

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

**State-Level Complaint 2018:528
Denver Public Schools**

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on September 17, 2018, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA). On September 27, 2018, the parties agreed to extend the 60-day investigation timeline to engage in mediation. Mediation resulted in impasse on October 15, 2018, and consequently, the State Complaints Officer (SCO) resumed the investigation.

Based on the written Complaint, the SCO determined that the Complaint identified 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 events that occurred no earlier than September 17, 2017, to determine whether a violation of IDEA occurred. Information prior to this date 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 the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failing to implement Student's IEPs specifically by:

- a. Failing to provide Student with the adult support as indicated in the service delivery statement during social studies as outlined in his IEPs from September 17, 2017 through the present, consistent with §300.323 (c)(2);
- b. Failing to provide Student with the adult support as indicated in the service delivery statement during math class as outlined in his IEPs from September 17, 2017 through the present, consistent with §300.323 (c)(2);
- c. Failing to ensure school staff was appropriately informed of Student's IEP consistent with §300.323(d).

FINDINGS OF FACT

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

Background

1. Student is a thirteen year old eighth-grade student in the Denver Public School District. At all times relevant to the Complaint, Student has attended School. Student has been identified as eligible for special education as a student with Autism Spectrum Disorder (ASD) and a Speech Language Impairment (SLI), and receives special education and related services pursuant to an IEP. The time period of this complaint is Student's seventh grade year and the beginning of his eighth grade year to the present. (2017 IEP, Ex.1; 2018 IEP Ex. 1.)

2. Parents and teachers alike describe student as a highly creative and artistic young man, who has created an extensive video game world of characters and story lines that he avidly illustrates. All interviewees also commented on Student's sense of humor, describing him as funny and at times irreverent. Parents and several teachers also characterized him as being sweet and compassionate towards others, with a genuine concern for social justice. (2018 IEP, Ex. 1 at 36; Interviews with Math Teacher 1, Math Teacher 2, Social Studies Teacher 1, Social Studies Teacher 2, Special Education Teacher 1, and Special Education Teacher 2.)

3. Student's ASD affects his education in several ways. It is universally agreed by parents and teachers that Student has difficulty focusing, and therefore needs consistent redirection in class. The amount of redirection and direct support Student needs is the main issue in this complaint. Besides difficulty focusing and staying on task, teachers describe Student as struggling with multistep problems, beginning classroom work, and prioritizing his work. Parents noted that Student is slow processing information and slow with output. Parents also mentioned Student's struggles with organization. Similarly, Student's 2018 IEP states that he is easily distracted, struggles with multistep directions or problems, has difficulty putting thoughts into words, and struggles to respond appropriately to new and difficult situations. (2017 IEP, Ex. 1 at 9-10; 2018 IEP, Ex. 1 at 45; Interviews with Math Teacher 1, Math Teacher 2, Social

Studies Teacher 1, Social Studies Teacher 2, Special Education Teacher 1, and Special Education Teacher 2.)

4. Parents filed a state complaint on behalf of student in 2016 alleging a failure to implement Student's IEP, failure to include all required individuals at IEP meetings, and that services were missing on Student's service delivery grid. The investigation resulted in no findings against the District.

5. The impetus for the current complaint is a comment by Student's math teacher on Student's year-end report card issued in June 2018. Under the section titled "Points of Growth/Improvement," teacher wrote:

"One area of growth for [Student] is DYB ("Do Your Best"). If I am not standing directly next to [Student]/helping him one-on-one, more often than not he opts out of the work. His teachers do not have the capacity to constantly be next to him, as there are other students in the class that they must check in with." (Complaint; Ex. 2.)

6. Based on that statement, Parents believed that math teacher was unaware of Student's IEP needs, and that the IEP had not been properly implemented. (Complaint at 4; Interview with Parents.)

7. Parents contacted Principal the day they received the end of year report with their concerns. During registration for the 2017-18 school year, Parents again voiced their concern to Principal. In response, an IEP meeting was convened. (Complaint at 5.)

8. Subsequently at the beginning of the 2018-19 school year, Parents became more vigilant in asking Student about the supports he was receiving daily in class. On August 23, 2018, Student told Parents that there was no additional adult support in his social studies class, and that he had not had any additional adult support in social studies the entirety of the 2017-2018 school year. (Complaint at 6-7; Interview with Parents.)

9. On September 17, 2018, Parents filed this complaint. Notably, they specifically state that they believe the current IEP as written would provide FAPE. Their contention is not with the contents of the IEP, only that the School failed to implement the IEP as written. (Complaint at 3.)

Provision of Adult Support in Social Studies

10. Pertinent to this case is the service delivery statement for math and social studies. The service delivery statement for social studies requires:

"[Student] will receive 50 minutes daily in a social studies block with an adult in the classroom who will provide re-directs and accommodate assignments as needed and

pull [Student] for small group (less than 5 total) or 1 on 1 support based on data...”
(2017 IEP, Ex.1 at 19; 2018 IEP, Ex.1 at 53.)

The service delivery statement in Student’s 2018-19 IEP was copied from the previous year, and is identical to the 2017-18 IEP. (*Comparing* Ex. 1 at 10 *with* Ex. 1 at 53.)

11. Relevant to the implementation of the Student’s IEP for Social Studies, there is current disagreement between the parties as to what the IEP requires. Associate School Director stated that it was a purposeful decision by the IEP team to state that there would be “an adult” and not an “additional adult” in the room for social studies, because social studies is a preferred class for Student, and therefore requires a lower level of support because Student needs less redirection in classes he is interested in. Associate School Director also stated that the May 2017 IEP took nearly 20 hours of collaborative time, and that the majority of that time was spent on the content and language of the service delivery statement. Parents disagree, and state that support in social studies was a focal point of the 2016 complaint, and that they did not believe student needed less support. Parents agree that Student may need less redirection in a preferred class, but that his interest in a specific subject does not affect his output.

12. Based on the following factors, the SCO finds that Student’s IEP did not require additional adult support in social studies class. First, the IEP team spent considerable time crafting the service delivery statement. Second, the service delivery statement specifically sets forth “additional adult support” in reading, writing, and math. Regarding math, the service delivery statement also explains that the additional adult support is to provide redirection and “in the moment support.” The word “additional” does not appear when setting forth the services in social studies. Consequently, the SCO finds it more likely than not that the IEP does not contemplate or require “additional” adult support in social studies. (Ex. 1 at 53.)

Implementation of IEP in Social Studies Class during the 2017-18 School Year

13. Student’s social studies class had three adults consistently present in the classroom: Social Studies Teacher 1, Special Education Teacher 1, and Student Teacher. Student Teacher was initially in the classroom three days a week, gradually increasing time in the classroom as the year progressed. By the end of the year, Student Teacher was in the classroom four to five days a week. Social Studies Teacher 1 estimated that Special Education Teacher 1 was in his classroom about 70% of the time. (Interviews with Social Studies Teacher 1 and Special Education Teacher 1.)

14. All three teachers “co-taught” social studies. As described by the teachers, this meant that when one teacher would be leading instruction, the others would circulate around the room and assist students as necessary. All teachers reported that they routinely and consistently checked on Student. For example, Social Studies Teacher 1 specifically described his system of making a chart at the beginning of the school year to help him prioritize where in his class his students who needed more check-ins were located. (*Id.*)

15. Both Social Studies Teacher 1 and Special Education Teacher 1 describe similar supports that were administered to Student in social studies. Relevant to the Complaint allegation, Social Studies Teacher 1 and Special Education Teacher 1 frequently checked in on Student during class and redirected him when necessary. In addition, Student received an accommodated work packet at the beginning of every class, multistep work that was “chunked down, as well as sentence starters and other aids to help with his output. Moreover, Special Education Teacher 1 consulted with Social Studies Teacher 1 weekly regarding Student. Special Education Teacher 1 reported that if Student needed help, time would be blocked off to help Student one-on-one. Social Studies Teacher 1 explained that he would communicate with Special Education Teacher 1 before the class began to work on big projects so Student could be pulled for small group sessions. Based on these interviews, the SCO finds that Student’s IEP was properly implemented in social studies during the 2017-18 school year. (*Id.*)

Implementation of IEP in Social Studies Class during the 2018-19 School Year

16. Student’s 8th grade social studies class is taught by Social Studies Teacher 2. Social Studies Teacher 2 began the school year without a student teacher or a special education teacher assigned to his class. Social Studies Teacher 2 described Student’s need for redirection, the accommodated work that he receives every day, pared down assignments, and the sentence starters, annotated texts, and graphic organizers provided to student. Social Studies Teacher 2 appears to know Student quite well, describing his interest in drawing and that his common distractions include legos and other fidgets. Based on these factors, the SCO finds that Social Studies Teacher 2 is providing support consistent with the requirements of Student’s IEP. (Interview with Social Studies Teacher 2.)

17. Although the IEP did not require additional adult support in social studies, the District provided this support in response to parental concerns raised in the fall of 2018. After Parents contacted school asking who the additional support staff was in this class, school had Special Education Teacher 2 fill in until additional support staff could be hired. Special Education Teacher 2 began attending Student’s class on August 27, 2018, and has continued to provide support since that time. Additionally, School assigned a paraprofessional who has attended this class since August 30, 2018. (Interviews with Social Studies Teacher 2 and Special Education Teacher 2.) (Response at 4; Interviews with Parents and Associate School Director.)

Provision of Adult Support in Math

18. The service delivery statement for math requires:

“[Student] will receive additional adult supports in math, to provide redirection and in the moment support to modify the pacing of the curriculum and length of assignments, in order to prioritize standards and provide opportunities for guided practice in his areas of need. During classroom independent work time, he will receive direct adult support in a 1:1 or small group (5 or fewer students).” (2017 IEP, Ex.1 at 19; 2018 IEP, Ex.1 at 53.)

19. The service delivery statement in Student's 2018-19 IEP was copied from the previous year, and is identical to the 2017-18 IEP.

Implementation of IEP in Math Class for the 2017-18 School Year

20. Student's math class had three adults consistently in the classroom: Math Teacher 1, Special Education Teacher 1, and Math Teacher 2, a first year apprentice teacher. Special Education Teacher 1 was in the classroom everyday with Math Teacher 1, and functioned as a co-teacher. Math Teacher 2 began the year mostly observing class and learning how to teach, and by the end of the year was leading classroom instruction. (Interviews with Math Teacher 1, Math Teacher 2, and Special Education Teacher 1.)

21. All three teachers describe the same support for Student, including: preferential seating, accommodations made to daily work, working with student to breakdown tasks and prioritize his in-class work, and frequent check-ins and redirection as necessary. Math teacher also stated that Student received small group instruction 4-5 days a week for roughly 10 to 12 minutes with other students who were struggling with the material. (*Id.*)

22. As evidence that Student is not receiving appropriate adult support, Parents identify the co-teaching model utilized at School. Parents believe that when the special education teacher is co-teaching, not enough time and attention are dedicated to implementing Student's IEP. After interviewing various teachers, the SCO disagrees. Both Math Teacher 1 and Special Education Teacher 1 stated that one of them would teach the day's material to the class at large, and the other would circulate through the classroom checking on students. Both teachers described "sharing the load," with respect to teaching the larger class and implementing student's IEPs.

23. All teachers interviewed in this class credibly described how they recognized when Student needed redirection, what methods they used to redirect him, and roughly how often he needed to be redirected. (Interviews with Math Teacher 1 and Special Education Teacher 1.)

24. For instance, Math Teacher 1 stated he made a point of visually checking in on Student. If he noticed Student wasn't paying attention, he would sometimes nudge Student's shoulder or tap his desk. Math Teacher 1 also stated that Student needed more frequent redirection at the beginning of the year (once every two to five minutes), but that Student improved over the course of the year and needed less frequent redirection by the end of the year. Special Education Teacher 1 also described frequent planned check-ins with Student. If she noticed Student playing with fidgets or not paying attention, she would conduct a "Check for Understanding" in which she would speak to Student and confirm he was following along with the material. Special Education Teacher 1 estimated Student needed 3-6 redirections within a 10 minute period, depending on the class. (*Id.*)

25. Special Education Teacher 1 was in math class every day of the 2017-18 school year. However, Student's IEP does not call for Special Education Teacher 1, or any other teacher or paraprofessional, to be completely dedicated to Student. Based on FF# 20-24, the SCO finds that all three teachers were responsible for implementing Student's IEP, and all three properly implemented Student's IEP in math.

26. Additionally, Student showed progress in math throughout the 2017-18 school year. All three of these teachers noted that Student showed progress both in his ability to stay on task, and his fluency with math concepts. Notably, his eighth grade math teacher, who was the apprentice in Student's seventh grade class, noted that he saw progress and continues to see progress in Student's math skills. (Interviews with Math Teacher 1, Math Teacher 2, and Special Education Teacher 1.) Additionally, Student's end of year Progress Report states "[Student] has grown significantly in Math this year. He ended up trimester 3 with a 66% summative average. In addition, [Student] showed significant growth on MAP assessments. His most recent MAP assessments, his scores took him from the 21st %ile to the 27th %ile, which is strong growth for a school year. It has been also a pleasure to see [Student's] confidence in Math grow." (Response; Ex. F at 12, 24-26.)

Implementation of IEP in Math Class during the 2018-19 School Year

27. Student's current math class is being taught by Math Teacher 2, the apprentice teacher in his 7th grade math class. Additionally, Special Education Teacher 2 is in class every day. Both Math Teacher 2 and Special Education Teacher 2 explained that a paraprofessional is in the class approximately 3 days a week. (Interviews with Math Teacher 2 and Special Education Teacher 2.)

28. Having spent the 2017-18 school year with Student, Math Teacher 2 demonstrated familiarity with Student's unique academic needs. Both Math Teacher 2 and Special Education Teacher 2 reported that Student receives an accommodated packet at the beginning of each class, that he is seated at the front of the class so he is more easily redirected and typically partnered up with a supportive student. Student is pulled for small group work two to three times a week based on mastery checks and results from other assignments. Both teachers also described how they prioritized checking in with Student during class. Further, Special Education Teacher 2 explained that she frequently communicates with Special Education Teacher 1 regarding how to support Student. (*Id.*)

29. Math Teacher 2 and Special Education Teacher 2 co-teach math this year, and they are both responsible for implementing Student's IEP. Based on interviews, the SCO finds Math Teacher 2 and Special Education Teacher 2 demonstrated knowledge concerning Student's unique academic needs and their responsibilities for implementing Student's IEP, and that they are properly providing the necessary supports in Math Class. (*Id.*)

30. Both teachers also report seeing progress in Student's ability in math this year. Special Education Teacher 2 said that Student now makes connections between the different concepts they have been learning. Math Teacher 2 describes Student having more confidence in his abilities, more perseverance to stick with difficult lessons, and that he has seen specific improvements in Student's use of formulas, his understanding of rational vs. irrational numbers, and his ability to solve problems using equations. Notably, Math Teacher 2 described an instance where he observed Student apply math concepts he had learned in science class. (*Id.*)

Access to Student's IEP

31. All teachers interviewed during this investigation gave consistent accounts of how they are generally informed of student's IEPs. During an in-service at the beginning of the school year, all the teachers from one grade (i.e. all 8th grade teachers) meet with the special education teachers to review their student's IEPs and accommodations. The general education teachers are given IEP "snapshots" which are summaries of the key points of the IEP. These are provided for quick access and ease of use. During the discussion, any teacher that is familiar with a certain student's needs is welcome to give input, regardless if they are responsible for implementing that student's IEP that year or not. Additionally, Student's teachers had access to his IEP through the school's computer network. Finally, School also conducted a special "Autism Refresher" on September 12, 2018, for Student's teachers intended to provide further support. (Interviews with Math Teacher 1, Math Teacher 2, Social Studies Teacher 1, Social Studies Teacher 2, Special Education Teacher 1, and Special Education Teacher 2.) Based on the above process and the SCO's interviews with Student's teachers, the SCO finds that all teachers have access to Student's IEP and understand their responsibilities for implementing the IEP in Math and Social Studies.

CONCLUSIONS OF LAW

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

Conclusion to Allegation One: Student has received adult support in Math and Social Studies classes consistent with his IEP during the 2017-18 and 2018-19 school years.

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 201 (1982).

To that end, a public agency must implement a student's IEP in its entirety. 34 CFR § 300.323(c). To satisfy this obligation, the District must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR §

300.323(d)(2). In addition to informing teachers of their responsibilities regarding a student's IEP, the District must ensure that the IEP is being implemented. 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.

Regarding the implementation of Student's IEP in math, the SCO concludes that Student received adult support in accordance with his IEP for both the 2017-18 and 2018-19 school years. In reaching this conclusion, the SCO disagrees with Parent's assertion that the IEP requires that someone be standing directly next to Student or helping him one-on-one at all times during class. Rather, Student's IEP calls for adults to redirect him, modification of assignments, modified pacing, and small group and 1:1 support during independent work time. As described more fully in FF #20-30, Student was provided adult support in Math class consistent with the requirements of his IEP.

Regarding implementation of Student's IEP in social studies, the SCO acknowledges that the Parties disagree as to whether Student's IEP calls for an additional adult to be in the classroom for social studies. Parents contend that an additional adult is required. School staff states that it was agreed by all parties that an additional adult was not required in this particular class because of Student's interest in social studies. As described in FF # 12, the SCO determined that the IEP did not require additional adult support in social studies. Although the IEP did not require additional adult support, the District provided additional adult support during the 2017-18 and 2018-19 school years. During the 2017-18 school year, Student's social studies class was "co-taught," providing the additional adult support through the classroom model. During the 2018-19 school year, the District arranged for Special Education Teacher 2 to attend class, and then hired additional paraprofessionals for that class that were available to provide support to Student by August 30, 2018. Consequently, the SCO concludes that the District provided more than what the IEP required in social studies for both the 2017-18 and 2018-19 school years.

Regarding the School staff's knowledge about Student's IEP, the SCO finds and concludes that all staff had access and were knowledgeable about their specific responsibilities for implementing Student's IEP. As described more fully in FF # 31, the District has a system for providing general education teachers with access to a student's IEP through a "snap shot" and its information technology system. In addition, the teachers working with Student in math and social studies were knowledgeable about the Student's needs and their specific responsibilities for implementing the IEP and regularly communicate with special education staff about Student's needs.

REMEDIES

Concluding that the District has not violated IDEA, no remedy is ordered.

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 November, 2018.

Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-9

Exhibit 1: May 8, 2017 IEP and IEP Snapshot; April 19, 2018 IEP

Exhibit 2: 2017-18 end of year report card

Exhibit 3: Email correspondence August 27, 2018- September 4, 2018

Exhibit 4: Email correspondence August 30, 2018- September 7, 2018

Exhibit 5: Email correspondence August 30, 2018- September 7, 2018

Response, pages 1-8

Exhibit A: May 8, 2017 and April 19, 2018 IEPs

Exhibit B: May 30, 2017 Evaluation Report

Exhibit C: School Schedules and teacher lists

Exhibit D: Prior Written Notices from September 2017 to present

Exhibit E: Notices of Meeting and email correspondence

Exhibit F: Grade and IEP progress reports

Exhibit G: Email correspondence

Exhibit H: DPS Standard Operating Procedures Manual

Exhibit I: List of staff members with knowledge of complaint allegations

Exhibit J: Response delivery verification to Parents

Exhibit K: 2018 IEP snapshot

Exhibit L: May 10, 2016 IEP

Reply, pages 1-4

Exhibit 6: Email correspondence October 24, 2018 – November 1, 2018

Exhibit 7: October 19, 2018 math assessment

Exhibit 8: October 31, 2018 medical report

Exhibit 9: October 31, 2018 after visit summary

Exhibit 10: Medical report

Exhibit 11: Email correspondence

Exhibit 12: October 2018 calendar

Exhibit 13: Student's 2018 math grades

Exhibit 14: CDE survey

Exhibit 15: DPS Risk Review

Interviews with:

Parents

Social Studies Teacher 1
Social Studies Teacher 2
Math Teacher 1
Math Teacher 2
Special Education Teacher 1
Special Education Teacher 2
Associate School Director