

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

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**State Complaint 2012: 503**  
**Harrison School District #2**

**DECISION**

**INTRODUCTION**

This pro-se, state-level complaint (Complaint) was properly filed with the Colorado Department of Education (CDE) on March 28, 2012 by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))<sup>2</sup> and to protect the anonymity of the parents and their child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

- [Mother], Mother of Child, (“Mother” or “Parent”);
- [Father], Father of Child, (“Father” or “Parent”);
- [Student], Child of Parents, (“Student”);
- Student’s age of [Age], [Age];
- Harrison School District #2, (“District”);
- [Special Education Director], District Special Education Director, (“Special Education Director”);
- [Private School Director], Private School Director, (“Private School Director”);
- [Private School], (“Private School”);
- [Public School], (“Public School”);
- [District Supervisor], District Supervisor of Out of District Placements, (“District Supervisor”);
- [Instructional Coach], District Instructional Coach, (“Instructional Coach”);
- [School Social Worker], School Social Worker, (“School Social Worker”);
- [District Social Worker], District Social Worker, (“District Social Worker”); and

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

<sup>2</sup> 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.*

- [Receptionist], District Special Programs Receptionist, (“Receptionist).

A State Complaint, signed by both Parents, was received on March 21, 2012. After reviewing the Complaint, the State Complaints Officer (SCO) emailed Mother and scheduled a telephone interview of Mother on March 27, 2012.

As a result of a lengthy telephone interview with Mother on March 27, 2012, the SCO determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>3</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

On April 25, 2012, Parents notified the SCO by email that they had reached agreement with the District concerning two of the Complaint allegations. Parents requested that the SCO dismiss those allegations from the investigation. As a result, on the same date, the SCO sent by overnight mail an Order of Dismissal of Two Complaint Allegations to Parents and the District.

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 Student a free appropriate public education (FAPE).

On April 28, 2012, the SCO conducted a face-to-face interview with the Special Education Director and inspected the location of the District’s special education records. School Social Worker was present during this interview.

On April 30, 2012, the SCO interviewed Instructional Coach by telephone.

On April 30, 2012, the SCO received additional documentation which was requested from the District on April 26, 2012. The additional documentation was marked as Exhibits 9 through 13. Copies of these exhibits were supplied to Parents on the same date that the Decision was mailed to the parties.

On May 1, 2012, the SCO conducted telephone interviews of District Social Worker and Receptionist.

On May 7, 2012, the SCO spoke briefly by telephone with Special Education Director.

On May 7, 2012 the SCO closed the Record.

### **PARENTS’ COMPLAINT ALLEGATIONS**

Parent’s Complaint allegations are summarized as follows:

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<sup>3</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children’s Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

**Allegation #1:** The District committed procedural violations in conjunction with the April 28, 2011 IEP. Specifically, the District:

- a) Failed to provide Parent with a Meeting Notice and failed to conduct an IEP meeting;
- b) Failed to invite the necessary meeting participants, including Parents, to an IEP meeting;
- c) Unilaterally changed Student's IEP placement and goals without the knowledge or consent of Parents;
- d) Failed to supply Parents with a copy of the IEP until January, 2012; and
- e) Failed to supply Parents with prior written notice concerning the change in Student's placement.

**Allegation #2:** The District failed to properly maintain Student's educational records as evidenced by the fact that numerous documents (i.e., the 2004-2005 IEP; 2008-2009 IEP; progress reports from the fall of 2011; and evaluations conducted in conjunction with the 2003, 2006 and 2009 triennial evaluations) are missing from Student's file.

**Proposed Remedies:** As to Allegation #1: that the April 28, 2011 IEP be disregarded and the IEP dated April 7, 2010 be used as Student's "stay-put" placement until final resolution of this matter; and, as to Allegation #2: that the District provide Parents with copies of Student's tri-annual evaluation data from 2003, 2006 and 2009.<sup>4</sup>

### **THE DISTRICT'S RESPONSE**

The District's Response is summarized as follows:

**Allegation #1:** The District did not commit any procedural violations in conjunction with the April 28, 2011 IEP. An IEP meeting was conducted on March 11, 2011 but Parents disagreed on the appropriateness of the proposed change of Student's placement. The parties attempted mediation on April 12, 2012. Although the mediation resulted in impasse, the parties agreed to meet on April 28, 2011 to continue discussions. The agreements reached during the April 28, 2011 meeting were recorded in Student's April 28, 2011 IEP. As a result of that meeting, a copy of the April 28, 2011 IEP was hand delivered to Mother's residence in the spring of 2011 by District staff.

**Allegation #2:** The District supplied Parents with a complete copy of Student's educational file. "If there are items missing, they are also missing from the District's file."<sup>5</sup>

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<sup>4</sup> Parents' allegations and proposed remedies concerning stay-put were rejected as being outside of the SCO's jurisdiction. Any remedies ordered by the SCO must be in compliance with the SCO's jurisdiction.

<sup>5</sup> Because the District did not deny that the referenced documents were missing from Student's file, the Response to Allegation #2 is treated as an admission.

## PARENTS' REPLY AND AMENDED REPLY<sup>6</sup>

Parents' Reply and Amended Reply are summarized as follows:

**Allegation #1:** "We agreed to a continuation of the April 12, 2011 mediation . . . [We did not agree] to an IEP meeting." Parents reiterated that the April 28, 2011 IEP generated as a result of the meeting committed procedural violations of the IDEA (i.e., lack of meeting notice, failure to conduct an IEP meeting, improper meeting participants, unilateral change of Student's placement, failure to supply prior written notice (PWN) and failure to supply Parents with a copy of the IEP until January, 2012).

**Allegation #2:** Parents note that the District's Response appears to confirm that the District's educational record for Student is incomplete.

### FINDINGS OF FACT

After thorough and careful analysis of the entire Record,<sup>7</sup> the SCO makes the following FINDINGS:

#### **Factual Background:**

1. At all times relevant to the Complaint, Student, [age] years of age, was a resident of the District and was identified as having a disability (i.e., autism). There is no dispute that Student is eligible for special education and related services.
2. Per agreement with the District, for several years, including the 2010-2011 school year, Student attended Private School full-time and received all special education and related services at that location. The Private School serves only children with autism. The District has continuously paid for this private placement.<sup>8</sup>
3. Since at least December, 2010, the District has been conducting discussions with Parents concerning transitioning Student into Public School.<sup>9</sup> Parents have been resistant to Student being transitioned from Private School to Public School and felt that the District was not prepared to supply Student with educational services at Public School. The District agreed not to rush into a change of placement. As a result, in advance of the scheduled annual IEP meeting, the District put several professional development sessions in place and conducted observations of Student at Private School.<sup>10</sup>

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<sup>6</sup> Documentation that the SCO requested the District include with its Response was not timely supplied. Specifically, on the same date that District supplied the requested documentation, the SCO also received Parents' Reply. Consequently, Parents were permitted to file an Amended Reply which was timely received.

<sup>7</sup> Appendix A, attached and incorporated by reference, details the entire Record.

<sup>8</sup> Interviews with Mother and Special Education Director; and Response, pg. 3.

<sup>9</sup> Id.

<sup>10</sup> Response, pg. 3.

4. An annual IEP meeting was conducted on March 11, 2011. During that meeting, Parents wanted to continue Student’s full-time placement at Private School while the District proposed to move Student to Public School. The meeting was adjourned without a finalized IEP. The SCO specifically finds that, at the conclusion of the March 11, 2011 IEP meeting the parties had not finalized Student’s IEP concerning whether the Private School placement should continue.

5. On April 12, 2011 the parties voluntarily participated in mediation in an attempt to resolve their dispute concerning whether Student should be transitioned from Private School to Public School. The mediation resulted in an impasse however, the parties agreed to continue negotiations.<sup>11</sup> To that end, the parties executed an Interim Agreement, in which they agreed to:

[M]eet again (outside the presence of the mediator) on Thursday, April 28, 2011 at the District Special Programs office to further discuss the following potential points of settlement: a. Discuss flexible schedule to end [sic] of 2010/2011 school year; b. Extended school year; c. Program expectations including measurements of success; [and] d. Contracted support from [Private School] for remainder [sic] and ESY.<sup>12</sup>

### **The April 28, 2011 Meeting.**

6. The following persons attended the April 28, 2011 meeting at the District Special Programs office: Special Education Director; Instructional Coach; School Social Worker; Mother; and an unidentified friend of Mother.<sup>13</sup>

7. Parents claim that the April 28, 2011 meeting was a continuation of mediation and was not an IEP meeting.<sup>14</sup> The District does not claim that the meeting was an IEP meeting. Rather, the District claims that the meeting was a post-mediation meeting to “further talk placement.”<sup>15</sup> The SCO specifically finds:

- Student’s annual (i.e., 2011) IEP had not been finalized prior to the April 28, 2011 meeting;
- The April 28, 2011 meeting was not an IEP meeting;
- Because the April 28, 2011 meeting was not an IEP meeting, the District was not required to supply Parents with a Meeting Notice or to have typical IEP meeting participants at the meeting.
- Contrary to Parents’ assertions, the meeting was not a mediation session since there was no mediator present and, therefore, any discussions had during the meeting were not confidential;
- The meeting was, per the parties’ Interim Agreement, to further discuss Student’s transition from Private School to Public School;

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<sup>11</sup> Exhibit A.

<sup>12</sup> Exhibit B.

<sup>13</sup> Exhibit 11.

<sup>14</sup> Interview of Mother, Complaint, pg. 2 and Reply, pg. 1.

<sup>15</sup> Interview of Special Education Director and Response, pgs. 1 and 3.

- Mother brought written talking points to the meeting (i.e., Mother sought assurances that, in conjunction with any Public School placement, the District would continue to deliver Student an Applied Behavioral Analysis (ABA) curriculum; hire a Board Certified Behavioral Analyst (BCBA) to oversee, monitor and modify Student’s program; and continuously consult with Private School staff);<sup>16</sup>
- Mother’s concerns were addressed during the meeting discussions; and
- Student’s IEP was projected on the wall of the conference room.<sup>17</sup>

8. The uncontroverted evidence in the Record reveals that, as a result of the 90 minute April 28, 2011 meeting, Mother agreed that:

- Commencing on August 15, 2011 with the start of the 2011-2012 school year, Student would attend Private School on Monday, Wednesday and Fridays and Public School on Tuesday and Wednesdays;
- During the split school arrangement, Student would continue to receive ABA services at Private School but would not receive ABA services at Public School;
- District would supply the transportation to both schools to and from the residences of both parents;
- The split placement would continue through the first semester of the school year; and
- The parties would meet again in November, 2011 to discuss Student’s transition progress.<sup>18</sup>

9. Agreements reached during the April 28, 2011 meeting were recorded in Student’s IEP.<sup>19</sup> Parents’ Complaint alleges that in recording the agreements in the April 28, 2011 IEP, the District unilaterally changed Student’s placement and goals (i.e., transition goals) without Parents’ knowledge and consent. Additionally, Parents claim that the District also failed to supply prior written notice concerning Student’s change of placement.<sup>20</sup> Mother argues that she only agreed, on a trial basis, to “try a temporary” split placement and insisted that she did not consent to the agreements being recorded in Student’s April 28, 2011 IEP.<sup>21</sup> In support of this claim, Mother noted that she did not sign the April 28, 2011 IEP.<sup>22</sup> Given the credible evidence in the Record, the SCO specifically finds:

- Parents, through Mother’s participation in the April 28, 2011 meeting, discussed and consented to Student’s split-school placement detailed in paragraph 8, above;

<sup>16</sup> Interview with Mother and Exhibit C.

<sup>17</sup> Interview with Special Education Director.

<sup>18</sup> Interview of Mother and Special Education Director.

<sup>19</sup> Exhibit D.

<sup>20</sup> Interview of Mother and Complaint, Allegation #1.

<sup>21</sup> Interview with Mother. As noted in footnote 4, above, Parents’ stay-put claims and remedies were rejected as being outside of the SCO’s jurisdiction. Mother’s stay-put claims were coupled with the allegation that, in including agreements concerning the split-school placement in the April 28, 2011 IEP, the District had unilaterally changed Student’s placement. As a consequence, Mother initially claimed that, during the State Complaint process, Student’s April 27, 2010 IEP (i.e., the full-time Private Placement) should remain in effect.

<sup>22</sup> Id.

- The April 28, 2011 IEP accurately reflects the agreements that were reached during the April 28, 2011 meeting;
- Mother cited no rule, regulation or District policy requiring that a finalized IEP be signed by the parents;
- Mother cited no rule or regulation which would permit Student’s transition from Private School to Public School, even on a trial basis, to occur without an IEP reflecting the changed placement;
- The matters recorded in the April 28, 2011 IEP accurately recorded agreements reached with Mother’s knowledge and consent during the April 28, 2011 meeting; and
- Subsequent to the April 28, 2011 meeting, the District failed to schedule an IEP meeting, including the requisite team members, to present to the team the final draft IEP, including all agreements reached during the April 28, 2011 meeting.<sup>23</sup>

10. Parents allege that the District failed to supply them with a copy of the April 28, 2011 IEP until January, 2012.<sup>24</sup> Conversely, the District argues that Parents were timely supplied with a copy of the IEP.<sup>25</sup> Specifically, Special Education Director stated that a copy of the April 28, 2011 IEP was hand delivered to Mother’s residence by Instructional Coach and District Social Worker on “the first Thursday after April 28, 2011” (i.e., May 5, 2011).<sup>26</sup> Instructional Coach and District Social Worker recalled going to Mother’s residence together at an unknown date and time during the spring of 2011 to hand-deliver a sealed envelope that they understood to contain the April 28, 2011 IEP. Instructional Coach drove and, upon arrival at that location, District Social Worker exited the vehicle, knocked on the door of the residence and, when no one answered the door, she left the sealed manila envelope between the screen door and front door. Neither the District Social Worker nor Instructional Coach could recall the specific date or time they made the delivery to Mother’s residence although both were certain that the delivery was made during their normal working hours in the spring of 2011.<sup>27</sup> Given the lapse of time between the actions of the parties and the date of the Complaint, the SCO finds these statements credible. Instructional Coach stated that, typically, IEPs are sent home with the student. However, Student had not attended Public School for several years and, due to ongoing resolution sessions with Mother, the District felt that hand delivery rather than delivery by U.S. mail would be the safer option.<sup>28</sup> Given the conflicting evidence in the Record, the SCO specifically finds that it is more likely than not that a copy of the April 28, 2011 IEP was hand delivered to Mother’s residence on or about May 5, 2011. Through hand delivery of the IEP to Mother’s residence, Parents received the April 28, 2011 IEP.

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<sup>23</sup> The parties are presently conducting meetings and discussions concerning Student’s 2012 IEP. An IEP meeting is scheduled for May 7, 2012. Interview of Special Education Director.

<sup>24</sup> Interview of Mother. Complaint, pg. 1.

<sup>25</sup> Interview of Special Education Director and Response, pg. 1.

<sup>26</sup> Interview of Special Education Director.

<sup>27</sup> Interviews of Instructional Coach and District Social Worker.

<sup>28</sup> Interview of Instructional Coach.

11. Parents also allege that they were not supplied with prior written notice concerning Student's change of placement<sup>29</sup> while the District claims that the parents received prior written notice through the April 28, 2011 IEP.<sup>30</sup> The SCO specifically finds that:

- The April 28, 2011 IEP explained why a transition of Student from the Private School to the Public School was appropriate (Exhibit D, pg. 3);
- The April 28, 2011 IEP described information the District relied upon to form the basis for the proposed action (Exhibit D, pg. 3 );
- The District supplied Parents with a copy of their procedural safeguards, including sources for parents to contact to obtain assistance; (Exhibit D, pg. 2);
- The April 28, 2011 IEP described other options considered and why those options were rejected; (Exhibit D, pg. 12); and
- The April 28, 2011 IEP described other factors relevant to the public agency's proposal. (Exhibit D, pg. 3).

12. The SCO finds that, given the credible evidence in the Record, throughout the first semester of the 2011-2012 school year, the District complied with the terms agreed to in the April 28, 2011 meeting (i.e., paragraph 8, above) and the April 28, 2011 IEP. Furthermore, although Parents received the April 28, 2011 IEP on or about May 5, 2011, it was not until January, 2012, over six months after the District had fully implemented the agreements reached on April 28, 2011, that Parents claimed lack of knowledge and consent of the split-school placement. The SCO does not find these claims to be credible.

### **Student's Educational Records.**

13. The District is responsible for maintaining educational records including Student's educational records. There is no dispute that several educational records are missing from Student's file.<sup>31</sup> The District has no written policies concerning maintenance and supervision of educational records.<sup>32</sup>

14. On April 28, 2012, in conjunction with interview of Special Education Director, the SCO conducted an on-site inspection of the District's storage arrangements of special education records. The files of all special education students are located in the reception area of the Special Programs Office and stored in four large units containing multiple shelves. Receptionist's desk provides full view of the four units, whether the units are open or closed. The units are secured by rolling the units together, turning a handle on the front, inserting and locking a bar in the end of the closed unit and pressing a button on the handle. Receptionist is responsible for

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<sup>29</sup> Interview of Mother and Complaint, pg. 1.

<sup>30</sup> Complaint, Response and Reply.

<sup>31</sup> Complaint, Response and Reply. The SCO notes that Mother has confirmed that she has copies of all of the documents missing from Student's educational file. Mother has agreed to supply complete copies of the documents to the SCO. The SCO will forward these copies to the District to ensure that Student's educational file is complete.

<sup>32</sup> Exhibit 9.

supervising the educational records stored in the units. According to Special Education Director, Parents do not have access to educational records.<sup>33</sup>

15. The SCO interviewed Receptionist by telephone on May 1, 2012. Typically, Receptionist works from 7:30 a.m. to 4:00 p.m. At the beginning of the day, Receptionist unlocks the units using a key that she keeps in her unlocked desk drawer, removing the bar and rolling the units apart. At the end of the day, she rolls the units back together, locks the unit and returns the key to her unlocked desk drawer. Receptionist is unsure whether any other District staff member has a key to the units. In addition to Receptionist, eight other District staff members have offices within or adjoining the reception area. There is also a conference room adjacent to the reception area. Typically, District staff members retrieve educational records from the units themselves. Educational records are not supposed to be removed from the reception area. According to Receptionist, if a parent requests a copy of an IEP, Receptionist pulls the file, copies the document and returns the file to the unit. Under these circumstances, the parent must sign a log indicating receipt of a copied document. However, if a parent wishes to merely inspect their child's educational records, they are given the student's file and are permitted to review the documents without supervision in the conference room. In this case, the parent is not required to sign the log. District personnel are not required to sign the log. The educational records are loose (i.e., not fastened) in the file folders. Colored dividers separate each school year of documentation.<sup>34</sup>

16. The SCO finds that the District's lax procedures resulted in numerous documents that should have been in Student's file to become lost or misplaced. Given this fact as well as the credible statements of Receptionist, the SCO concludes that the District's current procedures fail to adequately protect educational records including Student's records.

### **CONCLUSIONS OF LAW**

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

1. In asserting a violation of the IDEA, the burden of proof is properly placed on the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528 (2005) ("The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.") Accord *A.E. v. Indep. Sch. Dist. No. 25*, 936 F.2d 472 (10<sup>th</sup> Cir. 1991) ("The burden of proof rests upon the party attacking the child's IEP.")

2. Under the IDEA and the corresponding Colorado law, the Exceptional Children's Educational Act (ECEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA 1 CCR 301-8, 2220-R-1.00 *et seq.*)<sup>35</sup>

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<sup>33</sup> Interview of Special Education Director.

<sup>34</sup> Interview of Receptionist (emphasis added).

<sup>35</sup> Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

3. The IDEA defines a FAPE to mean *special education and related services that*:
  - (a) Are provided at public expense, under public supervision and direction, and without charge;
  - (b) Meet the standards of the [Colorado Department of Education];
  - (c) Include an appropriate preschool, elementary school, or secondary school education; and
  - (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

Section 300.17 (emphasis added).

4. In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of the IEP. *Garcia v. Board of Educ.*, 520 F.3d 1116, 1125 (10<sup>th</sup> Cir. 2008). Next, the court looks at whether the special education services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

#### **Allegation 1: The April 28, 2012 IEP.**

5. An IEP must comply with the provisions of §§ 300.320 through 300.324. Specifically, it is the IEP team's responsibility to finalize an annual IEP. §§ 300.300 and 300.324(a). To that end, public agencies must take steps to ensure that, through proper meeting notices, one or both parents are present at each IEP team meeting. § 300.322(a). Furthermore, public agencies must ensure that, during IEP meetings, the IEP team is composed of certain persons, including the parent(s) of the child. § 300.321(a) and (b). One of the central purposes of the IDEA's IEP regulations is to ensure parental participation in IEP decision making. *Analysis of Comments and Changes to the 2006 Part B Regulations*, 71 Fed. Reg. at pg.46678 (August 14, 2006).

6. For several years the District agreed to and paid for Student's Private School placement. During discussions begun in December, 2010 Mother was resistant to Student being transitioned from Private School to Public School. (Finding of Fact (FF) #s 2-3). During the annual March 11, 2011 IEP meeting, the IEP team reached agreement on some but not all of the IEP issues. Specifically, agreement was not reached with Parents concerning the appropriateness of transitioning Student from Private School to Public School. (FF #4). The parties' attempts to resolve this matter through voluntary mediation met with impasse on April 12, 2011. However, at the conclusion of the mediation, the parties signed an Interim Agreement to meet and continue discussions without a mediator on April 28, 2011. (FF #5). The meeting conducted on April 28, 2011 was neither a mediation session nor an IEP meeting. (FF #7). Consequently, it is irrelevant that the IEP team did not attend the April 28, 2011 meeting. (FF #s 6 and 7).

7. Parents do not claim that they did not have meaningful participation concerning Student's transition from Private School to the split-school placement. Nor is there dispute that during the

April 28, 2011 meeting, Mother and Special Education Director discussed and reached agreements concerning Student's transition from a full-time Private School placement to a split-school placement between Private School and Public School. Instead, Mother alleges that the agreement represented a "temporary" trial placement which the District recorded in the IEP without consent of the Parents. Parents characterized the District's actions as a unilateral change to Student's placement which they had no knowledge of until January, 2012. (FF #9).

8. Two of the requirements of a properly developed IEP are "a statement of the special education and related services . . . to be provided to the child" and "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in [his or her special education program]." § 300.320(a)(4)-(5). Therefore, the IEP must reflect what the student's placement is and any changes to the student's placement must be reflected in the IEP. *See also, Pikes Peak Board of Cooperative Educational Services*, 9 ECLPR 15 (March 31, 2011) ("Whether a new placement is deemed 'temporary,' 'diagnostic,' or an 'assessment period,' under the law it must be reflected in the IEP"). Furthermore, contrary to Parents' claim, nothing in the IDEA regulations nor the ECEA rules require that the IEP be signed by the parents in order for the IEP to be effective.

9. The parties agreed that a split-school placement would be implemented on August 15, 2011 and would remain in effect during the first semester of the 2011-2012 school year. (FF #s 8-9). These agreements were recorded in Student's April 28, 2011 IEP. However, the District failed to schedule another IEP meeting subsequent to the April 28, 2011 meeting. (FF # 9). Instead, after recording the agreements in Student's April 28, 2011 IEP, the District hand delivered a copy of the IEP to Mother's residence on or about May 5, 2011. (FF #9-10).

10. A parent and a public agency may agree to make changes or amendments to a child's IEP after the annual IEP team meeting for a school year. Under these circumstances, the parent and public agency may develop a written document to amend or modify the child's *current IEP*. § 300.324(a)(4)(i) (emphasis added). However, because Student's 2011 IEP had not yet been finalized, the District could not rely on this regulatory provision to incorporate agreements made on April 28, 2011.

11. The District's failure to schedule another IEP meeting subsequent to the April 28, 2011 meeting demonstrates a fundamental misunderstanding of the IEP meeting requirements and is a violation of §§ 300.320, 300.321, 300.322 and 300.324. Nevertheless, despite the District's multiple procedural violations, Parents certainly participated in multiple discussions and, on April 28, 2011, reached agreements concerning the split-school placement. These were the agreements that were recorded in the April 28, 2011 IEP.

12. The IDEA requires that, a reasonable time before the public agency proposes to change the educational placement of the child or the provision of FAPE to the child, that the parents be supplied with written notice, including:

- A description of the action proposed;
- An explanation of why the agency proposes to take the action;

- A description of the information relied upon to form the basis for the proposed action;
- Assurances that the parents have received a copy of their procedural safeguards;
- Sources for parents to contact to obtain assistance;
- A description of other options considered and why those options were rejected; and
- A description of other factors relevant to the public agency's proposal.

Section 300.503(b). However, prior written notice can be supplied through an IEP and need not be supplied through a separate written notice. *Letter to Lieberman*, 52 IDELR 18 (August 15, 2008). The April 28, 2011 IEP that was hand delivered to Parents on or about May 5, 2011 supplied Parents with prior written notice a reasonable time before the District's proposed actions were to be implemented on August 15, 2011. (FF #10 -12). The SCO concludes that District's prior written notice complied with the requirements of § 300.503(b).

**Allegation #2: Safeguarding of Educational Records.**

13. The District is responsible for safeguarding educational records of students within the District. (FF 13). To that end, public agency, including District, must:

- (a) Protect the confidentiality of personally identifiable information at collection, disclosure, and destruction stages;
- (b) Appoint one official who must assume responsibility for ensuring the confidentiality of any personally identifiable information;
- (c) Ensure that all persons collecting or using personally identifiable information receive training or instruction regarding the State's policies and procedures under § 300.123 (concerning confidentiality of personally identifiable information) and 34 CFR part 99 (concerning the Family Educational Rights and Privacy Act (FERPA)); and
- (d) Maintain for public inspection, a current listing of names and positions of those employees within the agency who may have access to personally identifiable information.

Section 300.623(a) through (d).

14. There is no dispute that several educational records are missing from Student's file. Furthermore, the District has no written policies in place to ensure that the personally identifiable information contained in Student's records were properly safeguarded. (FF #13). The District's current procedures and practices fail to ensure that educational records, including Student's records, are properly safeguarded. (FF #s 14 through 16). The District's actions are a clear violation of §300.623(a) through (d).

**FAPE Analysis:**

15. Applying the two-prong analysis of *Garcia v. Board of Educ.*, 520 F. 3d 116 (10th Cir. 2008), even if it is determined that a district committed procedural violations of the IDEA, it is appropriate to also determine whether the services provided to the student in the IEP were reasonably calculated to enable the child to receive educational benefits. The District committed procedural violations when it failed to reconvene an IEP meeting subsequent to the April 28, 2011 meeting. However, throughout the first semester of the 2011-2012 school year, the District supplied Student with special education and related services in conformity with the April 28, 2011 IEP, including all agreements reached with Mother during the April 28, 2011 meeting. (FF #12). Given Parents' active participation in the decision making concerning Student's special education and related services, including the split-school placement (FF #s 3-9), the SCO concludes that the special education services provided to the Student during the fall of 2011 were reasonably calculated to enable the child to receive educational benefits. It follows that, despite the District's multiple IEP procedural violations, Student was not denied a FAPE. Nor is there any evidence that the loss of past educational records resulted in Student being denied a FAPE. Parents have presented no credible evidence to the contrary. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

### REMEDIES

The District has violated the following IDEA requirements:

- Section 300.320;
- Section 300.321;
- Section 300.322;
- Section 300.324; and
- Section 300.623.

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

1) The District shall:

- a. **Within three business days of the last IEP meeting** conducted in conjunction with Student's finalized 2012 IEP, supply CDE and each Parent *by certified mail* with a copy of the 2012 IEP; and
- b. **Within three business days of the date of this Decision**, supply CDE and each Parent *by certified mail*, written verification that the enclosed educational records of Student (supplied to CDE by Mother on May 8, 2012) have been incorporated into the District's central special education file maintained for Student.

2) **Corrective Action Plan:**

**No later than June 1, 2012**, the District shall submit to the Department a Corrective Action Plan (CAP) that addresses each and every violation noted in this Decision.

Furthermore, the CAP must also include specific information on **how District level staff**

**hired subsequent to October 1, 2012** will receive the mandatory training described below. The CAP must, at a minimum, provide for the following:

- a. **By August 15, 2012**, submission of all revised District written policies, procedures, forms, notices and website information, consistent with the IDEA and this Decision.
- b. **By August 15, 2012**, submission of the name and title of all proposed trainers and a complete copy of all proposed written training materials consistent with the IDEA and this Decision. (NOTE: CDE stands ready, willing and able to supply technical assistance in the form of trainers and training materials for each of the mandated trainings described below.)
- c. **By October 1, 2012**, conduct a training on IEPs which shall include, *at a minimum*, training and discussion consistent with the IDEA and this Decision concerning §§ 300.320 through 300.324 on:
  - The development, review, revision and amendment of IEPs;
  - IEP meeting notices;
  - Parent participation; and
  - The composition of an IEP team.

The District's IEP training *shall include* all of the following staff: All District level special education administrators who may be appointed to serve as the Special Education Director or Co-Director and any other person who may be appointed to serve as Special Education Director Designee.

- d. **By October 1, 2012**, conduct a training on protecting the confidentiality of personally identifiable information which shall include, *at a minimum*, training and discussion consistent with the IDEA and this Decision concerning § 300.623(a) through (d) and the safeguarding of student educational records.

The District's educational records training *shall include* all of the following staff: All District level personnel who are or may be responsible for collecting and/or maintaining special education records.

- e. **By October 12, 2012**, submission of evidence that such training has occurred (i.e., complete copies of training schedule(s), agenda(s), curriculum/training materials, the name and title of each trainer, and legible attendee sign-in sheets which lists each attendee's printed name and job title).

Please submit the CAP and all other 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.

The enclosed sample template provides suggested formats for the CAP and includes sections for "improvement activities" and "evidence of implementation of change."

### **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 C.F.R. § 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 \_\_\_\_ day of May, 2012.

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Jeanine M. Pow, Esq.  
State Complaints Officer

## **Appendix A**

### **Parent's Complaint, pages 1 through 10.**

Exhibit A: Mediation Impasse Agreement.

Exhibit B: Interim Agreement.

Exhibit C: Parents' Written Proposals Brought to April 28, 2011 Meeting.

Exhibit D: April 28, 2011 IEP.

Exhibits E through I: Not relevant to the two Complaint allegations investigated and therefore, not considered.

Exhibit J: Written Communications between Mother and Special Education Director, February 23, 2012 to February 27, 2012.

### **Parents' April 20, 2012 Reply, pages 1 through 6.**

### **Parents' April 24, 2012 Amended Reply, pages 1 through 2.**

Exhibits K through N: Not relevant to the two Complaint allegations investigated and therefore, not considered.

### **District's Response, pages 1 through 3.**

Exhibit 1: April 28, 2011 IEP.

Exhibit 2: March 11, 2011 sign in sheet; February 28, 2011 Notice of meeting.

Exhibits 3 through 7: Not relevant to the two Complaint allegations investigated and therefore, not considered.

Exhibit 8: District staff having personal knowledge of facts underlying the Complaint allegations.

### **Additional Documentation:**

Exhibit 9: Statement concerning District written policies re: Maintenance of Student Educational Records.

Exhibit 10: March 27, 2012 Letter from Special Education Director to Mother.

Exhibit 11: List of persons attending the March 28, 2011 meeting.

Exhibit 12: Contact information for person(s) hand delivering copy of April 28, 2011 IEP to Mother.

Exhibit 13: Index of documents supplied to Mother by District.

### **Interviews with:**

Mother on March 27, 2012;

Special Education Director on April 28, 2012 in the presence of District Supervisor;

Instructional Coach on April 30, 2012; and

Social Worker and Receptionist on May 1, 2012.