

Colorado Department of Education  
Decision of the State Complaints Officer (“SCO”)  
Under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup>

**State-Level Complaint 2016:520  
Arapahoe County School District 5**

**DECISION**

**INTRODUCTION**

This pro-se, state-level complaint (“Complaint”) was properly filed on August 30, 2016 by the mother (“Mother”) of a child (“Student”) identified as a child with a disability under the IDEA. Mother brings this Complaint against Arapahoe County School District 5 (“School District”).

The SCO determined that the Complaint raised issues subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATIONS**

Mother’s Complaint raised the following issues, in summary:

Whether the School District has violated Mother’s rights and denied Student a free appropriate public education (FAPE):

1. by failing to evaluate Student upon Mother’s May 10, 2016 request;
2. by failing to develop Student’s IEP since March 25, 2016, specifically, Student’s functional and health needs; and
3. by failing to implement Student’s IEP since August 11, 2016.

**Summary of Proposed Remedies.** To resolve the Complaint, Mother proposed, in summary, that School District contact Mother regarding scheduling with the School District’s Home/Hospital (“H/H”) personnel in order to begin Student’s 2016-17 school year; send Mother a completed and thorough consent for the reevaluation Mother requested in May 2016; and complete the reevaluation in order to inform the IEP team about Student’s current educational performance and need for modifications. Mother also proposed that School District contact Mother to schedule an IEP meeting in order

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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 C.F.R. § 300.1, *et seq.*

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

to complete Student's March 25, 2016 IEP, including a complete and accurate Individualized Health Plan ("IHP") developed with the School District, home health nursing provider, and Mother. Finally, Mother proposed that the School District provide her with a comprehensive plan to provide Student with compensatory education services for education Student has been denied since the beginning of the 2016-17 school year.

### **SCHOOL DISTRICT'S RESPONSE**

School District responded that it has offered and agreed to conduct the reevaluation, but that Mother has refused to provide consent. School District asserted that it has extensively considered and attempted to address Student's health needs in order to develop Student's March 2016 IEP, but that Mother has failed to provide School District with orders from Student's physicians in order to complete Student's IHP. Lastly, School District asserted that implementation of Student's March 13, 2015 IEP is limited only by the hindrances Mother has imposed, including her refusal to bring Student to School and her repeated unilateral application for H/H services.

### **MOTHER'S REPLY**

Mother replied that she and School Psychologist agreed on the appropriate assessments to evaluate Student, however, School District has not provided Mother with an appropriately updated consent form. Mother asserted that despite her repeated requests, School District has never informed her which physician orders it needs to complete Student's IHP and denied that she has refused to allow School District access to Student's physicians, but rather, asserted that School District has refused to submit requests for information or request a meeting with Student's physicians through Mother. Finally, Mother asserted that although she had applied for H/H services on July 27<sup>th</sup> for the beginning of the 2016-17 school year, Student did not begin receiving H/H services until September 2<sup>nd</sup> due to School District's delay in processing her application.

### **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 been assigned to School. Student has been identified as a student with multiple disabilities, eligible for special education and

related services under the IDEA and ECEA.<sup>3</sup>

### **March 13, 2015 IEP Implementation**

2. Student's March 13, 2015 IEP provides that Student will spend at least 80% of the time in the general education classroom.<sup>4</sup> The Service Delivery Statement in Student's March 2015 IEP provides that:

"[Student] will participate in general education curriculum with the exception of 150 minutes weekly of special education services, 35 minutes daily of school health services and 30 minutes weekly of direct speech language services outside the general education classroom to receive specialized instruction. Additionally, inside the general education classroom, 1800 minutes per week of special education services, 60 minutes weekly of speech language services, 30 minutes weekly of occupational therapy and 60 minutes monthly of physical therapy will be provided."<sup>5</sup>

3. At all times relevant to the Complaint, Student has not attended School, but rather, Mother has applied for H/H services for Student in accordance with the School District's H/H policy every nine weeks, which School District has always approved.<sup>6</sup>

4. School District's H/H program is a general education program that provides temporary, part-time interim services to all (disabled or not disabled) students deemed too ill to attend school for a limited period of time. The purpose of the program is to assist the student in maintaining continuity in the educational curriculum during the period of temporary extended illness or injury. The H/H program is not home schooling and is not intended as or used in lieu of the student's normal educational day, curriculum, homework or placement. As a program providing a temporary service for the purpose of educational continuity during a time of illness and recovery, the hours of service are much less than the typical school day and are targeted and narrower in

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<sup>3</sup> Response

<sup>4</sup> Response; Exhibits A1 and M. SCO notes that School District asserts that Student's March 13, 2015 IEP was Student's IEP until the IEP team met again on September 30, 2015 to finalize Student's March 25, 2016 IEP. SCO also notes that the IEP team specifically discussed whether H/H was Student's FAPE and LRE, recommending that Student's placement not be in the home. The March 13, 2015 IEP team meeting and the School District's offer of placement at that time are outside of the jurisdiction of this SCO, however, School District provided this information in its Response and it is noted only for purposes of providing context.

<sup>5</sup> Exhibit A1

<sup>6</sup> Response; Exhibits F, P, and Q; Interviews with H/H Support Specialist, Mother, Principal, and Special Education Director

scope than the typical school curriculum. Specific to students with disabilities, School District's H/H policy provides that:

"If the student is a student with a disability under either Section 504 or the IDEA, the nature and duration of the instruction and services will be individually designed and determined on a case-by-case basis in accordance with both the circumstances and either the student's IEP, Section 504 Plan or the respective IEP or Section 504 placement team. When warranted or requested by either the parent or the district, the IEP team shall convene either an IEP meeting or Section 504 meeting in accordance with applicable law to determine what, if any accommodations, modifications or services are needed for the student with a disability to access the H/H instruction or whether homebound instruction is the child's free appropriate public education (FAPE) placement in the least restrictive environment (LRE) as defined by the Individuals with Disabilities Education Act (IDEA)."<sup>7</sup>

5. Based on a thorough review of the record, which includes numerous interviews with credible witnesses and documentation provided by both School District and Mother, SCO concludes - and School District did not deny - that at all times relevant to the Complaint, School District has not changed Student's placement to home instruction and has not implemented Student's IEP. School District has assigned H/H Instructor to provide Student with instruction in the family's home for ten hours per week with curriculum gathered by ILC Teacher from general education teachers at School. School District's ESY Data Documentation, dated March 16, 2015, specifically noted that "[Student] has not been accessing her FAPE at [School] due her [sic] being in Home Hospital."<sup>8</sup>

6. Student's IEP provides for Student to receive occupational therapy ("OT"), physical therapy ("PT"), speech and language ("S/L"), and special education services, however, as noted above, none of these services have been provided by the School District. Rather, at all times relevant to the Complaint, Student has received services in the family's home from private therapists, some who are paid through Mother's private

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<sup>7</sup> Response; Exhibit F; Interviews with H/H Support Specialist and Special Education Director

<sup>8</sup> Response; Reply; Exhibits A1, A3, A4, A5, A6, A7, F and M; Interviews with H/H Support Specialist, Mother, Principal, and Special Education Director

insurance, including OT, PT, and S/L services.<sup>9</sup>

7. On July 27<sup>th</sup>, Mother submitted the H/H application for the beginning of the 2016-17 school year which started on August 11<sup>th</sup>, however, Student did not begin receiving H/H services from H/H Instructor until September 2<sup>nd</sup>.<sup>10</sup>

### **March 25, 2016 IEP Development**

8. Student's IEP team met a total of five times -- March 25<sup>th</sup>, April 21<sup>st</sup>, May 11<sup>th</sup>, May 23<sup>rd</sup>, and September 30<sup>th</sup> -- to review and develop Student's March 25, 2016 IEP. The IEP team's discussion at every meeting was predicated on the School District's supposition that its offer of FAPE would not change in terms of placement from that in the March 2015 IEP. The Service Delivery Statement in Student's March 25, 2016 IEP provides that:

"[Student] will participate in general education classroom, with the exception of 150 min. direct special education services outside of the classroom. Additionally, inside the general education classroom, 1800 minutes direct per week of special education services, plus 30 minutes per week consult. 30 minutes per week of direct speech language services outside the general ed classroom, 60 minutes weekly direct inside the general education classroom, 30 minutes per week indirect consult, 15 minutes per month of indirect OT, and 60 minutes monthly indirect of physical therapy, 30 minutes weekly direct inside the classroom of physical therapy, 450 minutes daily direct health service inside the classroom, 30 minutes weekly indirect outside the classroom."<sup>11</sup>

### **Mother's request for reevaluation**

9. At the May 11<sup>th</sup> IEP meeting, Mother requested a reevaluation of Student's intellectual, cognitive, and social emotional functioning in order to inform the IEP team with respect to Student's current level of functioning and needs. School District agreed that this information was germane to the development of Student's IEP and agreed to

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<sup>9</sup> Exhibits A1, M, and 17; Interviews with Mother and Home Health Provider

<sup>10</sup> Exhibits 5, 6, 13, and Q; Interviews with Mother, Principal, Special Education Director, H/H Support Specialist, and Director of Health Services

<sup>11</sup> Exhibits A4, A5, A6, A7, and M; Interviews with Mother, Principal, Home Health Provider, and Special Education Director

the reevaluation.<sup>12</sup>

10. Because of the sophistication of conducting the reevaluation due to Student's multiple disabilities, School Psychologist, who is also one of School District's special education coordinators, was assigned to Student's reevaluation.<sup>13</sup>

11. Based on the credible record, SCO concludes that Student has not been reevaluated as Mother requested because School District has never provided Mother with an appropriate consent form. Mother has continued to advocate for the assessments to be done, has been willing to consent to the reevaluation, and has continued to ask School District for an appropriate consent form.<sup>14</sup>

12. From June 10<sup>th</sup> through July 27<sup>th</sup>, School Psychologist and Mother spent many hours discussing the possible methods and purpose of the reevaluation. On July 27<sup>th</sup> they agreed on the assessment methods, including who would conduct the assessments and who would be involved and present for purposes of obtaining the information about the Student that the IEP team needed to complete Student's March 2016 IEP. School Psychologist was prepared to send Mother a consent form reflecting their shared understanding, but Special Education Director directed School Psychologist not to do so. School District did eventually email Mother a new consent form on October 7<sup>th</sup>, however, the document added an area to be evaluated that was never agreed on and was not requested by Mother, included parent contact notes and prior written notice ("PWN") statements that were extraneous and unnecessary, and included statements about the September 30<sup>th</sup> IEP meeting that were subjective and that Mother found objectionable. Essentially, the School District was attempting to condition its provision of the reevaluation on Mother's willingness to sign a consent form that also required her to agree with statements with which she did not necessarily agree.<sup>15</sup>

### **CONCLUSIONS OF LAW**

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

1. As an initial matter, SCO notes that the School District's Response included a detailed description of facts, raised issues, and provided documentation that exceeded

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<sup>12</sup> Interviews with Mother, Special Education Director, and Principal

<sup>13</sup> Response; Interviews with School Psychologist and Special Education Director

<sup>14</sup> Exhibits 4, A3, and N; Interviews with Mother, Special Education Director, and School Psychologist

<sup>15</sup> Response; Exhibits 4, A3, and N; Interviews with Mother and School Psychologist

the scope of the Complaint allegations, thereby expanding the scope of SCO's investigation. Accordingly, SCO makes findings in this Decision that were raised by School District, extend out of the allegations raised by Mother in her Complaint, and are within the jurisdictional limits of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

**A. The School District failed to develop Student's IEP according to the procedural requirements and failed to implement Student's IEP with all required components.**

2. SCO's primary concerns are the issues related to the development and implementation of Student's IEP within the time frame that is subject to SCO's jurisdiction.<sup>16</sup> In her Complaint, Mother alleged that the School District has failed to develop Student's IEP since March 25, 2016, specifically with regard to Student's functional and health needs. Mother also alleged that Student's IEP has not been implemented since August 11<sup>th</sup>. However, based on a thorough review of the credible record, SCO finds that School District has failed to develop Student's IEP according to Student's individual needs and has not implemented Student's IEP since August 31, 2015.<sup>17</sup>

3. Under the IDEA, public school districts are required to provide children with disabilities with a "free appropriate public education" (or FAPE) by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized education program (or IEP) that is developed according to the IDEA's procedures. 20 U.S.C. § 1401(9); 23 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA contains extensive procedural requirements relating to the development of the IEP, including the requirements that the IEP be a written document, reviewed at least annually, and that it be developed by a team of individuals with knowledge about the child, including the child's parents, and that it be based upon the input of the IEP meeting participants as well as evaluative data derived from valid, scientifically based assessments conducted in accordance with the IDEA's requirements. *See, e.g.*, 34 C.F.R. §§ 300.301-300.304; 300.320-300.324.

4. In the seminal case of *Board of Education v. Rowley*, the United States Supreme Court highlighted the importance of compliance with the IDEA's procedural

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<sup>16</sup> SCO notes that the Complaint was filed on August 30, 2016, therefore, SCO's one year jurisdictional review extends only to August 31, 2015.

<sup>17</sup> SCO notes that throughout the course of the investigation, School District raised issues that extend beyond the one year jurisdictional limits of this Decision.

requirements, particularly given the lack of specificity provided by the IDEA with respect to the substantive requirements for FAPE.

“[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.”

*Board of Education v. Rowley*, 458 U.S. 176, 205-206 (1982).

5. Typically, contemplation of the two prong analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley*, *supra* at 206-207. “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.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11<sup>th</sup> Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6<sup>th</sup> 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...”).

6. In this case, neither Mother nor School District disagree that Mother has applied for homebound services for Student pursuant to the School District’s H/H policy. While School District characterized this event as Mother’s unilateral decision to keep Student at home rather than send Student to School, the application of the H/H policy in this case is anything but unilateral. Indeed, School District has always approved Mother’s H/H application and provided an H/H Instructor in the family’s home, but has never provided Student with the special education and related services specified in Student’s



IEP.

7. Notwithstanding the School District's mischaracterization of Mother's H/H applications, what is more concerning is School District's apparent misunderstanding of the law with respect to the important distinction between instruction in the home, which is an IDEA placement option, *see 34 C.R.F. § 300.115(b)(1)*, and homebound instruction, which is a temporary excusal from school due, generally, to a temporary illness or injury and available to all students as a general education accommodation. *See, e.g., New Jersey Dep't of Educ. Complaint Investigation C2012-4341*, 59 IDELR 294 (N.J. Super. Ct. App. Div. 2012); *see also, Abington Heights Sc. Dis.*, 112 LRP 16163 (SEA PA 03/13/12). The Office of Special Education and Rehabilitative Services ("OSERS") has specifically addressed this very issue, specifying that "[whether] a change of placement has occurred triggering the IDEA's procedural protections turns on the length of the exclusion. For long-term exclusions – generally, those which are more than 10 consecutive school days – districts must consider a continuum of alternative placements, as required by 34 CFR 300.115. The placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR 300.116." *See Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak*, 53 IDELR 269 (OSERS 2009).

8. Here, despite the fact that Mother has been utilizing the School District's H/H process for over two years, which is without question a change of placement greater than the ten days that triggers the IDEA's procedural protections, School District has continued to insist that Student's IEP be implemented at School, a violation of the IDEA, in opposition to its own H/H policy, and a per se denial of FAPE. Moreover, while School District actually did meet to develop Student's IEP numerous times since March 25<sup>th</sup>, rather than change Student's placement to reflect the reality of Student's situation and develop an IEP that could meet Student's unique needs in the family's home, instead School District continued to develop Student's IEP and make an offer of FAPE to be provided at School.

9. For all of these reasons, SCO finds that School District has violated both Mother's procedural rights and Student's right to FAPE by failing to develop or implement Student's IEP based on Student's individualized needs.

**B. The School District has failed to reevaluate Student upon Mother’s May 11, 2016 request.**<sup>18</sup>

10. Lastly, SCO considers the issues related to Mother’s request for a reevaluation. Mother alleges that School District has failed to reevaluate Student and, moreover, that School District has never provided Mother with an appropriate consent form. School District admits that the reevaluation has not been completed, but asserts that it is only because Mother has refused to give consent. Based on a thorough review of the credible record, SCO agrees with Mother.

11. Pursuant to 34 C.F.R. § 300.303 (a) and (b)(2), when a child’s parent or teacher requests a reevaluation, the IDEA requires public agencies such as School District to ensure that a reevaluation is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311. This means that prior to conducting the reevaluation requested by a child’s parent, the public agency is required to obtain informed parental consent. 34 C.F.R. § 300.300. Under the IDEA, informed consent means that the parent: a) has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; b) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and c) understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 C.F.R. § 300.9.

12. Here, Mother requested a reevaluation of Student’s intellectual, cognitive, and social emotional functioning at a May 11<sup>th</sup> IEP meeting. School and School District team members agreed that the information was necessary to inform the IEP team’s discussion about Student’s programming and School District agreed to the reevaluation. Indeed, School Psychologist and Mother communicated by email, phone, and in-person for approximately 15 hours to discuss the assessments, which were complicated by many factors, including Student’s communication needs, and ultimately they agreed on the method and logistics of the assessments. At this point, School Psychologist was ready to provide Mother with a consent form reflecting their shared understanding, but Special Education Director directed School Psychologist not to do so, believing it was pointless since Mother would not consent. Ultimately, School District did provide Mother with a new consent form on October 7<sup>th</sup>, however, the consent form School District emailed Mother essentially conditioned the reevaluation on her willingness to agree with statements with which she did not necessarily agree and which were not at all necessary to obtaining her consent for the

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<sup>18</sup> SCO notes that there is a one day discrepancy in Mother’s Complaint allegation and the date that the request was actually made.

reevaluation.<sup>19</sup>

Accordingly, SCO finds that School District violated Mother's procedural rights by failing to reevaluate Student upon Mother's May 11<sup>th</sup> request.

### **REMEDIES**

The SCO has concluded that the School District committed the following violations of IDEA:

1. Failure to develop an IEP according to the procedural requirements and the unique needs of a child with a disability (34 C.F.R. §§ 300.320 and 300.324);
2. Failure to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services (34 C.F.R. § 300.115);
3. Failure to provide special education and related services at public expense and at no charge to the parents (34 C.F.R. § 300.17);
4. Failure to provide Mother with an appropriate request for consent to reevaluate Student (34 C.F.R. § 300.9); and
5. Failure to reevaluate Student upon parental request (34 C.F.R. §§ 300.303 through 300.311).

To remedy these violations, the School District is ordered to take the following actions:

1. By no later than November 18, 2016, the School District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the School District is responsible. The CAP must, at a minimum, provide for the following:

Effective training concerning relevant policies and procedures to address the cited violations must be conducted for School administrators, special education case managers, and School District evaluators. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and

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<sup>19</sup> SCO notes that, despite the fact that the IEP team agreed that the reevaluation was necessary to develop Student's March 25, 2016 IEP, they met on September 30<sup>th</sup> and completed the IEP nonetheless.

legible attendee sign-in sheets) and provided to the Department no later than January 9, 2017.

2. By no later than November 11, 2016, the School District shall reimburse Mother for the costs she has incurred (or which have been incurred on her behalf, via Mother's private insurance)<sup>20</sup> for OT, PT, and S/L services provided by private providers from August 31, 2015 through and including the date of this Decision, as follows:

- a. 21.5 hours (based on 30 minutes per week) of OT services at a rate of \$110/hour, totaling \$2,365.00;
- b. 21.5 hours (based on 30 minutes per week) of PT services at a rate of \$110/hour, totaling \$2,365.00;
- c. 64.5 hours (based on 90 minutes per week) of S/L services at a rate of \$123.16/hour, totaling \$7,943.82; and
- d. The School District shall obtain from Private Agency an accounting of the amounts paid by or on behalf of Mother from the date of this Decision through the time that the School District changes Student's placement and begins implementing Student's IEP in the family's home.

3. Conduct an IEP team meeting in order to change Student's placement to home instruction, developing Student's IEP with that placement in mind, as soon as possible, but no later than two weeks after this Decision is issued.

- a. The IEP team meeting (and all IEP team meetings held pursuant to the findings in this Decision) must be facilitated by a neutral facilitator not employed by the School District;
- b. The IEP team meeting must include all professionals who currently provide services to Student in the family's home and must also include H/H Instructor, Principal, School Psychologist, and Private SLP. The IEP team must also include a multi-disciplinary team comprised of School District professionals with experience working with students with traumatic brain injuries, i.e., staff from the School District's brain injury team, or persons knowledgeable about the impacts of brain injury;
- c. The IEP team must work with Student's current service providers to develop all areas of Student's IEP, specifically, the IEP team will collaborate in the development of goals by discussing Student's clinical goals in order to develop appropriate educational goals;

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<sup>20</sup> Reimbursement that Mother receives for amounts paid by insurance may need to be reimbursed to her insurance company.

- d. The IEP team must consider all potential areas of Student's present levels and need, i.e., cognitive ability, achievement, executive function, social-emotional competency, learning processes, language processes, visual-spatial processes, attention, processing speed, memory, and sensory-motor. If it is determined that additional information is needed to inform the IEP process, the School District will provide Mother with a request for consent to re-evaluate Student to fully inform Mother of all information relevant to the consent for reevaluation, specifically, identifying the area of concern, specifying what information is being sought, how Student will be assessed, and who will be performing the assessment. The request for consent should not include any additional statements about issues related to communications or meetings;
- e. With regard to the evaluation of Student's cognitive ability, School Psychologist and Mother will discuss with the IEP team the plan they devised on July 27, 2016, determine whether that plan will provide the information IEP team needs, and include the description in the request for consent, incorporating any revisions agreed upon at the IEP team meeting;
- f. Once the reevaluation is complete, the IEP team will reconvene within two weeks to review and revise Student's IEP, as necessary. The IEP team must also discuss a plan for compensatory services to address any deficiencies that is consistent with its consideration of Student's present levels and needs related to the absence of special education services<sup>21</sup> from August 31, 2015 until the date of this Decision.

These compensatory services shall be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory education services will be provided, with special consideration to Student's needs, stamina, cooperation, and schedule.

- g. A complete copy of any new IEP developed for Student, including a plan for compensatory services, and prior written notice, as well as the School District's consent to reevaluate Student, shall be provided to the Department within five days after the IEP meetings occur or consent form is provided.
4. The School District shall be prohibited from changing the Student's placement until all training and other corrective action ordered herein has been completed. Thereafter, the School District shall be prohibited from changing the Student's placement until the School District convenes an IEP meeting, facilitated by a neutral

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<sup>21</sup> SCO notes that Student would have been provided with approximately 70 minutes per day of direct specialized instruction outside of the general education classroom. See School District Response, footnote #3 on page 2.

facilitator (not employed by the School District) that complies with all procedural requirements of the IDEA, particularly all of the provisions that the SCO has found the School District to have violated.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the School District's timely compliance with this Decision. Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn: Gail Lott  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

Failure by the School District to meet the timelines set forth above will adversely affect the School District's annual determination under the IDEA and will subject the School District to enforcement action by the Department.

#### **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 24<sup>th</sup> day of October, 2016.

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Lisa A. Weiss, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, dated August 30, 2016, pages 1-9**

- Exhibit 1: Confidential IHP documents with handwritten notes
- Exhibit 2: IEP, dated March 25, 2016 noted as “draft 4”
- Exhibit 3: 2015-16 Progress/Status Report
- Exhibit 4: Three separate Prior Notices and Consents for Reevaluation, dated June 24, 2016
- Exhibit 5: H/H forms and faxed correspondence, dated August 3, 2016
- Exhibit 6: Email correspondence related to IHP and H/H

### **Reply, dated September 20, 2016, pages 1-9**

- Exhibit 7: Correspondence from medical providers and private therapists
- Exhibit 8: Documentation related to complaints filed with the United State Department of Education Office for Civil Rights
- Exhibit 9: Agreement to Mediate with the Office of Administrative Courts
- Exhibit 10: Progress Reports
- Exhibit 11: IHP with handwritten notes; Nursing notes
- Exhibit 12: Documentation related to progress monitoring
- Exhibit 13: Email correspondence regarding H/H services for the 2016-17 school year

### **Provided by Mother at request of SCO**

- Exhibit 14: Correspondence, dated September 26, 2016
- Exhibit 15: Notes between Mother and Director of Health Services related to IHP
- Exhibit 16: Audio recordings of IEP meetings
- Exhibit 17: Statements from private service providers

### **Response, dated September 16, 2016, pages 1-11**

#### Appendix, pages 1-2

- Exhibit A1: IEP documentation, dated March 13, 2015
- Exhibit A2: Document with handwritten title “Revised Modifications by [Home Health Provider]”
- Exhibit A3: Prior Notice and Consent for Reevaluation, dated June 24, 2016
- Exhibit A4: Draft IEP, dated March 25, 2016 (March 25, 2016 meeting)
- Exhibit A5: Draft IEP, dated March 25, 2016 (April 21, 2016 meeting)
- Exhibit A6: Draft IEP, dated March 25, 2016 (May 11, 2016 meeting)
- Exhibit A7: Draft IEP, dated March 25, 2016 (May 23, 2016 meeting)
- Exhibit A8: Email correspondence and May 2016 draft IHP
- Exhibit B1: Copy of appendix
- Exhibit B2: Email correspondence regarding scheduling IEP meeting and Notice of Meeting on March 25, 2016
- Exhibit B3: Email correspondence related to April 21, 2016 IEP meeting
- Exhibit B4: Email correspondence related to May 11, 2016 IEP meeting
- Exhibit C: Copy of appendix
- Exhibit D: Contact information regarding School and School District staff members
- Exhibit E1: School District Board Policies: AC, Nondiscrimination/Equal Opportunity

- Interpersonal/Human Relations, AC-E-1; Notice of Nondiscrimination/Equal Opportunity and AC R-7; and Nondiscrimination on the Basis of Handicap/Disability
- Exhibit E2: Colorado Association of Legal Services Program Special Education Practitioner’s Manual-Placement/Least Restrictive Environment, FAPE and Evaluations and Reevaluation
- Exhibit F: School District Board Policy and Regulation IHBF, Homebound Instruction – Home/Hospital and IHBF-R
- Exhibit G: Email correspondence from September 30, 2014 through January 30, 2015
- Exhibit H: Parent contact log
- Exhibit I: Email correspondence related to September 30, 2016 IEP meeting

**Provided by School District at request of SCO**

- Exhibit J: Draft IHP with handwritten notes and highlighting
- Exhibit K: Email correspondence between Mother and Director of Health Services, dated February 23, 2015
- Exhibit L: Schedule provided to H/H Support Specialist by Mother
- Exhibit M: IEP, dated March 25, 2016 (September 30, 2016 meeting)

**Additional documentation provided by School District**

- Exhibit N: October 7, 2016 email correspondence with consent form; Prior Notice & Consent for Reevaluation; October 12, 2016 email correspondence

**Provided by School District at request of SCO**

- Exhibit O: 2014-15 H/H Application Documents
- Exhibit P: 2015-16 H/H Application Documents
- Exhibit Q: 2016-17 H/H Application Documents
- Exhibit R: Audio recordings of IEP meetings

**Interviews with:**

- Mother  
Principal  
School Psychologist  
Executive Director  
Special Education Director  
Director of Health Services  
H/H Support Specialist  
Home Health Provider