

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

State-Level Complaint 2008:513

Douglas County School District RE-1

Decision

A. INTRODUCTION

This State-level Complaint (Complaint) was dated 10/01/08 and submitted on 11/18/08.¹ The then State Complaints Officer (SCO), Keith Kirchubel, determined that the Complaint's allegations identified allegations subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA). The SCO notified Douglas County School District RE-1 (District) and the Parent of that determination by letter dated 11/26/08.

The allegations identified by the SCO in the 11/26/08 letter raised the issue of whether the District implemented the student's Individualized Education Program (IEP), including all specified services, accommodations and modifications, following the Student's enrollment in the [LEARNING CENTER] on 08/25/08. [LEARNING CENTER] is a learning center associated with Hope Online Learning Academy Co-Op (Hope Online). Hope Online is an online charter school authorized by the District.

The District received the 11/26/08 letter and a copy of the Complaint on 12/01/08. The District's response was originally due on 12/16/08. By letter dated 12/10/08, the District requested an extension of time to respond to the Complaint. The SCO extended the due date for the District's Response to 12/24/08. The District's Response was received on 12/23/08. The Parent's Reply to the District's Response was received on 01/08/09. Acting SCO Laura L. Freppel² (hereafter referred to as the SCO) closed the record on 01/09/09.

The Complainant is the parent of student who has been identified as being a child with a disability. Hereafter, the Complainant is referred to as the "Parent" and the student is referred to as the "Student".

¹ Two separate complaints involving two separate school districts were submitted simultaneously by the Parent. On 10/11/08, the Parent sent Mr. Keith Kirchubel (the State Complaints Officer at that time) an email letter which Mr. Kirchubel interpreted as the Parent's withdrawal of the Complaint. Between 11/09/08 and 11/18/08, the Parent and Mr. Kirchubel exchanged a series of email letters during which the Parent clarified that this Complaint was not to be withdrawn and requesting reactivation. On 11/18/08, Mr. Kirchubel reactivated this Complaint and reset the 60-calendar day timeline.

² Mr. Kirchubel left the employment of the Department effective 12/31/08.

B. THE PARENT'S ALLEGATIONS

The Complaint, in relevant part, alleges as follows:

- 1) Between 08/25/08 and 09/16/09, Student attended [LEARNING CENTER], a charter school of the District;
- 2) During registration day on 08/18/08, the Parent asked [LEARNING CENTER]'s school director: "[Can] this school [accept] and provide for [Student's] IEP. She said 'yes'. She did not see a problem. I asked, if [she] needed to review any information 1st. She said no."
- 3) "From Aug. 25 until Sept.16 my child attended and did paper packets for school. Without reviewing [Student's] IEP. All other [students] got logged onto computer and lesson (sic) that were for credit for graduation except: [Student]. When I talked with [Teacher] over the phone and he said he didn't know [why she] wasn't on the computer. [Student] completed all paper packets at school and [turned] them in."
- 4) "On 9/16/08, I had a phone [consultation] with Jefferson County IEP person, the IEP person for Douglas County and myself. At this time the school district decided to review [Student's] IEP with me for enrollment. They decided that they couldn't [educate Student due] to her IEP...Also, they are only willing to give [Student] credit for being in attendance and not for any work done."
- 5) "I withdrew my child on Sept. 18, 2009. [[LEARNING CENTER]'s school director] was there to hand me my withdrawal form and [asked] why? I told her that her school refused my child. After filling out the form, I handed back to her. She asked me to keep her there and my reply was that I had already enrolled her into [Colorado Distance and Electronic Learning Academy or CDELA³] in Brighton."

C. THE DISTRICT'S RESPONSE

The District's Response, in relevant part, states as follows:

- 1) "[Student] was never admitted to and enrolled in Hope Online or the District."
- 2) "Hope Online's Application and enrollment materials make clear in several places that submission of an application does not equate to enrollment."

³ Colorado Distance and Electronic Learning Academy is an online charter school authorized by the State Charter School Institute.

- 3) Per Hope Online's enrollment materials, "[Students] who are in special education will be able to enroll through the same process and timelines as other students. *All enrollments, however, are conditioned upon a proper IEP team determining that a special education student can be appropriately served through Online.* No enrollment of a special education student is final, whether the parent has provided the appropriate information or not, until an IEP team made such a finding."
- 4) "[The] Application Instructions inform parents that 'Acceptance of this enrollment packet does not constitute enrollment of your child. You will receive a confirmation of your child's enrollment acceptance within 3 weeks of submitting this packet to Hope Online.'"
- 5) "The Parent submitted an application for Student on 08/21/08, one business day before Hope Online's school year began...As Jefferson County schools...started on August 12, 2008, [Student] had been eligible to begin school over a week before submitting her application to Hope Online and remained eligible to attend school while her Hope Online Application was processed. "
- 6) "Hope Online immediately began processing [Student's] application. Within two business days, Hope Online reviewed [Student's] application for completeness, recorded it into the system, and forward the information to the assigned coordinator...Within the same week, the coordinator requested [Student's records] from her Jefferson County School...On September 9, 2008, more than two weeks after its request, Hope Online received the necessary student records from Jefferson County and immediately began processing Student's application. Within the same week, on September 12th, Hope Online contacted [Parent] to arrange for an enrollment determination meeting. On September 16th, one calendar week after receiving the educational records, Hope Online convened an enrollment determination meeting. At that meeting, the team determined that [Student] could not be provided a free appropriate public education at Hope Online. Accordingly, Hope Online notified the family at the time of the meeting that [Student] could not be enrolled at Hope Online."
- 7) "Ordinarily, an applicant is not allowed to begin at Hope Online until eligibility for enrollment and the necessary admission paperwork can be completed. This school year, Hope Online transitioned its charter to the School District from the Vilas Board of Cooperative Educational Services. As such, the School District and Hope Online had to forge a new working partnership while working to re-admit existing and former Hope Online students and process new applications. In an effort to ensure that [Student] was not left without an education, the School District and Hope Online understand that [Student] was permitted to attend the Hope Online program during the time that her application was processed. During these few weeks, since only admitted and enrolled students may be logged onto individualized online curriculum, [Student] was provided with written work at her level. Only a few days past Hope Online's three week application processing timeline, Hope Online provided [Parent] with notice that [Student] could not be admitted. Though the School District and Hope Online complied with the applicable laws and their own policies in considering [Student's] application, we

understand that [Parent's] complaint demonstrates that this family was unclear about the enrollment process and [Student's] status during the time that her application was pending."

D. FINDINGS OF FACT

- 1) Student is a resident of the Jefferson County School District RE-1 (JeffCo). JeffCo's school year for 2008-09 began on 08/12/08.
- 2) Student has been identified as a child with a disability.
- 3) During the time period relevant to this Complaint, Student had a current IEP dated 02/13/08. The IEP specified as follows:
 - (a) Student was to receive 20 hours per week of direct special education services provided by a special education teacher outside the general classroom. The rationale for the services was that "[Student] requires small group/specialized instruction in all content areas as well as extra literacy support"; and
 - (b) Student was to receive the following curricular accommodations/modifications: check for understanding; flexible setting/group; graphic organizer/learning tools; preferential seating; provide copies of materials to be copied from book or board; provide copies of notes; read aloud/sign for directions; read aloud/sign test items; and study guide.
- 4) Hope Online is an online charter school authorized by the District. [LEARNING CENTER] is a learning center associated with Hope Online.
- 5) Between 08/15/08 and 08/18/08, the Parent completed, signed and/or initialed a variety of enrollment application forms for Student's enrollment in Hope Online. The enrollment application forms included the following:
 - a) **Student Information Form** (dated 08/15/08). The Student Information Form states: "To help us better serve your student's needs and transition, we would like to know about any special services your student has received or is required to receive under state or federal law. *This information will not be used to determine enrollment eligibility, but will be used to ensure that your child is provided with proper services.*" [Emphasis added]. The Parent checked the "yes" boxes to the subsequent questions asking "Does your child have a current IEP?" and "Has your child ever had an IEP?"⁴
 - b) **Enrollment Acceptance Form** (undated): "I understand that the completion of this enrollment form does not guarantee admission into Hope Online or attendance at my Hope Online Learning Center of Choice"⁵

⁴ District Response, Attachment A at page 2

⁵ District Response, Attachment A at page 7

- c) **Parent Agreement Form** (dated 08/18/08). This form contains language explaining that all enrollments in Hope Online of special education students “are *conditioned* upon a proper IEP team determining that a special education student can be appropriately served through Online. No enrollment of a special education student is *final*, whether the parent has provided appropriate information or not, until an IEP team made such a finding.”⁶ [Emphasis added].
- 6) On 08/18/08, the Parent submitted an application for Student’s enrollment in Hope Online for attendance.⁷ The Parent submitted the application to [LEARNING CENTER]’s school director. The District does not dispute the Parent’s allegations as set forth, above, in Allegation No. 2. Accordingly, such allegation is deemed admitted by the District to the effect that [LEARNING CENTER]’s school director accepted Student’s enrollment application, which did not include a copy of Student’s 02/13/08 IEP.
- 7) The instructions for the form entitled “Hope Online New Enrollment Application”⁸ states that “*Records are not requested from previous schools until students are officially accepted by Hope Online. Therefore, submission of the below documents is required prior to acceptance.*” [Emphasis added]. Among the required documents to be submitted with the enrollment application are “a copy of your child’s Special ED records...or IEP (Individualized Education Plan).” At the bottom of the form is a confirmation receipt section to be completed by a Hope Online enrollment representative and language that states; “Acceptance of this enrollment packet does not constitute enrollment of your child. You will receive a confirmation of your child’s enrollment acceptance *within 3 weeks* of submitting this packet to Hope Online.” [Emphasis added].
- 8) Per the Student’s Enrollment Checklist, on 08/21/08 a Hope Online representative received, reviewed and accepted [Student’s] enrollment application packet even though it did not include copies of the Student’s special education records or IEP. The Enrollment Checklist contains the notation “IEP” in the “Notes” section.⁹
- 9) On 08/25/08, Student’s application was entered into Hope’s system and forwarded to the assigned coordinator.¹⁰
- 10) Student began attending Hope Online on 08/25/08. The District concedes that Student was permitted to attend Hope Online during the time that her application was in process in an effort to ensure that Student was not left without an education.¹¹
- 11) On 08/29/08 (Friday), Hope Online requested a copy of Student’s special education records and other educational records from Student’s previous school in JeffCo.

⁶ District Response, Attachment A at page 10

⁷ Per information provided by the Parent during a telephone interview conducted by the SCO on 01/09/08.

⁸ District Response, Attachment B

⁹ District Response, Attachment A at page 1

¹⁰ District Response, Attachment A at page 1

¹¹ District Response at page 2

- 12) On 09/05/08, JeffCo mailed the Student's special education records to Hope Online.¹²
- 13) On 09/09/08, Hope Online received from JeffCo the necessary special education records for Student.¹³
- 14) On 09/12/08, Hope Online contacted the Parent to arrange for an IEP Team meeting which the District characterizes in its Response as an "enrollment determination meeting."
- 15) On 09/16/08, the IEP Team, including the Parent, met via teleconference. Per the 09/16/08 IEP documentation, the IEP Team determined that "student needs could not be met at Hope with special education consultative services."¹⁴ The 09/16/08 IEP documentation identifies Student's home school and school of attendance as Hope Online Charter.¹⁵ The 09/16/08 Memorandum attached to the 09/16/08 IEP document characterizes the meeting as a "Significant Change of Placement" meeting.¹⁶
- 16) The Parent was notified during the 09/16/08 IEP Team meeting that Hope Online could not meet student's needs. A period of more than three (3) weeks had elapsed from the date that Student's application was submitted by the Parent.
- 17) The District does not dispute Parent's Allegation No. 3, above. Accordingly, such allegation is deemed admitted by the District to the effect that, while attending Hope-Online, Student did not have access to a computer or to Hope Online's general education curriculum, nor did Student receive credit for the work that Student completed and turned into [LEARNING CENTER].
- 18) The District does not dispute Parent's Allegation No. 5, above. Accordingly, such allegation is deemed admitted by the District to the effect that, even after the IEP team determined that Hope Online was not an appropriate placement for Student, [LEARNING CENTER]'s school director attempted to persuade the Parent not to withdraw Student.
- 19) Between the dates of 08/25/08 and 09/16/08, Student received no special education services.
- 20) Between 09/16/2008 and 09/18/08, Parent withdrew Student from Hope Online and enrolled Student in CDELA.

E. ANALYSIS AND CONCLUSIONS OF LAW

- 1) During all times relevant to this Complaint, Student was a child with a disability and entitled to a free appropriate public education (FAPE) consistent with Student's 02/13/08 IEP.

¹² District Response, Attachment C at page 1

¹³ District Response, Attachment C at page 1

¹⁴ District Response, Attachment D at page 4

¹⁵ District Response, Attachment D at page 1

¹⁶ District Response, Attachment D at page 5

2) The language in the Student Information Form and the Parent Agreement Form, when read together, may be reasonably interpreted to mean that: (a) a special education student will be *conditionally* enrolled until such time as an IEP Team, including the parent, makes a determination about whether Hope Online is an appropriate placement for the student; and (b) once the IEP Team makes that determination, then a *final* decision about enrollment will be made. (See, Sections D.5.a and D.5.c, above).

3) Based on the unique facts of this case only, the SCO concludes that Student was conditionally enrolled at Hope Online as an in-state transfer student. Student’s status as an enrolled student is evidenced by the following:

(a) Hope Online’s records request to Student’s previous school in JeffCo. Per Hope Online’s own policy, records are not requested from previous schools *until students are officially accepted by Hope Online*;

(b) Student’s actual attendance and submission of school work in Hope Online between 08/25/08 and 09/16/08;

(c) Identification of Hope Online in the 09/16/08 IEP documentation as Student’s home school and school of attendance;

(d) The District’s concession that Student was permitted to attend Hope Online “in an effort to ensure that [Student] was not left without an education...”

4) With regard to special education services for in-state travel students, the IDEA charges the receiving public agency with the following responsibilities:

34 CFR §300.323(e)

If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous agency), until the new public agency either—

- (1) Adopts the child’s IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.

In this case, the District, as the responsible special education administrative unit, was responsible to ensure that Hope Online both consulted with the Parent and then provided FAPE to the Student until the Student’s IEP team could be convened to determine whether Hope Online was an appropriate placement for Student. However, Student received no special education services; Student was not allowed access to a computer in order to access

Hope Online's general curriculum; and Student completed and turned in paper packets of unknown quantity and quality for which Student received no credit. The SCO concludes that the District violated 34 CFR § 300.323(e). The SCO further concludes that such violation denied Student a FAPE.

- 5) Contrary to the District's contention that the District and Hope Online complied with applicable laws and policies, the record shows that certain Hope Online and [LEARNING CENTER] staff did not accurately understand and/or correctly implement certain Hope Online's enrollment policies. (See, Sections D.6, D.8, D.10 and D.16, above).

F. REMEDY

- 1) Because the Student was denied a FAPE, the Student is entitled to appropriate compensatory special education services (hereafter referred to as compensatory education) from a qualified special educator consistent with the nature and type of special education instruction specified by Student's 02/13/08 IEP. The SCO has determined that the amount of compensatory education shall be twenty (20) hours. Such compensatory education shall be provided to the Student no later than **08/31/09**. The parties shall cooperate in determining how the compensatory education will be provided. On or before **09/15/09**, the District shall submit written documentation (such as provider logs/reports, invoice and payment documentation) to the Department evidencing that the ordered compensatory education has been timely provided. If the parties are unable to agree on how the compensatory education will be provided, the parties must immediately notify the SCO, who then will make that determination for the parties.

The SCO acknowledges that, in the Complaint, Parent stated that Student is attending CDELA (which is a full time public online charter school); taking Student to a professional educator would make Student lose more education time from CDELA; and the parent would miss work to take Student to appointments. "A parent and a home school program can do the job correctly." Instead, the Parent requested that the District be required to pay the parents so that they may miss work to work with Student. The SCO does not believe that the Parent's request is appropriate because Student's 02/13/08 IEP specifies that Student is to receive special education instruction from a special education teacher. Therefore, the Parent has the choice of accepting or declining the ordered compensatory education. **The Parent must notify, in writing, the District and the undersigned SCO no later than 5:00 PM on February 12, 2008 as to whether she accepts or declines the ordered compensatory education. If the Parent fails to so notify the District and the SCO, the District will be excused from providing the compensatory education.**

- 2) The District must correct the cited noncompliance as soon as possible but, in any event, no later than **June 1, 2009**. Failure to timely correct the cited noncompliance will subject the District to enforcement action by the Department. Consequently, on or before **February 25, 2009**, the District must submit to the Department a proposed Corrective Action Plan (CAP) that effectively addresses how the District will ensure that the cited noncompliance will be corrected so as not to recur. Please submit the CAP to the

Department to the attention of the undersigned Acting SCO. The Department will review and then either approve or request revisions to the CAP. The enclosed sample templates provide suggested formats for the CAP and include sections for “improvement activities” and “evidence of implementation and change.”

In its Response, the District described its commitment to implement changes to Hope Online’s enrollment process as a means of preventing any further misunderstandings and to improve the Hope Online enrollment process for the 2009-10 school year. The SCO appreciates the District’s commitment to these improvement activities. The District shall include such improvement activities in the CAP as the SCO agrees that they are likely to prevent recurrence of the cited noncompliance. However, the District must also address the cited noncompliance involving in-state transfer students.

G. CONCLUSION

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

Dated this 12th day of January, 2009.

Laura L. Freppel, Esq.
Acting State Complaints Officer