

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 2012: 510**  
**Colorado School for the Deaf and the Blind**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was properly filed on October 9, 2012, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))<sup>2</sup> and to protect the anonymity of the complainants and their child, the persons and locations identified in this complaint investigation and decision will be redacted prior to publication and labeled as follows:

[Parents] (Parents);  
[Student] (Student);  
Student's age of [Age], [Age];  
Colorado School for the Deaf and the Blind (CSDB);  
[District of Residence] (District of Residence);  
[Private School] ([Private School]);  
[CSDB Special Education Director] (CSDB Special Education Director);  
[[Grade] Teacher ] ([Grade] Teacher);  
[Speech Language Pathologist] (Speech Language Pathologist);  
[Audiologist] (Audiologist);  
[District Representative], (District Representative);  
[District Special Education Director] (District Special Education Director); and  
[Private Speech Therapist], (Private Speech Therapist).

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

<sup>2</sup> FERPA, codified at 20 U.S.C. § 1232g, was enacted to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>3</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

On October 16, 2012, CSDB's Special Education Director was notified of Parents' allegations in a letter which included a complete copy of the Complaint.

On October 31, 2012, the SCO timely received CSDB's Response and Exhibits "A" through "R." A copy of the Response and all supporting documentation were delivered to Parents on November 1, 2012.

On November 12, 2012, the SCO<sup>4</sup> conducted interviews of the following individuals:

- CSDB Special Education Director
- CSDB Speech Language Pathologist
- CSDB [Grade] Teacher
- CSDB Audiologist
- Parents

On November 13, 2012, the SCO timely received Parents' Reply. A copy of Parents' Reply and all supporting documentation were delivered to CSDB on November 14, 2012.

On November 16, 2012, the SCO interviewed District Representative and District Special Education Director.

On November 19, 2012, the SCO interviewed Private Speech Therapist.

On November 19, 2012, Parents provided additional documentation marked as Exhibit 27.

On November 19, 2012, the SCO closed the record.

### **PARENTS' COMPLAINT ALLEGATIONS**

Parents' Complaint contained two allegations, summarized as follows:

1. From October 2011 through March 6, 2012, Student was denied a free appropriate public education when Student's IEP team failed to consider Student's unique communication needs following implantation of bilateral cochlear implants. Specifically:

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<sup>3</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).

<sup>4</sup> Wendy Armstrong, Esq., CDE Policy Analyst and Developer, participated in this investigation and accompanied the SCO on all interviews.

- a. Student's IEP team did not consider input from Parents regarding Student's individual strengths, needs, and goals when developing Student's IEPs, resulting in predetermined IEPs that were not based on Student's individual needs and not reasonably calculated to allow Student to receive educational benefit;
  - b. Student's IEP team refused to acknowledge, document, or consider input from Parents, professionals, and others familiar with Student's ability to express [him/herself] and respond to spoken language in developing Student's communication plan, resulting in a communication plan that denied Student instructional opportunities in auditory and spoken language by identifying Student's primary language and mode of communication as exclusively that of American Sign Language (ASL);
  - c. Statements in Student's October 2011 IEP regarding [Student] inability to understand the sounds [Student] was now detecting were not based on testing or evaluation conducted by CSDB; and
  - d. Members of Student's IEP team from CSDB excluded Parents from meaningful participation in the development of Student's educational program by occasionally communicating with each other in ASL and not interpreting these conversations for Parents.
2. By promoting ASL to the exclusion of other languages and modes of communication, CSDB fails to develop IEPs and communication plans based on the unique communication needs of students who may communicate or require instructional opportunities in other modes of communication, such as spoken language and listening, resulting in the predetermination of IEPs.

**Summary of Proposed Remedies.** To resolve Allegation One concerning Student, Parents proposed that the CSDB provide compensatory education through a professional who has expertise in listening and spoken language for children with hearing loss and ensure that Student will always be placed in a linguistically-rich environment that includes peers and educators who use auditory-oral modes of communication.

To resolve Allegation Two concerning other students served by the CSDB, Parents proposed that the CSDB be required to inform parents considering placement at CSDB that ASL will be the primary communication mode taught in this program and that students needing auditory-oral communication will not be adequately supported, or alternatively, that CSDB be required to revise their program and train staff to provide services that adequately support students who use other modes of communication, specifically auditory-oral.

## **SUMMARY OF CSDB'S RESPONSE**

Regarding Allegation One, CSDB asserted that Student's IEP met [Student's] educational needs following cochlear implants and provided [Student] with a free appropriate public education. CSDB asserted that Parents had a significant voice in the development of Student's IEP because the IEP Team considered Parents' input and even amended sections of Student's IEP at their request. CSDB denied that any IEP team members discussed Student's IEP using ASL during IEP meetings.

According to CSDB, Parents' primary dispute regarding Student's IEP concerns the IEP Team decision to designate ASL as Student's primary language and mode of communication. Student's IEP team determined that Student's primary language and mode of communication were ASL because [Student] had been exposed to ASL since birth, had a working vocabulary of over 100 signs, and had "no functional recognition of spoken English."<sup>5</sup> Based on the assessments conducted by CSDB's Speech Language Pathologist and Audiologist, including the results of the Ling 6 Sound test and the Word Association for Syllable Perception (WASP), Student's IEP team determined that ASL would continue to be the "foundation for teaching" Student following cochlear implants, but that [Student] would also be provided with 60 minutes of direct speech language therapy each week to support development of speaking and listening skills.

Further, CSDB explained to Parents that it provides a signing environment that uses a bilingual approach where ASL is developed as the student's first language, with English developed as a second language through reading, writing, and spoken English. Parents, however, continued to confuse the bilingual environment offered at CSDB with a total communication environment. During Student's IEP meetings and in subsequent email correspondence with Parents, CSDB informed Parents that they would need to find a different placement option if they wanted Student to be in an environment with typical hearing and speaking peers.

Regarding Allegation Two, CSDB asserted that each student's communication plan is developed based on individual need and that CSDB recognizes and accommodates modes of communication other than ASL, including auditory. As evidence that it supports the diverse communication needs of deaf and hard of hearing students, CSDB reports that the number of students whose sole mode of communication is identified as ASL is below 56% and that oral students who enroll at CSDB experience academic and social success.

## **SUMMARY OF PARENTS' REPLY**

Regarding Allegation One, Parents reiterated that CSDB failed to include parental input about Student's unique communication strengths and needs following cochlear implants, resulting in IEP goals and services that did not appropriately support the development of auditory

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<sup>5</sup> Response, p. 2.

communication skills and Parents' goal that Student becomes a "speaking child." Parents denied that CSDB informed them that it employed a bilingual methodology in developing language skills. Instead, Parents asserted that CSDB promoted a total communication approach at Student's November 2011 IEP meeting and then failed to provide or create the linguistically rich environment Student required, including routine exposure to, and opportunity for, listening and speaking. Parents asserted that CSDB should have either significantly changed Student's program to provide a sound rich environment or should have recommended that Parents consider other placement options earlier.

Regarding Allegation Two, Parents referred to documentation provided by CSDB as evidence that the District and CSDB should have advised them to consider other placement options immediately after Student received cochlear implants.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>6</sup> the SCO makes the following FINDINGS:

#### **Factual Background:**

1. At all times relevant to the Complaint, Student was [age] years old and a resident of the District.
2. Student is eligible for special education and related services on the basis of a hearing disability. Student has a bilateral severe-profound sensorineural hearing loss.<sup>7</sup> A sensorineural hearing loss occurs when there has been damage to the inner ear (cochlea) or to the nerve pathways that run from the inner ear to the brain.
3. At all times relevant to the Complaint, Student attended CSDB, a State Operated Program (SOP) established for the purpose of supporting the education of Colorado children who are deaf and/or blind. To be eligible for enrollment at CSDB, a student must be between the ages of 3 and 21, and qualify for special education on the basis of a hearing or vision disability.<sup>8</sup> CSDB provides an American Sign Language (ASL) rich educational environment that utilizes a communication methodology known as the bilingual approach to develop language and communication skills.<sup>9</sup> The bilingual approach is designed to develop ASL as the student's first language and develop English as the student's second language through reading, writing, and spoken language, as appropriate, based upon the unique needs of the individual student.<sup>10</sup>

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<sup>6</sup> Appendix A, attached and incorporated by reference, details the entire Record.

<sup>7</sup> Exhibit L, p. 4.

<sup>8</sup> CSDB Policy on admission, available at <http://csdb.org/Default.aspx?DN=0a3ae879-a107-46d0-b5b3-002422df7419>.

<sup>9</sup> Response, p. 3.

<sup>10</sup> Response, p. 3; Exhibit P.

This approach is considered bilingual because ASL is a language separate and distinct from English, including its own distinct vocabulary and syntax.

4. [Redacted]. The primary language and mode of communication used in Parents' home is spoken English, though the family was also provided instruction in ASL through the Colorado Home Intervention Program (CHIP) and the Integrated Reading Project (IRP). [At the age of two years and six months], Student was signing ASL in two-word phrases, knew approximately 20 ASL signs, and communicated with others primarily through simple signs, gestures, body language, facial expressions, pointing, and vocalizations.<sup>11</sup> Student's communication and language skills were reported as significantly delayed compared to both hearing and deaf peers [Student's] age.<sup>12</sup>

5. For the 2010-2011 school year, Student's IEP team placed [Student] at CSDB to provide direct instruction in ASL and consistent interaction with peers and adults who communicate proficiently in ASL, in order to develop [Student's] communication, language, social, and academic skills.<sup>13</sup> Student's IEP and communication plan identified [Student's] primary language, both expressive and receptive, as ASL. Student's primary communication mode was identified as ASL for expressive communication, and ASL and picture symbols for receptive communication.<sup>14</sup>

6. At the age of [age], Student received bilateral cochlear implants because Parents, [ ], wanted [Student] to learn spoken English, the language used by [Student's] [ ] family.<sup>15</sup> A cochlear implant provides a way for sound to reach the brain. A child with cochlear implants, however, does not automatically hear, i.e., make sense of sound, as soon as the implants are activated. Because the brain is developed and organized by the sensory information it receives, a child with a hearing loss has lost, and continues to lose, auditory neural capacity as the brain learns to make use of the other available senses, especially vision. To develop the auditory neural pathways and capacity required to communicate by listening and speaking, a child with cochlear implants must be taught to hear through auditory exposure, stimulation, and practice. What this means is that the child's brain, which has previously been organized by the absence of sound, must be rewired through strategic auditory input and exercises in listening and speaking to build the auditory neural pathways and capacity required to make sense out of sound.<sup>16</sup>

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<sup>11</sup> Exhibit L, p. 5; Exhibit 4, p. 2; Exhibit 2, p.1.

<sup>12</sup> Exhibit M, p. 3.

<sup>13</sup> Exhibit M; Exhibit L.

<sup>14</sup> Exhibit M, p. 6.

<sup>15</sup> Complaint, pp. 2-4; Exhibit 4, p. 2.

<sup>16</sup> Carol Flexer, Ph.D., *The Auditory Brain: Conversations for Pediatric Audiologists* at <http://www.audiologyonline.com/articles/auditory-brain-conversations-for-pediatric-817>.

## October 2011 IEP Meeting.

7. On October 17, 2011, CSDB convened a properly constituted IEP team meeting to review and develop Student's annual IEP.<sup>17</sup> This IEP meeting was the first one following activation of Student's cochlear implants. At the time of the October 17 IEP meeting, Student's right cochlear implant had been activated for approximately four months, while [Student's] left implant had not yet been activated.<sup>18</sup> Student "bonded immediately to both of [Student's] cochlear implants and immediately expressed delight with sound."<sup>19</sup>

8. At this time, Student communicated primarily through gestures, pointing, expressions, and simple signs, and [Student] was making "steady gains in [Student's] ability to express [Student's] needs and wants with a larger signed vocabulary."<sup>20</sup> Student continued to struggle with using more than two expressive signs at a time and relied heavily on picture prompts. Student also struggled with answering "wh" questions, e.g., who, what, why, and where, in ASL. For example, Student could sometimes answer questions about who or what happened following a story told in ASL, but [Student] could not answer questions about where or why.<sup>21</sup> Results of the Expressive One Word Picture Vocabulary Test indicated that Student's language delays continued to be significant.<sup>22</sup>

9. The evaluation conducted by CSDB Audiologist in preparation of Student's IEP meeting indicated that Student had good access to soft sounds as a result of [Student's] cochlear implants. Although Student's cochlear implants provided the access to sound necessary to detect human speech, [Student] was not yet able to make sense of the sounds [Student] was hearing or to associate these sounds with human speech.<sup>23</sup> Student's spoken language skills, based on observation and results of the Word Associations for Syllable Perception screening, indicated that [Student] was able to imitate sounds and syllables with consistent modeling and cues, and play with sounds.

10. The IEP developed on October 17, 2011, identified Student's needs and the impact of [Student's] disability as follows:

[Student] requires a structured, small learning environment where the material is presented mainly in ASL for comprehension.  
[Student] requires repetitive and clear language paired with

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<sup>17</sup> Exhibit A, p. 1; Exhibit B, p. 2.

<sup>18</sup> Due to swelling caused by the surgical procedure, cochlear implants are not activated until several weeks after surgery. Consequently, the implant in Student's right ear was activated in July of 2011, and [Student's] left ear was activated in October of 2011. Interviews with Parents; Exhibit A.

<sup>19</sup> Exhibit A, p. 20.

<sup>20</sup> Exhibit 6, p. 3. Exhibit 6 is the draft IEP that was sent to Parents prior to the October 2012 IEP meeting.

<sup>21</sup> Exhibit 6, p. 4.

<sup>22</sup> Although this test is standardized for hearing children, the results showing significant language delays are consistent with the private evaluation conducted prior to cochlear implants. Exhibit 1, pp. 4-5.

<sup>23</sup> Exhibit 6, p. 3.

picture communication prompts. Parents report the desire for English to eventually be the primary mode of communication [sic] but at this time, ASL is needed as a bridge to English in order to teach meanings of sounds and vocabulary in spoken English. Classroom instruction is in ASL with English emphasis on familiar vocabulary.<sup>24</sup>

11. Student's IEP provided 60 minutes of direct speech language services per week, 40 minutes of direct instruction in ASL per week, and 620 minutes of specialized instruction per week.<sup>25</sup>

12. Student's communication plan identified [Student's] receptive and expressive primary language as ASL. [Student's] primary communication modes were identified as fingerspelling and ASL for receptive communication, and as fingerspelling, gestures, and ASL for expressive communication.<sup>26</sup>

13. During the IEP meeting, Mother expressed concerns that Student's sole primary language and mode of communication were identified on [Student's] communication plan as ASL, when Student's family wanted [Student] to learn spoken English (the language used in the family home), now that [Student] had cochlear implants.<sup>27</sup> Mother told the IEP team that Student was starting to express [him/herself] vocally at home and that she strongly disagreed with the statement about Student's auditory skills that "the sounds around [Student] do not make sense, yet." As evidence that Student was starting to make sense out of what [Student] was hearing, Mother shared with the IEP team that Student verbalized "bye-bye" with meaning and was associating certain sounds with objects, such as the phone ringing, the blender, and water running. She also stated that Student would rub [Student's] stomach when eating and make the sound "mmm."<sup>28</sup> Although Mother expressed these concerns at the meeting, they were not recorded on the IEP Parents received following the October IEP meeting.

14. In response to Mother's concerns about the designation of ASL as Student's primary language, CSDB Special Education Director and CSDB [Grade] Teacher explained that ASL is the language and mode of communication that Student currently understands and uses to communicate. Consequently, ASL would provide meaningful access to language and to the [Grade] academic curriculum while Student developed spoken English. CSDB [Grade] Teacher expressed concern that Student's pre-academic skills would suffer significantly without continued access to and development in ASL because language, regardless of mode of communication, is critical for cognitive development and Student's primary language was, at

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<sup>24</sup> Exhibit 6, p. 4.

<sup>25</sup> Exhibit 6, pp. 8-11.

<sup>26</sup> Exhibit 6, p. 7.

<sup>27</sup> Complaint, pp. 2-5; Interviews with Parents.

<sup>28</sup> Complaint; Interviews with Parents, CSDB Special Education Director, and District Representative.

this time, ASL.<sup>29</sup> CSDB Speech Language Pathologist also explained that ASL would serve as a bridge to explain to Student the new sounds [Student] was hearing during the direct therapy she would be providing to support the development of spoken English.<sup>30</sup>

15. At the end of the IEP meeting, District Representative presented other possible placement options, including placement in a general education setting and other deaf and hard-of-hearing programs. CSDB Special Education Director also clarified that CSDB provided an ASL-rich environment that utilized the bilingual approach to developing language and communication skills, rather than a total communication approach.<sup>31</sup>

16. After discussing other placement options, Student's IEP team concluded that CSDB was the most appropriate placement for Student's current educational and communication needs.<sup>32</sup> During this discussion, Mother indicated that she agreed with Student's placement at CSDB at this time, but wanted to consider other placement options for the next school year. District Representative encouraged Mother to visit the other placement options identified.<sup>33</sup>

17. On October 19, 2011, two days after the IEP meeting, Mother emailed [Grade] Teacher to request that she "hold off on the final paper work for [Student's] IEP" because Parents were "not comfortable with where things were standing" after the IEP meeting and wanted to check into other options. Mother indicated that another IEP meeting may be necessary.<sup>34</sup>

18. On October 28, 2011, Mother emailed District Representative and District Special Education Director to ask for a list of all the schools that the District would consider for Student because she wanted to check out other options for the next, not the current, school year. Mother wanted to check out other placement options because Student's private audiologist had recently informed her that Student needed to be in an enriched speaking environment for the cochlear implants to be successful.<sup>35</sup> District Representative responded the same day with a list of possible placement options, including two programs that utilized a total communication methodology.<sup>36</sup>

19. Total communication differs significantly from the bilingual approach used at CSDB. A hallmark of total communication is simultaneous communication, meaning that a word/phrase

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<sup>29</sup>Exhibit N, p. 1 ("[[Grade] Teacher], I believe you especially gave a wonderful explanation about getting behind in academics."); Interviews with CSDB Special Education Director, [Grade] Teacher, District Representative, Speech Language Pathologist, and Mother; Exhibit P.

<sup>30</sup> Interview with Speech Language Pathologist and CSDB Special Education Director.

<sup>31</sup> Complaint, p. 2; Response, p 3. ("It was explained to [Mother] during enrollment and at every IEP meeting that this is a signing environment using a bilingual approach."); Interviews with Parents, CSDB Special Education Director, [Grade] Teacher, and District Representative.

<sup>32</sup> Exhibit A, p. 15.

<sup>33</sup> Exhibit N; Interviews with District Representative and Parents.

<sup>34</sup> Exhibit N, p. 1.

<sup>35</sup> Exhibit N p. 5.

<sup>36</sup> Exhibit N, p. 5.

is spoken in English and signed at the same time. Simultaneous communication requires the use of an English based sign system, such as Signing Exact English (SEE II) or Conceptually Accurate Signed English (CASE). It is not possible to use simultaneous communication with ASL because ASL is a different language with a distinct vocabulary and syntax.<sup>37</sup> Therefore, the total communication method is incompatible with a classroom using the bilingual approach.

### **November 2011 IEP Meeting.**

20. On November 14, 2011, CSDB convened an IEP meeting to discuss Parents' concerns and to finalize Student's IEP. At this meeting, Parents provided the IEP team with a letter from Student's private audiologist that documented progress Student had made in using and responding to spoken language since receiving [Student's] implants. The private audiologist strongly recommended that Student be placed in an auditory rich environment where sign and speech were used concurrently, such as a total communication classroom. Further, the private audiologists stressed that the key to auditory development was the concurrent use of sign and speech and warned that Student's cochlear implants would not be of expected use if sign language was used alone.<sup>38</sup>

21. Based on parental input, including the letter from the private audiologist, the IEP Team agreed to add an objective to improve Student's communication skills by working on [Student's] auditory ability to discriminate environmental sounds,<sup>39</sup> and added English to Student's primary language and auditory and spoken language to Student's primary mode of communication.<sup>40</sup> CSDB also agreed to consult with Student's Private Speech Therapist to coordinate speech language services for developing spoken language, but Parents did not provide consent until sometime after November 21, 2012.<sup>41</sup> Parents did, however, provide Private Speech Therapist's evaluation and recommendations to CSDB prior to this IEP meeting.<sup>42</sup> The IEP developed on November 14, 2011, documented input from Parents that Student was associating environmental sounds, such as the phone ringing and water running, with their origin.<sup>43</sup>

22. In response to the recommendation from the private audiologist that Student be placed in a total communication environment, CSDB Special Education Director and [Grade] Teacher again clarified that CSDB was an ASL-rich environment and that ASL was being used as a bridge to spoken English.<sup>44</sup> To support the development of speaking and listening skills, Student

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<sup>37</sup> Exhibit P; Interviews with Audiologist, CSDB Special Education Director, District Representative, Speech Language Pathologist, and Private Speech Therapist.

<sup>38</sup> Exhibit 3, p. 2.

<sup>39</sup> Comparing Exhibit 6 and Exhibit 7, p. 11 with Exhibit A, p. 11. Interviews with Parents, CSDB Special Education Director, District Representative, Speech Language Pathologist, and Audiologist.

<sup>40</sup> Comparing Exhibit 6 and Exhibit 7, p.7 with Exhibit A, p.7.

<sup>41</sup> Exhibit 7, p. 4.

<sup>42</sup> Exhibit N, p. 10.

<sup>43</sup> Comparing Exhibit 6 and Exhibit 7, p. 11 with Exhibit A, p. 11.

<sup>44</sup> Response, Interviews with CSDB Special Education Director and District Representative.

would be receiving one hour per week of direct speech language services. [Grade] Teacher informed Mother that there would also be some opportunities for speaking and listening in the classroom, but clarified that it was not possible to speak and use ASL simultaneously. Therefore, she could not use a total communication methodology in her classroom. In addition, Student would be in a classroom with peers who communicated primarily in ASL and not by speaking.<sup>45</sup> CSDB Special Education Director informed Parents that if they wanted Student to be in a classroom that utilized the total communication approach and included peers who communicated in spoken English, they would have to look at placement options other than CSDB because CSDB could not offer this environment.<sup>46</sup>

23. While there is an intense professional debate concerning what communication methodologies are best for children with cochlear implants, the development of language, regardless of communication mode, is paramount. Without language, a child's cognitive development may be significantly impaired.<sup>47</sup> Accordingly, consideration should be given to the communication mode the child used prior to implantation, the age of the child at implantation, and accessibility to language while spoken language is being developed, regardless of the methodology chosen.<sup>48</sup> In light of these considerations, Student's IEP team discussed other placement options, including mainstream options and other deaf and hard of hearing programs that could offer a total communication environment, but concluded that CSDB best fit Student's current educational and communication needs because Student had a foundation in ASL that could be used to access the pre-academic curriculum and to develop spoken English.<sup>49</sup>

#### **Parent requested changes to Student's IEP from December 2011 through January 2012.**

24. On December 14, 2011, Mother emailed District Representative and District Special Education Director to request information about possible placement options in the Denver area. Mother stated that they were not "in agreement" with the November 2011 IEP because their concerns were not properly documented and the recommendations from their private audiologist, including "rehabilitation speech" and an auditory enriched environment, were not listed under Student's communication plan as a plan of action. Mother stated that she planned to visit all possible placement options in January 2012 so that placement options for the next school year could be discussed at an IEP meeting that District Representative told her would be scheduled in February of 2012.<sup>50</sup>

25. On December 15, 2011, District Representative replied that she understood Mother's concerns about providing Student with a "language AND auditory rich environment."

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<sup>45</sup> Complaint, p 2; Interviews with Parents, CSDB Special Education Director, [Grade] Teacher and District Representative.

<sup>46</sup> Interview with CSDB Special Education Director, CSDB [Grade] Teacher, and District Representative.

<sup>47</sup> Interviews with CSDB Special Education Director, CSDB [Grade] Teacher; Exhibit 3, p.2; Exhibit P.

<sup>48</sup> Exhibit P.

<sup>49</sup> Comparing Exhibit 6 and Exhibit 7, p. 15 with Exhibit A, p. 15; Interview with CSDB Special Education Director, CSDB [Grade] Teacher, and District Representative.

<sup>50</sup> Exhibit N, pp. 3-4.

Concerning placement options in the Denver area, she referred Mother to her previous emails suggesting placement options, to the CDE website, and to CDE's consultant for the deaf and hard of hearing. She volunteered to accompany Mother to visit any placement options that were of interest.<sup>51</sup>

26. On January 11, 2012, Student's Private Speech Therapist sent an email to Parents that strongly recommended that they send Student to [Private School] because it would provide increased exposure to spoken language and an auditory enriched environment.<sup>52</sup>

27. On January 13, 2012, Parents emailed CSDB Special Education Director, District Special Education Director, and District Representative a list of their concerns regarding Student's November 2011 IEP. First, Parents noted that the IEP section documenting present levels of performance did not accurately reflect their input about Student's speaking and listening abilities, as observed in the home environment. Special Education Director responded on January 23, 2012, by adding the exact language Parents requested to Student's IEP.<sup>53</sup> Similarly, Parents objected that the written recommendations from Student's private audiologist were not included in the IEP section on student needs and impact of disability. Specifically, Parents wanted the IEP to document their concerns that CSDB indicated there was "no need for an FM system within the classroom and that there are no speaking peers." CSDB Special Education Director responded by adding the exact language Parents requested and attaching the report from the private audiologist to Student's IEP.<sup>54</sup>

28. In this email, Parents also requested that English be listed as Student's primary language, with ASL as a secondary language. Parents asserted that primary language and mode of communication were a matter of parental choice and requested that all references to ASL as Student's primary or native language be removed from [Student's] IEP. CSDB Special Education Director responded that the designation of a student's primary language is based upon a consensus of the IEP team, not parental choice, because it represents the expressive and receptive language and modes of communication that a student currently uses, which in Student's case, included ASL.<sup>55</sup>

29. Although Parents have stated in their Complaint and Reply that their goal was to have Student become a "speaking child," the SCO finds that, at least as expressed to educational providers and private service providers, it is more accurate to characterize Parents' communication goal for Student as bilingualism, i.e., to develop both spoken English and ASL. Parents have consistently informed Student's IEP teams, private audiologist, and Private Speech Therapist that they wanted Student to be able to communicate in spoken English and ASL, with

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<sup>51</sup> Exhibit N, p. 6.

<sup>52</sup> Email correspondence with Mother on November 19, 2012; Exhibit 27; Interview with Private Speech Therapist.

<sup>53</sup> Comparing Exhibit N, p. 9, with Exhibit A, p. 3.

<sup>54</sup> Comparing Exhibit N, p. 10, with Exhibit A, p. 5.

<sup>55</sup> Exhibit N, p. 11.

the goal of eventually developing spoken English as Student's primary language and ASL as a second language.<sup>56</sup>

30. Finally, Parents expressed concern that Student's IEP and communication plan did not explain how CSDB would be teaching Student how to use [Student's] cochlear implants to speak and listen, how CSDB could be providing Student with an auditory rich environment when Student was not in a classroom with hearing and speaking peers, and questioned whether CSDB was the least restrictive environment.<sup>57</sup> CSDB Special Education Director responded that "it was clearly explained that CSDB is an ASL environment" and that Student's auditory needs were being supported through 60 minutes of direct speech language services each week and the vocalization of key vocabulary throughout the day.<sup>58</sup> Regarding Parents' concern that CSDB was not the least restrictive environment, CSDB Special Education Director further clarified that, in light of its purpose and mission, CSDB could not provide Student with an environment where [Student] could interact with typical hearing peers. CSDB Special Education Director clearly informed Parents that they would have to contact their home District if they wanted to pursue other placement options because CSDB could not place Student any place other than [Student's] District of residence.<sup>59</sup> CSDB Special Education Director copied District Representative and District Special Education Director on his response to Parents' email.

31. Parents have alleged that CSDB also excluded them from meaningful participation in the development of Student's IEP by occasionally communicating in ASL during IEP meetings. Based on the credible evidence in the record, the SCO finds it more likely than not that CSDB Special Education Director and [Grade] Teacher had a brief exchange in ASL at one of Student's IEP meetings.<sup>60</sup> The exchange related to a snack fee that Parents had not paid, and as such, was unrelated to any substantive discussion of Student's IEP. Regardless of the content of the exchange, communicating in ASL at an IEP meeting when Parents are not proficient in ASL excludes Parents from that discussion. In fact, [Grade] Teacher chose to communicate in ASL because she was unsure of whether she should bring the matter up at the IEP meeting and wanted to check with CSDB Special Education Director before doing so. This brief and isolated incident, however, did not prevent Parents from meaningfully participating in the development of Student's IEP, as demonstrated in FF 14-22, above.

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<sup>56</sup> Exhibit 3, pp. 1-2 ("Family's goal to develop auditory/oral communication as well as sign language."); Exhibit E, p. 4 ("The family wishes for [Student] to be bilingual, and would like [Student] to learn both spoken language and American Sign Language."); Exhibit 27, p. 1 ("[Student's] parents have stated the desire for [Student] to become a spoken language user, with ASL as a second language.").

<sup>57</sup> Exhibit N, pp. 12-15.

<sup>58</sup> Exhibit N, p. 14.

<sup>59</sup> Exhibit N, p. 14.

<sup>60</sup> Interviews with CSDB Special Education Director, [Grade] Teacher, and Parents.

### **District places Student in [Private School].**

32. On March 1, 2012, District convened an IEP meeting at parental request to discuss immediate placement options for Student, specifically placement at [Private School].<sup>61</sup> Even though Student had attended CSDB since May of 2010, Parents refused to allow any CSDB staff to attend the IEP meeting, including Student's [Grade] Teacher.<sup>62</sup>

33. In determining placement, Student's IEP team concluded that while CSDB provided Student with a free appropriate public education in Student's first language, ASL, the District was choosing to place Student at [Private School], an oral school for deaf and hard of hearing children, to provide additional support for the development of Student's oral communication skills.<sup>63</sup> The IEP team discussed placing Student at [Student's] home school, but concluded that this setting would be more restrictive because Student would be the only deaf child in the [class] and [Student] did not have the English language skills to access the general curriculum. Parents agreed with the placement decision because [Private School], unlike CSDB, would "focus on the methodology that supports our family goal."<sup>64</sup>

34. Student's last day at CSDB was March 6, 2012.<sup>65</sup>

### **Student's progress at CSDB from October 2011 to March 2012.**

35. Student had four separate IEP annual goals that were each measured by objectives. Because Student started these goals after the beginning of the first quarter and was withdrawn before the end of the third quarter, these findings represent Student's progress after approximately three months. The progress reports indicated that Student made slight progress on [Student's] math and literacy goals, but was not yet proficient. Similarly, Student's progress on [Student's] speech language goal and ASL goal were identified as not yet proficient. The information on these progress reports is minimal and does not meaningfully show whether Student made reasonable progress.<sup>66</sup>

36. Unlike the progress reports described above, observations made by Speech Language Pathologist and [Grade] Teacher do indicate that Student made reasonable progress in pre-academic, communication, and social skills during the 2011-2012 school year.<sup>67</sup> [Grade] Teacher observed Student gain confidence and make significant social progress with peers, including improvement in accepting new schedules and new peers, chatting with friends, and

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<sup>61</sup> Exhibit 22. Parents met with District in February of 2012 to discuss placement options, but there is no documentation that this was an IEP meeting. Student's placement was changed at the IEP meeting on 3/1/2012.

<sup>62</sup> Exhibit L; Exhibit 22; Interviews with CSDB Special Education Director, District Special Education Director, and District Representative.

<sup>63</sup> Exhibit 22, p. 9.

<sup>64</sup> Exhibit 21, p. 2.

<sup>65</sup> Exhibit N, p. 18.

<sup>66</sup> Exhibit F.

<sup>67</sup> Interviews with Speech Language Pathologist and [Grade] Teacher; Exhibit 4; Exhibit O.

initiating conversation in ASL.<sup>68</sup> Student moved from only labeling items in ASL to commenting and making predictions in ASL, a change that demonstrated [Student] was developing critical thinking skills. During story time in ASL, Student had improved on [Student's] ability to answer "wh" questions and identify characters and events in the story.<sup>69</sup> By the end of February, Student had correctly written the entire alphabet in order when signed to [Student], an accomplishment that indicated [Student] was making progress on meeting [Student's] IEP literacy objective to write 20 out of 26 letters correctly in three out of four trials.<sup>70</sup>

37. Speech Language Pathologist, who provided 60 minutes of direct speech language therapy each week, observed improvements in Student's oral communication skills. From October 2011 to mid-January 2012, Speech Language Therapist's progress notes indicated that Student needed much encouragement and prompting by her to use [Student's] voice. However, by February 2012, Student was vocalizing more spontaneously and had improved accuracy when modeling sounds.<sup>71</sup> By March 2012, Speech Language Pathologist reported that Student's spoken language skills included imitating sounds and familiar words, such as colors, numbers, names, foods, and greetings.<sup>72</sup>

#### **Allegation Two concerning other students who attend CSDB.**

38. Parents alleged that CSDB refuses to document modes of communication and language other than ASL on students' communication plans, regardless of how they actually communicate.<sup>73</sup>

39. According to CSDB's 2010-2011 Annual Report, 52% of enrolled students have ASL only designated as their primary language/mode of communication. Students who do not have ASL documented as a primary language represent 6% of the student population. Students who use ASL and English (14%), ASL and oral (5%), and ASL/Oral/English (23%) together represent the remaining 42% of the student population.<sup>74</sup> These statistics alone show that CSDB does not refuse to document language/modes of communication other than ASL on its students' communication plans.

40. In relevant part, CSDB's Student Communication Philosophy provides that:

CSDB's goal for students shall be to develop strong skills in English through daily exposure to reading and writing. In addition, the school believes that well-developed ASL and English literacy skills

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<sup>68</sup> Interview with [Grade] Teacher; Exhibit 4.

<sup>69</sup> Interviews with [Grade] Teacher and Speech Language Pathologist; Exhibit 4; Exhibit O.

<sup>70</sup> Exhibit 4; Exhibit F.

<sup>71</sup> Exhibit O.

<sup>72</sup> Interview with Speech Language Pathologist; Exhibit O; Exhibit 4.

<sup>73</sup> Complaint, p. 6.

<sup>74</sup> Exhibit R.

in individuals who are deaf and hard of hearing are critical factors to realize each student's potential for academic success.

. . . Students enter CSDB with diverse language backgrounds. Individuals who are deaf, hard of hearing and/or blind have different communication modes. CSDB staff shall respect and build on the social and academic language competencies of all students.

. . . CSDB shall emphasize each student's individual educational needs within a linguistically-rich environment that promotes high levels of academic achievement utilizing each individual's primary mode of communication, in accordance with each student's [IEP]. ASL, speech, literacy . . . auditory modes and other support/related services and accommodations shall be provided to students in accordance with each student's IEP.

. . . CSDB shall also provide a unique ASL . . . atmosphere to enhance the social skills, self esteem, cultural identify, and self-awareness of students who are deaf/heard of hearing.

41. Consistent with its Student Communication Philosophy, CSDB provides an ASL- rich environment with accommodations and related services in other modes of communication, including oral, in accordance with each student's IEP. CSDB Special Education Director estimates that 25% of students currently enrolled at CSDB have cochlear implants.<sup>75</sup> Speech Language Pathologist, who has training and prior experience working in an oral program, provides a range of direct speech language services to students with cochlear implants to develop speaking and listening skills. The services Speech Language Pathologist provides to one student with cochlear implants can look very different from the services she provides to another, depending on the unique needs of the student. For example, there are students on her case load with whom she never uses ASL, and others where she must use ASL to help explain what the sound means.

42. Parents provided no evidence in their Reply that would rebut the evidence provided by CSDB.

### **CONCLUSIONS OF LAW**

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

**Allegation One: Parents meaningfully participated in the development of Student's IEP and the IEP developed by CSDB provided Student a free appropriate public education.**

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<sup>75</sup> Interview with CSDB Special Education Director.

1. Parents have alleged that CSDB denied them the opportunity to meaningfully participate in the development of Student's IEP by failing to document and consider their input concerning Student's unique communication strengths and needs following cochlear implants. For the reasons explained below, the SCO concludes that Parents meaningfully participated in the development of Student's IEP and that the IEP developed provided Student with a free appropriate public education.
2. 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*, 458 U.S. 176 (1982), in which the Court set out a two-pronged analysis for determining whether an IEP has offered a FAPE. 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; *see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). If those two questions are satisfied in the affirmative, then the IEP is appropriate under the law.
3. Under the first "prong" of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA's procedures. In this case, Parents allege that CSDB violated the IDEA's procedural requirements because it predetermined Student's IEP by: a) failing to consider parental input; b) stating that Student was unable to understand the sounds [Student] heard, without testing or evaluation data to support that claim; c) excluding parents from the meeting when two CSDB representatives communicated to each other in ASL, which the Parents do not understand; and d) employing a predetermined methodology (bilingual vs. total communication).
4. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, page, (10<sup>th</sup> Cir. 2008). Although the emphasis on parental involvement does not mean that a parent has veto power over an IEP team decision, meaningful parent participation is prevented when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. *See Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003) ("A district may not enter an IEP meeting with a 'take it or leave it' position."); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9<sup>th</sup> Cir. 2003). When parents are prevented from meaningful participation because an aspect of their child's IEP, such as educational methodology or placement, has been predetermined, the resulting procedural violation denies the student a free appropriate public education. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005).
5. On the other hand, courts have found that parents have been afforded an opportunity for meaningful participation when an educational agency, here CSDB, considers their suggestions and requests, and to the extent appropriate, incorporates them into their child's IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10<sup>th</sup> Cir. 1998). Consideration does not

mean simply agreeing to whatever parents have suggested or requested. Rather, meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parents' questions, incorporates some suggestions or requests into the IEP, and discusses privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *Id*; See *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

6. In this case, the facts support a conclusion that CSDB meaningfully considered Parents' input about Student's strengths and needs following cochlear implants. In response to parental input, including recommendations from Student's private audiologist, CSDB amended Student's October 2011 IEP to include Parents' observations that Student was beginning to associate sound with meaning in the home environment, added spoken English as a primary language and mode of communication, and added an IEP objective to develop Student's auditory ability to discriminate words. (FF 20-29). Such conduct demonstrates that CSDB considered parental input and, where appropriate, included it in Student's IEP. Parents' claims that CSDB refused to document their input or include spoken English as a primary language and mode of communication are not supported by the evidence.

7. Further, contrary to Parents' assertion, the statement about Student's current inability to understand the sounds [Student] was now able to detect was based on testing and evaluations conducted by CSDB Audiologist and Speech Language Pathologist. (FF 8-9). Those evaluations indicated that Student could not yet discriminate words or differentiate the sound of human speech from other environmental sounds. (FF 9).

8. Finally, the SCO concludes that the isolated and brief conversation in ASL between CSDB Special Education Director and [Grade] Teacher concerning the snack fee at Student's November 2011 IEP meeting did not prevent Parents from meaningfully participating in Student's IEP meeting. The SCO bases this conclusion on the findings of fact that demonstrate Parents meaningfully participated overall in the development of Student's IEP, see FF 7-31, and on the fact that the discussion was extremely brief and did not involve anything related to the IEP or its development.<sup>76</sup> (FF 31).

9. The heart of Parents' Complaint is not how their concerns were or were not documented on Student's IEP. Rather, Parents have essentially argued that by not documenting parental input on Student's emerging spoken language skills and by designating Student's language and mode of communication as ASL, CSDB predetermined Student's educational methodology and placement in an ASL-rich environment.

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<sup>76</sup> This conclusion is based on the unique and complete facts of this case. It is not difficult to imagine circumstances where such an exchange could have resulted in a conclusion that parents were excluded from meaningful participation.

10. The law is clear, however, that as long as the educational methodology selected by the school district provides a free appropriate education, i.e., allows the student to receive educational benefit, educational agencies have the professional discretion to select the methodology suitable to the student's needs. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008). The methodology selected by the school district does not have to be the best, or even better than that preferred by the parents, so long as it is appropriate to implement the IEP. *M.M. v. School Bd. of Miami-Dade Cty.*, 437 F.3d 1085 (11th Cir. 2006). The District may not, however, predetermine the methodology by coming to the IEP meeting with a closed mind. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

11. The analysis of whether CSDB predetermined Student's communication methodology is complicated by the fact that communication methodology for deaf and hard-of-hearing students can have implications for placement, and CSDB is not, for purposes of placement, an administrative unit with the authority to place Student at another program or school. CSDB is a state operated program (SOP) that serves as a point on the continuum, i.e., a placement providing a particular methodology, for students in Colorado who are deaf and hard-of-hearing. CRS § 22-80-102; ECEA Rules 2.49 and 2.02. As such, it is an out-of-district placement option for an administrative unit of residence and not itself an administrative unit. While an SOP is responsible for reviewing, developing, and implementing an IEP for a student attending its school, "it is the responsibility of the special education director of the administrative unit of residence to place the child in the least restrictive environment consistent with the educational placement decision of the IEP team." CRS § 22-20-108 (7)(a); ECEA Rules 8.01 (3) and 8.06. This means that District, who was represented at Student's IEP meetings by District Representative, was ultimately responsible for determining whether placement at CSDB was appropriate and what other placement options were available. CSDB, of course, would be responsible for informing Student's IEP team whether or not they were an appropriate placement and capable of providing Student with a free appropriate public education.

12. In this case, the communication methodology Parents preferred, total communication, could not be implemented at CSDB because it was incompatible with the bilingual methodology that CSDB utilizes. (FF 19). It is simply impossible to have an auditory-rich environment in a largely "voices off" environment where students communicate to a large degree in ASL. As a result, when Parents presented Student's November 2011 IEP team with the letter from Student's private audiologist recommending educational placement in an auditory-rich environment that utilized a total communication methodology, CSDB Special Education Director clearly informed Parents that: a) CSDB could not provide this methodology or environment because it was incompatible with the bilingual methodology utilized by CSDB; and b) CSDB could not provide Student with speaking peers. (FF 19-22). Further, District Representative was present and discussed with Parents and the IEP team other placement options, including those utilizing a total communication methodology and speaking peers. (FF 22-23). Therefore, the SCO concludes that CSDB did not predetermine Student's communication methodology or placement. Rather, Student's IEP team discussed the available placement options and

concluded that CSDB best fit Student's individual educational needs. Importantly, Parents did not disagree with the placement at the meeting. Instead, Parents stated that they wanted to consider other options for the next school year. (FF 23-24).

13. Accordingly, the SCO finds that CSDB did not violate the procedural requirements of the IDEA in developing Student's IEP. The IEP was developed with the input and meaningful participation of Parents, included data based upon testing and evaluation, and included a placement that was decided upon after discussion of other options. The SCO now turns to the question of whether the IEP, to be implemented in CSDB using its bilingual methodology, provided Student with a free appropriate public education.

14. When a student's IEP is developed in compliance with the IDEA's procedural requirements, *Rowley* holds that a certain degree of deference is to be given to the resulting IEP. "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Rowley*, 458 U.S. at 206. Further, it is well-settled that questions of methodology are generally left to the discretion of trained, professional educators. *Id.* at 207;<sup>77</sup> *see also, Sytsema, supra*, 538 F.3d 1306. Thus, under this authority, so long as the IEP is reasonably calculated to allow the student to achieve some educational benefit, i.e., more than de minimus, the IEP is appropriate and the choice of methodology is left to the discretion of the school district. *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143 (10th Cir. 2008).

15. In this case, placement in an ASL-rich environment utilizing a bilingual approach was reasonably calculated to confer educational benefit because Student's primary language was ASL. Because Student, who was [age] at the time [Student] received [Student's] cochlear implants, was at a critical age for language development and had a foundation in ASL, placement in an ASL-rich environment was appropriate to provide [Student] with access to the pre-academic curriculum and to serve as a bridge to spoken English. (FF 1, 4, 14, 23). Every teacher and expert in this case has stated that for a [age]-year-old newly implanted with cochlear implants, who is in a critical window for language development, the most important thing for Student's education was to develop language in order to foster [Student's] communication skills and to avoid cognitive delays or deficits. (FF 14, 22-23, 30). Where Student was already developing language skills using ASL and accessing the [Grade] curriculum,

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<sup>77</sup> "The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child's needs, was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child. The Act expressly charges States with the responsibility of "acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and [of] adopting, where appropriate, promising educational practices and materials." § 1413(a)(3). In the face of such a clear statutory directive, it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories..." *Rowley*, 458 U.S. at 207-208.

was making progress in [Student's] oral communication skills, and was progressing on [Student's] IEP, the SCO finds that the IEPs developed and implemented for Student at CSDB provided [Student] with a free appropriate public education. (FF 35-37).

16. Further, as noted above, Parents have repeatedly stated that their goal for Student was to be bilingual and that access to ASL was important to them. (FF 29). Placement at CSDB provided an ASL-rich environment and support for the development of spoken language, thereby meeting the Parents' stated goals. Although Parents have argued that designation of primary language and mode of communication is a matter of parental choice, it is an IEP team decision, which includes meaningful consideration of the Parents' input. *See* C.R.S. 22-20-108 (4.7). In this case, the SCO concludes that the educational methodology identified by the IEP team was consistent with Student's needs and with Parents' desire for Student to be bilingual.

**Allegation Two: CSDB does not systematically refuse to document languages and modes of communication other than ASL.**

17. Parents have alleged that CSDB systematically refuses to document a primary language or mode of communication other than ASL on its students' communication plans. A student's IEP, including the communication plan for a student who is deaf or hard of hearing, must be based on the unique strengths and needs of the student. 34 CFR § 300.324; ECEA Rule 4.03 (6)(a). Accordingly, a school-wide practice of designating ASL as the primary language and mode of communication for every student, regardless of individual need, would constitute a systemic violation of the IDEA. In this case, CSDB provided evidence demonstrating that only 52% of the students enrolled have communication plans where ASL is the sole primary language. Parents offered no further evidence. (FF 38-42). The SCO concludes that this allegation is not founded.

**REMEDIES**

Finding no violations, the SCO does not order remedies.

**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 5<sup>th</sup> day of December, 2012.

*Candace Hawkins*

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Candace Hawkins, Esq.  
State Complaints Officer

## **Appendix A**

### **Complaint, pages 1-7.**

Exhibit 1: 2011 speech-language evaluation related to candidacy process for cochlear implant.

Exhibit 2: 2011 Colorado Home Intervention Program (CHIP) progress report.

Exhibit 3: Letter from Student's audiologist.

Exhibit 4: 2012 Communication Plan and pages from Student's 5/4/2012 IEP.

Exhibit 5: Progress Reports

Exhibit 6: Student's draft IEP dated 10/17/2011

Exhibit 7: Student's 11/14/2011 IEP

Exhibits 8 and 9: Correspondence between Parents and CSDB

### **Reply, pages 1-7.**

Exhibit 10: Email correspondence.

Exhibit 11: Irrelevant and not considered.

Exhibit 12: CHIP assessment summary.

Exhibit 13: List of words Student knew in April 2010.

Exhibit 14: Duplicate page in Exhibit L.

Exhibit 15: Student's medical report dated October 2009.

Exhibit 16: Letter from private physician dated February 2012.

Exhibits 17-21: Correspondence and progress notes.

Exhibit 22: IEP dated March 2012.

Exhibit 23: Evaluation dated April 2012.

Exhibit 24: Evaluation by Private Therapist dated October 2011.

Exhibit 25: Correspondence.

Exhibit 26: Description of CSDB [class] program.

Exhibit 27: Evaluation by Private Therapist dated February 2012.

### **Response, pages 1-4.**

Exhibit A: Student's most recent IEP developed by CSDB.

Exhibit B: Notices of meeting.

Exhibit C: Statement that there are no meeting notes.

Exhibit D: Statement regarding prior written notice.

Exhibit E: Assessment reports.

Exhibit F: Progress reports.

Exhibit G: Attendance report.

Exhibit H: School calendar.

Exhibit I: Statement regarding training.

Exhibit J: Statement that there is no current corrective action plan in place.

Exhibit K: CSDB staff contact information.

Exhibit L: District's initial IEP dated May 2010.

Exhibit M: IEP dated October 2010.

Exhibit N: Email correspondence between CSDB and Parents.

Exhibit O: Service notes from Speech Language Pathologist.

Exhibit P: Information provided to family about communication methodology.

Exhibit Q: CSDB communication philosophy.

Exhibit R: Selections from CSDB's annual reports.

**Interviews with:**

- Parents
- CSDB Special Education Director
- [Grade] Teacher
- Audiologist
- Speech Language Pathologist
- District Representative
- District Special Education Director
- Private Therapist