

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA)¹

**State-Level Complaint 2015:521
Falcon School District 49**

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed on November 20, 2015 by the mother (Mother) of a child (Student) identified as a child with a disability under the IDEA. Mother brings this Complaint against Falcon School District 49 (School District).

Based on the written Complaint, dated November 17, 2015, the State Complaints Officer (SCO) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT ALLEGATIONS

Mother's Complaint raised the following allegations, in summary:

Whether the School District has violated Mother's rights and denied Student a free appropriate public education (FAPE) since November 20, 2014:

1. by failing to appropriately implement or adopt Student's transfer IEP from another state (State);
2. by failing to develop or implement an IEP that was based upon the Student's individual needs and abilities and was reasonably calculated to provide Student with meaningful educational benefit; and
3. by denying Mother meaningful participation in the IEP process by refusing to consider or discuss placement and service delivery options.

Summary of Proposed Remedies. To resolve the Complaint, Mother proposed the following, in summary:

1. Compensatory time be awarded for the missed ST/OT/PT from the current IEP, as well as for the change in services from State to Colorado;

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.*

² 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).

2. Meaningful access be provided for parents in the IEP process in School District, including any necessary training;
3. Teachers at School and in-home tutors coordinate to maximize Student's education and have everyone working on the same goals in the same manner; and
4. School District staff to receive training in order for them to learn to appropriately meet the needs of students with disabilities in conformity with Colorado law and recommendations of the Colorado Department of Education.

FINDINGS OF FACT

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

1. At all times relevant to the Complaint, Student has lived with Mother within the boundaries of the School District and has attended School. Student has been identified as a student with a disability, eligible for special education and related services under the IDEA and ECEA.
2. Mother and Student previously resided in State, where Student had an individualized educational program (IEP), dated February 20, 2014 (State IEP). Prior to moving to Colorado in late October 2014, Mother contacted School District to advise them that Student would be enrolled in School District and had an IEP. State IEP was faxed to School District by Student's former school on September 24, 2014. State IEP referenced evaluations, dated September 20, 2012, as the most recent evaluations.³
3. Mother enrolled Student in School on October 27, 2014. On November 4, 2014, a meeting was held regarding the transfer of State IEP. State IEP indicated that Student had been placed in a secondary multiple disabilities classroom in a public school program with a full-time personal aide, where Student received occupational therapy (OT) and physical therapy (PT) twice a week for thirty minutes and therapy three times a week for thirty minutes with a speech language pathologist (SLP).⁴
4. At the November 4th meeting, School District did not adopt the State IEP, determining that they needed to conduct their own comprehensive evaluation of Student. Pending those evaluations, the IEP team agreed to provide Student with a "diagnostic placement" in a significant support needs (SSN) classroom with a total of twelve multiply disabled students at School, Special Education Teacher, four classroom paraprofessionals, and one-to-one (1:1) paraprofessional support, receiving OT, PT, and SLP services for sixty minutes per week, and a 1:1 nurse to ensure Student's safety due to Student's apparent medical concerns. Mother would not agree to a start date for the plan until she observed the SSN classroom, which she did on November 7th.⁵

³ Interviews with Special Education Director and Mother, Exhibits 7 and 8.

⁴ Interviews with Special Education Director and Mother and Exhibit 7.

⁵ Interviews with Mother, Special Education Director, and Special Education Teacher, Exhibit 1.

5. On November 7th, Special Education Teacher, who serves as Student's case manager, provided Mother with prior written notice (PWN) and consent for evaluations, which Mother refused to sign. On November 17th, Special Education Teacher again provided Mother with PWN and consent for evaluations, which Mother signed. The consent noted that the areas to be evaluated were cognitive, adaptive, social/emotional, academic, OT, PT, speech, adaptive physical education, health, transition, and sensory.⁶
6. On November 18th, Student began attending School. Between November 18th and January 13th, School District staff members assessed Student in a variety of areas, i.e., speech language, OT, PT, academic skills, observations, and record review. Out of the 34 school days during that period of time, Student attended only 13 days.⁷
7. In order to address Mother's concerns regarding placement, including her request for Student to be placed at Private School, a meeting was held on November 20th. Student's school program in State was unavailable in School District, due to differences in programming and Student's diagnostic placement determined on November 4th remained the same. Moreover, there was no availability at Private School.⁸
8. On January 13, 2015, the IEP team met to discuss the assessment data, eligibility and placement. Mother again requested that Student be placed at Private School. Private School Clinical Director attended the meeting to discuss the program. Private School Clinical Director stated that they do not have a nurse present at their program and that there was a wait list. The team agreed that a 1:1 nurse was no longer needed to ensure that Student's medical and safety needs were addressed and agreed that Student qualified and needed 1:1 paraprofessional support. The team agreed to reconvene no later than thirty days later in order to conduct further evaluations.⁹
9. The IEP team reconvened on February 18, 2015. The team discussed the evaluations and again discussed Mother's request that Student be placed at Private School, noting in the documentation that Mother disagreed with Student's placement at School. School District team members felt that placement at School was appropriate, that Student was adapting to the new environment, and that Student's health, safety, and academic needs were appropriately addressed with paraprofessional support. The team reviewed Student's present levels of performance, reviewed or determined eligibility, updated goals, identified

⁶ Interviews with Mother and Special Education Teacher, Exhibits 1 and D.

⁷ Interviews with Mother and Special Education Teacher, Exhibits 3, C and H. SCO notes that some of the absences were due to the unavailability of the 1:1 nurse and that compensatory services were agreed upon and provided for those missing class periods and services.

⁸ Interviews with Mother, Special Education Director, Special Education Teacher, Private School Clinical Director, Exhibits B-3.3 and 2.

⁹ Interviews with Mother, Special Education Director, Special Education Teacher, Private School Clinical Director, School Psychologist, Exhibits 3 and C.

service providers, service hours, and accommodations.¹⁰

10. Student was absent a total of 91 class periods during the 2014-15 school year, oftentimes related to Student's medical condition. Numerous witnesses, including Mother, stated that Student's medical condition has continued to decline and Student made minimal progress toward the goals in Student's IEP during the 2014-15 school year.¹¹
11. At Mother's request, the IEP team met again on May 20, 2015. Mother was accompanied by an advocate. Mother advised the team that she had placed Student on the wait list at Private School, which was not anticipated to open until late September or October 2015. The team also determined that Student would receive compensatory services and homebound ESY services. The IEP team scheduled another meeting for August 11, 2015 to discuss placement for the 2015-16 school year.¹²
12. The IEP team met on August 11, 2015 to discuss information about progress made during the summer. Mother was accompanied by an advocate. Student made significant progress toward the goals on Student's IEP over the summer. Student received 1:1 instruction from Special Education Teacher in the home. Special Education Teacher and Mother both stated that the benefit of the continuity of instruction without absences, as well as the individual focus on Student was beneficial. The team also discussed placement options, including Private School and a program at BOCES. The team also agreed that Student was owed compensatory services in PT that were not provided during ESY and that OT services were still owed. The team agreed to meet again after Mother visited the BOCES program and that Student would continue to be provided homebound services until a decision was made about the BOCES program.¹³
13. Mother visited the BOCES program and the team reconvened on September 10th. Mother was accompanied by an advocate and stated that she was not comfortable that Student would be safe at the BOCES program. The IEP team agreed that Student would remain on homebound services in order for additional personnel and services the team agreed upon could be secured. Student returned to School on October 5th. The team met again on October 6th to discuss progress Student made on homebound services.¹⁴
14. Student currently attends School with the added accommodation of the use of a small classroom just outside of the SSN classroom in order to enable staff members to provide a

¹⁰ Interviews with Mother, Special Education Teacher, Special Education Director, Occupational Therapist, and School Psychologist, Exhibits 4 and B-3.7. SCO notes that the team also noted that, due to confusion, OT and PT services were provided at 30 minutes instead of 60 minutes per week and that Student was owed time for those missed services. Mother and School District staff agreed to a compensatory plan for the missed services. Mother and School District agree that Student is still owed 7 hours of services.

¹¹ Interviews with Mother, Special Education Director, and Special Education Teacher, Exhibits E and H.

¹² Exhibit B-3.8, B-3.9, B-2.2, B-3.10, B-3.11.

¹³ Exhibits B-3.11, B-3.12, B-3.13, B-3.14.

¹⁴ Exhibits B-3.15 and B-3.17.

1:1 environment with no distractions when it is advantageous for Student. Mother and Special Education Teacher both stated that the 2015-16 school year is going well as a result of a better understanding of how to provide services for Student.¹⁵

CONCLUSIONS OF LAW

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

A. School District complied with the IDEA’s requirements related to transfer IEPs.

1. Mother alleges that the School District failed to provide Student with a FAPE by failing to appropriately implement or adopt Student’s Transfer IEP from State. SCO disagrees.
2. Jurisdiction over allegations in a state complaint only extends to those which occurred not more than one year prior to the filing date. 34 C.F.R. § 300.151. Accordingly, because the decision regarding the transfer of Student’s State IEP occurred more than one year prior to the filing of this Complaint, SCO does not have jurisdiction over this issue. The SCO does, however, have jurisdiction over claims relating to the services provided within the one-year limitations period. Accordingly, SCO will proceed with the analysis under the IDEA’s transfer regulations.
3. When a student with an IEP transfers from one state to another, the IDEA provides for the application of the following requirements:

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

(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.

¹⁵ Interviews with Mother, Special Education Director Special Education Teacher, and School Psychologist.

34 C.F.R. § 300.323(f).

4. In this case, Student had a February 20, 2014 IEP in effect in State, which was provided to School District before Student and Mother moved to Colorado. Student was enrolled in School on October 27, 2014. On November 4, 2014, School District held a Transfer IEP meeting, at which State IEP was not adopted and plan for the delivery of special education and related services was made to deliver comparable services for Student on an interim basis in order to allow School District an opportunity to perform comprehensive evaluations on Student.
5. With regard to Mother’s contention that School District needlessly wasted resources and erroneously determined they needed to evaluate Student to develop an IEP, SCO disagrees. The School District had a clear legal right – indeed, a legal obligation – to obtain current, comprehensive, and reliable evaluative data about Student in order to determine the nature and extent of Student’s disability and special education and related services that would be appropriate for Student. 34 C.F.R. §§ 300.301 through 300.304 (establishing that before a student may be provided with special education and related services, a school district must conduct comprehensive evaluations to determine the child’s disability and special education and related service needs). Particularly given that the evaluations that were relied on in the development of State IEP were more than two years old and given the significant impact of Student’s disability and needs, it was reasonable that the School District conduct their own comprehensive evaluation of Student.¹⁶
6. The question before SCO then is whether Mother is correct in her allegation that the School District has denied Student FAPE in its implementation of the Transfer IEP by failing to provide “comparable services” to those listed in the State IEP, as required by 34 C.F.R. § 300.323(f) (requiring the receiving school district to “provide the child with FAPE (including services comparable to those described in the child’s IEP from the previous agency)”). SCO finds, after a thorough review of the documentation provided, in addition to numerous interviews with reliable witnesses, that Mother has not met her burden of proving that School District has denied Student a FAPE. With the exception of 30 minutes of related services with a Speech Language Pathologist (SLP), the plan provided for during the evaluative period is nearly identical to the services provided for in State IEP. SCO notes that

¹⁶ SCO notes that Mother provided no documentation nor could SCO find any documentation showing that School District was provided with the evaluations upon which State relied in developing State IEP. The only reference to the evaluations was in the State IEP itself, which notes that the most recent evaluations were performed in September 2012. SCO also notes that Mother requested an independent education evaluation (IEE) on November 17, 2015, which was granted by School District, but that Mother never pursued the IEE process. Mother is not foreclosed from requesting an IEE if she disagrees with the School District’s evaluation and it is evident that School District would comply with such a request.

with regard to placement, an additional meeting was held on November 20, 2014 in order to discuss the educational setting given the fact that the educational setting for Student in State was different and unavailable in School District due to differences in programming. It was, therefore, determined that Student's placement for the evaluation period at School would include both a 1:1 paraprofessional and 1:1 nurse to ensure that Student's medical, safety, and educational needs were provided for during that time period. SCO notes that it was learned at a February 18, 2015 IEP meeting that related services were not always provided in accordance with the transfer plan due to staff's lack of understanding of Student's stamina and attention, which was learned by providers during their experience working with Student in the evaluative period. SCO also notes that when this was learned, School District immediately consulted with Mother regarding a plan for compensatory services, much of which has already been completed and there is no dispute regarding this plan. There is nothing else in the record suggesting that special education services were not appropriately provided. Accordingly, SCO finds that except for the failure of implementation that has already been remedied, the Transfer IEP was appropriately implemented.

B. School District properly developed Student's IEP and Mother meaningfully participated in the IEP process.

7. Mother also alleges that the School District violated Student's right to FAPE by failing to develop an IEP that was based upon the Student's individual needs and abilities and was reasonably calculated to provide Student with meaningful educational benefit. Specifically, Mother alleges that School District predetermined placement and refused to consider placement in any setting other than at School, which also resulted in a violation of Mother's right to meaningfully participate in the IEP process. SCO disagrees.

8. The IDEA requires local education agencies such as the School District to provide eligible students with disabilities with a FAPE by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized educational program (IEP) developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's procedural requirements for developing, reviewing, and revising the IEP require a school district to timely convene an IEP meeting with the required participants (including the child's parents) in order to review the student's progress, new evaluative information, parent concerns, etc., in order to develop a current education plan. In the development of an IEP, parents must be afforded the opportunity to attend and meaningfully participate, which includes giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1), 300.324(a)(ii) and 300.501(b).

9. In the seminal *Rowley* case, the Supreme Court explained that the IDEA established a procedure that would involve full participation of all concerned parties, including parents, at every stage of the process. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 at 205-206 (1982). The IDEA thus requires educational agencies, teachers, and parents to jointly prepare and update an IEP tailored to the unique needs of the child, specifying the child's present educational performance, annual goals, required services, and criteria for evaluating progress. *Id.* at 181. The IDEA's procedural requirements for developing a student's IEP are specifically designed to provide a collaborative process that places particular importance on parental involvement.

“[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrate[s] 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 205-206.

10. Typically, contemplation of the two pronged analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley, supra at 206-207*. “[The inquiry in cases brought under IDEA] is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?” *Id.* It is well-established, however, that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process, the result is a “per se” denial of FAPE. *See, e.g., O.I. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11TH Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6th Cir. 2004); see also, 34 C.F.R. §300.513(A)(2)(II) (“In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's

child...”).

11. The IDEA further provides that before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of a child with a disability, the school district must provide the parents with “prior written notice” (PWN) describing and explaining the basis for the school district’s action. 34 C.F.R. § 300.503. Further, a school district must obtain parental consent prior to conducting evaluations. 34 C.F.R. § 300.300. In the development of an IEP, the IDEA specifically requires that school districts consider parental suggestions and requests and, to the extent appropriate, incorporate them into the IEP. 34 C.F.R. § 300.501(b); *O’Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10th Cir. 1998). A school district is said to have impermissibly “predetermined” a child’s placement if it makes 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. *R.L. v. Miami-Dade County Sch. Bd.*, 757 F.3d 1173 (11th Cir. 2014)(school district personnel cannot come into an IEP meeting with closed minds, having already decided material aspects of the child’s educational program without parental input); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.3d 840 (6th Cir. 2004)(where school district had decided in advance of the IEP meeting not to offer a particular program that the parents sought, regardless of the student’s individual needs and the effectiveness of his private program, placement was predetermined and denied FAPE); *Ms. S. ex. Rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003)(“A district may not enter an IEP meeting with a “take it or leave it” position)(*superseded on other grounds*, 341 F.3d 1052(9th Cir. 2003)). Predetermination of placement deprives the child’s parents of meaningful participation in the IEP process, and amounts to a *per se* denial of FAPE. *Deal, supra.*¹⁷
12. Based on a thorough review of the documentation provided and numerous interviews with reliable witnesses, SCO concludes that School District in this case always provided Mother with notice, obtained consent, and provided Mother with opportunities for meaningful participation in every instance. The IEP team, including Mother, who was at times accompanied by various advocates, met numerous times to develop Student’s IEP. Mother’s input, including her objections regarding placement and scheduling, were consistently noted and it is clear that the IEP team considered her input. With regard to placement, Private School Clinical Director and a representative from a BOCES program were present at IEP meetings in order to provide information about their programs for the IEP team’s

¹⁷ Procedural violations of IDEA will ordinarily only result in a denial of FAPE if those violations resulted in a denial of educational benefit or resulted in an IEP that was not reasonably calculated to allow the child to receive educational benefit. *See Rowley, supra*. Some procedural violations, however, are so egregious that no examination of resulting harm is required; resulting harm is presumed, such that the procedural violation is deemed a “per se” denial of FAPE. Predetermination is such a procedural violation, as is the failure to make a specific offer of placement.

consideration. Mother was also provided with opportunities to observe programs and Mother's suggestions and objections were consistently noted in documentation. Moreover, SCO concludes, based on interviews with numerous witnesses, that particular consideration was given to Student's safety. SCO notes that Private School and the BOCES programs are largely attended by students with significant behavioral concerns, unlike Student. While this does not necessarily indicate that the programs would be inappropriate for Student, the student populations of these programs raised particular concerns for the IEP team members with regard to Student's safety.

13. Accordingly, the SCO finds that the School District did not predetermine Student's placement.
14. It is also clear to SCO that Student's IEP was designed based on reliable data informed by a set of comprehensive evaluations and observations, as well as experience working with Student. As previously discussed, School District determined at the November 4, 2014 meeting to discuss the transfer of State IEP that a comprehensive evaluation was necessary to develop a new IEP for Student. Mother's consent was obtained on November 17, 2014 and evaluations were to be performed within thirty days, however, based on a thorough review of the documentation and numerous interviews with reliable witnesses, SCO concludes that the evaluations took longer than the thirty days in large part due to Student's unavailability due to absences related to Student's medical condition and resulting medical needs. A number of assessments were completed in time for a January 13, 2015 IEP meeting, and the remainder of the assessments were completed prior to the February 18, 2015 IEP meeting.
15. Accordingly, the SCO finds that Student's IEP was based upon Student's individual needs and abilities and was reasonably calculated to provide Student with meaningful educational benefit.

C. School District properly implemented Student's IEP.

16. Finally, SCO considers Mother's allegation that School District improperly implemented Student's IEP. Mother's allegation specifically points to Student's lack of meaningful progress while at School, as compared to the relatively considerable progress Student made during ESY services.
17. The IDEA defines FAPE as special education and related services that: are provided free of charge; meet State standards; include an appropriate preschool, elementary school, or

secondary school education; and are provided in conformity with a properly developed IEP. 20 USC § 1401(a)(9); 34 CFR § 300.17. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a material failure to implement an IEP can also result in a denial of FAPE. *Id.*; see also *K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir 2007), *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003). Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g.*, *L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE). This means that a finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry. Rather, the SCO must also determine whether the failure was material.

18. It is clear in the record that Student's progress at school was markedly lower than the progress Student made while receiving 1:1 services from Special Education Teacher in the home over the summer. While the lack of progress on its own could be an indication of implementation issues during the regular school year, SCO concludes, based on the entire record of this case, which includes numerous interviews with reliable witnesses, including Mother, that the difficulties staff and Student may have experienced during the school year were compounded by several factors, including the natural and expected difficulties in transitioning into a new program, a new school, as well as a new state. School District staff members and Student all experienced a period of transition while learning how to anticipate Student's needs, which were often affected by Student's medical condition. Moreover, Student's attendance during the school year was significantly impacted by Student's medical condition and medical needs, resulting in absences in 91 class periods in the 2014-15 school year and absences in 46 class periods already in the current school year. SCO also concludes, based on interviews with School District staff members and Mother, that staff members' ability to work consistently with Student over the summer, without the constant interruption of absences, greatly contributed to the ability of the IEP team to make decisions in how to better plan for Student's programming at School in the current school year, which appears to be going quite well. Although it is certainly unfortunate that Student did not make the kind of progress that was made during ESY services last year, SCO concludes that this was not the

result of a failure to implement the IEP, but rather, was a natural consequence of both Student's medical condition and transition into an entirely new environment. Accordingly, the SCO finds no violation with regard to the implementation of Student's IEP.

REMEDIES

Because the SCO has concluded that the School District has not violated the IDEA, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and 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.

This 19th day of January, 2016.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated November 17, 2015, pages 1-8

- Exhibit 1: Transfer From Out of State form; Transfer Student from Another State documents; Prior Written Notices & Consents for Evaluations; Prior Notice & Consent for Initial Provision of Special Education and Related Services document
- Exhibit 2: IEP, dated November 20, 2014
- Exhibit 3: IEP checklist, dated January 13, 2015; IEP, dated January 13, 2015
- Exhibit 4: Evaluation Report, dated February 18, 2015; IEP, dated February 18, 2015
- Exhibit 5: IEP, dated May 20, 2015
- Exhibit 6: IEP, dated August 11, 2015
- Exhibit 7: New Jersey IEP, dated February 20, 2014
- Exhibit 8: Meeting attendance sheet, dated February 20, 2014; Fax transmittal sheet; email correspondence
- Exhibit 9: Daily notes, dated April 27, 2015 through May 1, 2015
- Exhibit 10: Email correspondence requested by SCO

Reply, dated December 28, 2015, pages 1-4

School District Response (Exhibit A), pages 1-2

- Exhibit B-3: IEP page and checklist, dated November 4, 2014
- Exhibit B-3.1: IEP pages, dated November 4, 2014
- Exhibit B-3.2: IEP pages, dated November 4, 2014
- Exhibit B-1.1a: Transfer From Out of State form; Transfer Student from Another State
- Exhibit B-1.1b: Transfer Student From Another State form; Prior Written Notice & Consent for Evaluation form
- Exhibit B-1.2: Prior Written Notice & Consent for Evaluation form; Prior Notice & Consent for Initial Provision of Special Education and Related Services; New Jersey IEP documents
- Exhibit B-1.3a: New Jersey IEP documents
- Exhibit B-3.3: November 20, 2014 IEP documents; Special Evaluation Checklist, dated January 13, 2015
- Exhibit B-3.4: January 13, 2015 IEP documents
- Exhibit B-1.3b: January 13, 2015 IEP documents
- Exhibit B-3.5: January 13, 2015 IEP documents
- Exhibit B-3.6: IEP documents, dated January 13 and February 18, 2015
- Exhibit B-3.7: IEP documents, dated February 18, 2015
- Exhibit B-3.8: IEP document, dated May 20, 2015; SWAAC assessment, dated January 15, 2015
- Exhibit B-3.9: IEP documents, dated May 20, 2015
- Exhibit B-2.2: IEP documents, dated May 20, 2015
- Exhibit B-3.10: May 20, 2015 IEP documents
- Exhibit B-3.11: May 20 and August 11, 2015 IEP documents
- Exhibit B-3.12: August 11, 2015 IEP documents
- Exhibit B-3.13: May 20 and August 11, 2015 IEP documents
- Exhibit B-3.14: August 11 and September 10, 2015 IEP documents
- Exhibit B-3.15: September 10, 2015 IEP documents

Exhibit B-3.16: September 10 and October 6, 2015 IEP documents

Exhibit B-3.17: October 6, 2015 IEP documents

Exhibit B-3.18: October 6, 2015 IEP page

Exhibit C: Evaluation Report, dated January 13, 2015; Progress Reports

Exhibit D: Prior Written Notice & Consent for Evaluation documents; Prior Notice & Consent for Initial Provision of special Education and Related Services documents; Notice of Meeting documents; Student Invitation to the Transition IEP Meeting documents; Prior Written notice of Special Education Action documents

Exhibit E: Email correspondence

Exhibit F: List of Individuals with information about complaint allegations

Exhibit G: School District 2015-16 Special Services Supplemental Procedure Manual

Exhibit H: Infinite Campus attendance and grade document

Interviews with:

Mother

Advocate

Private School Clinical Director

Special Education Director

Special Education Teacher

School Psychologist

Occupational Therapist

School Nurse