

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

State-Level Complaint 2017:509
Douglas County School District

DECISION

INTRODUCTION

This state-level complaint (Complaint) was properly filed on June 7, by the mother (Mother) and father (Father) of an incoming 11th grade student (Student) who attends a charter school (School) in the Douglas County School District (School District). A decision needs to be issued on or before August 4, 2017. Student is currently identified as an eligible 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 identified six allegations 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 ALLEGATIONS

Whether the School District has violated Parents' rights and denied Student a free appropriate public education (FAPE) by:

1. Denying Parents' meaningful participation by developing an individualized educational plan (IEP) on December 13, 2016 and May 30, 2017 without considering Parents' and Student's input;
2. Failing to provide Parents with documentation detailing the manner in which special education services were provided to Student;
3. Failing to provide prior written notices from the December 13, 2016 and May 30, 2017 IEP meetings;

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).

4. Failing to consider the least restrictive environment based on Student's individualized needs;
5. Failing to develop, review and revise Student's IEP according to Student's individualized needs, including but not limited to transitional goals and services;
6. Failing to consider the independent educational evaluation conducted on November 21-22, 2016.

SUMMARY OF PROPOSED REMEDIES

In order to resolve the Complaint, Parents propose School District perform the following, in summary:

1. Update Student's IEP to:
 - a. Include a review of Student's existing IEE conducted on November 21-22, 2016 to determine goals and accommodations;
 - b. reword his writing goal and service grid to accommodate his need for writing services outside of the one they have offered at [School];
 - c. add transition services to Student's IEP which include his apprenticeship and his participation in concurrent enrollment, as described by the U.S. Department of Education's Transition Guide for Students and Youth with Disabilities; and
 - d. include appropriate and necessary accommodations such as "allow student to dictate," which he can take to [Community College].
2. Develop a creative solution for Student to receive service hours outside of the English class at [School].

FINDINGS OF FACT

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

1. At all times relevant to the Complaint, Student has lived with Parents within the boundaries of the School District and has attended School. Student was a 10th grader during the 2016-2017 school year.

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

2. Student has been identified as a student with a specific learning disability in the area of writing, and is eligible for special education and related services under the IDEA and ECEA.⁴
3. This past school year, the school implemented a new system for delivering special education services, in that a student needing specially designed instruction in reading and writing receives those services in English classes and students needing specially designed instruction in math receive those services in math classes. Student used study hall to obtain additional assistance from Special Education Teacher 1.⁵
4. Student's IEP at the beginning of the 2016-2017 school year identified Student's needs and impact of disability as:
 - Writing (editing and organization)
 - Ability to remain on task, refocus and organize due to his attention deficit and dyslexia
 - Weakness in processing
5. The IEP contained two goals. Both goals addressed Student's identified area of need in writing. The first goal provided that "in order to be successful in college and a career in information technology, Student when given a visual/verbal prompt will edit his writing for conventions and make corrections as needed at 75% independence." The second goal provided that "[i]n order to be successful in college and a career in Information Technology, Student will independently write a well-organized five paragraph essay including an introduction, three body paragraphs with appropriate transition words, and a conclusion paragraph." His service delivery statement provided 400 minutes per month of direct specialized instruction in the general education classroom.⁶
6. Over the course of the 2016-2017 school year, School conducted three IEP meetings, specifically an annual IEP meeting held October 2016, a triennial held December 2016, and a review meeting held May 2017.

⁴ Complaint. Exhibit A.

⁵ Interview Mother, Principal, Special Education Case Manager. The SCO notes that the additional assistance Special Education Teacher 1 consistently provided to Student in the Study Hall class was not documented in the IEP nor was the additional assistance she provided to the general education teachers.

⁶ After the 2013 initial evaluation, Student's needs were identified as "weakness in mathematics (math calculation), basic reading (decoding), and writing (editing and organization). His attention deficit impacts his ability to remain on task, refocus and organize. Additionally, Student has a weakness in processing speed. Student also needs to utilize sensory strategies to help him focus." The 2013 IEP contained four goals; two addressing writing, one addressing math and one addressing reading. Exhibit 20.

7. In addition to these meetings, a number of other meetings were held throughout the school year to discuss issues and/or concerns Mother had around accommodations, special education services and the manner in which those services were being provided. Throughout the school year, Mother contacted the general education teachers, Special Education Teacher 1, Principal and Special Education Case Manager regarding concerns that teachers were not providing Student with accommodations, that Student was struggling with homework and tests, and that Mother was spending hours with Student providing the “accommodations” she believes the school should be providing.⁷ While Special Education Teacher 1 was diligent in trying to address Mother’s concerns, it is clear that there were numerous communication breakdowns among Student, Parent and staff. As a result, School staff, including Special Education Case Manager, were becoming frustrated with Mother’s frequent communications regarding accommodations and the lack of support she felt her son was getting. Almost all staff members were of the opinion that Student needed to learn to advocate for himself rather than depend on Mother.⁸ In the last month of the school year, two meetings were held that focused on Student’s decision to participate in concurrent enrollment and an apprenticeship and its impact on his direct service minutes - a decision made without the input of special education staff.⁹
8. One of the first meetings, which occurred in September, amended the accommodations and modifications sections of the IEP. This occurred shortly after Student was permitted to change his math class because the original math teacher was not providing accommodations. Mother stated that she wanted to ensure that Student’s accommodations were documented in the IEP so that they would not have the same issue in the next math class.¹⁰ The Special Education Case Manager and Mother agreed to conduct these discussions outside of an IEP meeting. One function of the amendment was to correct the previous year’s form and place the items listed in modifications in the accommodations section where they belonged. The other purpose was to include additional accommodations recommended by Mother. School readily added the accommodations and communicated those changes to the teachers.
9. Around that same time, School staff and Mother discussed the upcoming triennial evaluation. Student’s annual review was due on or before November

⁷ These accommodations included preparing note cards with formulas and step by step instructions to solve equations, scribing, helping to organize material and re-teaching material.

⁸ The SCO notes that while Student’s need to self-advocate was highlighted by almost everyone, including Special Education Case Manager and Special Education Teacher 1, no goals were identified to assist Student learn these skills.

⁹ Interviews with Mother, Special Education Case Manager, Special Education Teacher 1 and Assistant Principal.

¹⁰ Interview with Mother.

8, 2016, and Student's triennial was due on or before December 12, 2016. School initially wanted to conduct the evaluations early enough to consolidate both meetings. This did not take place, as Parents had planned to obtain an independent educational evaluation (IEE)¹¹ which was not scheduled until November 21, 2016, after the annual review due date.¹²

10. School's position is that Parents refused to consent to the school conducting any evaluations of Student. Based on a review of the record and after conducting numerous interviews, SCO finds that District agreed to use Parents' IEE as part of the reevaluation process. Additionally, SCO finds that Parents did not refuse consent to School's request to evaluate.¹³ Rather, in an effort to not be duplicative, Parents requested that Student not be evaluated using the same tests as the IEE evaluators and inquired as to other tests School was interested in conducting.¹⁴ SCO finds that School did not propose additional evaluations; instead it proceeded to conduct an annual review and wait until receipt of the IEE to conduct the triennial. SCO finds that School received a signed consent on December 2, 2016 and within that consent it states School would like to review records and conduct new assessments. There is no record that School discussed additional or different assessments based on the result of the IEE.¹⁵

October 28, 2016 IEP

11. School convened the annual IEP meeting on October 28, 2016. Present at the meeting were Student, Mother, Father, Special Education Coordinator, General Education Teacher 1, Special Education Teacher 1 and Special Education Teacher 2.¹⁶ A few of the concerns noted in the Present Levels of Academic Achievement & Functional Performance ("PLAAFP") included Student being distracted and off-task when frustrated about assignments, needing help to organize thoughts, and needing to increase his self-advocacy. The PLAAFP also included summaries from a 2013 evaluation which indicated that Student has a number of areas where he struggles (at least two grade levels behind) in various academic areas including reading, writing and math. The evaluation noted that processing speed is an area of weakness for him and other areas of concern were attention problems, working memory and planning/organizing. It also included results from Student's Measures of Academic Progress ("MAP")

¹¹ Mother stated they initiated the IEE in anticipation of Student taking college entrance exams.

¹² Exhibit A and B. Interview with Mother and Special Education Case Manager.

¹³ Interview with Mother and Special Education Case Manager.

¹⁴ Exhibit B. Interview with Mother and Special Education Case Manager. Mother also requested an assistive technology evaluation which further demonstrates their willingness to discuss other evaluations.

¹⁵ Exhibit A and B. Interview Mother and Special Education Case Manager.

¹⁶ Special Education Teacher 1 provides all of Student's direct service minutes and provides additional support during study hall.

test. In the PLAAFP's parents/student input portion, Parent noted a number of concerns including low muscle tone, an optimistic sense of ability though in practice much slower, difficulty keeping track of work submitted, concerns regarding too much work and being overwhelmed, processing speed and working memory affecting his ability to do math problems, and Student needing help with formulating his thesis prior to beginning research. Parents also note that he doesn't like speech to text [technology] because it doesn't hear him correctly and that they would like assistive technology for math.¹⁷ The PLAAFP also provided an update on Student's previous goals. Student met Goal 1 in writing which required him to edit his writing for conventions. He made progress on Goal 2 which required him to write a 5 paragraph essay noting that he can write the essay but it takes him a long time to get his ideas on paper when he needs to research.¹⁸

12. As Student is 16 years of age, the IEP team addressed his Post-Secondary Transition Plan. While Special Education Teacher 1 conducted an interview just prior to the IEP meeting and included a summary in the PLAAFP, the Post-Secondary Transition Plan remained virtually identical to the November 2015 IEP. The plan identifies Student's area of interest in the area of Information Technology. Student's career employment goal provides "[Student] will work in the field of Information Technology." His Post-School Education/Training Goal provides that [Student] will go to a post-secondary school that will offer courses in Information Technology Engineering. Lastly, Student's Independent Living Skills Goal provides that ...[Student] has age-appropriate skills to live independently; therefore, no goals are needed. The Education/Instruction and Related Services segment is identical to the prior year's plan. In summary, it provides that various members of the special education team will provide Student with opportunities to find out about post-secondary options, eligibility requirements and disability related services. The Career/Employment and other Post-School Adult Living Objectives provides in summary that special education staff will provide opportunities for Student to develop strong writing skills. Additionally, special education and general education staff will provide opportunities to volunteer at career related sites, job shadowing, job applications, etc.¹⁹ The SCO finds that that there are no updates on what, if anything, has been achieved during this one year time period to support Student achieving his post-secondary goals, including researching concurrent enrollment opportunities.²⁰
13. The Needs and Impact of Disability section provides that "[Student's] specific learning disability impacts his academic performance in writing as well as the

¹⁷ Student had previously received private services for speech-language issues in elementary school from a private therapist. Interview with Mother.

¹⁸ Exhibit A.

¹⁹ *Id.*

²⁰ Exhibit A.

amount of time required to complete tasks that require reading. [Student] needs to improve his writing skills by creating an outline prior to beginning research in order to help him remain on topic and focused during writing assignments. [Student] needs to access accommodations in order to aid him in tasks that require reading." The SCO finds that the Needs Statement insufficiently captures Student's areas of concern as reflected in the PLAAFP and does not address how his disability affects the attainment of his post-secondary goals.

14. During this meeting, the IEP team developed a different goal which provided that "[given] a writing assignment that requires research, [Student] will create an outline prior to beginning his research 75% of the time in all classroom settings as measured by teacher check-ins via Google docs."²¹ Student's service delivery statement provides for 400 minutes of direct service per month in the general education classroom. Student's Least Restrictive Environment is general education class at least 80% of the time.²²
15. The PWN noted that Mother's request for assistive technology services to address Student's skill deficits related to his SLD was rejected because Student refuses speech to text, that the team does not have enough information and that an evaluation should be considered. The PWN did not mention Mother's request for assistive technology as it relates to math.²³
16. Following the annual IEP meeting, on October 29, 2016, Mother e-mailed Special Education Coordinator requesting an assistive technology evaluation to assist Student with all his challenges including math.²⁴ An Assistive Technology Specialist conducted a consultation on December 1, 2016. The SCO finds that this was not an evaluation. The framework for the consultation was based on a referral completed by the Special Education Case Manager and consisted of an interview with Student and Special Education Teacher 1.²⁵ The referral, in answering the question of "what to gain from possible consultation," Special Education case manager provided that "[student] is in the 10th grade and has a medical diagnosis of dyslexia. His mom requested the evaluation. She just wants to see what is available for him. He uses a computer for writing assignments, but his mom does not want him doing any writing in math. She also states that she feels he should have an AT evaluation every 6 months "just to see what's out there." " According to the Assistive Technology Specialist, she was not aware that there were concerns regarding Student's difficulty with the

²¹ Exhibit B.

²² Exhibit A.

²³ *Id.*

²⁴ *Id.*

²⁵ The referral contemplates a caregiver completing the referral form. In this situation, it may have provided the AT Specialist a better understanding of Mother and Student's concerns as it pertains to assistive technology.

speech to text technology and as a result did not delve into those concerns. Additionally, while the summary includes some extensions that could be used to assist Student with math, it does not clearly reference how or when to use it or how it addresses Mother's concern.²⁶ Consequently, the SCO finds that while the consultation summary noted a significant number of assistive technologies/programs available and owned by Student and provided access to another one, it did not address the two concerns voiced by Mother during the IEP, namely, Student's difficulty with speech to text, and Mother's request for assistive technology in math.²⁷ The SCO finds that the referral insufficiently identified the issues and concerns presented by Mother both at and after the IEP meeting and as a result, the consultation was incomplete.²⁸ Additionally, the SCO finds that a PWN was not issued notifying the parents that an assistive technology evaluation was not going to be completed.

December 13, 2016 IEP

17. School convened the triennial meeting on December 13, 2016. In attendance were Special Education Coordinator, Mother, Special Education Teacher 1 and English Teacher. In addition to Student not attending,²⁹ School Psychologist was not in attendance. According to the Special Education Case Manager, School Psychologist was the only one who could interpret the cognitive testing. The SCO finds that she was a required member of the IEP team and the parties did not execute a written excusal to allow for her absence.
18. The evaluation that formed the basis for the triennial was mostly comprised of information gleaned from an IEE conducted in November 2016. School included composite scores from the Wechsler Adult Intelligence Scales-Fourth Edition (WAIS-IV), composite scores from the Wechsler Individual Achievement Test-3rd Edition with analysis of the data from that assessment and scores from The Nelson-Denny Reading Test. School did not include results from the Woodcock Johnson III which indicated very low scores in processing speeds. In addition to the information obtained from the IEE, School included assessment scores from the Measure of Academic Progress Report conducted in the Fall of 2016, the consultation conducted by the Assistive Technology Specialist³⁰ and a Health Assessment. The evaluation summary noted concerns in the following areas:

²⁶ The SCO notes that the technology that Mother is requesting for math may not, in the end, be appropriate for Student. Nevertheless, this should have been explored and Mother's concerns addressed.

²⁷ The SCO notes that while the outcome may have been the same, little was done to determine Student's success and comfort with the assistive technology he currently had. For example, parents reported that Student had difficulty using speech to text but the consultation does not address this issue.

²⁸ Exhibit H.

²⁹ Student reports that IEP meeting was held at a time when he had a conflict.

³⁰ Mother reports that she did not receive a copy of the Assistive Technology Consultation. There is no summary provided within the body of the evaluation report.

Student's processing speed falls into the low average when compared to his peers and is an area of weakness when compared to his other ability levels which may result in frustration; significant deficits in the areas of written expression and math fluency; significant discrepancy in Student's Reading Comprehension assessment. The SCO notes that the Health Assessment indicated that Student has past/present medical history that includes low muscle tone which contributes to speech problems. This is notably missing in the evaluation summary. Also missing from the evaluation is anything addressing potential areas of suspected disability such as ADD/ADHD, dysgraphia and dyslexia, all of which were raised as concerns in the PLAAFP. While the evaluation resulted in a determination of Specific Learning Disability in the area of written expression, the SCO finds the evaluation was not comprehensive in areas of suspected disability including but not limited to ADHD, dysgraphia, dyslexia, dyscalculia and possibly speech and language, and how these may be impacting Student's learning.³¹ Additionally, the SCO finds that the determination of SLD was not based on a body of evidence including evidence of instructional strategies and assessment data indicating the student's response to intervention. Additionally, the SCO finds that School did not conduct a complete assistive technology evaluation as requested by Mother or, in the alternative, issue a PWN explaining the basis for not completing it.

19. In addition to repeating the information from the October IEP, the PLAAFP also included a summary of a classroom observation conducted by Special Education Teacher 1 and the summary from the evaluation. Special Education Teacher 1 reports that the observation lasted approximately 15 minutes and that she felt was sufficient given she was familiar with Student. She reported that no other observations were conducted because that wasn't where Student was receiving his services. The SCO finds that the classroom observation was not adequate in terms of the information provided, e.g., it did not provide information on the accuracy of the written material he was producing, the instructional strategies that teacher was using and did not provide the length of time it took to initiate writing. The SCO finds that the School did not provide sufficient observations in the various areas of suspected disabilities. For example, no observations were done either in a writing class where there was no special education support (such as history class) or the math class where Mother voiced concerns. Special Education Teacher 1 reported that she would have observed if asked by a teacher. However, she admits that teachers have reported to her that Student tends to be distracted in class and can sit there without accomplishing anything. The SCO notes that based on Mother's communications, the evaluations and the annual IEP, School was on notice that there were possible

³¹ The SCO notes that based on Mother's concerns and Special Education Teacher 1's observations, these areas should have been explored in the reevaluation process or at least discussed as possible areas of further inquiry. While math calculation alone does not qualify a student for special education label, it may fall under another category or at least as an identified area need.

other areas of suspected disabilities and needs that should have been further explored in the triennial reevaluation.³²

20. Student's Needs and Impact of Disability statement provides that "[Student's] specific learning disability impacts his academic performance in writing as well as the amount of time required to complete tasks that require reading. Student needs to improve his writing skills by creating an outline prior to beginning research in order to help him remain on topic and focused during writing assignments. [Student] needs to access accommodations in order to aid him in tasks that require reading and writing." Given the results of the evaluation, the concerns reported in the PLAAFP, statements by Special Education Teacher 1, English Teacher and Math Teacher, the SCO finds that the Needs statement does not accurately reflect the challenges this Student faces as identified in the evaluation and PLAAFP.
21. The Parent/Student Input section was updated to include concerns and requests from Mother as follows:

"[t]hey are going to try ADHD medications again due to the struggles he's having in school and concerns with attention while driving. Parent says there is a text editor in word that is used for equation editing. Parent believes that Student should qualify in mathematical calculation because he is not given unlimited time at school. [Student] responds very well to redirection."³³
22. Similar to the October 2016 IEP, the Post-Secondary Transition Plan is virtually identical to the November 2015. As previously stated, the SCO finds that either the tasks listed in the education/instruction and related services have been not been worked on during the course of the year or the work has not been documented and the section updated.
23. Ultimately, very little was changed based on the reevaluation. The team continued to find him eligible with a SLD in writing but decided that Student was not eligible with a SLD in math calculations.³⁴ The PWN states that the team rejected eligibility and goals related to math calculation because in untimed conditions he demonstrated adequate math calculation skills. In addition it states that [Student's] fluency deficits will be met with accommodations to all extended time. The SCO finds that School did not rely

³² Interview with Special Education Teacher 1.

³³ Interview with Mother, Special Education Teacher 1, Math Teacher, English Teacher.

³⁴ Mother reported that she continued to believe that Student should qualify given the evaluation data and the continuing difficulty they were having at home getting the homework completed and him ready for tests.

on a body of evidence to make such a determination, including response to intervention and observations in classes where the disability may present itself. The untimed conditions appear to reference the MAP test which, in and of itself, should not be used as the sole evidence to deny eligibility when presented with other data possibly supporting eligibility. While Student receives A's and B's in his classes, including Math, Parents report that it was due to them providing the accommodations at the home, spending hours at home re-teaching subject matter by utilizing other resources, and Student's ability to redo assignments. Based on e-mails and the data from both the 2013 evaluation and the 2016 evaluation, math was an area of suspected disability that should have been more closely evaluated in order to make a determination supported by data.³⁵

24. Student retained the writing goal developed from the October 2016 IEP meeting. The list of accommodations remained and Student's LRE setting remained in the General education at least 80% of the time.

Concurrent Enrollment/Apprenticeship

25. In addition to the concerns voiced during the IEP meetings, Mother sent numerous e-mails to the various general education teachers, special education teacher 1 and Special Education Coordinator regarding ongoing concerns about Student not receiving his accommodations as it relates to assignments and tests. The teachers, both general education and special education teachers state that, generally speaking, they were providing Student accommodations; however, there were times where Student refused the accommodation. Additionally they state that they believe that Student needs to learn to advocate for himself rather than have his mother initiating the contact. In response to teachers' assertion that he refused accommodations, Student reports that there were times his material was not ready and he was too anxious to wait for the material to be prepared. Special Education Case Manager stated that she believes Parent only complains when Student does not receive As on assignments and tests. The SCO finds, based on the e-mails and interviews with witnesses, that Mother had legitimate concerns regarding accommodations not being provided Student at times.

³⁵ The SCO notes the 2013 initial evaluation determined Student's area of need in reading, writing and math with corresponding goals. There is no reference to this in the IEP and how he addressed those areas of need to the extent that goals were no longer needed.

26. Apart from the IEP process, Student successfully navigated the application processes to be able to attend Community College through School's concurrent enrollment program and an apprenticeship through the School's Colorado Career Wise program.³⁶ Both programs required approval at the administrative level. It is unclear when the Special Education Teacher 1 became aware of Student's acceptance into these programs. It appears from the documentation that Special Education Case Manager first became aware that Student was accepted into these programs on April 12, 2017. Both agree that they were not initially brought into the discussion as to the appropriateness or fit of these programs as it relates to Student. Upon becoming aware of the Student's plans, Special Education Case Manager immediately began communicating with School administration and the Special Education Coordinator to figure out next steps as it related to Student's IEP, but without success. It wasn't until April 25, 2017, when parent requested a conversation to review accommodations, that the issue was revisited.
27. The meeting was held on May 10, 2017 with Mother, Student, Special Education Teacher 1 and Special Education Case Manager. Rather than addressing accommodations, the parties agree that the conversation turned to Student's involvement with the two programs and the complications it created as it pertained to his IEP. Mother and Student left the meeting under the impression that the IEP would be terminated if Student continued with his plan of attending full-time at Community College and participating in Career Wise.
28. Numerous e-mails were exchanged among and between Mother, school officials, district personnel and Colorado Department of Education personnel regarding the options available given the situation.
29. Another meeting was held on May 16, 2017, this meeting involved the Principal, Mother, Student and Special Education Case Manager. Again Parent left feeling that the available options were to either agree to have Student take a class at School or to have the School terminate the IEP.³⁷ Mother requested an IEP to review the options and discuss revising the IEP.

May 30, 2017

³⁶ Career Wise is a program initiated by the Governor. This is the first year.

³⁷ Mother reports that taking a college level class at School deprives Student of over a 1/3 of his apprenticeship hours.

30. School convened an IEP meeting on May 30, 2017. In attendance were Student, Father, Mother, Advocate, Special Education Case Manager, General Education Teacher, Special Education Coordinator and School Principal. Special Education Case Manager also filled the role of a special education teacher as Special Education Teacher 1 was out of town.

31. The majority of the meeting was spent discussing the available options given Student's desire to take advantage of these two programs. As previously stated, Parents were concerned that School wanted to terminate the IEP if Student pursued these school offered opportunities. During the meeting, Parents requested the concurrent enrollment program and the Career Wise program be included in the Post-Secondary Transition portion of the IEP. Additionally, Parents requested that Student's IEP be changed to incorporate this development so that he could get his services in a different way. Furthermore, Mother inquired whether the team believed these programs were good for Student. The SCO finds that the School staff did not engage in the discussion regarding whether these programs met Student's needs. Rather School was insistent that this was parent's choice and they refused to consider and discuss the viability and appropriateness of this plan though they offered a way for Student to receive special education services. Additionally, School insisted that it could not include Student's enrollment at Community College and the Career Wise program in the Transition plan because they believed it was committing those agencies to providing services. Furthermore, Special Education Case Manager stated that "transition services could not be part of his IEP ... [because the team didn't] determine he needs concurrent enrollment. Additionally, she stated that [Student] does not require "apprenticeship" in order to receive reasonable educational benefit."

32. The SCO finds that this statement is inconsistent with the information already contained in the Career/Employment section of the IEP, which provides that special education and general education teacher will provide opportunities to volunteer at career related sites, job shadowing...." Special Education Coordinator also informed the family that transition services are only for kids with significant cognitive disabilities.³⁸ Lastly, the School rejected Parents' request to modify Student's goal and service delivery because it would require a reevaluation due to the LRE possibly being changed.

³⁸ Exhibit 16

33. The SCO finds School misunderstood and/or misapplied the law as it relates to LRE and transitional services and as a result, denied Parents meaningful participation. The SCO finds that, because of this misapplication of the law, the meeting failed to provide parents meaningful participation because 1) School determined that it could not consider these opportunities because it would commit another program; 2) School could not make a referral to vocational rehabilitation, as part of the transition plan in the context of FAPE because Student was not significantly impaired; 3) School believed that providing services on Friday would require a change in the LRE necessitating a reevaluation; 4) an IEP cannot stand alone with consultation services. During the entire course of the IEP meeting, there was no discussion regarding the pros and the cons of these programs, the benefits and the challenges of Student taking part in these programs as contemplated by Student and Parents or whether Student's needs could be met in a different way than what was in the currently in the IEP given this new set of circumstances.³⁹
34. During the meeting, the Special Education Case Manager informed the family that "the team" decided that Student did not need these programs. The SCO finds that the IEP meeting did not have the necessary members to make such a determination nor did document any evidence supporting its position.⁴⁰ Notably missing from this meeting were the Assistant Vice Principal and Special Education Teacher 1. As the Assistant Vice Principal is the individual most familiar with the community college programs and the Special Education Teacher is the one most familiar with Student's special education needs, the "team" could not appropriately assess these programs in light of Student's strengths and weaknesses. Special Education Case Manager did not inquire from Parent or Student why they believed this was an appropriate next step given his special education needs. According to both English teacher and Special Education teacher1, they had significant concerns regarding Student's ability to be successful in college but they readily admitted that they did not know much about the community college program. According to both Special Education Teacher 1 and English Teacher, neither one discussed their concerns with Parent nor did they inquire as to the reasoning behind Parents' and Student's decision. Additionally, neither one spoke to Assistant Vice-Principal regarding why she believed Student was capable of success in the community college environment.

³⁹ Exhibit 16

⁴⁰ Exhibit B and 16. Interviews with Mother, Special Education Case Manager, Principal and Advocate.

35. The meeting ended with a discussion that a reevaluation needed to happen before modifications to the transition plan could be considered. The only changes or additions to the IEP included an update in PLAAFP noting Student's intent to attend Community College and Apprenticeship and a prior written notice.

CONCLUSIONS OF LAW

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

Issue 1: Whether School District denied Parents' meaningful participation by developing an individualized educational plan ("IEP") on December 13, 2016 and May 30, 2017 without considering Parents' and Student's input.

1. Under the IDEA, public schools districts are required to provide children with disabilities with a "free appropriate public education" (or 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 (or IEP) that is developed according to the IDEA's procedures. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's extensive procedural requirements relate to the development of the IEP, including the requirements that it be developed by a team of individuals with knowledge about the child and that it be based upon the input of the IEP meeting participants as well as evaluative data derived from valid, scientifically based assessments conducted in accordance with the IDEA's requirements. See, e.g., 34 C.F.R. §§300.301-300.304 and 300.320-300.324.
2. In the formative case of *Board of Education v. Rowley*, the United States Supreme Court stressed the importance of compliance with the IDEA's procedural requirements.

[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation *at every stage of the administrative process, see, e.g. 1415 (a)-(d)*, as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full

participation of concerned parties throughout the development of the IEP ... demonstrates [s] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

Board of Education v. Rowley, 458 U.S. 176, 205-206 (1982).

3. With the intention of developing an IEP that is tailored to the unique needs of the child, the IDEA places particular emphasis on collaboration among parents and school districts, requiring the parents be afforded the opportunity to participate and that their participation be meaningful, including giving careful consideration to their concerns about their child. 34 C.F.R. §§300.321 (a)(1), 300.322, and 300.324 (a)(ii). It is well-established that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process, the result is a "per se" denial of FAPE. See, e.g., *O.I. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6th Cir. 2004); see also, 34 C.F.R. §300.513(A)(2)(ii) ("In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ...[s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child...").
4. Mother communicated on numerous occasions that she had concerns regarding School's ability to meet Student's needs and provide the accommodations listed on his IEP. Mother frequently e-mailed school staff regarding situations where she believed accommodations were not provided to Student and as a result Student's academic work suffered. Many of these concerns were repeated in both the October 2016 IEP and the December 2016 triennial where, among other things, Mother voiced her concern regarding deficits in Student's math calculation, Student's difficulties with speech to text, and Student's difficulty keeping track of things. During the May 30, 2017 IEP meeting, Parents wanted to discuss whether concurrent enrollment and the apprenticeship program could be part of Student's transition plan. Special Education Case Manager and Special Education Coordinator refused to really consider these options as a viable path to meeting Student's Post Secondary Goals. Special Education Case Manager came to view Mother's advocacy as "aggressive" and believed she only complained when her son did not get an A.

Furthermore, School staff became increasingly frustrated because communications came from Mother rather than Student.

5. Based on a thorough review of the record, including numerous interviews, the SCO concludes that School District violated the procedural requirement related to parent participation in the eligibility process by not meaningfully considering information provided by Parents. While a number of parent concerns were documented in the IEP, the SCO finds that School gave little to no credence to Parents' concerns despite supporting data from the evaluations. Furthermore, School failed to meaningfully consider Parents' and Student's request to update Student's Post-Secondary Transition Plan to include concurrent enrollment or apprenticeship. Special Education Coordinator stated that the IEP was "locked" and it could only be changed upon a reevaluation or another IEP meeting.
6. Accordingly, SCO concludes that School District violated the procedural requirement related to parent participation in the eligibility process by failing to meaningfully consider information provided by Parents, resulting in a per se violation of Student's right to a FAPE.

Issue 2-Whether School District failed to provide parents with documentation detailing the manner in which special education services were provided to Student.

7. The law does not contain any specific requirement that a service provider maintains logs or document the provision of services in a particular way. While the IDEA allows parents to have access to their child's education records that are maintained by a school district, in this circumstance, the School states that it is not their policy to keep service logs of special education teachers. 34 C.F.R. § 300.613.
8. Accordingly, the SCO does not find a violation on this issue.

Issue 3 Whether School failed to provide Parents with sufficient Prior Written Notice (PWN).

9. The IDEA provides that before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of a disability, the school district must provide the parents with "prior written notice" (PWN)

describing and explaining the basis for the school district's action. 34 C.F.R. § 300.503.

10. The SCO finds that School did not provide a PWN as it pertains to the assistive technology evaluation requested by Mother. However, as it pertains to the issues discussed during the December 2016 violation, the SCO Does not make any findings. As for the May 2017 IEP meeting, the SCO finds that the PWNs as issued addressed the proposals and refusals discussed during those meetings.

Issue 4 Whether School failed to consider LRE based on Student's individualized needs.

11. A "significant change in placement" that requires consideration of reevaluation is one that, *inter alia*, is a "change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA." ECEA Rule 4.03(8)(b)(ii)(A)(II). The educational environment categories for reporting purposes are as follows: 1) 80% or more in the general education environment; 2) 40% to 79%; 3) less than 40% of the time; etc. See, e.g., OSEP Child Count and Educational Environment data documentation form, <https://www2.ed.gov/programs/osepidea/618-data/collection-documentation/data-documentation-files/part-b/child-count-and-education-environment/idea-partb-childcountandedenvironment-2015.docx>. Thus, if a child's environment category is 80% or above, and a change in the child's services does not change that category, it would not be a "significant change in placement" under the ECEA and no consideration of reevaluation would be required.
12. The LRE discussion is not relevant in this situation. None of the proposed changes would be a "significant change in placement." Even if it was considered a "significant change in placement," the only requirement is that there is a **consideration** of a reevaluation. ECEA Rule 4.03(8)(b)(ii)(B). In other words, the team must consider whether a reevaluation is necessary. If the team determines that no further reevaluation is required, the change of placement may proceed.

Issue 5 failed to develop, review and revise Student's IEP according to Student's individualized needs, including but not limited to transitional goals and services

13. While parents did not specifically address the school's evaluation as an issue with the development of the IEP, through the investigation, the SCO finds that

School did not complete a full and individual comprehensive evaluation that was sufficiently comprehensive in the areas of suspected disability and therefore were not able to develop an IEP according to Student's needs. The SCO notes that while School agreed to accept the IEE, it still had an obligation to ensure that Student was evaluated in all areas of suspected disability. Additionally, it did not connect the assessments to the educational impact and individualized need.

14. Evaluations under the IDEA have two primary purposes: 1) to determine whether the child has a disability, and because of the disability needs special education and related services, and 2) to assist the IEP team in determining the child's specific needs.⁴¹ Therefore, it is imperative that when evaluating students for eligibility, the school district must:
 - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parents⁴², that may assist in determining whether the child is a child with a disability;
 - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability;
 - c. Use technically sound instruments that may assess the relative contribution of cognitive behavioral factors, in addition to physical or developmental factors;
 - d. Ensure that assessments and other evaluation materials are selected and administered without racial or cultural bias, are provided in the child's native language, are valid and reliable, and are administered by trained and knowledgeable personnel;
 - e. Select assessments relevant to specific areas of educational need;
 - f. Assess the child in all areas of suspected disability;
 - g. Make an eligibility determination by a group of qualified professionals and the child's parents.⁴³

To be eligible for educational services under the IDEA, a child must have one of the 13 qualifying impairments, and, "by reason thereof, needs special education and related services."⁴⁴ To resolve a state complaint that challenges

⁴¹ 34 C.F.R. §300.304(b)(1)(i)-(ii); see also 71 Fed. Reg. 46548.

⁴² SCO notes that parent input includes private evaluations.

⁴³ 34 C.F.R. §§300.304-300.306

⁴⁴ 34 C.F.R. §300.8; ECEA Rule 2.8

a school district's eligibility determination, the SCO must first determine whether the school district followed the relevant procedures and standards required for making the determination and if so, whether the resulting determination is consistent with and supported by child-specific facts, i.e., evaluation data and other data in the record.⁴⁵

15. The IDEA defines SLD as a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. 34 C.F.R. § 300.10.
16. Eligibility determinations of students suspected of having an SLD are sometimes particularly complex and, as a result, the regulations have established additional procedures for the SLD category. 34 C.F.R. 300.307 through 300.311. For a student suspected of having SLD, the team making the determination must ensure that the child is observed in the child's learning environment to document the child's academic performance and behavior in the areas of difficulty. 34 C.F.R. 300.310.
17. Identifying students with specific learning disabilities requires additional procedures. A student can be determined to have a Specific Learning Disability that prevents the child from receiving reasonable educational benefit from general education if a body of evidence demonstrates the following criteria are met:
 - a. The child does not achieve adequately for the child's age or to meet state-approved grade-level standards and exhibits significant academic skill deficit(s) in one or more of the following areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:
 - i. oral expression;
 - ii. listening comprehension;
 - iii. written expression;
 - iv. basic reading skill;
 - v. reading fluency skills;

⁴⁵ *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-6 (OSERS 2013).

- vi. reading comprehension;
- vii. mathematical calculation;
- viii. mathematics problem solving, and

b. The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in Section 2.08(8)(b)(i) when using a process based on the child's response to scientific research-based intervention.

18. In the beginning of the 2016-2017 school year, Student was allowed to change math classes due to the teacher not providing the accommodations listed on the IEP. This was corroborated by Special Education Teacher 2 who co-teaches in that class. While this change was an improvement, Mother continued to voice her concerns that Student was having difficulties when it came to math problems and math calculations in both Student's math class and chemistry class. Additionally, Mother made it known that she had concerns regarding the writing demands on Student and that the accommodations were not being consistently utilized. She made these concerns known in both the October 2016 and December 2016 IEP meetings. The evaluations corroborated Mother's concerns with data showing that Student demonstrated significant deficits in the area of written expression, significant difficulty in the areas of addition and multiplication and moderate difficulty with math fluency in the area of subtraction, that his processing speed is an area of weakness for him, that he has oral expression challenges, etc. Nevertheless, this data, in and of itself was not enough to evaluate the specific areas of weakness nor was it linked with functional information such as observations in all areas of concern, discussions about academic instruction specific to Student and response to instruction/intervention
19. Accordingly, the SCO finds that District violated Mother's procedural rights and Student's right to FAPE by failing to develop or implement Student's IEP based on Student's individualized needs.

Issue 2: Whether School failed to consider the IEE conducted on November 21-22, 2016.

20. The IDEA provides that if the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation, [it] must be

considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child... 34. C.F.R. 300.502 (c)(1).

21. In this case, School incorporated many of the assessments and recommendations from the IEE. It is not necessary to include each and every item from an IEE. However, as previously noted, the IEE should have cued School in that they needed to explore Student's suspected areas of disability and its relation/impact on Student's educational/academic performance.

REMEDIES

The SCO has concluded that the School District committed the following violations of IDEA:

1. Failure to provide meaningful participation to the child's parents in the eligibility process (34 C.F.R. §§ 300.320 and 324);
2. Failure to develop, review and revise Student's IEP according to Student's individualized needs, including but not limited to transitional goals and services (34 C.F.R. §§300.320, 300.324 , 300.501(b));
3. Failure to provide written notice describing and explaining the basis for the school district's action (34 C.F.R. § 300.503); and
4. Failure to ensure that the IEP team includes an individual who can interpret instructional implications of evaluation results (34 C.F.R. § 300.321);
5. Failure to provide an assistive technology evaluation (34 C.F.R. § 300.324(a)(2)(v).

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

1. By no later than September 5, 2017, the School District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every 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 School 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 October 27, 2017.
 - b. Effective training concerning relevant policies and procedures to address the cited violations must be conducted for School administrators, special education case managers, and School District evaluators. 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 the Department no later than November 1, 2017.
2. The School District shall provide an IEE in all identified and suspected areas of disabilities. Within two weeks of the IEE completion but no later than October 3, 2017, the School shall convene an IEP to review and revise Student's IEP, including transitional services if appropriate. The IEP shall be conducted by a neutral facilitator and ensure attendance by professionals who provided services to Student and must also include Vice-Principal, School Psychologist, Math teacher, Special Education Teacher for math, SLP and the private evaluator if possible. The IEP team must also include staff from the School District's SWAAC assessment team (or persons knowledgeable about SWAAC assessments) to identify all areas of suspected disability.
 3. A complete copy of any new IEP developed for Student, including prior written notice, as well as the School District's consent to reevaluate Student, shall be provided to the Department within five days after the IEP meeting occurs or consent form is provided.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the School District's timely compliance with this Decision. 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

Failure by the School District to meet the timelines set forth above will adversely affect the School District's annual determination under the IDEA and will subject the School 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 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).

Dated this 3rd day of August, 2017,

Jacqueline N. Esquibel, Esq.
State Complaints Officer

APPENDIX

Complaint, dated September 9, 2016

- Exhibit 1: Email communication (May 9, 2017 and May 17, 2016)
- Exhibit 2: December 13, 2016 IEP
- Exhibit 3: E-mail communication (February 17, 2017-February 28, 2017)
- Exhibit 4: Neuropsychology Assessment dated January 18, 2011
- Exhibit 5: Neuropsychology Assessment dated November 21, 2016
- Exhibit 6: Information regarding concurrent enrollment at [School]
- Exhibit 7: Information regarding [School] opportunities
- Exhibit 8: Mother's list of accommodations
- Exhibit 9: Colorado Department of Education Fast Facts: Secondary Transition Issues
- Exhibit 10: E-mail from Peak Parent Organization
- Exhibit 11: Transition Guide to Post-Secondary Education and Employment For Students and Youth with Disabilities
- Exhibit 12: E-mail communications with Colorado Department of Education
- Exhibit 13: E-mail communication (May 22, 2017-May 23, 2017)
- Exhibit 14: Letter from the United States Department of Education Office for Civil Rights dated May 23, 2017
- Exhibit 15: E-mail communication (June 1, 2017)

Response, dated June 26, 2017

- Exhibit A Special Education Documentation from 2015 - May 30, 2017
- Exhibit B E-mail communications (August 6, 2017 - June 1, 2017)
- Exhibit C List of employees with information
- Exhibit D Progress Report for December 31, 2015 - May 31, 2016
- Exhibit E Policies and procedures maintained by the School District
Relating to special education identification and eligibility
- Exhibit F Student's transcript
- Exhibit G Proof of Service

Additional documentation provided by District

- Exhibit H Documents related to Assistive Technology
- Exhibit I Contract between [School] and [Community College]

Reply

- Exhibit 16: Recording from May 30, 2017
- Exhibit 17: Summary of recording prepared by Mother
- Exhibit 18: Notice of Meeting dated December 9, 2013
- Exhibit 19: Initial Evaluation Report
- Exhibit 20: IEP dated December 9, 2013

Additional documents provided by parents

- Exhibit 21: E-mail communications (August 31, 2016 - May 22, 2017)
- Exhibit 22: E-mail communication (September 27, 2016 - February 24, 2017).
- Exhibit 23 Comparison Chart
- Exhibit 24 Writing Samples
- Exhibit 25 Prior Notice and Consent for Reevaluation dated May 30, 2017

Interviews with

- Student
- Mother
- Advocate
- Special Education Coordinator
- Special Education Case Manager
- Principal
- Assistant Principal
- Special Education Teacher 1

Special Education Teacher 2
English Teacher
Math Teacher
Community College
Assistive Technology Specialist