

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

State-Level Complaint 2011: 513
Jefferson County School District R-1

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed on 10/13/2011 by the [Parent] of two children who are each identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))² and to protect the anonymity of the Complainant and [Parent's] children, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

[Parent], [Parent] of Children, ("Parent");
[Student One], Child of Parent, ("Student One");
[Student Two], Child of Parent, ("Student Two");
Students' age of [Age], [Age];
[School], ("School");
[Former School], ("Former School");
Jefferson County School District, ("District");
[Special Education Area Coordinator], Special Education Area Coordinator, ("Special Education Area Coordinator");
[Special Education Teacher one], School Special Education Teacher, ("Special Education Teacher One");
[Special Education Teacher Two], School Special Education Teacher, ("Special Education Teacher Two");
[SLP], District Speech Language Pathologist, ("SLP"); and
[School Psychologist], School Psychologist, ("School Psychologist").

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

² FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

The Complaint consisted of eight pages. Although Parent filed a separate state complaint on behalf of each Student, the SCO consolidated these two complaints into one because the complaints raised the same allegations.

Based on the written Complaint and interview with Parent on 10/14/2011, the State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.³ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO is:

Whether the District committed procedural violations of the IDEA, and if so, whether the procedural violations denied Students a free appropriate public education (FAPE).

On 10/14/2011, the District's Special Education Director was notified of Parent's allegations in a cover letter which included a complete copy of the Complaint.

On 11/1/2011, the SCO timely received the District's eight-page Response and exhibits marked "A" through "P." A copy of the District's Response and all supporting documentation was delivered to Parent on 11/3/2011.

On 11/14/2011, the SCO timely received Parent's six-page Reply and accompanying exhibits marked "8" through "25." A copy of Parent's Reply and all supporting documentation was delivered to the District on 11/15/2011.

On 11/16/2011, the SCO conducted on-site interviews with Special Education Area Coordinator, Special Education Teacher One, Special Education Teacher Two, Speech Language Pathologist (SLP), and School Psychologist.

On 11/17/2011, the SCO conducted an in-person interview with Parent.

On 11/18/2011, the SCO received additional documentation requested from the District. A copy of this documentation, marked exhibits "Q" through "R," was sent to Parent by certified mail on 11/21/2011.

On 11/18/2011, the SCO closed the Record.

³ 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).

PARENT'S COMPLAINT ALLEGATION

Parent's Complaint contained four allegations, two for each Student, summarized as follows:

Student One

1. Between 8/22/2011 and 10/13/2011, the District failed to provide the special education and related services documented on Student One's 12/7/2010 IEP. Specifically,
 - a. The District has not provided Student One with the speech language services and mental health services required by [Student's] 12/7/2010 IEP; and
 - b. The District has not provided Student One with special education services, including specialized instruction in conjunction with [Student's] study skills class, as required by [the] 12/7/2010 IEP.
2. Between 8/22/2011 and 10/13/2011, the District failed to provide Parent with Student's progress reports, as required by the 12/7/2010 IEP.

Student Two

3. Between 8/22/2011 and 10/13/2011, the District failed to provide the special education and related services documented on Student Two's 12/13/2010 IEP. Specifically,
 - a. The District has not provided Student Two with the speech language services, direct or indirect, required by [Student's] 12/13/2010 IEP; and
 - b. The District has not provided Student Two with special education services, including specialized instruction in conjunction with [Student's] study skills class, as required by [Student's] 12/13/2010 IEP.
4. Between 8/22/2011 and 10/13/2011, the District failed to provide Parent with Student's progress reports, as required by the 12/13/2010 IEP.

Summary of Proposed Remedies. Parent proposed that the District be required to: 1) provide the specialized instruction and related services required by each Student's IEP; 2) provide compensatory services for any and all services not provided in accordance with each Student's IEP; 3) provide specialized instruction in Study Skill class; and 4) provide Parent with information on how each Student is progressing towards IEP goals.

THE DISTRICT'S RESPONSE

The District's Response is summarized as follows:

Allegations One and Three. With the exception of Student One's mental health services, the District admitted that it has not provided all of the special education and related services required

by each Student's IEP. Specifically, the District admitted that it has not provided the integrated special education service minutes, nor all of the speech language direct service minutes, required by Students' December 2010 IEPs. The District argued that the special education and related services currently being provided to both Students, while not identical to the services required by each IEP, are consistent with changes verbally agreed to by the Parties during a transition meeting on 4/25/2011. The District explained that it did not amend Students' IEPs following the meeting because Parent requested that these changes instead be documented at formal IEP meetings [Parent] wanted held in September of 2011 for Student One and in October of 2011 for Student Two. While the District acknowledged that the procedural requirements of the IDEA were violated by not having a formal IEP meeting to update each Student's IEP before the start of the 2011-2012 school year, it argued that the procedural violation did not harm either Student, as evidenced by grade and progress reports that demonstrate both Students are earning passing grades and making progress on their annual IEP goals.

Allegations Two and Four. The District denied that it violated the IDEA by failing to provide Parent with regular reports concerning each Student's progress toward meeting [their] annual IEP goals. The District provided documentation showing that Parent was provided with written progress reports consistent with the District's six-week reporting schedule and each Student's IEP. At Parent's request, the District "prepared and provided Parent with supplemental reports containing more detail and some supporting data and work samples related to Students' progress through October 10, 2011."⁴

PARENT'S REPLY

Parent's Reply is summarized as follows:

Allegations One and Three. Parent asserted that the meeting on 4/25/2011 was an IEP meeting, but that there was no discussion and/or agreement to change the service minutes or the delivery of those services for either Student. Parent also asserted that [Parent] notified various District staff members, including Special Education Area Coordinator, that Students were not being provided the speech language services required by their current IEPs.

Allegations Two and Four. Parent asserted that [Parent] did not receive progress reports on either Student's IEP goals on 10/7/2011, the date Students' grades were posted. Parent also alleged, for the first time, that the form and content of the progress reports did not meet Colorado Department of Education (CDE) guidelines. The SCO rejected this new allegation because neither the IDEA nor the ECEA mandate a specific form or content for progress reporting.

In addition, Parent raised new allegations that are beyond the scope of this investigation.⁵

⁴ Response at page 2.

⁵ Parent was informed on 11/17/2011 that the additional allegations would not be addressed in this Complaint investigation, but that [Parent] had the right to request that they be resolved by requesting mediation, filing a new state complaint, and/or filing a due process complaint.

FINDINGS OF FACT

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

Factual Background:

1. At all times relevant to the Complaint, Students were both [age] years of age, residents of the District, and eligible for special education on the basis of speech or language impairment.⁷
2. The IEPs at issue in this Complaint were developed in December of 2010 for implementation at Former School, a middle school. In August of 2011, Students began attending School, a high school. Both Parties understood that the differences between the educational demands and class schedule at Former School and School would necessitate changes in the delivery of special education and related services described on each Student's December 2010 IEP. In accordance with this understanding, the Parties agreed to some changes at a meeting on 4/25/2011 and anticipated that further changes would be documented at formal IEP meetings to be held at the beginning of the 2011-2012 school year.⁸ However, for reasons more fully described below, the changes agreed to were not documented and the IEP meetings did not happen in a timely manner, resulting in Parent's allegation that the District was not providing services in accordance with Students' current IEPs.

Allegations 1 and 3: Between 8/22/2011 and 10/13/2011, the District failed to provide the special education and related services documented on each Student's IEP.

Special Education and Related Services described on Students' December 2010 IEPs.

3. **Student One's IEP.**⁹ The 12/7/2010 IEP described the following special education and related services to be received by Student One on a weekly basis:
 - Special education services:
 - .5 hours of indirect (consultation);
 - 4.16 hours of integrated services in general classroom; and
 - 1 hour of direct (outside general classroom).
 - Mental health services:¹⁰
 - .25 hours of indirect (consultation); and
 - .5 hours of direct (outside general classroom).

⁶ Appendix A, attached and incorporated by reference, details the entire Record.

⁷ Exhibit A, p. 1; Exhibit E, p.1.

⁸ Response, pp.3-5; Reply, p.1; Exhibit 8; and interviews with Parent and Special Education Area Coordinator.

⁹ Exhibit A, p.18.

¹⁰ Student One has an IEP and BSP dated 5/13/2011. Exhibit A, pp. 27-34. The mental health services listed on the 12/7/2010 IEP and the 5/13/2011 IEP are identical. Exhibit A, pp. 18 and 27.

- Speech/language services:
 - 1 hour of indirect (consultation); and
 - 1 hour of direct (outside general classroom).

4. **Student Two’s IEP.**¹¹ The 12/13/2010 IEP described the following special education and related services to be received by Student Two on a weekly basis:

- Special education services:
 - .5 hours of indirect (consultation);
 - 4.16 hours of integrated services in general classroom; and
 - 1.5 hours of direct (outside general classroom).
- Speech/language services:
 - 1 hour of indirect (consultation); and
 - 1 hour of direct (outside general classroom).

Discussion of Special Education and Related Services at 4/25/2011 Transition Meeting:

5. On 4/25/2011, the District convened a meeting to discuss Students’ transition from Former School to School. The purpose of the meeting was to provide Students with the opportunity to tour the School, meet their new special education case managers, and discuss proposed class schedules and special education and related services for the 2011-2012 school year.¹²

6. The Parties dispute whether this meeting was a formal IEP meeting. Based on the emails exchanged between Parent and Special Education Area Coordinator prior to this meeting, the SCO finds it more likely than not that Parent initially requested that the meetings scheduled for 4/25/2011 be held as formal IEP meetings, but changed [Parent’s] mind.¹³ In an email sent on 4/22/2011, three days before the meeting, Parent informed Special Education Area Coordinator that [Parent] wanted the 4/25/2011 meeting to be a “get to know each other meeting” and that IEP matters, like Students’ speech language services, could be discussed at subsequent IEP meetings to be scheduled by Former School.¹⁴ At Parent’s request, Special Education Area Coordinator confirmed that the meeting would not be an IEP meeting.¹⁵ Accordingly, the SCO finds that the 4/25/2011 meeting was *not* an IEP team meeting.

7. Although the 4/25/2011 meeting was not a formal IEP meeting, the discussions that occurred during this meeting concerning Students’ transition from Former School to School did produce agreements between Parent and the District to change Students’ special education services. For example, during a discussion of the 2011-2012 class schedule, Parent was

¹¹ Exhibit E, p.12.

¹² Response; Reply; Exhibit 8; and Interviews with Parent, Special Education Area Coordinator, Special Education Teacher One, and Special Education Teacher Two.

¹³ Exhibit 8, pp. 1-11; Interviews with Parent and Special Education Area Coordinator,

¹⁴ Exhibit 8, pp. 10-11.

¹⁵ Exhibit 8, pp.9-11.

informed that a co-taught math class was not currently being offered at School.¹⁶ This information prompted a discussion concerning Students' special education integrated service minutes because the 4.16 hours of special education integrated service minutes required by each Student's IEP were currently being delivered in a co-taught pre-algebra class.¹⁷ (FF #3- 4.) Following a discussion of Students' math needs and the classes offered at School, the District recommended that Students be enrolled in analytical algebra, a class that would provide more hands-on instruction.¹⁸ Parent agreed with the District's recommendation that Students be enrolled in the analytical algebra class for the 2011-2012 school year and understood that Students would not be receiving integrated special education services.¹⁹

8. In addition to integrated special education services, the Parties discussed Students' special education direct services. Pursuant to their December 2010 IEPs, Student One received 1 hour and Student Two received 1.5 hours of special education direct services each week. (FF #3- 4.) The Parties did not discuss or agree to any changes in the amount of direct special education services. However, the District recommended that Students receive special education direct services through the study skills class. Parent agreed and understood that Students would be receiving special education direct service minutes through the study skills class for the 2011-2012 school year.

9. District and Parent did not discuss or agree to any changes in the amount or delivery of Students' speech language services or Student One's mental health services during the 4/25/2011 meeting.²⁰

10. In summary, the SCO finds that on 4/25/2011, the District and Parent agreed and understood that the following changes would be made to Students' December 2010 IEPs for the 2011-2012 school year:

- Students would no longer receive integrated special education services. Instead, Students would be enrolled in the analytical algebra class.
- Special education direct service minutes would not change, but they would be delivered through the study skills class.

11. Although the parties verbally agreed to the above changes, the District did not amend Students' IEPs to reflect these changes or provide Parent with prior written notice of the changes.²¹ The District did not make written changes to Students' IEPs because Parent requested

¹⁶ Interviews with Parent, Special Education Area Coordinator, Special Education Teacher One, and Special Education Teacher Two.

¹⁷ Exhibit A, p.18; Exhibit E, p.12; Interviews with Special Education Area Coordinator and Parent.

¹⁸ Interviews with Parent, Special Education Area Coordinator, Special Education Teacher One, and Special Education Teacher Two.

¹⁹ Response, pp. 3-4; Reply, p. 2; Interviews with Parent, Special Education Area Coordinator, Special Education Teacher One, and Special Education Teacher Two.

²⁰ Exhibit 8; Interviews with Parent and Special Education Area Coordinator.

²¹ Response; Interviews with Parent and Special Education Area Coordinator.

that the District wait and document these changes at IEP meetings that both Parties anticipated would be held shortly after the start of the 2011-2012 school year, well ahead of Students' annual review date in December of 2011.²² There is no evidence indicating that the District's failure to properly amend Students' IEPs and provide prior written notice was systemic in nature.

12. The District has been attempting to schedule an IEP meeting for Student One since 9/6/2011.²³ Based on formal notices of meeting sent to Parent, email correspondence between District staff and Parent, and interviews, the SCO finds that a *minimum* of seven scheduled or proposed IEP meetings have been cancelled by Parent.²⁴ With the exception of two cancellations, Parent has cancelled scheduled meetings because [Parent] or [Parent's] advocate could not be present. The extremely limited availability of Parent and [Parent's] advocate(s) has significantly impeded the District's ability to schedule an IEP meeting for Student One in a timely manner.²⁵ As of 11/18/2011, the date the SCO closed the record, the IEP meeting that both Parent and District expected would be held in September had not yet been scheduled.

13. The difficulties encountered with the scheduling of Student One's IEP did not occur with Student Two, whose IEP was updated on 11/11/2011, as a result of IEP meetings on 10/20/2011 and 11/11/2011.²⁶

Delivery of Special Education and Related Services beginning 8/22/2011:

14. **Special Education Services.** The District has delivered the .5 hours of weekly special education indirect minutes described on Students' December 2010 IEPs. (FF #3 and 4.) Each week, Special Education Teacher One and Special Education Teacher Two communicate with Students' general education teachers to check-up on Students' progress and needs, and make sure that accommodations are being followed in the classroom. These communications amount to at least 30 minutes of consultation each week.²⁷

15. With respect to the special education integrated services that were delivered through the co-taught pre-algebra class, the SCO finds that the parties agreed to discontinue these services in favor of the analytical math class offered at School, a class that Parties agreed would best meet Students' needs at that time. Therefore, consistent with the changes verbally agreed to at the

²² Response. Prior to the 4/25/2011 meeting, Parent requested that the District convene an IEP meeting for Student One in September of 2011 and for Student Two in October of 2011. Exhibit 8, p.3.

²³ Exhibit L, p.30.

²⁴ Exhibit L, pp. 30-41; Reply, p.2; Exhibit 9; Interviews with Parent, Special Education Area Coordinator, and Special Education Teacher One.

²⁵ In an email to Special Education Teacher One, Parent's then advocate insisted on a two-hour IEP meeting and then proceeded to provide only two dates during a 10 day window, dates upon which availability ended at 2 pm one day and at 3 pm on the other. Exhibit 19, p.1. The SCO acknowledges that one of Parent's advocates had to cancel due to personal or family matters. However, that does not change the fact that Parent's cancellations are related to the limited availability of the advocates [Parent] chooses to work with.

²⁶ Exhibit Q.

²⁷ Exhibit B, p.1; Exhibit F, p.1; Interviews with Special Education Teacher One and Special Education Teacher Two.

4/25/2011 meeting, the District has not delivered the 4.16 hours of integrated special education minutes described on their December 2010 IEPs. (FF# 7.)

16. Parent has alleged that Students have not received special education direct services in accordance with their IEPs because the study skills class does not provide formal instruction or teach learning strategies.²⁸ The SCO disagrees. Like the advisement class at Former School, special education teachers are available during study skills class to provide Students with assistance in developing good study habits, including organization and self-advocacy skills, and specialized instruction in academic content, as needed. (FF# 8.) Special Education Teachers One and Two check-in with each Student daily to determine whether they need assistance with any assignments or classes.²⁹ Both special education teachers have reviewed assignments and quizzes with Students one-on-one and arranged for them to meet with general education teachers to receive additional instruction in core classes, as needed. In addition to being available for individual support, Special Education Teachers One and Two have provided instruction on developing effective organization, test-taking strategies, study habits, and self-advocacy.³⁰ Accordingly, the SCO finds that District is delivering special education direct services in accordance with each Student's IEP through the study skills class.

17. Furthermore, the District has delivered more than the special education direct service minutes described on Students' December 2010 IEPs. The study skills class meets for a total of 3 hours and 45 minutes each week.³¹ Student One is pulled-out of study skills class for 45 minutes on Tuesdays to receive speech language services and for 30 minutes on Wednesdays to receive mental health services.³² After accounting for these weekly pull-outs, Student One received 2.5 hours of special education direct services each week through the study skills class, hours that exceeded the 1 hour a week required by [Student's] 12/7/2010 IEP.³³ Student Two is pulled-out of study skills class on Tuesdays for 45 minutes to receive direct speech language services. After accounting for these weekly pull-outs, Student Two received 3 hours of special education direct services each week through the study skills class, hours that exceeded the 1.5 hours a week required by [Student's] 12/13/2010 IEP.³⁴

18. **Student One's mental health services.** The District has delivered significantly more than the health services described on Student One's 12/7/2010 IEP. At a minimum, School Psychologist meets with Student One for 25-30 minutes each Wednesday.³⁵ These meetings alone would satisfy the 30 minutes of mental health direct service minutes described on Student One's 12/7/2010 IEP. However, in addition to these weekly meetings, Student One frequently

²⁸ Complaint, pp. 3 and 8.

²⁹ Exhibit B, p.1; Exhibit F, p.1; Interviews with Special Education Teacher One, and Special Education Teacher Two.

³⁰ Exhibit B, p.1; Exhibit F, p.1; Exhibit 18; Interviews with Parent, Special Education Area Coordinator, Special Education Teacher One, and Special Education Teacher Two.

³¹ Response; Exhibit O; Exhibit I, p.21.

³² Response; Exhibit B.

³³ Exhibit A, p.18.

³⁴ Exhibit E, p.12.

³⁵ Exhibit B, pp. 2-4.

requests, or is sent by general education teachers in accordance with [Student's] behavioral support plan (BSP), to visit with School Psychologist to process frustrations with classes, teachers or classmates.³⁶ As a result of these additional meetings with School Psychologist, Student One is regularly receiving 60-90 minutes of direct mental health services each week, an amount that far exceeds the direct services described on [Student's] IEP.³⁷ In addition, School Psychologist is regularly spending between three and six hours every week responding to Parent's emails, and communicating with Student One's general education teachers about Parent's concerns, Student's needs and progress, and implementation of Student's BSP.³⁸ Accordingly, the SCO finds that Student One has received far more than the .25 hours of indirect service minutes described by [Student's] 12/7/2010 IEP.

19. **Students' Speech Language Services.** Both Students are identified as having a speech or language impairment and have IEP goals directed at developing effective communication skills in a variety of academic settings to improve academic performance. The speech language services that Students receive are aimed at improving communication skills, specifically, listening, critical thinking, reasoning, and identifying fact versus fiction.³⁹

20. Beginning 8/22/2011, the District has not delivered speech language direct services in accordance with Students' December 2010 IEPs.⁴⁰ Pursuant to their December 2010 IEPs, each Student should be receiving 60 minutes of speech language direct services each week. (FF #3 and 4.) On 9/19/2011, Parent notified Special Education Area Coordinator that [Parent] believed Students were not receiving speech language services in accordance with their IEPs.⁴¹ Special Education Area Coordinator assured Parent that she would contact SLP to ensure that the speech language services were being provided in accordance with Students' IEPs.⁴² Despite these assurances, there was no meaningful follow-through on the part of the District, which has continued to provide only 45 of the 60 minutes required by each Student's IEP.⁴³ Accordingly, the SCO finds that the District has knowingly and willfully failed to implement a quarter of Students' speech language direct services.

21. In consideration of the District's knowing failure to fully implement Students' speech language services, the SCO notes that the District previously refused to suspend the speech language services described on the December 2010 IEPs. At the end of the 2010-2011 school year, Parent requested that the District suspend speech language services for both Students so

³⁶ Exhibit B, pp. 2-4; Exhibit N, pp. 5-6; Exhibit A, pp. 31-34; Interview with School Psychologist.

³⁷ Exhibit B, pp. 2-4; Exhibit N; Interview with School Psychologist.

³⁸ Interview with School Psychologist.

³⁹ Interview with SLP; Exhibit A; Exhibit E; Exhibit L; Exhibit M; Exhibit Q.

⁴⁰ Exhibit A, p.18; Exhibit E, p.12.

⁴¹ Exhibit 16.

⁴² Exhibit 16, p.1.

⁴³ Response, p. 4; Interviews with SLP and Special Area Coordinator. Special Education Area Coordinator asked SLP to contact Parent. SLP said she left one message for Parent, but did not hear back. Parent said SLP did call, but that [Parent] referred SLP back to Special Education Area Coordinator. Regardless of what communication did or did not happen between SLP and Parent, Special Education Area Coordinator did not follow through with SLP to ensure Students were receiving proper services. Interviews with Parent, SLP, and Special Education Area Coordinator.

that they could attend end-of-year activities.⁴⁴ The suspension of these services, from 5/9/2011 to 5/27/2011, would have resulted in a loss of 3 hours of direct and indirect speech language services.⁴⁵ In a prior written notice provided to Parent, the District refused to suspend speech language services because Students' IEP teams had "identified those services as a necessary and integral part of [their] programming."⁴⁶ The District concluded that it would not be providing Students with a free appropriate public education if the three hours of speech language services remaining were suspended.⁴⁷

22. From the beginning of the 2011-2012 school year on 8/22/2011 and continuing through the date of this Decision, Student One should have received 15 hours of direct speech language services.⁴⁸ In determining what services have been provided to Student One, the SCO relied on the District's admission that it has only provided 45 minutes of direct services each week, Student's attendance record, the District's calendar, and SLP's service logs as the most credible evidence.⁴⁹ Based on the credible evidence in the record, the SCO finds that Student One received 9 hours and 45 minutes of direct speech language services, which resulted in 5 hours and 15 minutes less than what [Student] should have received during this time.⁵⁰

23. From the beginning of the 2011-2012 school year and continuing through to the date of the 11/11/2011 IEP,⁵¹ Student Two should have received 11 hours and 15 minutes of direct speech language services.⁵² Based on credible evidence in the record, the SCO finds that Student Two received 6 hours and 45 minutes of speech language direct services, which resulted in 4 hours and 15 minutes less than what [Student] should have received during this time.⁵³

24. Speech language indirect services. Based on their December 2010 IEPs, each Student should have received 1 hour of speech language indirect services each week.⁵⁴ Beginning the week of 8/22/2011, SLP has spent approximately 45 minutes each week providing consultative, i.e. indirect, speech language services for each Student. In addition, SLP spent three hours (per Student) analyzing all existing data and creating a chart that could be used by each Student's IEP team to evaluate the current need for speech language services and to develop appropriate

⁴⁴ Exhibit 19, pp.1-3.

⁴⁵ Exhibit 19, pp.1-3. Based on the school calendar archived at <http://www.jeffcopublicschools.org/calendar/archive/2010%202011%20family%20calendar.pdf>, the last day of was 5/27/2011.

⁴⁶ Exhibit 19, pp.1-5.

⁴⁷ Exhibit 19, pp. 4-5.

⁴⁸ Exhibit A, p.18; Exhibit J. The SCO did not include the week of Thanksgiving break.

⁴⁹ Exhibit B; Exhibit J; Exhibit C; and Interviews with SLP and Parent. The SCO notes that SLP's service logs indicate that she began providing direct services to Student One on 9/6/2011.

⁵⁰ Exhibit B; Exhibit J; Interviews with SLP and Parent.

⁵¹ Student Two's current IEP dated 11/11/2011 lists direct speech language service minutes as 3 hours a month. Therefore, the violation has not continued past Student Two's current IEP. Exhibit Q.

⁵² Exhibit E p.12; Exhibit J. The SCO notes that Student was absent on 9/27/2011. Accordingly, the SCO did not count this week in determining services received or lost.

⁵³ Exhibit F; Exhibit G; Exhibit J; Interviews with SLP and Parent. The SCO notes that SLP's service logs indicate that she began providing direct services to Student One on 9/6/2011.

⁵⁴ Exhibit A, p.18; Exhibit E, p.12.

goals.⁵⁵ From 8/22/2011 through the date of this Decision, Student One should have received 15 hours of indirect speech language services. Accounting for the time SLP spent creating the data-chart and relying on the same credible evidence described above, Student One received 14 hours and 15 minutes of indirect speech language services, which resulted in 45 minutes less than what [Student] should have received during this time. From 8/22/2011 through 11/11/2011, Student Two received 11 hours and thirty minutes, or 15 minutes more than the 11 hours and 15 minutes [Student] should have received during this time.

Allegations 2 and 4: Between 8/22/2011 and 10/13/2011, the District failed to provide Parent with Students' progress reports, as required by each Student's IEP.

25. Each Student's December 2010 IEP specified that Parent would be "regularly informed of progress to the extent of non-disabled children."⁵⁶ The parents of non-disabled children who attend School receive reports based on six-week grading periods.⁵⁷ Relevant to this Complaint, grades for the first six-week grading period were scheduled to be posted on 10/7/2011.⁵⁸

26. Based on the credible evidence in the record, the SCO finds it more likely than not that Parent received the following reports related to Students' progress on their IEP goals, in accordance with the schedule described on each Student's IEP:

- On or about 10/12/2011, Parent received reports regarding both Students' progress on their IEP goals, as summarized on the standardized IEP goal/objective pages.⁵⁹
- Parent was not satisfied with amount of information included in the progress reports and requested additional data concerning Students' progress, including work samples and graded classroom assignments that were used to assess Students' progress.⁶⁰
- The District provided additional data concerning Student One's progress on 11/1/2011.⁶¹
- The District provided additional data concerning Student Two's progress on 10/26/2011.⁶²

27. In addition, Student One's BSP specified that the school social worker or psychologist will weekly "communicate with [Parent] the [number] of times that [Student One] needs to take

⁵⁵ Exhibit B; Exhibit F; Interview with SLP.

⁵⁶ Exhibit A, pp. 20-23 and 29-30; Exhibit E, pp. 15-17. Although Parent has a settlement agreement that addresses progress monitoring for the 2010-2011 school year, Parent stated that the agreement was not incorporated into Students' December 2010 IEPs. Interviews with Parent and Special Education Area Coordinator.

⁵⁷ Exhibit I, p.13.

⁵⁸ *Id.*

⁵⁹ Exhibit D, pp. 2-5; Exhibit H, pp 2-5. The SCO notes that progress was measured on 10/10/2011 and both Special Education Teachers One and Two reported that they supplied Parent with the reports within a week of grades being posted on 10/7/2011.

⁶⁰ Interviews with Parent, Special Education Teacher One, and Special Education Teacher Two.

⁶¹ Exhibit L, p. 41; Interviews with Parent and Special Education Teacher One.

⁶² Reply; Interviews with Parent and Special Education Teacher Two.

a break.”⁶³ School Psychologist did not set-up communication with Student One’s general education teachers regarding this issue until 9/19/2011, the date she believed Student’s schedule would no longer change.⁶⁴ Beginning the week of 9/26/2011, School Psychologist has reported the number of times Student One needs to take a break in accordance with Student One’s BSP.⁶⁵ There is no evidence that the failure to provide this information to Parent between 8/22/2011 and 9/26/2011 in any way interfered with Parent’s right to participate in the development of Student One’s IEP.

CONCLUSIONS OF LAW

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

Allegations 1 and 3: Between 8/22/2011 and 10/13/2011, the District failed to provide the special education and related services documented on each Student’s IEP.

1. At the beginning of the school year, a district must have an IEP in effect for each student with a disability and must deliver special education and related services in accordance with the IEP. 34 CFR §§ 300.17 (d) and 300.101 (b). After the annual IEP meeting, changes to a student’s IEP may be made without another IEP meeting when the parent and the district agree to the changes by developing a written document to amend or modify the current IEP. 34 CFR § 300.324 (a) (4). In this case, the District failed to amend Students’ IEPs to reflect changes agreed to by the Parties following Students’ annual IEP meetings, in violation of 34 CFR § 300.324 (a). (FF # 10-11.) In addition, the District failed to provide services in accordance with Students’ IEPs.
2. Following Students’ annual IEP meetings, Parent and the District agreed to changes regarding the amount and delivery of the special education services described on Students’ December 2010 IEPs. (FF #7-9 and 10.) These changes were agreed to at a meeting held on 4/25/2011 to discuss Students transition from middle school to high school. (FF #5-7.) This meeting was not an IEP meeting. (FF #6.) However, while discussing Students’ transition, the Parties recognized that certain changes would need to be made in the delivery of the special education services described on Students’ current IEPs for the 2011-2012 school year. (FF# 2, and 7-10.) Specifically, Parent and the District agreed that Students would no longer be provided with special education integrated services and that the special education direct service minutes would remain the same, but be delivered through the study skills class. (FF#10.)
3. The District failed to amend Students’ December 2010 IEPs to reflect the changes agreed to by the Parties on 4/25/2011, in violation of 300.324 (a) (4). (FF #11.) In addition, the District should have provided Parent with prior written notice. A district must provide a parent with prior written notice a reasonable time before it proposes to change identification, evaluation,

⁶³ Exhibit A, p.34.

⁶⁴ Exhibit N; Interview with School Psychologist and Special Education Teacher One.

⁶⁵ Exhibit N; Interviews with School Psychologist and Parent.

educational placement, or the provision of FAPE to a student with a disability. 34 CFR § 300.503. By failing to provide Parent with prior written notice of the changes to Students' integrated special education services, the District violated 34 CFR § 300.503. (FF #11.)

4. Clearly, it is the district, not a parent, who has the legal obligation to ensure that a student's IEP is properly amended. By failing to amend Students' IEPs to reflect the agreements made at the 4/25/2011 meeting and provide prior written notice of the changes to Parent, the District violated the procedural requirements of the IDEA. However, it is well-settled that procedural violations of the IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

5. In this case, the SCO cannot ignore that it was Parent [] who requested that the changes agreed to at 4/25/2011 meeting not be documented until formal IEP meetings could be held, meetings [Parent] specifically requested not be scheduled until September and October of 2011. (FF# 11.) Even more troubling is the fact that the District has been diligently trying to schedule an IEP meeting for Student One since 9/6/2011, but has been unable to do so because Parent and [Parent's] advocate have unreasonably limited availability. (FF #12.)

6. To the extent that Parent has requested that the District not document changes to Students' IEPs and has unreasonably delayed the District's ability to update Students' IEPs, Parent should be denied relief for the District's failure to implement Students' IEPs with respect to the agreements made at the 4/25/2011 meeting. *Cf. L.B. v. Nebo Sch. Dist.*, 214 F.Supp.2d 1172, 1189 (D. Utah 2002), *aff'd in part and rev'd in part*, 379 F.3d 966 (10th Cir. 2004)(parents did not make their objections known to the district at the time of the 1997-1998 IEP, and thus are not entitled to reimbursement for the 1997-1998 failure to provide a FAPE).⁶⁶ The SCO therefore concludes that the District did not fail to deliver the integrated or direct special education services in accordance with Students' December 2010 IEPs because the services were modified by agreement of the parties on 4/25/2011 and delivered consistent with that agreement. (FF# 15-17.)

7. Unlike the services described above, the SCO concludes that the District failed to provide speech language services in accordance with Students' December 2010 IEPs. (FF# 20-24.) Because changes to speech language services were not discussed or agreed to at the meeting on 4/25/2011, the District was required to provide one hour of direct and one hour of indirect speech language services each week, in accordance with Students' December 2010 IEPs. (FF#9.) Beginning 8/22/2011, the District has delivered only 45 minutes of speech language direct services to Students each week. (FF #20.) As a result of this violation, Student One received 5 hours and 15 minutes less than the direct speech language services and 45 minutes less than the

⁶⁶ The Tenth Circuit expressly did not overturn the lower court's determination that the parents were not entitled to reimbursement for the 1997-1998 school year because they had waived such claims by failing to articulate them to the IEP team, such that this aspect of the district court's decision in *Nebo* remains good law. *L.B. v. Nebo Sch. Dist.*, 379 F.3d 966 at n. 1 (10th Cir. 2004).

indirect speech language services described on [Student's] 12/7/2010 IEP. (FF# 22 and 24.) Student Two received 4 hours and 15 minutes less than the direct speech language services described on [Student's] 12/13/2010 IEP, but received more than the required amount of speech language indirect services. (FF#23-24.)

8. Furthermore, the District continued its failure to deliver speech language services in accordance with Students' IEPs after Parent informed them of the problem. (FF#20.) Although Special Education Area Coordinator assured Parent that she would make sure Students' IEPs were being properly implemented, she failed to do so. (FF# 20.) Accordingly, the SCO concludes that the District knowingly and consistently failed to provide Students with 25% of the speech language services required by their IEPs.

9. The definition of a free appropriate public education means special education and related services that "are provided in accordance with an [IEP]." 34 CFR §§ 300.17 and 300.107. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. However, not every deviation from an IEP's requirements 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); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE).

10. In this case, the SCO concludes that the District's willful, knowing, and consistent failure to provide 25% of the direct speech language services required by Students' IEPs was material and resulted in a substantive violation of the IDEA. (FF #20-23.) Because the IEP is the district's determination of a free appropriate public education for a student eligible for special education services, it follows that very few, if any, of its provisions should be regarded as insignificant. Absent allegations that Students' December 2010 IEPs were not developed in accordance with IDEA requirements, the SCO assumes that the speech language services described in each IEP were appropriate, and that these services were intended to work in concert with other IEP provisions and services to provide Students with a free appropriate public education. In support of this assumption, the SCO notes that the District refused to suspend Students' speech language services at the end of the 2010-2011 school year *precisely* because it had determined such services were necessary to the provision of a free appropriate public education. (FF #21.) And yet despite the District's determination that each Student required one hour of direct speech language services each week, it knowingly failed to provide 25% of the required services, each and every week. (FF# 19-23.) This failure was material.

11. Because the District's failure to implement speech language direct services in accordance with Students' IEPs was a substantive violation denying Students FAPE, Students are entitled to compensatory education. Compensatory education is an equitable remedy intended to place a student in the same position they would have been, if not for the violation. *Reid. v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Here, Students were eligible for special education on the basis of speech language disability and it was Students' speech language

services that the District consistently failed to provide in accordance with Students' IEPs. (FF# 1 and 21-24.) Considering the nature of Students' disability in relation to the specific services lost each week, the SCO concludes that the amount of compensatory education owed is equal to the amount of services lost. Accordingly, Student One should receive five hours and fifteen minutes, and Student Two should receive four hours and fifteen minutes, of compensatory speech language direct services. (FF# 22-23.)

12. Regarding the indirect speech language services, the SCO found that the District provided 45 minutes less than what was required by Student One's IEP and provided more than what was required by Student Two's IEP. (FF#24.) The SCO concludes that the District's failure to provide 45 minutes of indirect speech language services to Student One over the course of three months was not material.

13. As to Student One's mental health services, which were not changed by the 4/25/2011 meeting, the District has delivered a great deal more than the services described on the 12/7/2010 IEP. (FF# 18.)

Allegations 2 and 4: Between 8/22/2011 and 10/13/2011, the District failed to provide Parent with Students' progress reports, as required by each Student's IEP.

14. The District has not failed to provide progress reports as required by each Students' IEP. An IEP must contain a description of when periodic reports of student's progress towards annual IEP goals will be provided. 34 CFR § 300.320 (a) (3). Each Student's IEP stated that Parent would be "regularly informed of progress to the extent of non-disabled children." (FF #25.) The parents of non-disabled children who attend School receive reports based on six-week grading periods. (FF #25.) Since Parent received progress reports on both Students within a week of the posting of grades for the first six-week reporting period, the SCO concludes that the District did not violate 34 CFR § 300.320 (a) (3). (FF# 25-26.) With respect to the weekly reports from School Psychologist described on Student One's BSP, the SCO concludes that the three-week delay at the start of the school year was reasonable under the circumstances and did not interfere with Parent's right to participate in the development of Student's IEP. (FF #27.)

REMEDIES

The SCO has concluded that the District violated the following IDEA requirements:

- a) Revision of IEP at 34 CFR § 300.324 (a) (4);
- b) Prior written notice at 34 CFR § 300.503; and
- c) Services provided in accordance with an IEP at 34 CFR §§ 300.17 (d) and 300.101 (b).

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

- 1) **By 1/11 /2012**, the 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

Students and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

- a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address each of the cited violations, no later than 2/27/2012.
- b) Effective training must be conducted for all Special Education Directors and intended designees concerning the policies and procedures, to be provided no later than 3/19/2012.
- c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department no later 4/3/2012.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

- 2) **Compensatory Education Services for Failure to Provide Students with a FAPE.** The District shall provide Student One with five hours and fifteen minutes of speech language direct services. The District shall provide Student Two with four hours and fifteen minutes of speech language direct services. These compensatory education services are to be completed within 120 days of the date of this Decision.

These compensatory services shall be in addition to any services Students currently receive or will receive that are designed to advance Students toward IEP goals and objectives. The Parties shall cooperate in determining how the compensatory education services will be provided.

By the end of the day on 12/16/2011, Parent must notify the District and the undersigned SCO whether [Parent] accepts or declines the compensatory education ordered. If Parent fails to notify the District and the SCO, the District will be excused from providing the compensatory education.

The District shall submit service logs to document that compensatory education services have been delivered, no later than 4/17/2012.

- 3) **If Student One has not yet had an IEP meeting by the date of this Decision, the District must convene an IEP meeting for Student One as soon as possible, but no later than 1/13/2011.** In scheduling the IEP meeting, the District must follow the parent participation regulation at 34 CFR § 300.322.

The District shall provide the Department with documentation that it has complied with this requirement no later than 1/23/2012.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Leadership Unit
Attn.: Joyce Thiessen-Barrett, Senior Consultant
1560 Broadway, Suite 1175
Denver, CO 80202-5149

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 7th day of December, 2011.

Candace Hawkins

Candace Hawkins, Esq.
State Complaints Officer

Appendix A

Complaint, pages 1 through 8.

Reply, pages 1 through 6.

Exhibit 1: Student One's IEP dated 12/7/2010.

Exhibit 2: Student Two's IEP dated 12/13/2010.

Exhibit 3: Parent's accounting of special education and related services received by Student One.

Exhibit 4: Parent's accounting of special education and related services received by Student Two.

Exhibit 5: Email exchange between Parent and District staff concerning speech/language services.

Exhibit 6: Not relevant and not considered.

Exhibit 7: Description of Study Skills class and District policy concerning curriculum development.

Exhibit 8: Email exchanges between Parent and District staff concerning 4/25/11 transition meeting.

Exhibit 9: Email exchanges between Parent and District staff concerning the scheduling of Student One's 2011 IEP meeting.

Exhibit 10: Email Exchanges between Parent and District staff concerning the scheduling of Student Two's 2011 IEP meeting.

Exhibit 11: Parent request for documentation.

Exhibit 12: Grade report for Student One.

Exhibit 13: Behavior data form.

Exhibit 14: Recording of Student One 5/13/2011 IEP meeting on compact disc.

Exhibit 15: Letter from private psychologist.

Exhibits 16-20: Email Exchanges between Parent and District staff.

Exhibit 21: Parent updated accounting of special education and related services received by Students.

Exhibit 22: Student One's academic planner.

Exhibit 23-24: Not relevant and not considered.

Exhibit 25: Letter from Parent to School Board.

Response, pages 1 through 8.

Exhibit A: IEP dated 12/07/2011 and BSP dated 5/13/2011 (Student One).

Exhibit B: Service logs (Student One).

Exhibit C: Attendance records (Student One).

Exhibit D: Grade and progress reports (Student One).

Exhibit E: IEP dated 12/13/2011 (Student Two).

Exhibit F: Service logs (Student Two).

Exhibit G: Attendance records (Student Two).

Exhibit H: Grade and progress reports (Student Two).

Exhibit I: School 2011-2012 Guidebook.

Exhibit J: District 2011-2012 Calendar.

Exhibit K: Name and Contact information for District staff with knowledge of the facts underlying the specific Complaint allegations, as listed on page 7 of the Response.

Exhibit L: Draft IEP and Notices of Meeting (Student One).

Exhibit M: Draft IEP and Notice of Meeting (Student Two).

Exhibit N: Email exchanges between Parent and District staff regarding Student One.

Exhibit O: Students' class schedules.

Exhibit P: Certified mail receipt.

Exhibit Q: IEP dated 11/11/2011 (Student Two).

Exhibit R: Students' grade reports for the 2010-2011 school year.

Exhibit S: Grade and progress reports (Student Two).

Exhibit T: Grade and progress reports (Student One).

Interviews with: Parent, Special Education Area Coordinator, Special Education Teacher One, Special Education Teacher Two, School Psychologist, and Speech Language Pathologist.