

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

State-Level Complaint 2019:517
San Juan BOCES

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on March 19, 2019, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).

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 C.F.R. §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

On March 28, 2019, the parties agreed to extend the 60-day investigation timeline to engage in mediation. Mediation resulted in impasse, and consequently, the State Complaints Officer (“SCO”) immediately resumed the investigation upon notification of impasse.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (CDE) has the authority to investigate alleged violations of IDEA that occurred not more than one year from the date the Complaint was filed. Accordingly, this investigation will be limited to the period of time from March 19, 2018 through March 19, 2019 to determine whether or not a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations accepted for investigation. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATION

Whether Student has been denied a free appropriate public education (FAPE) because the BOCES:

1. Failed to properly implement Student’s IEP since the beginning of the 2018-2019 school year to present, specifically as follows:

- a. Failed to provide extended time and/or shortened assignments, consistent with 34 C.F.R. § 300.323.

FINDINGS OF FACT

After an analysis of the record detailed in the appendix, the SCO makes the following findings:

1. At all times relevant to the Complaint, Student was a middle school student who is eligible for special education and related services as a child with other health impairment (OHI) based on a diagnosis of attention deficit hyperactivity disorder (ADHD).¹ *2018 IEP, Ex. A* at 2. During the 2018-19 school year, Student attended School, within a member school district of the BOCES. *Response* at 1.
2. As described in her 2018 IEP, Student needs and impact of disability include “support in organization/tracking of work, completion of work, repeated instructions/directions, extra time to complete work/process information.” *Ex. A* at 5.
3. To support disability-related needs and access the general education curriculum, Student received, among other accommodations, “extended time for written responses OR reduce [*sic*] amount of work required to demonstrate mastery,” pursuant to the 2018 IEP. *Ex. A* at 14.
4. In her Complaint, Parent alleges that Student has not received these specific accommodations in Language Arts since the beginning of the 2018-19 school year. Based on the findings described below, the SCO does not find evidence sufficient to support this allegation.
5. In general, the BOCES ensures that general education teachers are informed of their responsibilities for implementing a student’s IEP through the following procedures and practices. To ensure consistency across its member school districts, the BOCES provides a procedural manual to set forth expectations related to the provision of special education and related services. In accordance with the manual, the special education teacher/case manager is expected to provide each classroom teacher with a summary of the student’s IEP that includes relevant evaluation/testing data, a description of present levels of academic and functional performance, IEP goals, and accommodations. This information is provided to general education teachers at the beginning of the school year, as well as any time a student’s IEP is revised. Moreover, the special education teacher/case manager is expected to provide information beyond the summary, when appropriate, and to provide ongoing support to general education teachers to ensure a student’s IEP is being appropriately implemented in the general education classroom. *Interviews with Special Education Director and Special Education Teacher*.

¹ Student’s diagnosis of ADHD has recently been revised by her medical provider to attention deficit disorder (ADD). *Interviews with Parent and Special Education Teacher; Ex. G* at 3.

6. Specific to Student, the BOCES ensured that Language Arts Teacher was adequately informed of his responsibility to implement Student's IEP through the following processes and activities. At the beginning of the school year, Special Education Teacher met with Language Arts Teacher to provide the summary of Student's IEP, including accommodations, consistent with the BOCES' procedural manual and expectations outlined above. In addition, the School provided consistent opportunities for co-planning between the special education and general education teachers, as well as quarterly Response to Intervention (RtI) meetings where teachers had an opportunity to discuss student performance, progress, and whether accommodations were being successfully implemented. Finally, due to the small size of the teaching staff at School, Special Education Teacher and Language Arts Teacher communicated on a near daily basis regarding Student. *Interviews Special Education Director, Language Arts Teacher, and Special Education Teacher.* Accordingly, the SCO finds that the BOCES adequately informed Language Arts Teacher of his responsibility for providing the specific accommodations identified on Student's IEP.

7. Finding that Language Arts Teacher was informed of his responsibility to provide accommodations, the SCO now considers whether the accommodations at issue in this Complaint, i.e., providing extended time for written responses or reducing the amount of work required to demonstrate mastery, were indeed provided in Student's Language Arts class. During interviews, both Special Education Teacher and Language Arts Teacher adequately described the accommodation for extended time or reducing the amount of work as accommodations that addressed Student's needs related to ADHD and were able to provide examples of when and how these accommodations were provided during the 2018-19 school year. The examples provided in interviews were further corroborated by email correspondence. *Interviews with Special Education Teacher and Language Arts Teacher; Ex. E.*

8. While the available evidence supports a finding that both Special Education Teacher and Language Arts Teacher provided accommodations for extended time or reduced work, confusion about what reading assignments had or had not been completed following the winter break likely led to the perception that these accommodations were not being provided in Language Arts class.

9. On or around December 18, 2018, Special Education Teacher notified Parent that Student was 14 chapters behind in reading. *Ex. A at 32; Interviews with Parent, Special Education Teacher, and Language Arts Teacher.* Parent responded by email on January 6, 2019, to express concern that Student was not being provided with adequate assistance from Special Education Teacher and Paraprofessional to keep up with her reading assignments. *Ex. A at 32.*

10. At Parent's request, the School held a meeting to discuss these concerns on or around January 16, 2019. This meeting was *not* an IEP meeting. Because Parent requested that no one from School or BOCES administration be present, the meeting only included Parent, Parent Advocate, Special Education Teacher, Paraprofessional, and School Psychologist. At this meeting, the School and BOCES staff assured Parent that Student was not behind in her classes

and asked how to move forward. At Parent's request, it was tentatively agreed that each of Student's teachers would send a daily email to Parent describing Student's progress and assignments due. Upon review of this tentative arrangement, School Principal and Superintendent informed staff of his concerns that the daily emails would be burdensome and may lead to further conflict. In place of an email from each of Student's teachers, daily communication would instead be handled through Student's planner. *Complaint at 3; Response at 3-5; Ex. B at 101-130; Interviews with Parent, Special Education Teacher, and Language Arts Teacher.* Although the planner improved communication regarding assignments, it did not alleviate all confusion nor Parent's concern that Student was being provided with accommodations on her IEP for extended time and reduced work. *Ex. E; Interviews with Parent, Special Education Teacher, and Language Arts Teacher.*

11. Despite some ongoing confusion regarding assignments, however, there is no evidence that Student was not being provided with the accommodations at issue. For example, Language Arts Teacher notified Parent on March 4, 2019, that Student's grade had dropped to an "F" because she was behind in turning in assignments. Email correspondence further indicated that Special Education Teacher worked with Parent and Student to turn in missing Language Arts assignments, for which she was given extended time. *Ex. B at 101-130; Ex. E at 45-55; Interviews with Language Arts Teacher and Special Education Teacher.* Indeed, Student received a "B" for her final grade for the 2018-19 school year, as well as met her IEP goal in the area of reading. *Ex. C at 4-7.* Accordingly, the SCO finds that the evidence, taken as a whole, does not support a finding that Student was not provided with accommodations in Language Arts class.

CONCLUSIONS OF LAW

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

The BOCES has provided the accommodations, specifically extended time and shortened assignments, described in Student's IEP, in accordance with 34 C.F.R. § 300.323(c)-(d).

Under IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the BOCES, must implement a student's IEP in its entirety. 34 CFR § 300.323(c). To satisfy this obligation, the BOCES must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR § 300.323(d)(2).

Consistent with IDEA, the BOCES ensured that Student's Language Arts Teacher was adequately informed of his responsibility for implementing Student's IEP, including accommodations. As

described more fully in FF #5, the BOCES ensures that teachers are advised of their responsibilities for implementing a student's IEP, including accommodations, in multiple ways. To promote consistency across its member school districts, the BOCES provides a procedural manual that sets forth expectations related to the provision of special education and related services. In accordance with the manual, the special education teacher/case manager is expected to provide each classroom teacher with a summary of the student's IEP that includes relevant evaluation/testing data, a description of present levels of academic and functional performance, IEP goals, and accommodations, at the beginning of the school year, as well as any time a student's IEP is revised. Consistent with these expectations, Special Education Teacher met with Language Arts Teacher to review and provide a summary of Student's IEP, including accommodations. Moreover, Special Education Teacher and Language Arts Teacher communicated on a near daily basis regarding Student due to the small size of the School. Accordingly, the SCO concludes that Language Arts Teacher was adequately informed of his responsibilities for providing the accommodations described on Student's IEP.

In addition to informing teachers of their responsibilities regarding a student's IEP, however, the BOCES must ensure that the IEP is being implemented. This obligation includes ensuring that all identified services are being consistently provided. 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. 34 C.F.R. § 300.17; ECEA Rule 2.19. In this case, the evidence supports a conclusion that Student was provided with these accommodations in Language Arts class. As described more fully in FF # 8-11, Parent's concern that Student was not receiving appropriate accommodations emerged when she was notified that Student had fallen quite behind in her reading assignments prior to winter break. Despite occasional confusion about what assignments Student had or had not completed, Student was provided with extended time and earned a "B" in Language Arts at the end of the 2018-19 school year. Accordingly, the SCO finds and concludes that Student was provided with the accommodations described on the 2018 IEP in Language Arts class.

REMEDIES

The SCO finds and concludes that the BOCES did not violate any requirements of the IDEA. Accordingly, there are no remedies ordered pursuant to the IDEA and my authority as an SCO.

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 20th day of June, 2019.

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-3

Exhibit 1: Email correspondence

Exhibit 2: Request for records and release of information

Response, pages 1-9

Exhibit A: IEPs in effect for the 2018-19 school year, including meeting notes and contact log

Exhibit B: Service logs and documentation of services provided

Exhibit C: Grade and IEP progress reports for the 2018-19 school year

Exhibit D: Syllabi or equivalent for core classes, including documentation regarding accommodations

Exhibit E: Correspondence between the Parties

Exhibit F: Contact information for District witnesses

Exhibit G: May 2019 IEP

Parent did not submit a Reply.

Interviews:

- Parent
- Special Education Director
- Special Education Teacher
- Language Arts Teacher