

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

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**State-Level Complaint 2019:539  
Douglas County School District**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on May 23, 2019 by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the SCO determined that the Complaint identified one allegation 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.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from May 23, 2018 through May 23, 2019 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. 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:

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* and its corresponding regulations are found at 34 CFR § 300.1, *et seq.* IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”), found at 1 CCR 301-8, 2220-R-1.00, *et seq.*

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children’s Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

1. Convening an IEP meeting on April 25, 2019 without all required IEP team members, specifically School Psychologist, consistent with 34 C.F.R. § 300.321.

### **FINDINGS OF FACT**

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

1. Student is a seventeen-year-old currently eligible for special education and related services under the disability categories of [disability categories]. *Exhibit B*, p. 19.
2. Student is described as an outgoing, thoughtful, and creative person who enjoys reading, writing, and being outdoors. *Interview with Parent; Exhibit B*, p. 21.
3. As a result of his disability, Student has difficulty with problem solving in math class and organizing multi-paragraph written responses. *Exhibit B*, p. 29. Based on this, Student's IEP contains two annual goals, one addressing writing and one addressing math. *Id.* pp. 31-32.

### **Transfer to High School and administrative withdrawal**

4. At the beginning of the 2018-19 school year, Student transferred within the District to High School for his senior year. At that time, Student was behind in credits to graduate. Based on this, Student's IEP was amended to increase his direct service minutes in a resource class "based on the need for [Student] to receive support for skill development and work completion necessary to earn credits." *Exhibit B*, p. 18.
5. During the fall 2018 semester, Student struggled to maintain adequate attendance. On both September 7 and October 23, Dean emailed Parent explaining that Student had been identified as truant based on excessive absences, and that he was in danger of being administratively withdrawn from High School. *Exhibit H*, pp. 8, 10.
6. However, Student continued to struggle with attendance, and on November 27, 2018, Dean sent Parent a letter explaining that Student had been administratively withdrawn from High School for failing to maintain attendance. *Exhibit H*, p. 11. Parent explained that after Student was withdrawn from High School he became depressed, and his self-image and self-worth were negatively affected. *Interview with Parent*.

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

### District and Family meet to discuss concerns and arrange IEP meeting

7. On April 8, 2019, Parent and Advocate met with Special Education Director. Advocate and Parent explained their intent was to request an IEP meeting in order to address Student's needs after being out of school for several months, and to put a plan in place for Student's return to school. *Interview with Advocate and Parent; Complaint, p. 2.*
8. On April 18, 2019, Parent, Advocate, Student, Special Education Director and other District personnel met at the District's offices. The meeting was not an official IEP Team meeting, but rather an opportunity for the parties to meet, discuss the concerns of Student and Parent, and plan for an IEP meeting. Staff discussed Student's options for returning to the District, and his post-graduation plans. The parties also discussed attendees for the requested IEP meeting, with Special Education Director stating her desire to make sure all the right people were present in order to best serve Student. *Exhibit F, Audio Recording 4/18/19 meeting.*
9. Both Student and Advocate briefly addressed Student's mental health concerns. Student discussed the stigma he felt regarding being withdrawn from High School, and how it had been difficult to find a job because he was not enrolled in school. Student also stated he had become depressed as a result of being withdrawn from High School, and had recently been diagnosed with depression and prescribed medication. *Audio Recording 4/18/19 meeting.*

### Parent requests school psychologist attend IEP meeting

10. On April 24, 2019, Special Education Director emailed Parent in anticipation of the IEP meeting scheduled the next day. Pertinent to this decision, Special Education Director wrote: "[for] who is in attendance tomorrow: I have a mixture of district folks and [High School] folks per your request to problem solve." That list was comprised of ten individuals: Counselor, Assessment Specialist, Assistant Principal, Special Education Teacher, General Education Teacher, Executive Director, Support Coordinator, Special Education Coordinator, Special Education Director, and Special Education Coordinator 2. *Exhibit G, p. 4.*
11. The same day, Parent replied and requested that a school psychologist also attend the meeting. *Exhibit G, p. 3.* Special Education Director replied, stating: "I cannot pull a School Psychologist into our meeting. I have a recently expired School Psychologist license, maybe I can wear multiple hats? Since I am the person that authorizes resources, I am confident if there are any needs, I can make that happen." *Exhibit G, p. 2.*
12. Advocate responded to Special Education Director, stating in part, "I do not love that we did not include the mental health role in the invite or planning but [Special Education

Director] clearing [sic] is highly trained.....so that is a work around that should work.....thanks." *Exhibit G*, pp. 1-2.

13. Parent and Advocate explained that they requested a school psychologist to attend the meeting so someone with knowledge and expertise to address mental health concerns would be present. However, they were not requesting that a specific school psychologist attend. *Interviews with Parent and Advocate*. Special Education Director explained that, in addition to herself, Counselor was qualified to discuss mental health services and needs, and Counselor was present at the April 25 IEP meeting. *Interview with Special Education Director*. Additionally, Parent does not allege any other members of the IEP meeting were not present on April 25: "IEP meeting held . . . [f]ull team from district except requested school psychologist." *Complaint*, p. 2.
14. Before transitioning to an administrative role, Special Education Director worked as a school psychologist. She originally obtained her school psychology license in 2001. *Exhibit J*. Special Education Director explained that she had participated in numerous IEP meetings in the past in her role as a school psychologist, and that she still possesses "the requisite knowledge and experience to serve as a school psychologist in IEP meetings, where such expertise would be relevant to the IEP team's development of appropriate educational programming for a student with a disability." *Id.*; *Interview with Special Education Director*.
15. Based on Advocate's email, the SCO finds that Parent and Advocate consented to Special Education Director participating as a district representative with a background in school psychology and knowledge regarding the availability of the District's resources at the April 25, 2019 IEP meeting.

#### April 25, 2019 IEP meeting and proposed amendment

16. On April 25, a properly constituted IEP team convened to discuss Student's return to School. *Exhibit B*, p. 42. Special Education Director facilitated the meeting. *Interviews with Special Education Director and Advocate*. The parties' accounts of this meeting differ. Advocate stated that he explained Student was in crisis, and that he was requesting immediate mental health services. *Interview with Advocate*. Special Education Director stated the word "crisis" was never spoken, and there was no statement that Student was a danger to himself or others. *Interview with Special Education Director*. Both parties agreed that the discussion primarily centered around programs available to Student to help facilitate his return to school, and that mental health concerns were not discussed extensively. Additionally, Student had not undergone any new evaluations or assessments prior to this meeting. *Interviews with Special Education Director, Advocate, and Parent*.

17. Following this meeting, on April 29, 2019, Special Education Director sent Parent a proposed IEP amendment. The amendment consisted of an added self-determination goal which stated: “[Student] will work with his mental health provider to identify the effectiveness of his learning experience and ask for adjustments if needed.” The services provided to achieve this goal are direct mental health services for 2 hours a month. *Exhibit B*, p. 39. The District assigned a school social worker to provide the mental health services. *Reply*, p. 2.
18. The rationale given for the proposed IEP amendment was stated as: “The family asserts that [Student’s] removal from school in the fall of 2018 has resulted in a diagnosis of depression and anxiety. These services can help bridge the gap between [Student] being out of school and returning to school.” *Exhibit B*, p. 39. This proposed rationale is consistent with Student’s statements made at the April 18, 2019 meeting. Namely, that his mental health had suffered as a result of being withdrawn from High School in the fall.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation 1: The District included all required IEP Team members in the April 25, 2019 meeting consistent with 34 C.F.R. § 300.321, and thus did not violate the IDEA.**

“Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of . . . FAPE to the child, participate in the child’s IEP Team meeting.” *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011). Accordingly, IDEA requires that IEP Teams include:

- (1) the parents of the child;
- (2) not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) a representative of the public agency who –
  - (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) is knowledgeable about the general education curriculum; and
  - (iii) is knowledgeable about the availability of resources of the public agency.

- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a).

The IDEA therefore differentiates between mandatory and discretionary IEP Team members. *See Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include: parents, at least one regular education teacher, at least one special education teacher, a district representative with knowledge of the district's available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). Discretionary members include other individuals who have knowledge or special expertise regarding the child. 34 C.F.R. § 300.321(a)(6).

Under the IDEA, both the district and parents have discretion to invite "other individuals" with knowledge or special expertise about the child to the IEP meeting. 34 C.F.R. § 300.321(a)(6). "The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team." 34 C.F.R. § 300.321(c). Additionally, mandatory IEP Team members may only be excused from attending IEP Team meetings if the parents and district both agree in writing. 34 C.F.R. § 300.321(e). However, consent and a written agreement is not necessary to excuse "individuals who are invited to attend IEP Team meetings at the discretion of the parent or public agency because such individuals are not required members of an IEP Team." 71 Fed. Reg. 46675 (August 14, 2006).

For the following reasons, the SCO concludes the District did not violate IDEA's requirements pertaining to IEP Team participants.

First, Parent does not contest the composition of the IEP Team except for the absence of a school psychologist: "IEP meeting held . . . [f]ull team from district except requested school psychologist." *Complaint*, p. 2. Indeed, the District included all of the individuals required pursuant to 34 C.F.R. § 300.321(a)(1)-(5) at the April 25 IEP meeting: Parent, Regular Education Teacher, Special Education Teacher, and Special Education Director acting as the District's representative. Though a specific individual is not listed as the member present "who can interpret the instructional implications of evaluation results" pursuant to 34 C.F.R. §

300.321(a)(5), several members present were qualified to perform that role, including Special Education Director. Additionally, there were no new evaluations to consider.

Furthermore, Advocate recognized Special Education Director's background and experience as a school psychologist, and consented to her participating in the IEP meeting as both the District representative and as a District representative with a background in school psychology. Advocate's consent coupled with Special Education Director's subsequent participation conclusively show the District did not violate IDEA's requirements related to IEP Team composition at 34 C.F.R. § 300.321(a).

Second, the SCO concludes that, under the circumstances present here, the District was not obligated to include a school psychologist as a member of Student's April 25, 2019 IEP Team. Under certain circumstances, a school psychologist may be a mandatory member of an IEP Team. For instance, if a school psychologist is needed to interpret evaluation results, a district may be obligated to ensure their participation as a member of the IEP Team. 34 C.F.R. § 300.321(a)(5); *see also William S. Hart Union High Sch. Dist.*, 119 LRP 12836 (SEA CA 3/22/19) (finding a procedural violation for failing to include a school psychologist at an IEP meeting to interpret "a complicated, multi-part . . . psychoeducational assessment").

However, based on the record here, no such circumstance existed. Student had not undergone any new evaluations or assessments that needed to be interpreted. Also, Student had not previously received any services from a school psychologist pursuant to his IEP. His goals and services only addressed math and writing. The April 25, 2019, IEP meeting was convened specifically to put a plan in place to get Student reenrolled in the District and back in school. The intent of Parent and Advocate in asking that a school psychologist attend the meeting was to have someone present with knowledge of the District's mental health resources.

By virtue of her position, Special Education Director was qualified to explain the District's mental health resources, and she had the authority to commit those resources, as she indicated in her email on April 24. Also, as noted in FF 13, Counselor attended the meeting and was also qualified to speak about the District's mental health resources. Additionally, the proposed IEP amendment following the April 25 meeting directly addressed Student's stated concern that he had become depressed following his administrative withdrawal from High School. The counseling services proposed to assist with the self-determination goal directly address Student's stated concern. Accordingly, the SCO concludes that even though the District included a staff member with training and expertise in school psychology in the IEP Team at Parent's request, under the circumstances, it was not obligated to do so.

Finally, a discretionary member of an IEP Team must have "knowledge or special expertise regarding the child." 34 C.F.R. 300.321(a)(6); *see also Letter to Byrd*, 41 IDELR 94 (OSEP 2003). These individuals do not necessarily need to know the student personally, but could have expertise in "an instructional method or procedure, or in the provision of a related service that

the parents or agency believe can be of assistance in developing an appropriate IEP for the child." *Letter to Haller*, 119 LRP 21571 (OSEP 2019). Parent and Advocate did not request a specific individual with knowledge or special expertise regarding Student, but rather a person with knowledge and expertise of school psychology. The SCO therefore concludes that under these circumstances, a school psychologist would be a discretionary member of the IEP Team on April 25, 2019.

### **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 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 22nd day of July, 2019.

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Thomas Treinen  
State Complaints Officer



## **Appendix**

### **Complaint, pages 1-3**

#### **Response, pages 1-6**

- Exhibit A: District relies on CDE IEP procedural manual
- Exhibit B: IEPs dated 10/24/17 & 10/17/18
- Exhibit C: N/A
- Exhibit D: PWNs are embedded in IEPs in Ex. B
- Exhibit E: Notice of Meetings
- Exhibit F: Grade and IEP progress reports
- Exhibit G: Email correspondence
- Exhibit H: Attendance records and truancy letters
- Exhibit I: List of school staff with knowledge of the Complaint
- Exhibit J: Affidavit of Special Education Director

#### **Reply, pages 1-2**

- Exhibit 1: Proposed IEP amendment dated 4/29/19
- Exhibit 2: Reply
- Exhibit 3: Email correspondence
- Exhibit 4: Email correspondence

#### **Interviews with:**

Parent  
Advocate  
Special Education Director