IEP does not provide the intensive behavioral support necessary to meet Student's unique needs and allow her to make progress toward her academic and social/emotional goals.
2. On May 12, 2016, the District improperly determined that Student was not eligible for extended school year (ESY) services, resulting in a denial of FAPE.

### **FINDINGS OF FACT**

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

1. At all times relevant to the Complaint, Student was in the [grade level] and resided with Parent within the District's boundaries. Student has been identified as eligible for special education and related services.
2. Student has demonstrated strengths in writing, math, and science and is very interested in learning how things work and why. Student loves to sing, draw, color, and make up songs and stories. In addition, Student is caring and "desperately wants to fit in with her peers and have friends."<sup>4</sup>
3. Over the past several years, Student has also demonstrated significant and challenging behaviors that impede her ability to learn and maintain positive relationships with peers and educators. In general, Student displays significant verbal aggression, physical aggression, and property destruction. Student's behaviors can be severe and "terrifying for everyone around her," including her family, friends, and educators.<sup>5</sup> To illustrate, Student has had four acute psychiatric hospitalizations and one stay in a residential psychiatric treatment center due to the severity of her behaviors and the risks she can present to herself and others.<sup>6</sup> Based on the severity of her behaviors, Student's recent IEP teams have recommended that she be educated in a separate school for children with challenging behavioral and mental health needs.<sup>7</sup>
4. In December of 2015, Parent moved from Former State to Colorado in search of better in-home behavioral services for Student. On December 17, 2015, the District convened an IEP meeting to discuss Student's educational needs and placement. At this meeting, the IEP Team decided to accept and implement Student's IEP from Former State. Based on the services identified in Former State IEP, the IEP Team determined that services would be provided at the

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>4</sup> Exhibit A; Exhibit 23 at page 16; Interviews with Parent and Behavior Interventionist.

<sup>5</sup> Exhibit 23 at page 16; Exhibit F; Interviews with Parent, Behavior Interventionist, and Special Education Coordinator.

<sup>6</sup> Exhibit 23 at page 16; Exhibit F; Interviews with Parent, Behavior Interventionist, and Special Education Coordinator.

<sup>7</sup> Exhibit 23 at page 16; Interview with Parent.

District's Therapeutic Day Program (TDP), a separate school designed to meet the intensive needs of youth struggling with behavioral challenges.<sup>8</sup>

5. Student attended the TDP from January 5 to February 10, 2016. Although Student at times demonstrated appropriate behavior at TDP, she also exhibited the severe behavior she had historically exhibited in previous placements. This behavior included hitting TDP staff, throwing objects in the classroom, property damage, and verbal threats.<sup>9</sup> For example, Student engaged in the following behavior during the course of one day: cursed and yelled at peers and staff; made obscene gestures to peers and staff; ripped apart two books; took décor off classroom walls; attempted to open a window in the Principal's office to elope; kicked and hit staff; and made verbal threats to kill and injure staff.<sup>10</sup>

6. On February 10, 2016, Student was suspended from TDP for 1.5 school days. According to the District, Parent refused to cooperate in a threat assessment prior to reentry. Consequently, the TDP Principal decided to extend the suspension and further recommended expulsion.<sup>11</sup>

7. On February 24, 2016, the District conducted a manifestation determination because the extended suspension constituted a disciplinary change of placement. At this meeting, the District determined that Student's conduct was not a manifestation of her disability. Parent objected and filed a due process complaint on February 29, 2016, to challenge the determination.<sup>12</sup>

8. On March 2, 2016, the District held a contested expulsion hearing. This hearing resulted in an order to expel Student until March 8, 2017, subject to the outcome of the due process hearing. This order specifically provided that "free and appropriate educational services shall continue to be provided for [Student] during the expulsion period in accordance with applicable law and *as determined by her IEP Team.*"<sup>13</sup>

9. On March 14, 2016, the due process complaint challenging the appropriateness of the manifestation determination was resolved in mediation through a written settlement agreement. Thus, the matter was never adjudicated.<sup>14</sup>

10. The settlement agreement identified educational services to be provided to Student for the remainder of the 2015-16 school year.<sup>15</sup> First, the agreement provided that the District would provide access to the general education curriculum through online classes. In addition,

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<sup>8</sup> Response at page 1.

<sup>9</sup> Exhibit A, p. 6; Exhibit F.

<sup>10</sup> Exhibit F, pp. 20-21.

<sup>11</sup> Response at page 2.

<sup>12</sup> Response, pp. 2-5.

<sup>13</sup> Response at page 19 (District Exhibit 3)(emphasis added).

<sup>14</sup> Response; Exhibit 1.

<sup>15</sup> Exhibit 1, p. 1.

the District was to provide social/emotional therapy twice a week through Behavioral Interventionist to address Student's behavioral needs. The amount of therapeutic services, i.e., minutes per week, was not specified. Finally, Student was permitted to attend her gym class at Elementary School and would be allowed to attend music and other activities if she was successful in gym. Relevant to the Complaint allegations, the settlement agreement does not describe the specific educational services to be provided after the end of the 2015-16 school year.<sup>16</sup>

11. Parent's Complaint allegations solely concern the IEP meeting held on May 12, 2016. Specifically, Parent alleges that Student was denied a FAPE when Student's IEP Team refused her request to review and revise Student's annual goals, BIP, and educational services at this meeting. Consequently, the SCO considers Parent's opportunity to participate in the development of Student's educational program during the May 2016 IEP meeting.

12. On May 12, 2016, the District convened an IEP meeting to consider the reevaluation conducted in April of 2016 in the area of Autism Spectrum Disorder (ASD). Because Parent disagreed with the IEP Team's determination in February of 2016 that Student was eligible as a student with a serious emotional disability (SED), Parent requested an evaluation in the area of ASD using the Autism Diagnostic Observation Schedule (ADOS). With parental consent, the District reevaluated Student on April 7, 2016.<sup>17</sup>

13. The notice of meeting informed Parent that the purpose was "to discuss appropriate evaluation data to determine whether [Student] continues to be eligible for special education services," and "if so determined, the current [IEP] will be reviewed and an updated IEP will be developed."<sup>18</sup> Consistent with the stated purpose of the meeting, Parent sent an email to various District staff, including Special Education Coordinator, stating that she wanted to discuss the IEP and proposed educational services for the coming school year. In addition, Parent attached a list of concerns that she wanted to discuss at the IEP meeting. Parent expressed concerns in the areas of handwriting, spelling, reading, and social/emotional skills. Parent also proposed specific IEP goals in the areas of behavior and social skills, as well as academics. Finally, Parent offered input into accommodations and various strategies that could be used to assist Student for the 2016-17 school year.<sup>19</sup> Parent also provided the District with a recording of Student reading a passage and writing samples to illustrate her concern in the areas of reading and writing. Taken together, this documentation evidenced an expectation and understanding that the IEP meeting would include review and revision of Student's IEP and the educational services being provided during expulsion.

14. The IEP meeting, however, did not include any discussion of Student's IEP goals or services. Rather, the District limited discussion to evaluation results and eligibility. After the

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<sup>16</sup> Exhibit 1, p. 2.

<sup>17</sup> Response at page 3.

<sup>18</sup> Exhibit C, p. 1.

<sup>19</sup> Exhibit 9.

eligibility determination concluded, Parent expressed concern about Student's reading skills and requested that the IEP Team review her progress and discuss annual goals. In response to Parent's concern, Special Education Coordinator stated that "there is no change in eligibility at this point so there is really no reason to open the IEP."<sup>20</sup> Following this statement, Parent expressed concern that Student was not making progress on her IEP goals and was not benefiting from the online program. In response, the District's Legal Counsel announced that the meeting was no longer an IEP meeting and that Student's goals and services were no longer open for IEP Team discussion because Student was expelled.<sup>21</sup> At the time of the SCO's interviews with District staff, no IEP meeting had been scheduled for the coming school year.<sup>22</sup> Based on these facts, the SCO finds that Parent was denied a meaningful opportunity to participate in the development of Student's educational program for the 2016-17 school year at this meeting.

15. Next, the SCO considers Parent's allegation that the District failed to properly determine eligibility for ESY services at the May 2016 IEP meeting. During this meeting, Parent requested that the IEP Team consider ESY services. Specifically, Parent requested that the District allow Student to participate in the District's online course through the end of the summer. In response, Special Education Coordinator stated that Student had been determined ineligible for ESY services because she does not demonstrate regression/recoupment concerns. Further, the Special Education Director stated that she could not agree to extend the online services because this was not part of the written settlement agreement.<sup>23</sup>

16. It is the District's position that eligibility for ESY was properly determined at the March 2016 IEP meeting. Further, the District asserts that the Parties negotiated this matter as part of the settlement agreement.<sup>24</sup> Parent denies that the settlement agreement encompassed a determination of eligibility for ESY.<sup>25</sup> The SCO does not have the authority to interpret the settlement agreement and will therefore consider the allegation on its merits.

17. Between February 9 and March 16, 2016, the District convened three IEP meetings to determine eligibility and develop Student's IEP. Although the District initially accepted Student's IEP from Former State, it also requested consent to reevaluate Student in order to develop a new IEP, in accordance with 34 C.F.R. § 300.323 (f). Parent limited consent to a "review of records only."<sup>26</sup> Each of these IEP meetings was highly contentious because Parent did not agree with the District's decision to reevaluate, determine eligibility, and write a new IEP for Student. Instead, Parent expected the District to accept and implement Student's IEP

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<sup>20</sup> Exhibit 7, beginning at 46:00.

<sup>21</sup> Exhibit 7, between 49:30 and 1:06.

<sup>22</sup> Interview with Special Education Coordinator.

<sup>23</sup> Exhibit 7, between 54:00 and 56:00.

<sup>24</sup> Response at page 7.

<sup>25</sup> Interviews with Parent and Advocate; Reply at page 4.

<sup>26</sup> Exhibit A at page 21. Parent denied consent for any new assessments because it had been less than one year since Student's last evaluation and she was concerned that the results of the evaluation would be less accurate. Interview with Parent.

from Former State without change, unless the changes were approved by her.<sup>27</sup> Parent was particularly upset that the District did not determine Student eligible under the category of ASD. Intervening disciplinary action, i.e., Student's expulsion, further complicated the dynamic at these meetings.

18. Eligibility for ESY was first discussed during the IEP meeting held on February 19, 2016. Student's IEP Team concluded that predictive factors indicating eligibility for ESY were present but more information was necessary to make the determination. Accordingly, the IEP Team decided to review progress after spring break and make a determination as to eligibility for ESY before the end of the school year.<sup>28</sup> Eligibility for ESY was next discussed at the IEP meeting held on March 16, 2016

19. On March 16, 2016, the District held an IEP meeting to review eligibility based on reevaluation and revise Student's IEP, as appropriate. As mentioned above, the reevaluation consisted of a review of records because Parent did not consent to additional evaluation. Based on the review of records, the IEP Team determined that Student was eligible for special education as a student with SED. Parent voiced strong opposition to Student being identified as SED in place of ASD, a category Parent believes is more appropriate based on Student's needs, clinical diagnosis, and Former State's identification of Student as having ASD.

20. Following the eligibility determination, the IEP Team reviewed Student's IEP and discussed progress in reading and math. During the discussion about assistive technology, Parent became upset and left, informing the IEP Team that the meeting was over. Following Parent's departure, the IEP Team concluded the review of Student's IEP. The SCO finds it more likely than not that this discussion included the determination that Student was not eligible for ESY services because "she did not require an unreasonable long period of time to relearn previously learned skills" and "predictive factors do not indicate the need for ESY services," as documented on the IEP.<sup>29</sup> At the Advocate's request, the District agreed to delay finalizing the IEP for several days to allow input from Parent. Parent did not provide input until May 4, 2016, in advance of the May IEP meeting.<sup>30</sup> Based on the multiple IEP meetings scheduled during the spring of 2016 and the invitation to provide input following her premature departure on March 16, 2016, the SCO finds that Parent was provided with opportunities to provide input into the ESY determination and cannot reasonably complain that the ESY determination was improper because her input was not considered.

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<sup>27</sup> Exhibit 15 (Recordings of IEP meetings on February 9, February 17, and March 16, 2016).

<sup>28</sup> Exhibit 23 at page 10.

<sup>29</sup> Response at page 44 (IEP dated March 16, 2016 at page 12); Exhibit 15 (c); and Interviews with Parent, Advocate, Special Education Coordinator and Behavioral Interventionist. The recording provided by Parent did not include portions of the meeting after she left. The SCO requested a copy of the District's recording and was informed that the District did not retain a copy.

<sup>30</sup> Response at page 5.

## CONCLUSIONS OF LAW

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

**Allegation One: The District denied Parent a meaningful opportunity to participate in the development of Student’s educational program by refusing Parent’s request to review Student’s educational services for the 2016-17 school year during the May 2016 IEP meeting.**

1. Parent has alleged that the IEP meeting held on May 12, 2016, denied her a meaningful opportunity to participate in the development of Student’s educational program because the IEP Team refused to review and revise the IEP during the meeting. Specifically, Parent has alleged that the IEP Team failed to review Student’s annual goals, accommodations, BIP, and the special education and related services necessary to allow Student to make progress toward her IEP goals. For the reasons explained below, the SCO concludes that the IEP Team’s refusal to discuss Student’s goals and the provision of services for the 2016-17 school year during the May IEP meeting denied Parent a meaningful opportunity to participate in the development of Student’s educational program, resulting in a denial of FAPE.

2. Any analysis of the appropriateness of an IEP must begin with the standard established by the United States Supreme Court in *Rowley v. Board of Education*, 458 U.S. 176 (1982), in which the Court set out a two-pronged analysis for determining whether an IEP has offered a FAPE. The first part of the analysis looks to whether the IEP development process complied with the IDEA’s procedures; the second looks to whether the resulting IEP was reasonably calculated to confer some educational benefit upon the child. *Id.* at 207; *see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). If those two questions are satisfied in the affirmative, then the IEP is appropriate under the law.

3. Under the first “prong” of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA’s procedures. The IDEA’s procedural requirements for developing a student’s IEP are designed to provide a collaborative process that “places special emphasis on parental involvement.” *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10<sup>th</sup> Cir. 2008). Meaningful parent participation is prevented when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. *See Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003) (“A district may not enter an IEP meeting with a ‘take it or leave it’ position.”); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9<sup>th</sup> Cir. 2003). When parents are prevented from meaningful participation because an aspect of their child’s IEP, such as educational methodology or placement, has been predetermined, the resulting procedural violation denies the student a free appropriate public education. *Deal v.*

*Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005). On the other hand, courts have found that parents have been afforded an opportunity for meaningful participation when an educational agency, here the District, considers their suggestions and requests, and to the extent appropriate, incorporates them into their child's IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692 (10<sup>th</sup> Cir. 1998).

4. Under IDEA, meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parent's questions, incorporates some suggestions or requests into the IEP, and discusses privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *Id*; *See Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005). Meaningful consideration does not require a school district to simply agree to whatever a parent has suggested or requested.

5. In this case, Parent argues that the District refused to discuss her concerns about Student's academic progress, annual goals, BIP and special education and related services following the eligibility determination on May 12, 2016. The question of whether the IEP team had an obligation to review Student's IEP at this meeting must be answered through the application of IDEA's disciplinary provisions because Student had been expelled from March 2, 2016 through March 8, 2017, for conduct that was determined not to be a manifestation of her disability. Under IDEA, a student who is expelled for conduct that is not related to her disability is still entitled to FAPE when, as here, the expulsion constitutes a disciplinary removal, i.e., more than ten consecutive school days. Although the school district does not have to provide the same level of educational services that the student was receiving prior to the disciplinary removal, the services provided must enable the student to continue to participate in the general educational curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP. 34 C.F.R. § 300.530(d)(1)(i). In addition, the student is entitled to receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d)(1)(ii); *Q & A on Discipline Procedures*, 52 IDELR 231 (OSERS 2009).

6. When the removal constitutes a disciplinary change of placement and the conduct is not a manifestation of the student's disability, the IEP Team is responsible for determining the educational services necessary to provide FAPE. 34 C.F.R. § 300.530(d)(5); *Q & A on Discipline Procedures*, 52 IDELR 231 (OSERS 2009) ("For removals that constitute a change of placement, the child's IEP Team determines the appropriate services under 34 C.F.R. § 300.530(d)(1)."). In this case, the District's refused to discuss Student's IEP and the provision of services for the 2016-17 school year during the May 2016 IEP meeting, in violation of IDEA's procedural requirement that an IEP Team determine services for a student who is expelled for more than ten consecutive school days. Although the meeting on May 12, 2016, was convened to discuss recent evaluation data and determine eligibility under the ASD category, Parent specifically requested to discuss Student's IEP, including goals, accommodations, BIP, and services for the

coming 2016-17 school year both prior to and during the meeting. When the IEP Team determined that Student was not eligible under a different category, i.e., ASD, Parent requested that the IEP Team discuss her concerns about Student's reading skills and her annual goal in reading. In response, Parent was informed there was no reason to "reopen" the IEP to review and revision of goals because Student's eligibility had not changed. When Parent insisted on discussing services for the coming school year, District's Legal Counsel dismissed the IEP Team, stating that this meeting was no longer an IEP meeting.

7. The District argues that Parent has no right to complain about the appropriateness of Student's IEP as of May 12, 2016, and the provision of FAPE because Student's educational services are governed by a March 2016 Settlement Agreement. The Settlement Agreement, however, only governs specific educational services from March 14, 2016, through May 19, 2016. Because the settlement agreement does not specifically govern services for the 2016-17 school year, it is Student's IEP Team that must meet to determine these services, consistent with 34 C.F.R. § 300.530(d)(1)(i).

8. Moreover, the District argues that it has no obligation to review and revise Student's IEP because she has been expelled. This position is not supported by IDEA's disciplinary provisions and OSEP guidance. The law is clear that the school district "must provide services to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance towards achieving the goals in the child's IEP. 71 Fed. Reg. 46,728 (Comments to IDEA 2006 Regulations). If the student is not progressing toward meeting the IEP goals, it would be appropriate for the IEP Team to review and revise the determination of services. *Q & A on Discipline Procedures*, 52 IDELR 231 (OSERS 2009). Because the District has an ongoing obligation to provide FAPE throughout Student's expulsion, i.e., March 8, 2017, it must review and revise the services in Student's IEP, as appropriate, through the IEP process. Consequently, a refusal to review and revise Student's IEP simply because she has been expelled would be inconsistent with IDEA's disciplinary provisions.

9. For the reasons explained above, the SCO concludes that the IEP Team's refusal to discuss educational services for the coming school year violated IDEA's disciplinary provisions and Parent's right to meaningfully participate in the development of Student's educational program. To remedy the violation, the District must convene an IEP meeting to determine Student's services for the coming school year. Because Student is expelled, the District is not obligated to provide educational services in a setting that is not consistent with the expulsion order, including the expulsion order as modified by the Settlement Agreement, referred to by the Parties as a partial abeyance.

**Allegation Two: The District did not improperly determine that Student was not eligible for ESY services.**

10. Parent alleges that the District improperly determined that Student was not eligible for ESY services. As explained more fully below, the SCO concludes that Parent waived her right to

complain about this issue by refusing to participate in a discussion of ESY at the IEP meeting in March of 2016.

11. ESY services must be provided only if a child's IEP Team determines, on an individual basis and in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2); ECEA Rule 5.01(1)(f). ESY services are defined as special education and related services that are provided beyond the normal school year and in accordance with the child's IEP, at no cost to the parents. 34 C.F.R. § 300.106(b). Consistent with all special education and related services, ESY services are not intended or required to maximize a student's educational benefit. *Cordrey v. Euckert*, 17 IDELR 104 (6<sup>th</sup> Cir. 1990), *cert denied*, 499 U.S. 938 (1991). Rather, ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Johnson v. Indep. Sch. Dist. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10<sup>th</sup> Cir. 1990); *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010).

12. In her Reply, Parent argues that the eligibility determination was improper because she did not have an opportunity to participate in the discussion during the March 2016 IEP meeting. Moreover, Parent argues that several of the identified predictive factors used to help determine eligibility for ESY specifically require parental input. Consistent with the IDEA's emphasis on parental involvement in the development of the IEP, parental input is critical in determining eligibility for ESY services. Further, several of the predictive factors identified as relevant to the ESY determination, e.g., the ability of parents to provide educational structure at home, specifically require input from parents. *Id*; See also *CDE Extended School Year Services Guidance Manual*, available at [http://www.cde.state.co.us/sites/default/files/documents/cdesped/download/pdf/esy\\_guidancemanual.pdf](http://www.cde.state.co.us/sites/default/files/documents/cdesped/download/pdf/esy_guidancemanual.pdf).

13. Although parental participation is critical to determining eligibility for ESY, the SCO concludes that Parent waived her right to complain about this determination by leaving the IEP meeting on March 16, 2016, prior to the discussion of ESY. Courts have refused to award compensatory relief when parents refuse to cooperate or act unreasonably in the development of their child's educational program. See *Rockwall Indep. Sch. Dist. v. M.C. ex. rel. M.C.*, 116 LRP 9727 (5<sup>th</sup> Cir. 2016)(Court denied tuition reimbursement based on Parents' refusal to cooperate in the development of their child's educational program.) In this case, the IEP Team initially discussed ESY services at the IEP meeting in February of 2016 and determined that they needed additional information. Accordingly, the IEP Team agreed to revisit eligibility for ESY services in the spring. At the IEP meeting held on March 16, 2016, the IEP Team reviewed the IEP including Student's progress on math, reading, annual goals, and the BIP. During a discussion of accommodations, Parent became very angry and stated that she was ending the meeting. Following her departure, the IEP Team concluded the review of Student's IEP, including Student's eligibility for ESY. Parent cannot complain that the IEP team failed to

consider her input in determining Student's eligibility for ESY when she chose to leave the IEP meeting during which this determination was made.

### REMEDIES

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

- a) Failure to properly determine Student's educational services for the 2016-17 school year, in violation of 34 C.F.R. §§ 300.530(d) and 300.17.

To remedy these violations, the District is ordered to take the following actions:

- 1) **By August 31, 2016**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
  - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than September 30, 2016.
  - b) Effective training must be conducted for all special education administration staff, including any staff who serve as the District's special education designee concerning the policies and procedures, to be provided no later than October 28, 2016.
  - c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than November 11, 2016.
- 2) **Remedy for denying meaningful parental participation at the May 2016 IEP Meeting.**
  - a) As soon as possible, and no later than August 10, 2016, the District must convene a properly constituted IEP team to discuss educational services for the 2016-17 school year. At this meeting, the IEP Team must review Student's needs, progress on IEP goals, and access to the general curriculum, in accordance with §§ 300.530(d) and this Decision. The District is not obligated to provide an educational setting that inconsistent with the expulsion order and partial abeyance. The District shall provide evidence that the meeting occurred, including a copy of Student's IEP by August 19, 2016.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Beth Nelson  
1560 Broadway, Suite 1100  
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 20<sup>th</sup> day of July, 2016.

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### Complaint

Exhibit 1: Settlement Agreement.

Exhibits 2, 3, 5, 6, and 8-12: Email correspondence.

Exhibit 4: March 2016 IEP.

Exhibit 7: Recording of May 2016 IEP meeting.

Exhibit 8: Recording of Student reading.

### Response, pages 1-92.

Exhibit A: March 2016 IEP.

Exhibit B: Documentation requested provided as Exhibits C-E.

Exhibit C: Notice of meeting.

Exhibit D: Prior written notice and consent to evaluate.

Exhibit E: May 2016 Eligibility determination.

Exhibit F: Progress data.

Exhibit G: Email correspondence.

Exhibit H: Witness contact information.

Exhibit I: Additional progress data.

### Reply, pages 1-10.

Exhibit 13: BIP dated February 2016.

Exhibit 14: IEP dated February 9, 2016. Copy provided did not include odd numbers. SCO requested a complete copy from Parent. The complete copy is identified as Exhibit 23.

Exhibit 15: Recording of IEP meetings.

A: February 9, 2016.

B: February 17, 2016.

C: March 16, 2016.

D: Manifestation determination meeting.

Exhibit 16: Signed statement of Advocate.

Exhibit 17: Suspension letter.

Exhibit 18: Email correspondence.

Exhibit 19: Former State IEP.

Exhibit 20: CDE Guidance Manual.

Exhibit 21: CDE ESY Guidance Manual and case law cited by Parent.

Exhibit 22: ECEA regulations cited by Parent.

Exhibit 23: Documentation requested by SCO during interview with Parent.

**Interviews with:**

- Parent
- Advocate
- Special Education Coordinator
- Special Education Coordinator 2
- Behavioral Interventionist