

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

State-Level Complaint 2009:502

Cheyenne Mountain School District 12

Amended Decision

INTRODUCTION

This Complaint was dated March 21, 2009 and was received in this office on March 24, 2009. The Complaint was filed by the parent (Complainant) of a [GENDER] child with a disability (Student).

The Complainant had previously filed a Due Process Complaint (DP 2008:113) on behalf of the Student on October 24, 2008 and a decision was issued by an Impartial Hearing Officer (IHO) on December 17, 2008. As the State-Level Complaint repeated issues that had been previously decided in the due process hearing and because the decision on such issues is binding in a State Level Complaint Investigation,¹ the Complaint was initially rejected on April 1, 2009.

The rejection of the Complaint was reconsidered at the Complainant's request. The undersigned State Complaints Officer (SCO), reexamined the Complaint and determined that there were allegations that were closely related to, but had not specifically been decided in DP 2008:113 that were subject to the state level complaints process. The Complainant was notified via email and the District was notified via fax of the decision to investigate the Complaint on April 22, 2009.

The District response was received on April 29, 2009. The reply to the District's response was received on May 8, 2009.

The SCO interviewed the District by telephone on May 13, 2009. In the telephone interview, the District was asked to submit additional information which was received by fax on May 14, 2009.

In a series of emails on May 12 - 13, 2009, the SCO requested a telephone interview with the Complainant. The Complainant requested that the SCO provide interview questions in advance of the telephone interview and the interview questions were emailed to the Complainant on May 13, 2009. The Complainant responded to those questions via email on May 17, 2009.

The SCO contacted the Complainant by telephone on May 18, 2009 and conducted a brief telephone interview and confirmed that the Complainant wished to include the May 17, 2009 email response as part of the telephone interview.

The SCO closed the record at the end of the day on May 18, 2009.

¹ 34 CFR 300.152(d)(i).

ISSUES

The issues raised in the Complaint that are subject to the jurisdiction of the SCO are as follows:

- I. Whether qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day is required content under 34 CFR 300.320(a)(4);² and if so, whether the Student's Individualized Education Program dated 9/18/2008 (IEP) included the required content.
- II. Whether parent counseling and training was identified and properly documented as a related service on the Student's IEP.

A third issue was raised in the Complaint of whether the District violated the IDEA by placing Student alone in a room for 60 – 90 minutes,³ which the Complainant considered to be a practice of negative reinforcement that deprived Student of a FAPE during that time. This issue was specifically decided by the IHO in DP 2008:113 [Finding 36] and was not investigated.

The Complaint also repeatedly alleged violations of § 300.327 Educational Placements; and IDEA regulations § 300.324(a)(4)(ii) and § 300.324(a)(6) pertaining to IEP Amendments. However, the background information and supporting documentation submitted by the Complainant did not suggest that the educational placement decision was improper because it did not involve the parents pursuant to § 300.327; or that the IEP was improperly amended in violation of § 300.324(a)(4)(ii). Consequently, these issues were not investigated.

ISSUE I Whether qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day is required content under § 300.320(a)(4); and if so, whether the Student's IEP included the required content.

A. COMPLAINANT'S ALLEGATIONS

The Complainant has made the following allegations:

1. The Student's IEP did not adequately address the qualifications, training, and experience of the general education teacher, special education teacher, speech language therapist, occupational therapist, and paraprofessional.
2. The Student's IEP did not adequately address the degree and extent of paraprofessional support to be provided to the Student. Specifically –
 - a. The IEP should have fully disclosed the necessity for the Student to have constant paraprofessional or teacher support.

² Hereinafter IDEA regulations will be cited as follows § 300.000.

³ Amended from original decision 5/20/2009 per Complainant request.

- b. The IEP did not indicate the necessity for a “full time 1 on 1 para-professional trained and experienced to work with [Student’s disability].”
 - c. The IEP did not reflect paraprofessional support on page 12 – “Curricular Accommodations and Modifications” and on page 13 – “Recommended Placement in the Least Restrictive Environment.”
3. The Student’s IEP did not address specific reporting of Student’s attendance in general and special education attended during each day in daily communication logs provided to Complainant. Specifically, because the IEP indicated that a specific number of minutes per week of direct services in the general classroom and outside of the general classroom, the number minutes in each setting should be reported to track compliance. Such reporting did not occur in the daily communication logs.
4. The Student’s IEP overstated the amount of special education services the Student receives because “[t]he intent of this IEP percentage is to show small group and ‘1-on-1’ instruction – not the amount of time a child is ... segregated from the general ed[ucation] classroom.”

B. THE DISTRICT’S RESPONSE

The District responds as follows:

1. There is no requirement under the IDEA that the qualifications of service providers, degree and extent of paraprofessional support, and specific reporting of general and special education attended during each day be included in an IEP.
2. The regulations provide “Nothing in this section shall be construed to require that additional information be included in a child’s IEP beyond what is explicitly required in this section.” § 300.320(d)
3. The issue with regard to specific reporting of general and special education attended each day in daily communication logs was previously addressed by the Independent Hearing Officer (IHO) in the Due Process Complaint Decision (Specific Findings 13-14).

C. THE COMPLAINANT’S REPLY

The Complainant replies that the determination in the initial rejection of the Complaint and the conclusion of the IHO in Due Process case 2008:113 are not relevant. Further, the Complainant was not prepared to defend the argument to the IHO at the time of the Due Process Hearing for case 2008:113.

D. FINDINGS OF FACT AND CONCLUSIONS

1. At all times relevant to this Complaint, Student was a child with a disability with an IEP. Student was enrolled in and attended the Special Education Program [Program] at Elementary School [School] until Complainant withdrew [Student] from the School in October 2008.

2. On December 17, 2008, the IHO in DP 2008:113 made the following findings relevant to this Complaint which the SCO adopts and incorporates into the Findings of Fact for this decision:⁴
 - a. The Program at the School had a staff/student ratio at or very close to one to one.⁵
 - b. The Program's "rotating paraprofessional/student" protocol (multiple special education paraprofessionals working with the student throughout the day) was needed in order for the Student to be afforded a free appropriate public education (FAPE).⁶
 - c. While attending the School, the Student made both academic and behavioral progress.⁷
 - d. The Student's IEP as delivered by the District provided a FAPE beyond the standard established in *Bd. of Educ. of the Hendrick Hudson Central Sch. Bd. v. Rowley*.⁸
3. In DP Complaint 2008:113, the IHO ordered the District to amend the Student's IEP to include that staff members working with the Student must have specific background education, training and experience in working with [Student's disability].⁹
4. The IHO's order was reversed on appeal by an Administrative Law Judge (ALJ) in case EA 2009-0001 because the order lacked evidentiary support.¹⁰
5. The Student's IEP indicated the following:
 - a. The Student would receive 724 minutes per week of direct services by special education staff in the general class room.¹¹
 - b. The Student would receive 1175 minutes of direct services outside the general classroom.¹² These direct services included:
 - i. 60 minutes with a Speech Therapist,
 - ii. 30 minutes with an Occupational Therapist, and
 - iii. 1085 minutes of special education services with special education primary service providers.¹³
 - c. "Based on [Student's] educational needs, (sic) a combination of direct, consult, and targeted case management services [would] be provided in accordance with the [District's] calendar. Support [would] be provided in the general education classroom based on instructional need."¹⁴

⁴ Complaint Attachment (Att.) 1

⁵ Complaint Att. 1, p. 3. (IHO Finding 20)

⁶ Complaint Att. 1, pp 4, 11 (IHO Finding 24)

⁷ Complaint Att. 1, p. 7 (IHO Finding 39)

⁸ Complaint Att. 1, p.10

⁹ Complaint Att. 1, p.12

¹⁰ SCO Supplement to the record I (Supp. I), p.6

¹¹ Complaint Att. 2, p. 9; Response Appendix (App.) A, p.10; Response App.B

¹² Complaint Att. 2, p. 9; Response App. A, p.10

¹³ Response App. B.

¹⁴ Complaint Att. 2 p.10; Response App. A, p.11

- d. “[Student] [would] have special education support services for accommodation’s (sic)/modifications needed in order for [Student] to be successful.”¹⁵
 - e. Although one-to-one paraprofessional support was not specifically indicated in the IEP on page 12, “Curricular Accommodations and Modifications,” page 13, “Recommended Placement in the Least Restrictive Environment,” or elsewhere in the IEP;¹⁶ the service delivery table indicates that the Student would be provided with direct special education services both inside and outside of the classroom by special education service providers.¹⁷
6. Direct service provision for this Student means that a Service Provider is *with* (emphasis added) the Student while providing direct individual or small group instruction.¹⁸
 7. The Student would receive a total of 1839 minutes of direct special education services per week.¹⁹
 8. The School hours were from 8:10 AM to 3:10 PM which totaled 7 hours per day (420 minutes) and 35 hours per week (2100 minutes).²⁰
 9. Based on the total number of minutes per week of direct services on the IEP and the total number of minutes per week of School was in session, the IEP accurately reflected that the Student would receive special education and related services (both inside and outside of the general classroom) 90% percent of the time.²¹
 10. Because direct special education services are provided by multiple primary providers, the IEP components of (i) the number of minutes Student would receive direct services by special education primary service providers and (ii) the percentage of time Student would receive special education services, adequately reflected the “rotating paraprofessional” protocol deemed by the IHO in DP 2008:113 necessary to afford the Student a FAPE.
 11. The Student received constant supervision while at the Program based on the nearly 1:1 student to teacher ratio in the program (see 2(a) above); and according to written testimony submitted by Paraeducator in DP 2008:113 which stated the “[Student] has paraeducator support from the moment [Student] arrives at School until the time [Student] leaves.” The Paraeducator also stated “On no occasion is [Student] allowed to be without teacher or paraeducator support.”²²

E. ANALYSIS

Under the IDEA, a child’s individualized education program must include:

A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child to enable the child to –

¹⁵ Complaint Att. 2, p.11; Response App. A, p.12

¹⁶ Complaint Att. 2, pp.12-13; Response App. A, pp. 13-14

¹⁷ Complaint Att. 2, p.10; Response App. A, p.11

¹⁸ Telephone Interview with the District 5/13/09.

¹⁹ Complaint Att. 2, p. 9; Response Appendix (App.) A, p.10

²⁰ SCO Supp.II

²¹ Complaint Att. 2, p.10; Response App. A, p.11

²² Complaint Att.7, pp. 2, 4

- (i) Advance appropriately toward attaining the annual goals;
- (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

§ 300.320(a)(4).

Nothing in [the IEP content section] shall be construed to require –

- (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
- (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

§ 300.320(d).

The amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to that specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.

Letter to Copenhagen, 21 IDELR 1183 (OSEP 1994).

The qualifications, training and experience of general education and special education service providers is additional information that is beyond what is explicitly required in the Act and therefore was not required IEP content. Although the IHO ordered the District to amend the Student's IEP to include the education, training, and background of the special education staff working with the Student, that order was reversed on appeal [Findings of Fact²³ 3-4].

The daily reporting or tracking of the number of minutes that the Student is in general education and special education each day is additional information that is beyond what is explicitly required in the Act and therefore was not required IEP content.

The degree and extent of paraprofessional support was adequately documented in the IEP because the IEP reflected the "rotating paraprofessional" protocol implemented for the Student as services provided by special education primary service providers and accurately indicated the percent of time the Student received direct special education services [FF 9]. Although the IEP did not specifically indicate one-to-one paraprofessional support on the "Curricular Accommodations and Modifications" or "Recommended Placement in the Least Restrictive Environment pages of the IEP [FF 5(e)], paraprofessional support for the Student was contained under other components of the Student's IEP [FF 5(a-d)].

Accordingly, the SCO finds no violation of the IDEA on Issue I.

²³ Hereinafter FF

ISSUE II Whether parent counseling and training was identified and properly documented as a related service on the Student's IEP.

A. COMPLAINANT'S ALLEGATIONS

The Complainant has made the following allegations:

1. The Student's IEP does not address parental training to support the implementation of the IEP.
2. Although Complainant remembers being offered information regarding parental rights, Complainant "has no recollection" if information was offered concerning the Student's disability.
3. Parent counseling and training is "most effectively accomplished through direct observation." Because the District requested that the IHO in DP case 2008:113, order that Complainant's requests for classroom visits be submitted to the School 24 hours in advance of a proposed visit, it violates the parent counseling and training related service requirements.

B. THE DISTRICT'S RESPONSE

The District responds as follows:

1. The District offered information to the parent about the child's disability and their parental rights. The [Assistant Special Education Director] gave the [Complainant] the District's parent rights and program information in August 2008, prior to student's initial attendance.
2. Information offered about the child's disability or regarding parent counseling and training included:
 - a. School personnel met several times with parents to address Student's progress and concerns.
 - b. IEP states "daily two way communication via verbal consult, email or communication log" will occur and "parents [were] offered information regarding their child's disability."
3. Parents were sent the "Special Education Connection" newsletter to inform them of "CIMP Advisory Council (CAC)" meetings and training in August 2008.
4. Multiple District wide parent trainings were held including "Parent Supporting Parent Groups," the "CIMP Advisory Council", and "CAC Parent Trainings."
5. Staff sent handouts of all parent training sessions to the Complainants when requested by the Complainants.
6. There was no interest shown by the Complainant for a home visit to provide training, despite an offer to do so.

C. COMPLAINANT'S REPLY

Complainant replies as follows:

1. In its response, the District omitted:
 - a. The Complainant's interest in observing the Student in the classroom because Student was coming home from School bruised.
 - b. The Complainant's interest in observing the Student due to the School's placing of the Student in a room alone; and
 - c. The District's demand that the Complainant obtain prior approval to visit the class 24 hours in advance.
2. The offer to perform a home visit is immaterial as it constitutes one of 40 hours of academic instruction per week. Further, the Complainant was confident that the Speech Language Pathologist was performing competently and that there were few reports of trouble during the Speech Language Pathologist's direct instruction to the Student.
3. The training the Complainant attended and information sent to the Complainant were useless with specific regard to the Student's disability and the poor quality of academic instruction Student received.

D. FINDINGS OF FACT

1. The "Plan Requirements" page of the Student's IEP, documented "Parents are offered information regarding their child's disability along with their parental rights." The IEP also indicated "Parent and Follow-up activities will be provided as directed by the teacher and/or provider." The IEP further stated that daily two way communication, via verbal consult, email or communication log will occur as needed.²⁴
2. In DP 2008:113, the IHO made the following findings relevant to this issue which the SCO adopts and incorporates into the Findings of Fact for this decision:
 - a. The District's procedure for classroom visitations by any parent of students in the Program, which requests 24 hour notice and visitation at a pre-approved scheduled time, is not unreasonable.²⁵
 - b. No credible evidence established that in order to receive a FAPE, the Student required unscheduled observation by the Complainant or Student's Mother twice weekly for one hour each time at School, even if the Complainant or Student's Mother did not interact with the Student or Student's special education providers.²⁶
 - c. Having the Complainant or Student's Mother interact one hour per week with the Student's special education providers while the Student was receiving services, for the purpose of having the professionals teach the parents and having the parents instruct the professionals on how best to educate the Student would be unduly disturbing to the Student, the staff, and other students.²⁷
3. Although the Complainant stated that training was most effectively accomplished through direct observation, other training to support the implementation of the Student's IEP was offered by the District to the Complainant via a home visit. The

²⁴ Complaint Att.2, p.10; Response App.A, p.11.

²⁵ Complaint Att.2, p.9 (IHO Finding 43).

²⁶ Complaint Att.2, p.12 (IHO Decision – DP Issue 4).

²⁷ Complaint Att.2, p.12 (IHO Decision – DP Issue 5).

Complainant did not show interest in the offer of a home visit for training.²⁸ The Complainant stated that the home visit would be insufficient to address the Complainant's concerns around the methodologies and interventions used during the other hours of instruction in the Program at the School.²⁹

4. The Complainant further acknowledged that the purpose of observing the Student while in the Program at the School was not for training, but was in the interest of Complainant's concerns that the Student was being physically harmed and that the Student was being placed in a room alone for lengthy periods of time.³⁰
5. The District submitted documentation that trainings in special education processes and behavior supports, as well as providing opportunities for parents of children with specific disabilities to connect with other parents of children with similar disabilities were made available to the Complainant. The District supplied the Complainant with hand-outs from trainings upon Complainant's request.³¹ The Complainant acknowledged that he attended some of the trainings and received the hand-outs provided by the District.³²

E. ANALYSIS

With regard to parent counseling and training, the IDEA provides:

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes ... parent counseling and training.

§ 300.34(a).

Parent counseling and training means –

- (i) assisting parents in understanding the special needs of their child;
- (ii) providing parents with information about child development; and
- (iii) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP.

§ 300.34(c)(8).

An LEA only is responsible for providing parent counseling and training if a child's IEP team determines that it is necessary for the child to receive a FAPE.

Fed. Reg. Vol. 71, No. 156, Aug. 14, 2006, p.46573 (IDEA Preamble).

Nothing in the Act or in the definition of related services requires the provision of a related service to a child unless the child's IEP team has determined that the related service is required in order for the child to benefit from special education and has included that service in the IEP.

²⁸ Response App.F, p.3-4

²⁹ Complainant Reply, Telephone Interview with the Complainant 5/18/2009

³⁰ Complainant Reply

³¹ Response, App.D and App.F.

³² Complainant Reply

IDEA Preamble. p.46569.

Parent counseling and training was identified and properly documented as a Plan Requirement in the Student's IEP [FF 1]. However, the crux of the Complainant's allegation was whether observation of the Student while in the Program at School was parent counseling and training that required documentation in the IEP. The IHO concluded in DP 2008:113 that such observation was not necessary to provide the Student with a FAPE [FF 2(b)], therefore such observation was not a related service that would require documentation in the Student's IEP. Further, the Complainant's admitted purposes for observing the Student while in the Program at the School [FF 3-4] do not fall within the definition of parent counseling and training and therefore was not required to be in the Student's IEP.

Accordingly, the SCO finds no violation of the IDEA in Issue II.

REMEDY

As no violation was found, no remedy is hereby ordered.

CONCLUSION

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

Amended this 2nd day of June, 2009, retroactive to 20th of May, 2009.

Stephanie Lynch, Esq.
State Complaints Officer