

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

**State-Level Complaint 2018:523
Jefferson County School District**

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on July 3, 2018, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).

The State Complaints Officer (SCO) determined that the Complaint identified four 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. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (CDE) has the authority to investigate alleged violations of IDEA that occurred not more than one year from the date the Complaint was filed. Accordingly, this investigation will be limited to the period of time from July 3, 2017 through July 3, 2018 to determine whether or not a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations accepted for investigation. Findings of noncompliance, if any, shall be limited to one year prior to the date of the Complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

1. Failing to provide transportation to and from Student's transition program in a timely manner, resulting in Student regularly missing instruction and services during the 2017-18 school year;
2. Failing to conduct an assessment for assistive technology, as requested by Parent during the 2017-18 school year;

3. Failing to provide Parent with a copy of the November 2017 IEP in a timely manner; and
4. Failing to develop IEP goals on the November 2017 IEP designed to meet Student's unique needs in the following areas:
 - a. Communication to address post-secondary needs;
 - b. Reading, writing, and math;
 - c. Vocation/career; and
 - d. Independent living skills, including the use of public transportation.

FINDINGS OF FACT

After thorough and careful analysis of the record detailed in the appendix, the SCO makes the following FINDINGS:

Background:

1. At all times relevant to the Complaint, Student was twenty years old and eligible for special education and related services as an individual with multiple disabilities. (2017 IEP, Ex. 1 at 15.)
2. Student's disability "adversely impacts her ability to maintain appropriate age-level conversation, complete novel tasks without assistance, and independently navigate public transportation." Student's scores on cognitive assessments are two standard deviations below the norm and she requires alternative and modified curriculum. In addition, Student has complicated healthcare needs that require accommodations, school health services, and paraprofessional support. (2017 IEP, Ex. 1 at 21 and 27.)
3. For the 2017-18 school year, Student attended Transition Program where she received community based instruction and work experience, physical therapy, school health, and speech language services all to support postsecondary goals (PSG). (2017 IEP, Ex. 1 at 17-27.)
4. Student missed approximately four months of transition programming and services during the 2017-18 school year. In late November of 2017, Student required major surgery. As a result of complications following surgery, Student did not return to Transition Program until early January of 2018. Parent then withdrew Student from Transition Program on or around February 20, 2018. Following this withdrawal, Student did not return for the remainder of the 2017-18 school year. (Complaint at 10; Response at 3; Interviews with Parent, Paraprofessional, and Transition Director.)

5. Parent's Complaint concerns transportation services, the provision of an AT assessment, the appropriateness of Student's annual IEP goals for the 2017-18 school year, and when she was provided with a copy of the IEP. The findings below are organized topically rather than chronologically.

Transportation Services:

6. As a result of her disability, Student uses a power wheel chair for mobility and "requires special education transportation to and from school, and in situations when public transportation cannot be relied upon." (2017 IEP, Ex. 1 at 21.)

7. The Transition Program begins at 8:00 AM and ends at 2:00 PM, Monday through Thursday. On most mornings, Student arrived between 7:45 and 7:55 AM. Although Student may have arrived late on a couple of occasions due to inclement weather, as well as one occasion where Student was not picked-up at the usual time, there is no evidence to demonstrate that Student did not regularly arrive at Transition Program by 8:00 AM. (Interviews with Paraprofessional, Special Education Teacher, Transition Program Director, and Parent.)

8. There is evidence, however, that Student was released 5-10 minutes prior to the end of the Program for a few weeks in the beginning of the 2017-18 school year. The District acknowledged that the Transition Program was releasing students who used wheelchairs 5-10 minutes prior to the end of class to ensure that they would be ready to depart on time. (Response at 4.)

9. In early October, Parent notified Transition Program Director of her concern that Student was missing instruction because she was leaving early to load the bus. Based on the concern raised by Parent, as well as other parents, the Transition Program Director immediately informed the District's Transportation Division, drivers, and Transition staff that participants could not leave the program prior to 2 PM, even if the bus arrived prior to that time. Because the District promptly remedied this practice, there is no evidence that the limited early departures at the beginning of the 2017-18 school year constituted a failure to implement Student's IEP. (Interviews with Parent, Transition Program Director, Special Education Director, Special Education Teacher, and Paraprofessional.)

Assistive Technology Assessment:

10. During the November 2017 IEP meeting, Parent expressed concern that Student needed Assistive Technology (AT) to support her communication needs. Specifically, Parent requested PixWriter, or other similar technology, to support Student in "continuing conversations with others over her typical rote sentences." (2017 IEP, Ex. 1 at 22.) Parent reported that Student had used PixWriter, a software program that pairs pictures with words for beginner writers, when she was in middle school. Parent requested the AT assessment because Student enjoys technology and devices, such as her iPad and iPhone, and Parent wanted to explore how

technology could support Student in navigating a conversation with others. Interviews with Parent, Transition Program Director, and SLPA.

11. In response to Parent's concern, the SLPA voiced her opinion that Student did not need this technology because she communicates verbally and is easy to understand. Indeed, Parent and the professionals who work with Student all agree that Student's primary communication need involves learning how to have an age-appropriate conversation with others. Although Student effectively communicates her needs and is highly sociable, she struggles with how to initiate and maintain conversation. For example, Student needs support and prompting to take turns in a conversation, choose an appropriate topic, stay on-topic, and ask relevant questions to keep the conversation going. Accordingly, the IEP team concluded that Student needed an annual goal in communication to meet this specific need but did not require AT devices or services. (2017 IEP, Ex. 1 at 18-19 and 22 (consideration of special factors); Interviews with Parent, Transition Director, Special Education Teacher, Paraprofessional, SLP, and SLPA.)

2017 IEP: Annual Goals

12. Student's transition plan described the following three post-secondary goals (PSG):

- Independent living skills goal: [Student] will live at home or in a supported group home with nursing support. This will be referenced as PSG 1.
- Post-school education/training goal: Upon completion of [Transition Program], [Student] will audit college classes. This will be referenced as PSG 2.
- Career/Employment goal: Upon graduation, [Student] will work in a volunteer or paid position in retail or service industry. This will be referenced as PSG 3.

(2017 IEP, Ex. 1 at 22-23.)

13. To directly support PSG 3, the IEP described the following annual goal: In order to achieve her goal of working or volunteering in the community, [Student] will increase her percentage of independence during unpaid work experience by completing 80% of steps on the [Transition Program] job site task analysis. This goal was based on Student's performance on the Transition Program's job-site task analysis, an assessment designed to measure readiness for competitive employment. In the fall of 2017, Student had completed 61% of the steps independently with identified areas for growth that included calling supervisor when late, following directions, asking questions as needed, and accepting feedback from supervisor and coworkers. (2017 IEP, Ex. 1 at 18.)

14. To directly support PSGs 1, 2 and 3, the IEP described the following annual goal: [Student] will be able to make 2 connecting comments or ask 2 relevant questions when speaking with a peer in 4/5 opportunities in three consecutive trials. This goal was based on an assessment by SLP and the results of a transition assessment that identified various

communication needs, such as having a two-way conversation, interacting well in a group setting, developing and maintaining positive relationships, conversing effectively on the telephone, and presenting ideas in a clear and logical manner. (IEP, Ex. 1 at 18-19 and 21.) Consistent with this assessment, and as described above, Student's primary communication need concerned learning how to navigate and maintain appropriate conversation with others.

15. To support achievement of this goal, Student received 90 minutes of direct specialized instruction each month. SLPA reported that she worked with Student on a weekly basis to practice communication skills with peers, including opportunities to rehearse and role-play conversations in the work setting. (2017 IEP, Ex. 1 at 27; Interviews with Special Education Teacher, SLP, and SLPA.)

16. To directly support PSG 1 in the area of independent living, the IEP described the following two annual goals:

- In order for [Student] to be as independent as possible in the community, [Student] will be able to use the "dollar up" strategy to select the correct amount of money when purchasing an item in 4/5 opportunities in three consecutive trials.
- In order for [Student] to be as independent as possible in the community, [Student] will read and match the written word for common sign words, grocery words, recipe, and restaurant words with 80% accuracy in 4 of 5 trials.

These goals were based on the results of the transition survey and the identified need to improve independent living skills to include the use of public transportation, money management, and shopping for basic necessities. Functional skills in literacy and math were embedded in these goals. During the IEP meeting, Parent also expressed that she wanted Student's program to be "geared towards independence from me." (2017 IEP, Ex. 1 at 18-24.)

17. Student's IEP did not provide an annual goal that specifically addressed the use of public transportation. Student did, however, receive regular community based instruction on the use of public transportation consistent with the transition services and activities identified on the 2017 IEP. (*Id.*; Interviews with Special Education Teacher, Paraprofessional, and Transition Program Director.)

Copy of IEP:

18. Finally, Parent alleged that she did not receive a copy of the IEP following the November meeting. Based on the evidence described below, the SCO finds that Parent did not receive a copy of Student's IEP until February 26, 2018, approximately three months after the IEP meeting.

19. The District's general practice is to provide a copy of the IEP within three days after the IEP meeting by emailing a copy (with parental permission), sending the IEP home with student,

or mailing it to Parent. Although Special Education Teacher typically follows the District's practice, she did not do so in this particular situation. When asked why she did not follow the general practice, Special Education Teacher responded that this was an unusual situation because the IEP meeting was held in Student's hospital room and Student did not return to the Transition Program until January of 2018. Special Education Teacher further recalled that she did not mail the IEP to Parent following the meeting because the family was in the process of moving. At the time of her interview, Special Education Teacher could not recall whether or not she sent the IEP home with Student after she returned to school in January of 2018. (Interviews with Special Education Director and Special Education Teacher.)

20. On February 26, 2018, Parent emailed various District staff, including Special Education Teacher, to request that a copy of the 2017 IEP be sent to her by email. In addition to the request, Parent commented that she assumed an IEP had been written after the meeting in Student's hospital room. Parent's email is consistent with a finding that she had not received a copy of Student's IEP after the IEP meeting. (Email Correspondence, Exhibits H and I.)

21. On February 27, 2018, the day after the request, Special Education Teacher provided a copy of the IEP to Parent.

22. There is no evidence to support a finding that the failure to timely provide Parent with a copy of the IEP resulted in educational harm, impeded her ability to participate in the development of Student's educational program, or delayed access to the procedural safeguards. Indeed, Parent requested a copy of the IEP in February of 2018 because she had already decided to file a state complaint. (Email Correspondence, Exhibits H and I; Interview with Parent.)

CONCLUSIONS OF LAW

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

Conclusion to Allegation One: The District did not fail to provide appropriate transportation to and from Student's transition program during the 2017-18 school year.

Parent alleges that the District failed to provide appropriate transportation when it released Student 5 to 10 minutes prior to the time when the Transition Program ended. Under IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the District, must implement a student's IEP in its entirety. 34 C.F.R. § 300.323(c). Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

Because Student's IEP provided transportation as a related service, a failure to appropriately provide this service may result in a denial of FAPE.

In this case, the District admitted that it released Student 5 to 10 minutes prior to the end of the program for a short period of time at the beginning of the 2017-18 school year. To be actionable, however, the failure to implement the IEP must be material. *L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP). Once notified by Parent that Student was leaving early, the District promptly addressed the issue by directing bus drivers and Transition Program staff to begin loading no sooner than 2 PM, the precise time the program ended. The early departures that occurred for a brief period at the beginning of the school year did not result in educational harm or otherwise demonstrate a material failure to implement the IEP. Accordingly, the SCO concludes that Student's IEP was appropriately implemented with regard to transportation services.

Conclusion to Allegation Two: The IEP team considered Student's need for assistive technology during the November 2017 IEP meeting and appropriately concluded that Student did not require AT to receive FAPE.

Parent alleges that the District failed to provide the AT assessment she requested at the November 2017 IEP meeting. In developing the IEP, the team must "consider whether the child needs assistive technology devices and services." 34 C.F.R. § 300.324(a)(2)(v). If the IEP team determines that AT is necessary for a student to receive FAPE, the device or service must be identified on the IEP and provided at no cost to the parent. *Letter to Anonymous*, 24 IDELR 854 (OSEP 1996).

Here, the IEP team considered Student's need for AT during the November 2017 IEP meeting based on present levels of performance in the area of communication and appropriately concluded that AT was not necessary for Student to receive FAPE. As described in Findings of Fact (FF) 10-12, Student communicates verbally and is easily understood by others. Student's disability-related needs in the area of communication involve her ability to navigate and maintain age-appropriate conversation with others. To address this need, Student has an annual goal designed to improve her ability to maintain a conversation by making connecting comments and asking relevant questions. To support achievement of this goal, Student received 90 minutes of direct specialized instruction each month. Based on Student's unique strengths and needs, the IEP team appropriately concluded that she did not require AT to address her communication needs. Because there is no evidence to support the need for AT, the District was not obligated to provide an AT assessment.

Conclusion to Allegation Three: The District did not provide Parent with a copy of the November 2017 IEP in a timely manner.

IDEA requires a school district to provide a copy of the child's IEP to the parent at no cost. 34 C.F.R. § 300.322 (f). Providing a copy of the IEP is essential to a parent's ability to participate in the development and enforcement of their child's IEP. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017). In this case, Parent was not provided with a copy of Student's November 2017 IEP until February 26, 2018, approximately three months after the IEP meeting.

Although this was a procedural violation, there is no evidence that it impeded Parent's ability to participate in the development or enforcement of Student's IEP. First, Parent has not alleged that she was denied a meaningful opportunity to participate during the November 2017 IEP meeting. Second, Student did not return to Transition Program until early January of 2018. Approximately 6 weeks after Student's return to the program, Parent requested and immediately received a copy of the IEP. Finally, Parent requested a copy of the IEP because she intended to file this Complaint, an intention she subsequently acted upon. Accordingly, there is no evidence that Parent's ability to enforce the IEP through the procedural safeguards was impeded by the District's failure to provide a copy of the IEP to Parent within 3 days of the meeting, per the District's usual practice.

Finally, the SCO concludes that the failure to timely provide a copy of the IEP was unique to the circumstances of this particular case, including the unusual location of the IEP meeting, Student's delay in returning to Transition Program, and the uncertainty of Parent's address. Consequently, the findings do not support a conclusion that this was a systemic issue.

Conclusion to Allegation Four: The IEP team developed appropriate annual goals designed to meet Student's unique needs.

Parent alleges that the 2017 IEP did not include appropriate annual goals in the areas of independent living skills, communication, career/vocation, and academics (reading, writing and math). To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 137 S. Ct. 988, 999 (U.S. 2017). 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*, in which the Court set out a two-pronged analysis for determining whether an IEP has offered a FAPE. 458 U.S. 176 (1982). 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. If those two questions are satisfied in the affirmative, then the IEP is appropriate under the law.

Under the first “prong” of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA’s procedures. For a student of transition age, the IEP must include “appropriate measurable postsecondary goals based on age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. 34 C.F.R. § 300.320(b)(1). Annual IEP goals support PSGs and should “state what the student will do or learn within the next year that will move the student toward achieving the identified postsecondary goals (PSGs) linked to the student’s transition services.” *CDE IEP Procedural Guidance* at page 41.

First, Parent alleges that Student’s IEP did not contain appropriate annual goals in the area of independent living skills. Based on the facts described more fully in FF ## 12 and 16-17, the SCO concludes that Student’s IEP contained appropriate annual goals to support independent living skills. To begin, Student had a PSG in independent living that was based on a transition assessment and directly supported by two annual goals. The first annual goal was to improve Student’s independence in the community when shopping for personal items, and the second was to improve independence by recognizing common sign, recipe, grocery, and restaurant words. Relative to Parent’s allegation that Student did not have goals in literacy and math, the SCO notes that functional math was embedded in the first goal and functional literacy was embedded in the second goal. Because Student’s transition program and services were primarily focused on independent living skills, annual goals that included functional math and literacy skills in place of academic goals were appropriately based on Student’s needs. Finally, Student received regular community-based instruction on the use of public transportation, even though she did not have an annual goal that specifically addressed this area. Accordingly, the SCO concludes that Student’s IEP appropriately addressed independent living skills, as well as math and literacy.

Next, Parent alleges that Student’s IEP did not provide an annual goal tailored to Student’s communication needs. Based on the facts described more fully in FF ## 11 and 14-15, the SCO concludes that Student’s IEP contained an appropriate annual goal in the area of communication. There is no dispute that Student’s primary communication need concerns the ability to initiate and maintain an age-appropriate conversation. To address this need, the IEP contained an annual goal to develop Student’s ability to make connecting comments and ask relevant questions when conversing with a peer. To support achievement of this goal, Student received specialized instruction that included small group discussion, role-playing, rehearsing conversations with an employer, and support during peer interactions. Accordingly, the SCO concludes that Student’s IEP appropriately addressed her unique needs in communication.

Finally, Parent alleges that Student’s IEP did not provide an appropriate annual goal in career/vocation. Based on the facts described more fully in FF ## 11 and 12, the SCO concludes that Student’s IEP contained an appropriate vocational goal. To support Student’s PSG of working or volunteering in the community, Student’s IEP contained an annual goal to increase her independence during unpaid work experience. This goal was based on Student’s performance on a vocational assessment designed to measure readiness for competitive

employment. Accordingly, the SCO concludes that Student's IEP appropriately addressed her vocational needs.

REMEDIES

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

- a) Parent copy of IEP, 34 C.F.R. § 300.322 (f).

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

- 1) By September 12, 2018, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision.
- 2) By September 26, 2018, Special Education Director must review the requirement of providing a copy of the IEP to a student's parent with Special Education Teacher, consistent with this Decision. To document that this review has occurred, the District must submit a sign-in sheet and notes from the meeting to the Department by September 28, 2018. The District will be excused from complying with this remedy if Special Education Teacher is no longer employed by the District when the Decision is issued.

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.: Fran Herbert
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may 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 30th day of August, 2018.

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-16.

Exhibit A: 2017 IEP.

Exhibit B: 2017 IHP.

Exhibit C: Travel tip sheet.

Exhibit D: Correspondence.

Response, pages 1-11.

Exhibit 1: 2017 IEP.

Exhibit 4: 2017 progress reports.

Exhibit 5: Grade reports and IEP progress reports.

Exhibit 7: 2017 transportation form.

Exhibit 9: Correspondence.

Exhibit 10: Contact information for relevant District staff.

Exhibit 10-A: IHP

Exhibit 10-B: Attendance records.

Exhibit 11: Tracking report.

Exhibit 12: Progress notes.

Reply, pages 1 -2.

Exhibits E-KK: Correspondence between Parent and District staff.

Interviews with:

- Parent
- Special Education Director
- Special Education Teacher
- Paraprofessional
- Transition Program Director
- SLP
- SLPA