

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

State-Level Complaint 2010:505

Mesa County Valley School District 51

Decision

INTRODUCTION

This Complaint was brought pursuant to the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. The undersigned State Complaints Officer (SCO) has determined that the SCO has the jurisdiction to resolve the Complaint pursuant to those same regulations.

The Complaint was properly filed in the office of the SCO on 04/07/2010 by the (Parents), (Mother) and (Father), of (Student).

The SCO sent a Complaint Notification letter with a copy of the Complaint and attachments to the District via Federal Express/Overnight delivery on 04/08/2010. Delivery confirmation established that the District received this packet on 04/09/2010.

The District's Response was timely received by the SCO on 04/26/2010. The SCO confirmed that Parents received the District's Response on 4/26/2010 by telephone and certified mail.

The SCO requested additional information from the District on 4/30/2010. The requested information was received 5/7/2010 and 5/13/2010.

The SCO conducted telephone interviews with District personnel involved in the case on 5/13/2010. Based on the telephone interviews, the SCO requested additional information from District. The additional information was received 5/21/2010.

The SCO conducted a telephone interview with Parents 5/14/2010. Based on the telephone interview, the SCO requested additional information from Parents. The requested information was received 5/17/2010.

The SCO closed the record on 5/21/2010.

ISSUES

The Complaint raises one issue that occurred during the time period of 04/07/2009 to 04/07/2010 that is subject to the jurisdiction of the SCO:

Whether District denied Student a Free Appropriate Public Education (FAPE) when it failed to implement Student's Individualized Education Program (IEP) in Student's literacy class.

COMPLAINANT ALLEGATIONS

The SCO summarizes Parents' allegation as the District failed to implement Student's IEP in Student's literacy class. Specifically, Parents allege –

- Literacy Teacher did not participate in Student's IEP meeting on 10/20/2009 and thus did not provide information about Student's performance in literacy class or modifications necessary for Student to access the literacy curriculum;
- Literacy Teacher improperly delegated all responsibility for the education of Student, including IEP implementation, to Special Education Teacher when Student was in literacy class;
- Literacy Teacher did not implement the accommodations and modifications listed in Student's IEP when Special Education Teacher was absent from the literacy class as demonstrated by Student assignments completed in October 2009;
- Literacy Teacher did not support Student in progressing on the self advocacy goal in Student's IEP;
- Literacy Teacher was unable or unwilling to consider the special needs of students with disabilities in her literacy class as demonstrated by her conduct in class on 2/23/2010; and
- District declined Parents' request to move Student to a different literacy class due to Parents' concerns about Literacy Teacher.

DISTRICT'S RESPONSE

The DISTRICT denies the allegation. The SCO summarizes DISTRICT Response as follows –

- Special Education Teacher was available daily in Student's literacy class to ensure Student's IEP, including all accommodations and modifications, was implemented.
- Student received above average grades and was progressing in all subject areas including language arts.¹
- Subsequent to the filing of this Complaint, District met with Parents and agreed to Parents' requests in an effort to resolve Parents' concerns. However, Parents would not withdraw this Complaint.

PARENTS REPLY

A Reply was not received from Parents.

¹ The District refers to Literacy and Language Arts interchangeably in its response. For consistency in this Decision, the SCO will refer to the class solely as Literacy.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS of Fact:

1. Student is a resident of and attends (School) in District. Student is eligible for special education under the disability classifications of [Disability] and [Disability]. Student's disabilities affect Student's progress in literacy and the ability to understand verbal concepts.
2. At the beginning of the 2009-2010 school year, Student had an IEP dated 10/14/2008. According to the IEP, Student needed extra support in reading comprehension and fluency, and writing. Student was to receive 300 minutes per week of specialized instruction by Special Education Teacher for literacy and math classes. There is no dispute that Student received the special education and related services indicated in Student's IEP.
3. The 10/14/2008 IEP listed several accommodations for Student including: extended time, extra time during communication interactions, good eye contact with speaker, and wait time for Student's responses.
4. District did not supply the SCO with current policies or procedures on how a classroom teacher can access, or is provided with, the IEP information for students who have IEPs in his or her class. However, a process for informing the School's classroom teachers of their students' IEP information was evident from the SCO's interviews with the Principal, Assistant Principal and Special Education Teacher, and from documentation supplied by District. The School's process for informing classroom teachers of IEP information was as follows:
 - a. At the beginning of the school year a special education case manager (usually a special education teacher) was assigned to each student who had an IEP.
 - b. The School's Special Education Secretary informed classroom teachers of the case manager assigned to students who have IEPs.
 - c. A student's case manager met with the student's classroom teachers to review the student's IEP information prior to the start of school.
 - d. The case manager had the classroom teacher sign a "sign-off" sheet confirming the classroom teacher has received the student's IEP.
 - e. Teachers could access the IEPs of students in their classrooms during the year by contacting the case manager.
 - f. During the school year, the case manager provided teachers with updated IEP information for the students in their classes.

The SCO finds that the School had procedures in place for informing and providing access to IEP information for general education teachers.

² Decision Appendix A, p.9-10, which is incorporated by reference, details the entire record (Record) from which the Findings were determined in this case.

5. There was conflicting information as to whether the School's procedures for informing general education teachers about IEP information were implemented with regard to Student's IEP for Literacy Teacher. Literacy Teacher stated to the SCO that she did not receive Student's IEP information at the beginning of the school year, but that she was aware that Student was in special education. However, Special Education Teacher stated to the SCO that Literacy Teacher was provided with Student's IEP accommodations and modifications prior to the start of the school year. Further, Parents told the SCO that Literacy Teacher acknowledged having a copy of Student's IEP during parent teacher conferences in October 2009. Although, District was unable to locate the IEP information sign-off sheet signed by Literacy Teacher, District supplied email documentation that demonstrated the School's procedures for informing teachers about IEP information were followed with regard to Literacy Teacher. The SCO finds Literacy Teacher had access to and was informed of Student's IEP information.
6. District has recently implemented a co-teaching model for general education and special education teachers. Under the co-teaching model, both teachers take responsibility for working with general education and special education students. The co-teaching model is a new process to many teachers in the District.
7. Student's literacy class was co-taught by Literacy Teacher and Special Education Teacher. However, Literacy Teacher and Special Education Teacher had communication difficulties that impeded their ability to provide cohesive support to Student. Further, Literacy Teacher and Special Education Teacher maintained strict boundaries with regard to general education and special education responsibilities. Both Special Education Teacher and Literacy Teacher told the SCO that responsibility for IEP implementation for special education students rested solely with Special Education Teacher. The SCO finds the Literacy Teacher was not assigned responsibility for implementing Student's IEP in literacy class.
8. Special Education Teacher implemented Student's IEP in the literacy class each day unless the Special Education Teacher was absent from class. During the relevant time frame, Special Education Teacher was absent from the literacy class 15 out of 136 days. When Special Education Teacher was absent, a substitute teacher was provided. However, Special Education Teacher told the SCO that substitute teachers were not informed of Student's IEP. Because Literacy Teacher was not responsible for implementing Student's IEP and substitute teachers were not informed of Student's IEP, the SCO finds that Student's IEP was not implemented when Special Education Teacher was absent from literacy class.
9. Literacy Teacher did not attend Student's annual IEP review meeting held on 10/20/2009. However, participants in the IEP meeting included Special Education Teacher, Speech Language Pathologist, Student's Social Studies and Science Teachers, and Parents. Special Education Teacher participated in the meeting both as a special education service provider and special education director designee. Although Literacy Teacher was not in attendance, the SCO finds that the 10/20/2009 IEP meeting was properly convened and had the required IEP team participants in attendance. 34 C.F.R. § 300.321(a).
10. Relevant to this Complaint, the 10/20/2009 IEP indicated that Student continued to need support in math and literacy, specifically in the areas of reading comprehension and fluency, and writing. The 10/20/2009 IEP included accommodations such as

extended time, extra time during communication interactions, and wait time for Student's responses. The 10/20/2009 IEP also included a goal of demonstrating self advocacy skills to request help and clarification of directions, to answer questions in the classroom, and to express feelings.

11. In emails to Special Education Teacher on 10/22-10/28/2009, Mother expressed concerns about Student's Literacy Teacher. Mother's concerns were that Literacy Teacher appeared neither interested in information about Student's disability nor invested in Student's progress; Literacy Teacher did not implement accommodations on two assignments in literacy class which resulted in low grades (66% and 7%); and Literacy Teacher did not work with Student when Special Education Teacher was absent from the literacy class.
12. In an interview with the SCO, Literacy Teacher could not confirm when the assignments on which Student received the grades of 66% and 7% were completed or whether Student's IEP accommodations and modifications had been implemented for the assignments. On Student's grade report, the assignments were entered 10/12/2009, a day when a substitute teacher was present because Special Education Teacher was absent from literacy class. On one of the assignments, Student answered the first twelve questions, and all remaining questions were left blank which suggests that the accommodation of extended time was not implemented. The SCO finds that Student's IEP accommodations and modifications were not implemented for these specific assignments. However, prior to the filing of this Complaint, Student was subsequently allowed to complete these assignments with accommodations and resubmitted the assignments for higher grades.
13. Students in the School were assigned to a "core" group of general education classroom teachers at each grade-level. In Student's grade, there were two cores, 6-1 and 6-2. Student was assigned to core 6-1. In a 10/29/2009 letter to Principal, Father indicated concern with the Literacy Teacher's conduct such as Literacy Teacher's abrupt responses to Parents and indifference to information about Student's disability. Based on these concerns, Father requested that Student be transferred from the current core 6-1 literacy instructor to the core 6-2 instructor. Because this request was specific to general education teachers and classes, the SCO finds Parents' request was not a request for a special education change in placement.³
14. Assistant Principal responded to the 10/29/2009 letter from Parents and addressed the situation by directing Literacy Teacher and Special Education Teacher to improve their communications. Assistant Principal also directed Literacy Teacher to implement Student's accommodations such as extended time and to differentiate instruction for Student. Assistant Principal declined Parents' request to change Student's core classes because it would change all of Student's classroom teachers.
15. According to Parents, there were no issues with Literacy Teacher from November 2009 until February 2010. On 2/23/2010, the students in the literacy class were assigned to groups to provide in-class presentations. Parents and Special Education Teacher told the SCO that Literacy Teacher singled out Student's group and questioned one of the group members about whether they had received assistance

³ The terms "placement" or "educational placement" mean the provision of special education and related services. Rules for the Administration of the Exceptional Children's Educational Act (1 Colo. Code. of Reg. 301-8, 2220-R-4.03(8)(a)).

from Special Education Teacher to complete the assignment. When the group member acknowledged receiving Special Education Teacher's assistance, Literacy Teacher separated each student's written work and announced that the assignments would be graded individually rather than by groups. However, the Special Education Teacher confirmed that Student's IEP accommodations were implemented for the class assignment that day. Therefore, the SCO finds Student's IEP accommodations were implemented for the 2/23/2010 literacy class assignment.

16. Parents emailed Assistant Principal 2/23/2010 about the events of the literacy class that day. In response to Parents' concerns, Assistant Principal interviewed several students, including those in Student's group, about the 2/23/2010 literacy class. According to Assistant Principal's notes, the students reported that Literacy Teacher had been upset with the entire class and treated all of the students the same. Assistant Principal met with Literacy Teacher on 2/24/2010 and urged Literacy Teacher to work more closely and improve communication with Special Education Teacher.
17. Although satisfied with Assistant Principal's efforts, Parents remained unhappy with Literacy Teacher's attitude and alleged low expectations for special education students in the literacy class and filed this Complaint. On 4/22/2010, the District agreed to make and Parents accepted the following changes for Student to resolve Parents' concerns: (i) move Student to another "core" for the 2010-2011 school year, (ii) ensure a particular resource teacher would not be assigned to Student, (iii) provide class textbooks when available, and (iv) provide names of tutors. The SCO finds that the District addressed all concerns specific to Student raised by Parents in this Complaint.
18. Parents told the SCO that, for the most part, the accommodations and modifications in Student's IEP had been implemented in Student's classes except for the literacy class. Further, Parents acknowledged Student's accommodations and modifications were implemented in the literacy class when Special Education Teacher was present. Although the SCO does not condone *any* failure to implement Student's IEP, the SCO finds that the failures to implement Student's IEP accommodations and modifications in the literacy class were minimal.
19. According to Student's IEP progress report, Student was progressing on IEP goals including Student's self advocacy goal. Parents also said that Student was progressing on IEP goals. However, Parents stated to the SCO that they believe Literacy Teacher inflated Student's grades hence the grades were not an accurate reflection of progress in the literacy class. Yet, both Assistant Principal and Parents stated that Student's assessment⁴ scores had improved and that Student made progress in the area of literacy. Despite the occasional failure to implement Student's IEP accommodations in the literacy class, the SCO finds that Student progressed on IEP goals and in the literacy curriculum.

ANALYSIS AND CONCLUSIONS OF LAW

Having carefully considered all information in the record, the SCO makes the following CONCLUSIONS OF LAW which are specifically limited to the facts of this case:

⁴ Northwest Evaluation Association (NWEA) assessments.

Issue: Whether the District denied Student a FAPE when it failed to implement Student's IEP in literacy class.

1. Under the IDEA, each child with a disability is entitled to a free appropriate public education (FAPE). A FAPE is tailored to the unique needs of the child by means of an IEP. An IEP provides a FAPE if it provides the child with a basic floor of opportunity that consists of access to specialized instruction and related services which are individually designed to provide educational benefit. *Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982).
2. An IEP is developed by the IEP Team which, among others, must include the child's parents and *not less than one of the child's regular education teachers* (emphasis added). See 34 C.F.R. § 300.321(a).
3. According to the U.S. Department of Education Office of Special Education Programs (OSEP), the District determines, based on the needs of the child, which particular teachers are members of the IEP team. See Analysis of Comments and Changes 2004 IDEA Part B regulations, 71 Fed. Reg.⁵ p.46670 discussion on IEP Team members.
4. Although not all of the general education teachers of a child are required to attend a child's IEP meeting, in accordance with 34 C.F.R. § 300.323(d), a public agency must ensure that –
 - a. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - b. Each teacher and provider is informed of –
 - i. His or her specific responsibilities related to implementing the child's IEP; and
 - ii. The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
5. OSEP explains "The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed." *Preamble*, p.46681.
6. The SCO concludes that Student's classroom teachers, including Literacy Teacher, were informed about Student's IEP in accordance with 34 C.F.R. § 300.323(d). The School had a process to inform teachers about IEP information for students in the teachers' classes (FF 4). Although some of Student's teachers received IEP information by attending Student's IEP meeting 10/20/2009 (FF 8), Literacy Teacher was informed of Student's IEP accommodations and modifications consistent with the School's process (FF 5). The SCO finds there were no violations of 34 C.F.R. § 300.321(a) or 34 C.F.R. § 300.323(d).

⁵ Hereinafter *Preamble*.

7. A party challenging IEP implementation must demonstrate that the district failed to implement substantial or significant provisions of the IEP and more than a *de minimis* failure to implement all elements of that IEP. *Houston Ind. Sch. Dist. v. Bobby R.*, 200 F.3d 341, (January 2000, 5th Cir.).
8. Minor failures to implement a child's IEP are not automatically IDEA violations. A district does not violate the IDEA unless the district has materially failed to implement the child's IEP. A material failure to implement an IEP occurs when the services provided to a child with a disability fall significantly short of those required by the IEP. *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (April 2007, 9th Cir).
9. A child's educational progress, or lack thereof, may be probative of whether there has been a significant shortfall in the services provided. *Van Duyn*.
10. Given the evidence in the record, the SCO concludes Parents did not demonstrate that District failed to implement significant provisions of Student's IEP. The SCO further concludes that the minimal failures to implement Student's IEP accommodations (FF 8, FF 12, FF 18) did not rise to the level of a material failure. Moreover, such failures to implement the IEP did not impede Student's progress in the general education curriculum or on IEP goals (FF 19). Therefore, the SCO finds no violation of the IDEA and no denial of FAPE.

REMEDY

- I. As no violations were found, no remedies are hereby ordered.

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 C.F.R. § 300.507(a); Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).

CONCLUSION

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

Dated this 2nd day of June, 2010.

Stephanie D. Lynch, Esq.

Appendix A Record

Complaint Documents

- Emails and correspondence October 2009
- Emails February 2010
- 10/21/2009 Student's Grade Report/Assignment Summary for literacy class
- Student's 10/14/2008 IEP
- Two Student assignments graded 7% and 66% respectively
- 10/7/2009 Notice of 10/20/2009 IEP meeting
- Student's 10/20/2009 IEP
- Family and Advocates Partnership for Education (FAPE) Publication on School Accommodations and Modifications
- *Free Appropriate Public Education for Students with Disabilities: Requirements under Section 504 of the Rehabilitation Act of 1973.* (U.S. Department of Education, September 2007).

Interview with Parents 5/14/2010

Additional Documents Supplied by Parents received 5/17/2010

- School Letter all parents dated 4/21/2010 regarding not accommodating requests to change class cores
- Student Homonym assignment dated 1/8/2010 graded 85%

District's Response

- Exhibit 1: District Draft FAPE Procedures Manual, MVSD 6/2010
- Exhibit 1: District Board Policies, last reviewed 9/17/2002
- Exhibit 1: District Draft IEP Procedures Manual, MVSD 6/2010
- Exhibit 1: District Board Policy Student Progress Reports, Policy Manual Review 11/19/2002
- Exhibit 1: Practical Guidelines and Analysis, District Draft Procedures Manual, MVSD 6/2010
- Exhibit 2: Student's 10/14/2008 IEP
- Exhibit 2: Student's 10/20/2009 IEP
- Exhibit 3: Student's Transcript through third quarter, 2009-2010 school year
- Exhibit 3: Student's third quarter grade report
- Exhibit 3: Student's 4/21/2010 Grade Report/Assignment summary for literacy class
- Exhibit 3: Student's 10/21/2009 Grade Report/Assignment summary for literacy class
- Exhibit 3: Student's Developmental Reading Assessment, second edition (DRA2) administered 4/23/2010.
- Exhibit 4: Emails and correspondence October 2009/February 2010.
- Exhibit 4: Assistant Principal interviews of teacher and students notes, February 2010
- Exhibit 4: 2/24/2010 Assistant Principal email to Literacy Teacher
- Exhibit 4: 2/25/2010 email to Assistant Principal from Father, with Assistant Principal notes
- Exhibit 4: 2/23/2010 Assignment completed by Student's group
- Exhibit 4: 2/25/2010 email to Assistant Principal from Father
- Exhibit 4: Parents' Complaint received by SCO 4/7/2010, Parents' confirmation of Complaint being sent to District, SCO Notification letter to District
- Exhibit 4: April 2010 Emails and meeting notes regarding District's efforts to resolve Parents' concerns

District Additional Information requested by SCO received 5/7/2010

- Student IEP progress reports, 2009-2010, reporting periods 1-3, 10/19/2009 to 4/15/2010
- District Absences by Employee report for Special Education Teacher, 5/15/2009-5/27/2010
- 10/20/09 Student IEP cover page, IEP participation page, and IEP checklist signed by Special Education Teacher

District Additional Information received 5/13/2010

- IEP progress reports, Speech Language 1/11-5/11/2010

Interviews 05/13/2010 District Staff: School Principal, Assistant Principal, Literacy Teacher, and Special Education Teacher

District Additional Information requested by SCO received 5/21/2010

- 8/31/2009 Email "Read receipt" from Literacy Teacher to Sped Secretary
- Undated email to unknown recipient, from Sped Secretary regarding missing IEP sign-off sheet
- 9/15/2009 Email from Sped Secretary to various teachers including Literacy Teacher re: case manager assignments/case load list
- Redacted case manager assignment/case load list 2009 – 2010
- 11/5/2009 Email from Sped Secretary to various teachers including Literacy Teacher re: revised case manager assignments/case load list and pending IEP goal, accommodations, behavior plan and health care plan information
- Blank IEP Sign-Off Sheet

SCO supplement to the Record: School District 2009-2010 Calendar, Middle School Bell Schedule