

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

State-Level Complaint 2017:506
Adams County School District 27J

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on April 13, 2017 by attorney, Igor Raykin (Counsel), on behalf of a student (Student) and Student's mother ("Mother"). Student attends school (School) in the Adams County School District 27J (School District) and is not currently identified as a child with a disability under the Individuals with Disabilities Education Act.¹

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint allegations identified one issue subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.²

COMPLAINT

Whether the School District failed to evaluate Student upon Mother's March 13, 2017 request.

Summary of Proposed Remedies. To resolve the Complaint, Mother proposes, in summary, that:

- the School District immediately evaluate Student for an IEP;
- reimburse family for therapy; and

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 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). SCO notes that other allegations were raised in the Complaint, but were not accepted for investigation as those allegations rested on contingent future events that had not yet occurred and, as such, were not ripe for investigation or within the jurisdiction of the state-level complaint process.

- training be provided for School District and School in the IDEA, the identification of special education students, and proper procedures for obtaining consent.

FINDINGS OF FACT

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

1. Student attends School with accommodations provided for in a Section 504 plan.⁴
2. Mother emailed School on March 13, 2017 to request that Student be evaluated for an IEP.⁵
3. School's process for responding to parental referrals for special education is to schedule a "referral" meeting to discuss the concerns and plan for assessments prior to requesting parents' written consent.⁶
4. For approximately ten days beginning on March 13th School staff members corresponded with Mother by email attempting to schedule a meeting or a conference call to discuss Mother's concerns and determine which areas to evaluate. School waited for Mother to respond to the meeting requests, but Mother never agreed to a meeting and instead requested that a written consent form be provided.⁷
5. On March 24th a School staff member was directed to provide Mother with the consent form, but due to a variety of factors, i.e., uncertainty about which areas to evaluate, spring break, and a resulting shuffle of the task upon return from spring break, the consent form was not provided to Mother until April 12th.⁸
6. On April 13th Mother provided written consent to conduct a comprehensive evaluation, which was completed on May 11, 2017.⁹

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

⁴ Complaint; Response; Exhibit A

⁵ Complaint; Response; Exhibit E

⁶ Response; Exhibits E and G

⁷ Response; Reply; Exhibit E

⁸ Response; Exhibit E

⁹ Response; Reply; Exhibits B, C, and E

CONCLUSIONS OF LAW

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

1. The crux of Mother's complaint is that School's attempts to meet with Mother rather than immediately obtain her written consent to evaluate was an intentional delay that violated the procedural requirements of the IDEA and the ECEA rules. SCO concludes otherwise.

2. A parent of a child may initiate a special education referral by requesting an evaluation. 34 C.F.R. § 300.301 (b); ECEA Rule 4.02 (3)(a)(ii). Once a special education referral has been initiated, the administrative unit must complete the initial evaluation within 60 days. 34 C.F.R. § 300.301 (c); ECEA Rule 4.02(3)(c). The special education referral process is initiated, and the 60-day clock starts, when the district has received a request for an initial evaluation from the parent and the parent has provided written consent for the initial evaluation. 34 C.F.R. § 300.301 (b); ECEA Rule 4.02 (3)(c)(ii). Before a parent can provide consent for an initial evaluation, the district must request it. Although the IDEA does not specify how long a district may take to seek parental consent for an evaluation, it would not be acceptable for a district to wait several months to seek parental consent when the district suspects that the child may have a disability. 71 Fed. Reg. 46637; *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011) (" [I]t has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral is made, if the LEA agrees that an initial evaluation is needed. ").

3. Here, Mother emailed School on March 13th to request that Student be evaluated for an IEP. School's process is to schedule a "referral" meeting with parents to discuss their concerns and determine which areas need to be evaluated. In line with this process, School did not immediately request Mother's written consent, but rather, attempted to schedule a meeting with Mother to discuss her concerns and plan for appropriate assessments. Mother, however, never agreed to meet and instead continued to ask for a written consent form. Finally, School decided to yield to Mother's requests for the consent form and directed a staff member to send Mother the consent form on March 24th, a task which was not completed until April 12th for a variety of reasons. SCO does note that School did not request Mother's consent until they became aware of the filing of the Complaint, however, SCO concludes that the consent was still provided within a reasonable time frame and the evaluation was completed within sixty days from the date of Mother's initial request. SCO also notes that School's evaluation process actually began on March 13th when

School responded to Mother's request by attempting to schedule a meeting to understand her concerns and appropriately assess Student in light of those concerns. Accordingly, SCO finds no violations.

REMEDIES

Because the SCO has concludes that the School District has not violated the IDEA, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and 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.

This 29th day of June, 2017.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated April 10, 2017, pages 1-9

Exhibit 1: Email correspondence

Reply, dated June 1, 2017, pages 1-7

Exhibit 2-1 through 11-13: Email correspondence

Exhibit 12: Blank Prior Written Notice and Consent for Evaluation form

Exhibit 13: School calendar

Exhibit 14: Email correspondence

Response, dated May 22, 2017, pages 1-5

Exhibit A: Email correspondence; Section 504 plan documentation

Exhibit B: Email correspondence; Prior Written Notice & Consent for Evaluation (4/11/17 and 4/13/17); Evaluation Report marked "draft" (5/8/17); Eligibility documentation (5/11/17); Prior Notice of Special Education Action (5/11/17); Meeting Notes (5/11/17); Notice of Meeting (4/25/17); Request for Release or Secure Confidential Information (4/11/17)

Exhibit C: Evaluation Report marked "original" (5/8/17); Progress Reports; Report Cards

Exhibit D: Progress Reports; Report Cards

Exhibit E: Email correspondence

Exhibit F: List of School District and School staff members with knowledge of the allegations

Exhibit G: Special Education Policies and Procedure Manual