

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

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**State-Level Complaint 2014:518**  
**El Paso County School District 3, Widefield**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on September 17, 2014, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified one allegation 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.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATIONS**

Parent's Complaint raised one allegation, summarized as follows:

1. Since the beginning of the 2014-2015 school year, Student has been placed in an educational setting that is not appropriate and violates IDEA's least restrictive environment (LRE) requirements, resulting in a denial of a free appropriate public education (FAPE). Specifically,
  - a. The District did not consider placement in the general education environment with supplemental aids and services before placing Student in a self-contained classroom.
  - b. The District's offer, at an IEP meeting on September 11, 2014, to allow Student to attend a general education class for one hour every third day is not consistent with Student's individual needs and the LRE requirement;

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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> 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).

- c. Because Student does not have adequate access to typical peers in the self-contained classroom, he is demonstrating regression in language and social skills.
- d. The self-contained class is not an age-appropriate classroom.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **Background:**

1. Student is six years old and was initially determined eligible for special education and related services as a preschooler with a disability and a speech language impairment.<sup>4</sup> Parents reside within the District boundaries.
2. Student is described by all as a delightful child who enjoys music, story time, books, and playing games on an iPad.<sup>5</sup> Although Student often gets up or wanders during academic activities, particularly those that require the use of fine motor skills, he is able to follow class routines with prompting and responds well to redirection. Student is described as having significant delays in the areas of “functional communication, verbal interaction with peers, receptive and expressive language, and speech intelligibility.”<sup>6</sup> Student’s academic and behavioral skills are described as being below expectation for his age and he currently requires assistance with independent living skills during transition times, at lunch, and in the restroom.<sup>7</sup>
3. For preschool, Student attended an integrated classroom that included twelve to thirteen typical peers and five to seven students with disabilities.<sup>8</sup> During the 2012-13 school year, Student’s educational setting for purposes of LRE was in the general education classroom at least 80% of the time.<sup>9</sup>
4. Although Student should have started kindergarten the following school year, Parent and the District entered a written settlement agreement that provided Student would be retained in his preschool program for the first semester of the 2013-2014 school year and would receive the supports and services identified in the January 2013 IEP during this time. The agreement further provided that Student would be enrolled in his home school kindergarten

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>4</sup> Exhibit 1, p. 2.

<sup>5</sup> Exhibit 16; Interviews with Parent, Special Education Teacher, and Speech Language Pathologist.

<sup>6</sup> Exhibit 16, p. 4.

<sup>7</sup> Exhibit 16; Interviews with Special Education Teacher and Special Education Director.

<sup>8</sup> Interview with Special Education Director.

<sup>9</sup> Exhibit 2, p. 14.

program for the second semester if he remained in the District.<sup>10</sup> From September to December 2013, Student attended preschool in accordance with the written settlement agreement. As will be discussed more fully below, Student did not attend school within the District for the remainder of the 2013-2014 school year.

5. Since August 21, 2014, Student has attended kindergarten in the District's Significant Support Needs (SSN) program, a self-contained classroom.<sup>11</sup> Parent has alleged that this placement is not appropriate for Student's unique needs and violates the least restrictive environment (LRE) requirement because the District did not consider placement in the general education environment before placing Student in a self-contained classroom. In response, the District argued that it has "emphasized repeatedly that [Student] has the option of enrolling in [Home School] where he would receive services in the general education setting with necessary supports."<sup>12</sup>

#### **Development of Student's Kindergarten IEP:**

6. In investigating whether the District considered less restrictive environments, i.e., placement in the general education classroom with supports, before placing Student in a self-contained classroom, the SCO necessarily begins by reviewing the current IEP.

7. Student's current IEP, dated December 2013, was intended to be implemented in kindergarten and clearly demonstrates that the District has considered placement in the general education environment. First, the IEP documents that Student's IEP team had been discussing two different educational placements since May of 2013: 1) a regular kindergarten classroom with special education supports and services, and 2) a self-contained classroom, referred to as the SSN program.<sup>13</sup>

8. During these previous discussions, Parent consistently expressed concern that the SSN classroom may not be appropriate because Student would not have access to typical peers that would serve as role models for advanced communication and social skills.<sup>14</sup> Parent also expressed concern during these meetings, and to various District staff, that Student's Home School did not appear to have the resources Student may need to be successful in the general education classroom. And for this reason, Parent requested that Student be allowed to attend a general education class in the same school where the SSN program was located to help ensure access to the supports and services he would likely require.<sup>15</sup> In response, Parent was assured

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<sup>10</sup> Exhibit 12, p. 5.

<sup>11</sup> Although this classroom is also commonly known as Life Skills, the SCO will use the term SSN because this is the term now used by the District for this classroom.

<sup>12</sup> Response, p. 6.

<sup>13</sup> Exhibit 16, pp. 6-10; Exhibits 8 and 9.

<sup>14</sup> Exhibit 8, p. 7.

<sup>15</sup> According to Parent, her concern is based on the statement made by a teacher at Home School that they had not had a student like Student in a long time and did not seem prepared to adequately address Student's needs. Interview with Parent.

that Home School had the necessary resources, and was further informed that this was the school Student would attend if placed in a regular kindergarten class per District policy, unless Parent applied for and was granted a boundary waiver.<sup>16</sup>

9. At the IEP meeting on December 9, 2013, the IEP team reviewed Student's strengths and present levels of performance, noting progress on IEP goals and summarizing performance in the areas of education, social/emotional/ behavioral, self-help, physical therapy, occupational therapy, and communication. In discussing Student's needs and recommended placement in the LRE, the IEP team discussed placement in the general education classroom with supports and services and placement in the SSN program. During this discussion, Parent informed the IEP team that Student's last day of preschool would be December 11, 2013, because the family was leaving the country and may not be returning until the spring. In response, the IEP team discussed placement options should Student return in the spring or fall of 2013, including placement in a general education kindergarten class with supports, as well as placement in the SSN program, a self-contained class.<sup>17</sup>

10. Although placement options were thoroughly discussed, the District ultimately failed to clearly identify which placement, among the options discussed, it was offering. The SCO bases this finding on internal inconsistencies between the service delivery statement, LRE summary, and prior written notice sections of the December 2013 IEP, described immediately below.

11. At various points, the IEP appears to recommend both the general education classroom with supports and the self-contained SSN program, though those recommendations are clearly inconsistent and mutually exclusive. First, the service delivery statement and the LRE summary of the December 2013 IEP recommended placement in the SSN program, stating:

Beginning second semester of the 2013-2014 school year, it is recommended that [Student] attend kindergarten in the Significant Support Needs program, which is a self-contained program designed for children who have significant educational delays and needs. This program provides increased support and supervision, along with small group and individualized instruction based on [Student's] needs. Integration into the general education setting will also be a consideration as [Student's] skills and needs dictate.<sup>18</sup>

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<sup>16</sup> Exhibits 8, 9, and 16; Interview with Special Education Director. Per District policy, students may apply for a waiver to attend a school other than their assigned neighborhood school. Applications must be submitted by the last day of February of the preceding academic year. Exhibits 13-14. The District has explained the boundary waiver application process to Parent on multiple occasions and documented the discussion in Student's IEP. Exhibit 16; Interview with Special Education Director.

<sup>17</sup> Exhibit 16, p. 7.

<sup>18</sup> Exhibit 16, pp. 18-20.

Consistent with these statements, the prior written notice section stated that placement in the general education classroom with special education supports in Student's home school was considered and rejected because Student "demonstrates significant needs and would benefit more appropriately from the supports and services provided in the district's center-based [SSN] program."<sup>19</sup>

12. Elsewhere in the document, however, the IEP recommended placement in the general education classroom with supports. For example, the LRE was identified as in the general education class at least 80% of the time. Consistent with this recommendation, the prior written notice stated:

Discussion took place regarding options for kindergarten placement when [Student] returns in the spring or next fall . . . It is recommended that [Student] be enrolled in his home school upon re-entering [District] as a starting point. At that point, [Student's] current IEP will be put into place and parent may request a meeting with the receiving school to review [Student's] current skills and needs and necessary programing.

The notice also stated that the District's procedure for applying for a boundary waiver had been explained to Parent because she had expressed concerns about Student attending his home school at multiple IEP meetings.<sup>20</sup>

13. Based on the above, the SCO finds that the December 2013 IEP failed to offer a specific placement, and instead concurrently offered two entirely distinct placements and settings. Essentially, the District left the choice between the two options to Parent. Notably, this finding is consistent with multiple statements in the District's Response to this Complaint asserting that the choice to enroll Student in the SSN program or the general education classroom with supports at Home School has been up to Parent since May of 2013, and that Parent has been consistently reminded that she has this choice.<sup>21</sup>

14. Student's December 2013 IEP was not implemented for the remainder of the 2013-14 school year because he moved with his family to another country. While there, Student attended a kindergarten program with typical peers. Based on the brief report from the director of the program, Student was well liked by his peers and able to participate in many of the class activities and routines on his own or with assistance. He was also able to respond to requests in two languages.<sup>22</sup>

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<sup>19</sup> Exhibit 16, p. 20.

<sup>20</sup> Exhibit 16, p. 20.

<sup>21</sup> Response, pp. 3, 5, 6, and 7.

<sup>22</sup> Exhibit B; Interview with Parent.

### **Implementation of Student's Kindergarten IEP during 2014-15 School Year:**

15. On or around April 22, 2014, Parent informed Special Education Director that Student would be returning for the 2014-15 school year and requested that Student be enrolled in the SSN program at School, attend half-days, and not ride the bus.<sup>23</sup> Special Education Director told Parent that she agreed with Parent's request and that Student could attend the SSN program under these conditions.<sup>24</sup>

16. On August, 21, 2014, Student began attending the SSN program at School. The SSN program is a self-contained classroom that serves students in kindergarten through fifth grade from all schools within the District who have moderate to severe cognitive disabilities. There are currently fourteen students in the class, of which ten are between kindergarten and second grade. The remaining four students are in fourth and fifth grade and are rarely in the classroom. All students in this class are students with disabilities. The IEP currently being implemented in this setting is the December 2013 IEP.

17. On August 25, 2014, Parent requested an IEP meeting to discuss Student's placement in the SSN program because she had concerns that this placement was not appropriate and violated Student's LRE.<sup>25</sup> Parent was upset because she had been told at various IEP meetings that this program would provide Student with opportunities to be included with typical peers throughout the day and she did not believe this was happening. In addition, Parent was observing behavioral changes at home that she believed were related to Student's frustration in the SSN classroom.<sup>26</sup>

18. On September 11, 2014, the District convened an IEP meeting for the purpose of discussing Parent's concerns.<sup>27</sup> Although noticed as an IEP meeting, the purpose of the meeting was to learn more about Parent's concerns and not to review or revise Student's IEP.<sup>28</sup> School Psychologist, the staff member facilitating the meeting, stated that the team did not discuss a change of placement at this meeting because Student was in the process of being reevaluated. Consequently, placement was expected to be discussed and determined during subsequent IEP meeting once the reevaluation was completed.<sup>29</sup> As will be discussed more fully below, Parent signed the consent for evaluation form on August 27, 2014, but had not

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<sup>23</sup> Response; Interviews with Parent and Special Education Director. Parent also had several conversations with Special Education Teacher and School Principal about the program.

<sup>24</sup> Interviews with Special Education Director and Parent.

<sup>25</sup> Exhibit 6, p. 2.

<sup>26</sup> Interview with Parent; Exhibit A.

<sup>27</sup> Exhibit 5, p. 3.

<sup>28</sup> Exhibit 5, p. 3; Exhibit A; Interviews with School Psychologist, Speech Language Pathologist, Special Education Teacher, and Special Education Director. In her interview, Parent alleged that this meeting violated IDEA because a general education teacher was not present. Because this meeting was not convened for the purpose of revising Student's IEP, the absence of a general education teacher does not constitute a violation of § 300.321 regarding the composition of the IEP team.

<sup>29</sup> Interviews with School Psychologist and Special Education Teacher.

checked a box indicating whether she agreed with or was refusing reevaluation. At the time of this meeting, however, the IEP team was unaware of the problem and believed that Parent had provided consent.<sup>30</sup>

19. During this meeting, Parent discussed her concerns that Student did not have adequate opportunities to interact with typical peers and that this was causing him to regress socially and behaviorally. At the time, Student's only opportunity to interact with typical peers was during lunch where Student was in the same lunch room as typical peers but sat at a table with other students with disabilities. Consequently, Student was not being provided with any meaningful opportunity to interact with typical peers.

20. Several times during this meeting, Parent specifically asked that Student be placed in a general education classroom with supports and services and that he no longer attend the SSN classroom. In response, the School Psychologist asked Special Education Teacher to explore opportunities for inclusion during Student's school day.<sup>31</sup> At the end of the meeting, Parent was informed that Student would have the opportunity to attend specials, i.e., music, physical education, and computers, with typical peers in the afternoons. Because Student leaves after lunch each day, at Parent's request, and specials are scheduled for the afternoons, the specific offer was to have Student attend music with typical peers, a class that met for one hour every third school day. At the end of the meeting, Parent informed the team that she was not satisfied with the opportunities presented and would be considering further action.<sup>32</sup>

21. After this meeting, Parent decided to keep Student home from school because she was frustrated and upset about the options presented. Parent kept Student home from September 12, 2014, through September 26, 2014. As a result of Parent's decision, Student has missed approximately 15 days of school.<sup>33</sup>

22. Student returned to the SSN program on or around September 29, 2014, and has attended regularly since. Although Parent alleged that Student has regressed behaviorally and socially since being placed in this program, there is no evidence to support this. Student is making progress on his IEP goals and has shown improvement in communication skills. For example, Student has grown from using three-word utterances to using short sentences.<sup>34</sup> And even if Student had shown regression during this time, it would be difficult to attribute the decline to lack of exposure to typical peers when Student has missed such a significant amount of school.

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<sup>30</sup> Exhibit 4, p. 1; Interviews with School Psychologist, Special Education Teacher, Special Education Director, and Speech Language Pathologist.

<sup>31</sup> Parent was not reminded that Student could attend general education class at Home School because it was well known that Parent did not want Student to attend school there. Interviews with Special Education Director, School Psychologist, and Parent.

<sup>32</sup> Exhibit A; Interviews with Parent, Special Education Teacher, Speech Language Pathologist, and School Psychologist.

<sup>33</sup> Exhibit 17; Interviews with Parent, Special Education Teacher, and Special Education Director.

<sup>34</sup> Interviews with Speech Language Pathologist and Special Education Teacher.

23. Although Parent has complained about the educational services Student is receiving, she has frustrated and delayed the District's efforts to evaluate Student. Although the District initially requested consent to evaluate on August 26, 2014, Parent did not effectively sign consent until October 15, 2014.<sup>35</sup> As discussed above, Parent signed and returned the consent form on August 27, 2014, but did not indicate whether she agreed with evaluation or was refusing it. On or around September 19, 2014, the District realized that consent was defective and requested that Parent fill out the form indicating whether or not she consented to evaluation. On or around September 29, 2014, Parent returned a signed consent form stating that she consented to the reevaluation but did not "approve of any type of IQ testing."<sup>36</sup> On October 2, 2014, the District sent Parent prior written notice informing Parent that it was refusing to conduct an evaluation without Parent's full consent. The letter informed Parent that Student's eligibility, programming, and placement could not be accurately determined without including a cognitive assessment as part of the evaluation due to the limitations of the existing cognitive assessment data, discrepancies between existing data and teacher observation, and the length of time that had passed since Student received educational programming and services in Colorado.<sup>37</sup> On October 15, 2014, Parent signed consent and the District is in the process of completing the reevaluation.

24. At this time, the District is reevaluating Student and has an IEP meeting tentatively scheduled for December 2, 2014, to review and revise Student's IEP.

### **CONCLUSIONS OF LAW**

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

1. In this Complaint, Parent alleges that the District has denied Student a free appropriate public education (FAPE) by offering a placement that violates Student's right to be educated in the least restrictive environment (LRE). Parent argues that Student's right to be educated in the LRE has been violated because Student is currently being educated in self-contained classroom with very limited opportunity to interact with and learn from typical and same-aged peers. In response, the District argues that it has not violated the LRE requirement because FAPE can be provided in both the SSN classroom and the general education classroom with supports, and Parent has always had the option of having Student attend the general education classroom at Home School. The District's position constitutes a substantive violation of IDEA's LRE requirement, resulting in a denial of FAPE.
2. "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers

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<sup>35</sup> Interviews with Parent and Special Education Director.

<sup>36</sup> Exhibit 4, p. 2.

<sup>37</sup> Exhibit 4, p. 3.



to the maximum extent appropriate, and attend the school they would attend if not disabled. 34 CFR §§ 300.114 and 300.116. Each student’s educational placement must be determined on an individual case-by-case basis depending on each child’s unique needs and circumstances, rather than on the child’s category of disability, and must be based on the child’s IEP.” 71 Fed. Reg. 46 586 (2006).

3. Because the IDEA requires that eligible students be provided with a free appropriate public education (FAPE) in the least restrictive environment (LRE) to the maximum extent appropriate, a substantive IDEA violation may be shown by demonstrating that the school district failed to provide a free appropriate public education, or by showing that although FAPE has been provided, it was not provided in the LRE. *Nebo*, 379 F.3d at 973; *See also Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008) *citing Nebo, supra*.

4. In its defense to Parent’s allegation that Student is not being educated in the LRE, the District argues that Student’s IEP teams have concluded that the SSN program best meets Student’s needs, but that “they have never said that the SSN program is the only option in which FAPE can be provided for [Student].” *District’s Response* at page 7. Further, the District asserts that it has “consistently emphasized that [it] is prepared to provide sufficient staff and services in the [Home School] general education setting to provide FAPE for [Student].” *Id.*

5. The District’s position runs contrary to IDEA’s LRE requirement. If FAPE can be provided in a less restrictive setting, i.e., the general education classroom, it is a substantive violation of the IDEA to provide Student FAPE in a more restrictive setting, i.e., the SSN program. *Nebo*, 379 F.3d at 976. The fact that Parent requested to enroll Student in the SSN program in the fall of 2014 is irrelevant. If FAPE can be provided in the general education setting, as the District consistently argues it can, it should have refused Parent’s request to enroll Student in the SSN program. Because the SCO concludes here that the violation of the LRE requirement resulted in a denial of FAPE, the SCO does not need to address the specific allegations (a-d) concerning the SSN classroom.

6. The District’s decision to allow Parent to enroll Student in the SSN program, although inconsistent with IDEA, was understandable when considering the feelings Parent has consistently expressed toward Student’s Home School. Since May of 2013, Parent has made it clear to the District that she does not want Student to attend Home School because she has concerns that this particular school does not have the resources to properly serve Student in the general education classroom. Instead, Parent wanted Student to attend the general education classroom at the same school where the SSN program is located, a location that is not within the assigned boundary, i.e., not Student’s neighborhood school. In response to Parent’s concerns, the District has assured Parent that it has the staff to meet Student’s needs at Home School and has also advised her of the process to request a boundary waiver. Despite this information, Parent chose not to enroll Student at Home School and did not request a boundary waiver. Instead, Parent enrolled Student in the SSN program, and then requested that Student be moved into the general education classroom at that particular school less than

two weeks after he started school. This raises the concern that Parent was trying to get Student into the general education classroom at her preferred location without following the District's procedure for requesting a boundary waiver.

7. In Colorado, a decision concerning the location, i.e., the specific school, classroom, or teacher, where a Student's IEP will be implemented is not an element of "placement" and is an administrative determination made at the discretion of the District. The ECEA specifically provides that:

The terms "placement" or "educational placement" are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child's IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee. ECEA Rule 4.03 (8)(a).

This means that the District has the right to determine the location, i.e., the specific school, where Student's IEP will be implemented.

8. Unlike location, however, placement is an IEP team decision. In this case, Student's December 2013 IEP fails to clearly identify a particular placement. The law is unequivocal in requiring that a school district develop an IEP based upon the child's individual needs, and that it make a formal, written offer of a specific placement. *Sytsema, supra*, 538 F.3d at 1315-16, *citing with approval, Union School Dist. v. Smith*, 15 F.3d 1519 (9<sup>th</sup> Cir. 1994)(formal, written offer of placement must be included in the IEP); *see also, Knable v. Bexley City Sch. Dist.*, 238 F.3d 755 (6<sup>th</sup> Cir. 2001); *J.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672 (4<sup>th</sup> Cir. 2007)(school district violated IDEA by offering an IEP that did not specify a placement for the student). Contrary to the District's position, "a school district cannot abdicate its responsibility to make a specific offer [by] allowing parents to choose from among several programs ... After discussing the advantages and disadvantages of various programs that might serve the needs of a particular child, the school district must take the final step and clearly identify an appropriate placement from the range of possibilities." *Glendale Unified Sch. Dist. v. Almasi*, 122 F.Supp.2d 1093, 1108 (C.D. Cal. 2000), *citing Union, supra*. In this case, the December 2013 IEP recommended placement in both the general education classroom and the SSN program without clearly identifying which option the District was offering as a placement, effectively and impermissibly leaving the choice to Parent. The IEP is not a suggestive document and the failure to make a firm, written offer of placement in Student's December 2013 IEP resulted in a denial of FAPE.

9. Although the District violated IDEA with regard to educating Student in the LRE, Parent has also frustrated Student's educational program for the 2014-15 school year. First, Parent's

decision to keep Student home from School for two weeks complicated any argument that she may have had that the SSN program was causing Student to regress. If Student had shown regression in social and behavioral skills, as Parent alleged, it would have been very difficult to attribute the regression to being in the SSN program when Student missed 15 days of school during the first quarter.

10. Second, Parent delayed Student's evaluation by refusing to provide consent until October 15, 2014, nearly one month after the District effectively requested it. Because Student had not been in the District's program for eight months, during which time he was receiving educational services in a different country, the District reasonably requested consent to conduct a comprehensive evaluation to determine appropriate educational programming and services for the 2014-2015 school year. When the parents of a child with a disability refuse to allow a school district to conduct comprehensive evaluations by evaluators of its choosing, the parents lose any right to demand special education services or to complain about a denial of FAPE. See *M.T.V. v. DeKalb County School District*, 446 F.3d 1153 (11<sup>th</sup> Cir. 2006)(where parents refuse to allow school district to conduct evaluations by evaluators of its choosing, parents/student lose entitlement to special education services); *Shelby S. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5<sup>th</sup> Cir. 2006)(student who desires special education services under IDEA must consent to evaluations); *Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 178-79 (5<sup>th</sup> Cir. 1995)("if a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation"); *Johnson by Johnson v. Duneland Sch. Corp.*, 92 F.3d 554, 558 (7<sup>th</sup> Cir. 1996); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9<sup>th</sup> Cir. 1987); *M.S. v. Mullica Township Bd. Of Educ.*, 485 F. Supp. 2d 555 (D.N.J. 2007). Although Parent eventually consented to a comprehensive evaluation, her initial refusal has significantly delayed the development of Student's educational program.

11. Finally, as discussed above, Parent filed this Complaint alleging that the District was not educating Student in the LRE, and yet she is the one who requested the more restrictive setting and refused to enroll Student in Home School where he would have been receiving services in the general education classroom with supports. Although it is the District's obligation to provide FAPE in the LRE, Parent's decision to enroll Student in the SSN program rather than allowing him to attend a general education class at Home School contributed to the violation.

12. Students who are denied FAPE are generally 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). In this case, there is no evidence that Student suffered educational harm as a result of the violation. Further, Parent's conduct has contributed to the violation. Consequently, the SCO declines to award compensatory education services.

## REMEDIES

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

- a) LRE requirement at 34 CFR § 300.116; and
- b) Definition of IEP (placement) at 34 CFR § 300.320(a)(4)-(5).

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

- 1) **By December 19, 2014**, 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 January 30, 2015.
  - 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 March 27, 2015.
  - 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 CDE no later than April 10, 2015.

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. At the request of the District, CDE is willing and able to provide the training specified above.

### 2) Remedies for Student.

- a) If it has not already done so, the District must complete Student's evaluation no later than November 17, 2014 and in accordance with 34 CFR §§ 300.303-300.305.
- b) By December 2, 2014, the District must convene an IEP meeting and develop Student's IEP in accordance with 34 CFR §§ 300.116 and 300.320-324. Consistent with this Decision, the IEP must constitute a clear, firm offer of placement in the LRE.

The District shall provide the Department with documentation that it has complied with this requirement no later than December 19, 2014. Documentation must include evaluation results and a copy of Student's IEP.

If Parent decides to disenroll Student, the District will be excused from the remedies above.

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

Colorado Department of Education  
Exceptional Student Services 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 10<sup>th</sup> day of November, 2014.

*Candace Hawkins*

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### **Complaint, pages 1-3.**

Exhibit A: Recording of IEP meeting.

Exhibit B: IEP dated April 2014.

### **Parent did not submit a reply.**

### **Response, pages 1-9.**

Exhibit 1: IEP meeting notes dated September 2014.

Exhibit 2: IEP dated January 2013;

Exhibit 3: Description of SSN program.

Exhibit 4: Consent form.

Exhibit 5: Notices of meeting.

Exhibit 6: Correspondence.

Exhibit 7: Contact information of relevant witnesses.

Exhibit 8: IEP dated May 2, 2013.

Exhibit 9: IEP dated May 21, 2013.

Exhibits 10-11: District retention policy.

Exhibit 12: Settlement Agreement.

Exhibits 13-14: District policy regarding open enrollment and intra-district transfers.

Exhibit 15: District attendance policy.

### **Additional documentation requested by SCO:**

Exhibit 16: IEP dated December 2013.

Exhibit 17: Correspondence and Student attendance record.

### **In-person interviews with:**

- Parent
- Special Education Director
- Special Education Teacher
- School Psychologist
- Speech Language Pathologist