

State-Level Complaint 2010:508

Douglas County School District

Decision

INTRODUCTION

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

The Complaint was properly filed in the office of the SCO on 5/19/10 by the (Mother) of (Student).

The SCO hand delivered a Complaint Notification letter with a copy of the Complaint and all attachments to the District 5/21/10.

The District's Response was timely received by the SCO on 6/07/10.

The SCO requested additional information from the District 6/16/10. A portion of the requested information was unavailable, but the documentation that was available was received by the SCO on 6/17/10.

The Parent's Reply with attachments was timely received by the SCO on 6/21/10.

The SCO conducted on-site interviews with District personnel involved in the case on 6/30/10. The SCO interviewed Parent on 7/12/10.

The SCO closed the record on 7/12/10.

ISSUES

The issues raised in the Complaint from the time period of 5/19/09 to 5/19/10 that are subject to the jurisdiction of the SCO are as follows:

- I. Whether District failed to develop an individualized education program (IEP) with appropriate content that would confer educational benefit to Student.
- II. Whether District failed to consider the concerns of and information provided by Parent in developing Student's IEP.
- III. Whether District failed to ensure services delivered to Student were provided by trained staff.

- IV. Whether District failed to evaluate Student when conditions warranted because Student demonstrated limited progress and/or regression in skills.
- V. Whether District failed to educate Student in the least restrictive environment (LRE) to the maximum extent appropriate.

COMPLAINANT ALLEGATIONS

Parent's allegations are summarized as follows:

- I. District failed to develop IEPs with appropriate content that would confer an educational benefit to Student. Specifically –
 - a. Student's IEPs developed by District had unchanged content or content with very little change from year to year and reflected low expectations for Student based on Student's I.Q.
 - b. Student's IEPs did not include an effective research reading program such as Orton Gillingham, Wilson or Lindamood-Bell.
 - c. Student's IEPs did not address Student's math needs.
 - d. Student's IEPs did not include specific location for individualized instruction, name of person providing special education services, or what Student was specifically working on during class.
 - e. Student's IEPs were not consistently implemented as to related services.
 - f. Student did not receive an educational benefit from the IEPs as evidenced by slow progress and regression in academic skills.
 - g. District's failure to develop appropriate IEPs caused Student increased anxiety which resulted in Student's dual enrollment as a part-time homeschooled Student.
- II. District failed to consider Parent's input in the development of the 4/8/10 IEP. Specifically –
 - a. District did not consider and/or implement the recommendations of a privately obtained independent educational evaluation.
 - b. District did not consider Parent's knowledge of Student and did not include Parent in the development of Student's IEPs.
 - c. District predetermined special education services in Student's IEP.
- III. District failed to ensure trained staff provided services to Student in violation of the IDEA Highly Qualified requirements. Specifically, District's special education and general education teachers and paraprofessionals were not appropriately trained to provide special education services on a one to one basis to a child with Student's unique needs and learning style.

- IV. District failed to timely reevaluate Student when Student demonstrated slow progress, lack of progress and regression of skills. Specifically –
 - a. District did not reevaluate Student when there was evidence of regression or minimal progress demonstrated in all subject areas.
 - b. District did not reevaluate Student when Student demonstrated increased anxiety.
 - c. District relied on ineffective data collection systems as the sole criterion that Student was receiving a FAPE.

- V. District failed to educate Student in the LRE. Specifically,
 - a. Student did not spend an appropriate amount of time with non-disabled peers in the general education setting.
 - b. Student spent more time than identified on Student's IEPs in the resource room with peers who have more significant disabilities. These peers divert the attention of paraprofessionals and teachers from Student. Further, the peers who have more significant disabilities cannot provide appropriate role-modeling.
 - c. Student's placement in the resource room caused Student increased anxiety that required Student to be dually enrolled as a part-time homeschooled student.

To redress the aforementioned alleged violations, Parent has requested the following remedies:

- A. Student's placement at a Private School for children with learning disabilities at public expense citing *Sitka Sch. Dist. v. CIR*, 47 IDELR 194, Alaska Dist. Ct. (2007); and *N. v. New Milford Bd. Of Educ.*¹ (2000).
- B. ESY services by a Wilson Reading tutor of Parent's choice.
- C. Lexia Program three times per week for 20-30 minute sessions.
- D. Phonetically controlled reading material at Student's interest level from *Fastlearning llc.com*.
- E. A writing and spelling tutor two to three times per week for 30 minute sessions including a structured writing program such as Step up to Writing and a spelling program for home use such as those found at *www.neuhas.org* or *Spellography* by Luisa Moats.
- F. Math tutoring three times per week for one hour sessions that include hands on, visual, kinesthetic instruction that is meaningful to Student. Lessons should include basic math concepts, basic math facts and language incorporating basic money skills and time. In addition to the tutoring, District should provide a Flashmaster device to assist Student's math instruction.

¹ Unable to locate case in legal reporters.

DISTRICT'S RESPONSE

The District denies each and every allegation. The District Response is summarized as follows –

- I. The Parent's Complaint did not meet the minimum Complaint content requirements set forth in 34 C.F.R. § 300.153(b) because the Complaint did not include sufficient facts on which the allegations in the Complaint are based.
- II. At all times, Student was dually enrolled as both a public school and homeschooled student. Additionally, Student failed to attend school on a regular basis and missed between one third and one half of the instruction that could have been received in the available educational program.
- III. Regarding Complaint allegation I, District developed an IEP with appropriate content that would confer educational benefit.
 - a. Student's IEP was individually tailored to Student's needs and reasonably calculated to allow Student to achieve educational benefit. Despite Student's inconsistent attendance and dual enrollment, Student made progress on IEP goals and objectives.
 - b. The IDEA requires that children with disabilities receive a "free appropriate public education" (FAPE) that is provided in conformity with an IEP developed according to the IDEA requirements. *Bd. Of Educ. v. Rowley*, 458 U.S. 176 (1982). To determine if a FAPE as been provided to a child, it must first be determined whether the IEP was developed in compliance with the procedures in the Act, and secondly, whether the IEP developed through the Act's procedures was reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 207. An IEP that is procedurally compliant in most cases assures that the IEP is substantively appropriate. *Rowley*; see also *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 201 (10th Cir. 1998). Student's IEP complied with the IDEA's procedural requirements and resulted in a substantively appropriate IEP that was reasonably calculated to provide Student with educational benefit.
 - c. As to the educational benefit an IEP must confer, the IEP must simply be designed to allow the student to make some progress in school. *Thompson R2-J Sch. Dist. v. Luke P.* 540 F.3d 1143, 1150 (10th Cir. 2008). Student's IEP was reasonably calculated to allow Student to achieve some educational benefit and provided Student with a FAPE. Contrary to Parent's assertion that Student regressed, Student progressed under the IEP despite irregular attendance. Further, Student's IEP goals and objectives, although similar, were updated to reflect Student's progress and advancement in grade level.
 - d. The IDEA does not require IEPs to include instructional methodology or the names of individuals to deliver special education services, and is not intended to be a lesson plan. *Letter to Hall*, 21 IDELR 58 (OSERS 1994). Further, "parents do not have a right to compel a district to provide a specific program or employ a specific methodology in providing for the education of their [disabled] child." *Sytsema v. Academy Sch. Dist. No. 20*, 46 IDELR 71 (D. Colo. June 7, 2006). Questions of educational methodology and specific programming are the decision

of the educational experts. Such decisions are entitled to deference by courts, hearing officers and state review officers. *Sytsema*.

- IV. Regarding Complaint allegation II, District considered the concerns of and information provided by Complainant in developing Student's IEP. The District considered the private evaluation information provided by Parent and afforded Parent full participation rights in the IEP process.
- a. District considered the private evaluation provided by Parent in developing Student's 4/8/10 IEP and was implementing its recommendations. The IEP team examined the private evaluation in great detail and compared it to Student's previous testing data as well as to Student's school performance. Nearly all of the recommendations of the private evaluation were either being currently implemented by District, were offered to Student and rejected by Parents, or were not part of Student's educational program because of Student's dual enrollment.
 - b. The IEP team considered one of the recommendations pertaining to individualized instruction in math outside of the general education classroom, but determined that Student was making progress in math while receiving instruction in the classroom with support. The IEP team decided that pull-out services for math instruction would be inappropriate for Student because they did not provide Student with services in the least restrictive environment.
 - c. District provided Parents with opportunity to participate in the 4/8/10 IEP meeting, but Parents left the meeting before the IEP team had a chance to begin developing the IEP.
 - i. Prior to the 4/8/10 IEP meeting, Parent's Advocate contacted District with a list of demands including placement at a private school for children with disabilities and compensatory services. Parent's Advocate indicated to District that the 4/8/10 IEP meeting duration could not be any longer than one hour. The District indicated that the demands raised issues that needed to be addressed by the IEP team and offered to reschedule the IEP meeting to allow for a longer IEP meeting. District informed Parent and Advocate that the IEP team would take the time necessary to complete the IEP.
 - ii. The IEP meeting was held 4/8/10. Parent's Advocate insisted on opening the meeting with a prepared statement. Despite District's explanation that the private evaluation would be discussed and that updating the IEP was the purpose of the meeting, Parents insisted that there was no point to stay and participate in the meeting, and the Parents and Advocate left the meeting.
 - d. Districts are required to consider parents suggestions and, to the extent appropriate, to incorporate them into the IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10th Cir. 1998). However, districts are not required to "simply accede to parent's demands without considering any suitable alternatives." *Blackmon v. Springfield R-XII Sc. Dist.*, 198 F.3d 648, 657 (8th Cir. 1999). Further, parents who voluntarily limit their own participation in the IEP process

lose the right to complain that they were denied such participation. *Blackmon, supra*, 198 F.3d at 657.

- V. Regarding Complaint allegation III, District staff that worked with Student were all appropriately licensed and trained. The special education teachers working with Student were highly qualified consistent with the IDEA and No Child Left Behind (NCLB) requirements. The general education teachers and related service providers were appropriately licensed and paraprofessionals who worked with Student were under the supervision of licensed personnel.
- VI. Regarding Complaint allegation IV, District denies that it failed to evaluate Student when Student demonstrated limited progress and or regression in skills. The IEP team addressed Parent's concerns regarding Student's anxiety issues and considered a letter from a private social worker that was provided by Parent at the 4/8/2010 IEP meeting. Further District sought permission to contact the private social worker to discuss social worker's evaluation of Student and consent for District to conduct a functional behavior assessment (FBA). However, Parent never responded to District's requests.
- VII. Regarding Complaint allegation V, District educated Student to the maximum extent appropriate, in the least restrictive environment. Student's IEPs offered services in general education classrooms with access to typical peers for much of Student's instruction.
 - a. Student participated in general education for math class, with supports, and for Fast ForWord. Student received direct reading instruction outside of the general education classroom because Student's needs required more intensive services than could be provided in the general education classroom.
 - b. By electing to dually enroll Student, Parent limited Student's access to typical peers. Parent created an educational program that was far more restrictive than Student's program would have been under full-time enrollment.
 - c. Further, while Parent argues that Student was not educated with typical peers to the maximum extent appropriate, Parent also argues that Student requires more intensive and restrictive services to be successful.

PARENT'S REPLY

Parent's Reply is summarized as follows.

- I. Parent dually enrolled in 2009 Student because District failed to provide Student a FAPE. Dual enrollment enabled Student to receive outside reading services during school hours and through the summer. Further, District inaccurately reported Student's absences.
- II. As to Complaint Allegation I, Student's IEP did not have appropriate content to enable Student to receive educational benefit.
 - a. As early as 2008, Parent requested that the Student receive the Wilson reading program, but the program was not implemented for Student until 2010. The instruction Student was provided in the Wilson reading program was by an

unqualified instructor for only for a brief period of time. Finally, District did not provide Parent with the Wilson data collection for progress monitoring.

- b. District expected Student to participate in the general education Accelerated Reading program even though Student could not read independently and needed one on one attention by trained staff.
 - c. There was no evidence that District's program would enable Student to achieve even one year of progress in reading and math, thus Student would continue to remain at current 2nd/3rd grade level standards.
 - d. District provided Student with assignments which were either below or above Student's academic level which demonstrated a continued denial of FAPE.
 - e. Although the IEP team had the required participants, team members understood little, if anything, about Student's identified needs. Further, Student's IEP goals and objectives never clearly identified the gaps in Student's skills nor identified baselines.
 - f. District cites *Bd. Of Educ. v. Rowley* (citation omitted) for the standard for providing a FAPE, but the IDEA reauthorization and recent case law present a higher FAPE standard as illustrated in *K.L. v. Mercer Island* (citation omitted). Rather than a child being provided with a basic floor of opportunity where the child receives minimal or trivial progress, *K.L. v. Mercer Island* notes that Congress now places more emphasis on transition services, economic self-sufficiency, and independent living. The repetitive academic and functional goals in Student's IEP would not allow Student to attain these areas of emphasis.
 - g. The case *Florence County Sch. Dist v. Carter*, stands for the premise that proper reliance on *Rowley* to demonstrate methodology and individuals delivering special education services cannot simply be used denote "sound educational policy" when a district defaults "on its obligations under the Act."
 - h. Decisions about the content of the IEP, "including methodologies or use of materials," are made by the IEP team. *Letter to LoDolce*, (OSERS 2007). Contrary to this guidance, District turned a deaf ear to incorporating any other methodology into Student's IEP beyond the three reading programs.
 - i. Student's IEPs did not confer any educational benefit as demonstrated by the private evaluation obtained by Parent. District went through the motions to demonstrate procedural compliance with the IDEA without actually providing FAPE to Student.
- III. As to Complaint Allegation II, Parent tried numerous times to contribute to Student's educational program.
- a. However, "meaningful parental participation" as described in *Deal v. Hamilton Bd. Of Ed.* (citation omitted) was not adhered to by District. District refused to provide the Wilson Reading Program even though Parent expressed the need for an Orton-Gillingham based reading program that provides educational benefit for children with dyslexia. District continued to use the Read Naturally, Reading Mastery, and Accelerated Reading programs that did not provide Student with educational benefit.

- b. District was fully aware that Parent and Advocate would not remain at the 4/8/2010 IEP meeting unless the compensatory services noted in the Advocate's numerous communications with the District were addressed. District dismissed the concerns and gave no indication that compensatory services would be addressed.
- IV. As to Complaint Allegation III, documentation supplied by District regarding teacher qualifications was questionable. "Undergraduate and graduate level education in special education does not equate to 'highly qualified' per Student's unique needs." In IDEA 2004, Congress described the need for adequately trained teachers with high quality comprehensive professional development programs. According to Congress, meeting this need was essential to ensure that the persons responsible for the education or transition of children with disabilities possess the knowledge and skills necessary to address the educational and related need of those children. District has not taken steps to train staff to meet Student's unique needs as a child with severe dyslexia and other learning needs.
- V. As to Complaint Allegation IV, Student regressed and/or made limited progress in all subject areas as demonstrated by documentation supplied by Parents. The AIMSweb progress monitoring data was not an appropriate data collection for Student's Wilson instruction. The private evaluation report noted Student's academic, functional, and developmental skills remained lagging or stagnant with only limited progress. Student's academic performance was far behind State standards for grade level curriculum. Therefore, District should have reevaluated Student.
- VI. As to Complaint Allegation V, when Student was in general education math class, the support provided to Student was erratic and staff completed Student's work for Student. Further, Student was removed to separate classroom/resource room with students who had behavior challenges that required more attention from the instructor. This resulted in Student not receiving appropriate individual time from instructor in the resource room for programs such as Fast ForWord and Reading Mastery programs. Student did not receive necessary staff support to appropriately learn and apply Fast ForWord. Therefore, Student could not apply this technology toward Student's other general education classes.

FINDINGS OF FACT

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

Background

1. Student was a resident of and attended [grade level] at (School) in District. Student was diagnosed with dyslexia and a speech articulation disorder by (Hospital) in 2007. Student was eligible for special education under the disability classification of Specific Learning Disability (SLD).
2. In February 2009, Parent dually enrolled Student in the School for part-time public school and home-based instruction because Parent felt that Student was not getting

² Decision Appendix A, pp. 38-40, which is incorporated by reference, details the record (Record), comprised of approximately 1000 pages of documents, audio recording and SCO interviews of District staff and Parent, from which the Findings were determined in this case.

necessary assistance in School and that there was no change in Student's progress or the School's interventions. Under the dual enrollment arrangement, Student was enrolled at School for all classes except for reading and math which were provided through the home-based instruction. However, District's acceptance of the application for dual enrollment indicated that there was no guarantee that Student would receive writing instruction under the dual enrollment arrangement. Student received private vision therapy and private instruction through the Processing and Cognitive Enhancement (PACE)³ program as part of the home-based instruction. Student continued to receive private vision therapy and PACE instruction until September 2009. Student was educated under this dual enrollment arrangement through the end of the 2008-2009 school year.

3. On 8/5/09, the start of the 2009-2010 school year, Student began attending School full time. Student subsequently resumed dual enrollment as of 11/10/2009 because Parent believed Student was receiving the same ineffective programs, was placed more frequently in the resource room, and had disputes with teachers. However, unlike the previous dual enrollment arrangement, Student was enrolled in School for math and reading.
4. In the fall of 2009, Student received specialized reading instruction with the Wilson reading program by District's Learning Specialist (Learning Specialist). Student's progress in the reading programs were monitored using the AIMSweb progress monitoring system which measures the number of words Student could read correctly per minute. The SCO finds that this progress monitoring system was adequate to measure Student's progress in the reading program. Based on Student's progress monitoring data, Student was not succeeding in the Wilson program and was unable to advance to the next instructional level. Learning Specialist and Case Manager decided to use the Reading Mastery and Read Naturally reading programs for Student.
5. In an email to Parent from Student's Case Manager (Case Manager) on 9/10/09, Case Manager offered to provide additional writing instruction to Student in a small group setting. However, Parent declined this additional instruction.
6. School had three levels of general education math classes for Student's grade level; advanced, proficient and basic. Student was in the basic math general education class. In the math class, Student was supported by Learning Specialist and/or a paraprofessional who scribed for Student, provided re-teaching of concepts, and modified Student's assignments and tests.
7. In interviews with the SCO, District acknowledged that there were issues with Student's attendance records due to the dual enrollment arrangement and Parent stated that the attendance records were inaccurate. However, there was no dispute that Student was frequently absent from School.

IEP content and appropriateness

8. Student had an IEP dated 2/24/09. This IEP was in effect during the relevant time period from 5/19/09 through 4/19/10 when Student's IEP, developed on 4/8/10, was implemented.

³ The SCO notes that vision therapy and the PACE program are not specifically reading or math instruction programs.

9. Student's 2/24/09 IEP documented the following present levels of academic achievement and functional performance and educational needs:
 - a. Literacy: As of 2/12/09, Student was reading 85 words correct per minute (WCPM) at a second grade level with 4 errors and when Student reached and maintained 90 WCPM for three consecutive weeks, instruction and progress monitoring would be increased to the third grade level. Identified educational needs included improving reading fluency (speed, accuracy, and grade level) and reading skills by identifying syllable types and dividing one to three syllable words accurately. In writing, Student formed complete sentences greater than 90% of the time. Student wrote mostly simple sentences, but could form compound and complex sentences with prompting. Student used descriptive vocabulary when prompted. Student's educational needs included using compound sentences and descriptive words, as well as editing for run-on sentences in Student's writing.
 - b. Math: As of November 2008, Student completed more than 100 addition facts and 100 subtraction facts in a five minute period. Student could complete 93 multiplication problems and 66 division problems in five minutes. Student had begun working on two-digit by one-digit multiplication and was about to begin two to three-digit by one to two-digit division. Student could identify and label fractions through tenths. Student's educational needs included solving word problems with extraneous information, solving multi-digit multiplication and division problems, and learning to add fractions.
 - c. Communication: Student articulated *R*-blend words with 90% accuracy, but had 50% accuracy on *L*-blend words. Student was able to slow Student's rate of speech to improve intelligibility 100% of the time in speech group. Student was also able to use recall and comprehension strategies in speech group. Student's educational needs included improving articulation of *L*-blend words, following multi-step directions, and expanding vocabulary in the areas of science and social studies.
 - d. Social Emotional: Student struggled with social interactions in the classroom environment and did not do well with changes in routine. Student educational needs included support for changes in routine and social skills for positive social interactions.
 - e. Physical/Motor: Student could write lower case letters independently and copy one or more sentences on three line paper with correct letter sizing. Student could write in cursive and type 13-15 words per minute. Student was able to manage classroom tools to access the classroom environment. Student had the functional fine and gross motor skills necessary to access the School environment.
10. Student's 2/24/09 IEP included goals and objectives that included Student's baseline performance and measurement criteria and were linked to an academic standard. The goals and objectives were as follows:
 - a. Student will demonstrate communication and basic language skills to access the general education curriculum as measured by the following objectives:

- i. Given structured activities, Student will correctly produce *L*-blend words in complete sentences with 80% accuracy.
 - ii. Given structured activities in a small group setting, Student will follow three-step auditorally presented commands with 80% accuracy.
 - iii. Given new vocabulary words from the science and social studies curriculum, Student will recall a definition for each word using self-made picture cues with 70% accuracy with one prompt or less.
 - iv. Given conversational opportunities, Student will correctly articulate the ending sounds in words with 90% or greater accuracy with one prompt or less.
- b. Student will make measurable progress towards improving reading skills as measured by the following objectives:
 - i. Given a reading curriculum-based assessment, Student will read 90 WCPM at a *third grade* level.
 - ii. Given a *third grade* reading-curriculum-based assessment, Student will read with 97% accuracy.
 - iii. Given ten, *one to three syllable words*, Student will divide the words into syllables and identify the syllable types with 90% accuracy.
- c. Student will improve written communication skills as measured by the following objectives:
 - i. Given direct instruction in forming compound sentences, Student will use one or more compound sentences in Student's writing with one prompt or less.
 - ii. Given direct instruction in identifying run-on sentences, Student will edit Student's writing for one or more run-on sentences per writing assignment.
 - iii. Given a list of descriptive words, Student will add the descriptive words to Student's writing independently.
- d. Student will make measurable progress in mathematics as measured by the following objectives:
 - i. Given ten, two-fraction addition problems with like denominators, Student will solve the problems with 80% accuracy.
 - ii. Given ten, two-digit by one-digit and/or two-digit by two-digit multiplication problems, Student will solve the problems with 80% accuracy.
 - iii. Given ten division problems with up to three-digit dividends and two-digit divisors, Student will solve the problems with 80% accuracy.

- iv. Given ten, one-operation teacher-read word problems containing extraneous information, Student will determine what information is important and correctly solve the problems with 80% accuracy.
 - e. Student will learn skills to increase social success as measured by the following objectives:
 - i. Student will develop at least two age-appropriate solutions when faced with conflict involving peers.
 - ii. Student will learn social skills that will aid in peer interactions. Skills can include, but are not limited to joining a group, expressing feelings, and reading nonverbal social cues.
11. Relevant to this Complaint, Student's 2/24/09 IEP listed accommodations and modifications including use of word prediction computer software for all writing assignments/scribe; structured environment; multi-sensory approach to learning; extra processing time to initiate and answer questions; preferential seating-Student's right ear toward person talking and to front of class; break down multi-step tasks to improve comprehension; modify/accommodate work at Student's instructional level; allow extra time to complete tasks, as needed; sentence isolation window for reading text as needed; touch math; personal FM systems during instruction in phonics-based activities; phonics phone when reading aloud; directions/grade level text to be read to Student (or audio books); list of frequently used words; sentence starters; provide training on the new SWAAC technologies with direct assistance from an adult; test given orally as allowed; directions and assignments given orally; allow spelling corrections without penalizing unless objective is spelling; spelling list modified and provided by special education team; check for understanding of assignments and homework.
12. Student's 2/24/09 IEP listed the following services that would begin as of 5/5/09 and continue through 2/24/09:
- a. Student was to receive direct instruction for writing by learning specialist with crossover to general classroom; direct instruction for reading by learning specialist; classroom support by learning specialist/paraeducator as needed in math, literacy and non-fiction; fifteen minute per month of occupational therapy consult; *speech language team (speech language therapist, speech language assistant, or paraeducator/teacher as directed by the SLP) at least one hour per week on average in a small group or one to one setting outside class with flex into classroom*; ongoing speech language consultation with all team members; mental health support on a weekly basis for social skills, and support for changes in routine, and teaching of skills for changes in routine.
 - b. On a weekly basis, Student would receive nine hours of integrated services in the general classroom and seven hours of direct services outside of the general classroom provided by a Learning Specialist or paraeducator. Student would also receive one hour of direct speech language services outside of the general classroom. Further, Student was to receive .5 hour of direct mental health support outside the general classroom.

13. Parent told the SCO that Student's speech services had not been implemented because Student reported not ever seeing the Speech Language Pathologist (SLP). However, speech language services described in the IEP are provided by a speech team outside and/or inside the classroom. Further, Student's IEPs reflect progress on Student's communication goals. The SCO finds that Student received the specified speech language services that were provided by the speech language team in and outside of the classroom.
14. Parent obtained a private evaluation of Student in January 2010 and a report was issued 3/10/10. Student's educational information was provided to the evaluators by Parent and no school staff provided input for the evaluation. The private evaluation report confirmed Student has severe dyslexia. Relevant assessment results are as follows:
- a. Student's reading assessment results indicated Student's reading skills varied from the first to third grade level. Student was generally reading at approximately the second grade level.
 - b. Student's writing assessment results indicated Student's writing skills were at approximately the second grade level.
 - c. Student's math assessment results indicated Student's math skills varied from 2.7 to 4.1 grade level.
 - d. Cognitive assessments WISC-IV: Student's full scale I.Q. was an 81 which is in the low average range. The evaluation report noted a decline of full scale I.Q. from a full scale I.Q. score of 97 obtained in 2005 to the current level.
15. Student's progress on the 2/24/09 IEP goals was as follows:
- a. Student will demonstrate communication and basic language skills to access the general education curriculum as measured by the following objectives:
 - i. Given structured activities, Student will correctly produce *L*-blend words in complete sentences with greater than 80% accuracy.
 - 1. 6/5/09 – 83% accuracy
 - 2. 11/5/09 – Student making adequate progress
 - 3. 2/16/10 – 71% accuracy
 - 4. 4/6/10 – 78% accuracy.
 - ii. Given structured activities in a small group setting, Student will follow three-step auditorally presented commands with 80% or greater accuracy.
 - 1. 6/5/09 – 83% accuracy
 - 2. 11/5/09 – 83% accuracy

3. 2/16/10 – Objective complete 100% accuracy with limited prompts.
- iii. Given new vocabulary words from the science and social studies curriculum, Student will recall a definition for each word using self-made picture cues with 70% or greater accuracy.
 1. 6/5/09 – 100% accuracy given self made cues.
 2. 11/5/09 – Student making adequate progress.
 3. 2/16/10 – Objective complete, 100% recall given self made cues. This objective is complete but Student still needs to work on vocabulary.
 - iv. Given conversational opportunities, Student will correctly articulate the ending sounds in words with 90% or greater accuracy.
 1. 6/5/09 – Occasional errors on words ending in "ch." Self-corrects with reminders.
 2. 11/5/09 – 60% accuracy
 3. 2/16/10 – 75% accuracy on first listen. However, Student self-corrects 95% of Student's errors.
- b. Student will make measurable progress towards improving reading skills as measured by the following objectives:
- i. Given a reading curriculum-based assessment, Student will read 90 WCPM at a third grade level.
 1. 6/5/09 – Dual enrollment-Student is not receiving in-school literacy instruction at this time.
 2. 11/5/09 – Most recent Reading-curriculum based assessment 48 WCPM with 16 errors.
 3. 2/11/10 – 89 WCPM at a second grade level. 2/16/10 – 78 WCPM at a 3rd grade level.
 - ii. Given a third grade reading-curriculum-based assessment, Student will read with 97% accuracy.
 1. 6/5/09 – Dual enrollment-Student is not receiving in-school literacy instruction at this time.
 2. 11/5/09 – Most recent Reading-curriculum based assessment 75% accuracy.
 3. 2/11/10 – 93% accuracy at second grade level. 2/16/10 – 89% accuracy at a third grade level.

- iii. Given ten, one to three syllable words, Student will divide the words into syllables and identify the syllable types with 90% accuracy.
 - 1. 6/5/09 – Dual enrollment-Student is not receiving in-school literacy instruction at this time.
 - 2. 11/5/09 – Student’s ability to identify syllable types and to use this knowledge to decode unfamiliar words is improving. Student scores 95-100% when one syllable words are being identified. Student scores 50-75% with two syllable words. Student’s scores drop significantly 25-40% with words of three or more syllables.
 - 3. 2/19/10 and 4/8/10 – Student’s ability to identify syllable types in one syllable words and multi-syllabic words continues to improve. Student scores 95-100% correct when one-syllable words are being identified, 70-80% with two syllable words, and 50-60% with words of three or more syllables.
- c. Student will improve written communication skills as measured by the following objectives:
 - i. Given direct instruction in forming compound sentences, Student will use two or more compound sentences in Student’s writing with one or fewer verbal prompts.
 - 1. 6/5/09 – Dual enrollment. Not in school for writing most of the trimester.
 - 2. 11/5/09 – Student effectively uses “and” compound sentences in Student’s writing. More instruction and practice is needed for the use of words such as but, or, nor, for, so, and yet. However, the progress report also notes that due to Student’s dual enrollment, Student is no longer receiving writing instruction at school.
 - 3. 2/19/10 and 4/8/10 – Dual enrollment-Student is not currently receiving writing instruction in school. Student is home-schooled for writing instruction.
 - ii. Given direct instruction in identifying run-on sentences, Student will edit Student’s writing for one or more run-on sentences per writing assignment.
 - 1. 6/5/09 – “See above” – referencing dual enrollment.
 - 2. 11/5/09 – Student is beginning to be able to identify run-on sentences in Student’s writing. Student requires significant support for editing. Due to Student’s dual enrollment, Student is no longer receiving writing instruction at school.

3. 2/19/10 and 4/8/10 – Dual enrollment-Student is not currently receiving writing instruction in school. Student is home-schooled for writing instruction.
- iii. Given a list of descriptive words, Student will add the descriptive words to Student's writing without prompting.
1. 6/5/09 – "See above" (referencing Student's dual enrollment).
 2. 11/5/09 – When given a list, Student uses descriptive words in Student's writing. However, Student requires prompts to select and place the words in Student's writing. Due to Student's dual enrollment, Student is no longer receiving writing instruction at school.
 3. 2/19/10 and 4/8/10 – Dual enrollment-Student is not currently receiving writing instruction in school. Student is home-schooled for writing instruction.
- d. Student will make measurable progress in mathematics as measured by the following objectives:
- i. Given ten, two-fraction addition problems with like denominators, Student will solve the problems with 80% accuracy.
 1. 6/5/09 – Dual enrollment. Student is not receiving in school mathematics instruction at this time.
 2. 11/5/09 – Student is at greater than 80% accuracy when prompted. Student needs reminders of the process to complete the problems.
 3. 2/19/10 and 4/8/10 – Objective complete. Student is able to solve addition fraction problems with like denominators with 80% accuracy.
 - ii. Given ten, two-digit by one-digit and/or two-digit by two-digit multiplication problems, Student will solve the problems with 80% accuracy.
 1. 6/5/09 – Dual enrollment. Student is not receiving in school mathematics instruction at this time.
 2. 11/5/09 – Student is able to solve these problems accurately. Student needs reminders of the process to begin.
 3. 2/19/10 and 4/8/10 – Objective complete. With reminders of the process, Student is able to solve these problems with 80% accuracy.
 - iii. Given ten division problems with up to three-digit dividends and two-digit divisors, Student will solve the problems with 80% accuracy.

1. 6/5/09 – Dual enrollment. Student is not receiving in school mathematics instruction at this time.
 2. 11/5/09 – Student is able to solve division problems with single and double digit dividends and divisors. Student understands the steps of division and can follow the process when reminded of the steps. Working on accuracy in this process.
 3. 2/19/10 and 4/8/10 – Student is able to follow the steps of division with reminders. When problems involve larger numbers, Student often makes mistakes with the multiplication that is involved.
- iv. Given ten, one-operation teacher-read word problems containing extraneous information, Student will determine what information is important and correctly solve the problems with 80% accuracy.
1. 6/5/09 – Dual enrollment. Student is not receiving in school mathematics instruction at this time.
 2. 11/5/09 – Student is able to determine the information needed to solve the word problems with greater than 50% accuracy.
 3. 2/19/10 and 4/8/10 – Student is able to determine the information needed to solve the problem. Student needs to continue to practice determining the function to use to solve the problem.
- e. Student will learn skills to increase social success as measured by the following objectives:
- i. Student will develop at least two age-appropriate solutions when faced with conflict involving peers with verbal/gestural cues.
1. 6/5/09 – Student has done a fantastic job coming up with appropriate solutions. Student has reported that when peers bother Student, Student can walk away, assert self or get help. Student knows that not every peer interaction will be successful and [School Social Worker and Student] debrief after tasks so that Student can focus on accomplishments.
 2. 11/5/09 – Student tends to engage in negative thinking and Student will “think” that kids are doing things to [Student] even if there has not been any indication that this is true.
 3. 2/15/10 – no entry.
 4. 4/8/10 – Modified on new IEP. Within the past couple of weeks, Student has had some significant difficulty within the social area in the school environment. Parent reports that outside of school, Student is doing well with peers.

- ii. Student will learn social skills that will aid in peer interactions. Skills can include, but are not limited to joining a group, expressing feelings, and reading nonverbal social cues.
 - 1. 6/5/09 – Student has been able to be with same aged peers to play games and interact. Student is able to join a group of peers with little to no prompting. At times, Student has shown frustration if Student feels unsuccessful, but Student does not hesitate to learn new skills. Student ended this year learning about expressing feelings.
 - 2. 11/5/09 – Student does great in [peer] group. Student needs to have more confidence in Student’s interaction skills because when observed Student does better than Student thinks.
 - 3. 2/15/10 – no entry.
 - 4. 4/8/10 – Within the school environment, Student has refused to join peer group to work on these skills. Parent reports that out of the school environment, Student has some friendships developing.

16. The IEP team developed an IEP for Student on 4/8/10 which was effective through 5/19/10, the end of the time period relevant to this Complaint.

17. Student’s 4/8/10 IEP had the following present levels of performance:

- a. Literacy. As of 2/11-2/12/10, Student was reading 89 WCPM at a *second grade level* with 7 errors and 78 WCPM at a *third grade level* with 8 errors. According to the Read Naturally program, Student could read 76 WCPM cold timing/105 WCPM hot timing⁴ at the 2.5 grade level as of 4/7/10. Citing private evaluation results, the IEP team noted that Oral Reading Quotient (ORQ) from the GORT-IV is the best measure of a student’s overall reading ability, but the ORQ was not included in the private evaluation report. Because Student was dually enrolled and was not receiving writing instruction at school, the school had no writing data to report. Student’s educational needs were for instruction to improve reading fluency and instruction, tools and strategies to increase independence with writing.
- b. Math: Student performed as follows on Math Fact “principal’s exams” given to all students in the general education math class:
 - i. Addition: August 2009 - 37 of 100 in three minutes. January 2010 - 53 of 100 in three minutes.
 - ii. Subtraction: August 2009 – 13 of 100 in three minutes. January 2010 – 14 of 100 in three minutes.
 - iii. Multiplication: August 2009 – 30 of 100 in three minutes. January 2010 – 54 of 100 in three minutes.

⁴ Cold timing is the first read. Hot timing is after the program reads the passage to the student three times.

- iv. Division: August 2009 – 33 of 100 in four minutes. January 2010 – 56 of 100 in four minutes.
- c. The present levels of performance incorporated the results of the private evaluation obtained by parent and noted improvement in Student's math grade level equivalents from 2.6 in March 2008 to 3.6-3.8 in January 2010. Student's educational needs included providing strategies to improve math fact fluency. The SCO notes that math was an area of relative strength for Student.
- d. Communication: Student's articulation of L-blend words was inconsistent and if that objective is put on the back burner, Student's accuracy dropped. Student was readily able to follow three-part auditorally presented commands with very minimal prompting. Student learned many new vocabulary words using self-made cues. Student's recall of simple definitions was 100%, but there was still a need to expand Student's vocabulary skills. Student dropped word endings 25% of the time in conversational speech, but was able to self-correct 100% of the time when asked. Student's educational needs included instruction in articulation, vocabulary and following directions.
- e. Social Emotional: Student continued to struggle with social interactions in the school environment. Student's teachers noted that Student appeared to be withdrawing from social interactions with peers and adults. Student could describe problems and come up with solutions, but often engaged in negative self thinking. Parent reports that Student is extremely anxious about school. However, Student's teachers note that when Student was anxious, Student responded to efforts to calm down within a few minutes and was able to proceed with the school schedule. Case Manager and School Social Worker were available to Student when needed throughout the day as a safe place/person. The present levels of performance also referred to a letter provided by Parent from a private Clinical Social Worker who had worked with Student during the school year. The IEP team noted that the letter did not provide enough information for the IEP team to consider. Student's educational needs were instruction and strategies to increase successful social interactions, to decrease anxiety and to attend school on a regular basis.
- f. Cognitive: The present levels of performance were updated to reflect the cognitive testing from the private evaluation. It was noted that the full scale I.Q. score of 81 was commensurate with the full scale I.Q. of 83 obtained by District in 2007.⁵
- g. Physical/Motor: Student demonstrated a functional grasp when writing and has generally legible writing. However, Student's legibility decreased when Student was writing something that was not from a model. Student utilized word prediction software at home and school for spelling help. Student was able to access computers and various typing based programs with adequate motor skill.

⁵ The private evaluation report did note a significant decline in Student's I.Q. score obtained by District in 2005. According to a sworn statement from Case Manager, a School Psychologist (no longer with the District) did not follow protocols when administering the I.Q. test in 2005.

18. Student's 4/8/10 IEP had goals and objectives that included Student's baseline performance and measurement criteria and were linked to an academic standard. The goals and objectives were as follows:

- a. Student will demonstrate communication and basic language skills to access the general education curriculum as measured by the following objectives:
 - i. Given structured activities, Student will correctly produce L-blend words with 80% accuracy in complete sentences.
 - ii. Given structured activities in a small group setting, Student will follow three to four-step auditorally presented commands containing conditional, sequential and temporal concepts with 80% accuracy with two or fewer prompts.
 - iii. Given a discussion of new vocabulary words that come from Accelerated Reading (AR) books and conversations with adults, Student will generate a simple definition the new words and create self-made cues for the definition with 80% accuracy with one or fewer prompts.
 - iv. Given conversational opportunities, Student will correctly articulate the ending sounds in words on the first try with 75% accuracy.
- b. Student will make measurable progress towards improving reading skills as measured by the following objectives:
 - i. Given a reading curriculum-based assessment, Student will read 90 WCPM at a *fourth grade* level. (emphasis added)
 - ii. Given a *fourth grade* reading-curriculum-based assessment, Student will read with 97% accuracy.
 - iii. Given ten *multi-syllabic words (minimum of three syllables)*, Student will divide the words into syllables, identify the syllable types with 90% accuracy, and correctly decode the words with 90% accuracy.
- c. Student will improve written communication skills as measured by the following objectives:
 - i. Given a writing prompt or assignment and use of a graphic organizer (paper or computer software), Student will independently plan a multi-paragraph (minimum of three paragraph) writing piece with six or fewer verbal prompts.
 - ii. Given a writing prompt or assignment and use of word prediction software and talking word processor, or text to speech, Student will (after planning) independently produce a multi-paragraph (minimum of three paragraph) writing piece with six or fewer verbal prompts.
 - iii. Given a teacher-made rubric, Student will self-edit a multi-paragraph piece for capitalization, punctuation, indentation, subject-verb

agreement, and the use of compound sentences using and, but, or, nor, for, so and yet.

- iv. Given a list of descriptive words, Student will add the descriptive words to Student's writing.
- d. Student will make measurable progress in mathematics as measured by the following objectives:
 - i. Given opportunities to practice, Student will improve Student's math fluency for addition, subtraction, multiplication and division with 75% accuracy in a time period of three minutes or less.
- e. Student will learn skills to increase social success as measured by the following objectives:
 - i. Student will develop at least two age-appropriate solutions when faced with conflict involving peers without supports in multiple environments.
 - ii. Student will learn social skills that will aid in interactions with others. Skills can include, but are not limited to expressing feelings, reading nonverbal social cues and advocating age appropriately.
- f. Student will identify how Student feels and will evaluate what Student needs to help decrease anxiety as measured by the following objective:
 - i. Student will identify when feeling anxious at school and evaluate what Student needs to help decrease anxiety.

19. Relevant to this Complaint, Student's 4/8/10 IEP included accommodations and modifications of access to computer and use of word prediction computer software; talking word processor and text to speech software for assignments as needed; scribe or provide a copy of teacher notes; extra processing time to initiate and answer questions; preferential seating-Student's right ear toward person talking and to front of class; using predictable language for instructions; break down multi-step tasks to improve comprehension; assignments and tests modified for length and content; allow extra time (up to one and one half times the allotted time) to complete tasks, as needed; Math flip book for all skills (example and steps); allow the use of a calculator for math; directions/grade level text to be read aloud or use of audio books and/or "ebook" or "etext;" test given orally as allowed and in a small group; directions and assignments given orally; directions given one at a time and repeated as needed; allow spelling corrections without penalizing unless objective is spelling; check for understanding of assignments and homework; no copying from one plane to another, all copying should be on a level, flat plane (i.e. desk or table); access to safe place/safe person to cope with anxiety.

20. Student's 4/8/10 IEP identified the following services to begin 4/8/10 and to continue through 4/8/11:

- a. Direct instruction for writing by learning specialist with crossover to general classroom; direct instruction for reading by learning specialist; classroom support provided by learning specialist/paraeducator as needed in math,

literacy and non-fiction; fifteen minutes of occupational therapy consult per quarter; speech language team to address communication needs at least one hour per week on average in a small group or one to one setting outside class; mental health support on a weekly basis for social skills success and anxiety support; support for transitions around changes in routine and teaching of skills for changes in routine; and targeted pull-out instruction for math fact fluency.

- b. On a weekly basis, Student would receive nine hours of integrated services in the general classroom and nine hours of direct services outside of the general classroom provided by a Learning Specialist or Paraeducator. Student would also receive one hour of direct speech language services outside of the general classroom. Further, Student was to receive forty-five minutes of direct mental health support outside the general classroom.
21. The SCO finds that the 2/24/09 IEP was developed to and did confer an educational benefit to Student. Although Student made modest progress on the 2/24/09 IEP goals, the SCO finds that other factors, including Student's dual enrollment and frequent absences, contributed to Student's rate of progress. Additionally, the SCO finds that the private evaluation results were commensurate with the Student's academic progress indicated on the IEP and finds no evidence of regression in skills.
 22. The SCO also finds that the 4/8/10 IEP was developed to confer an educational benefit to Student. The 4/8/10 IEP reflected new goals and objectives based on Student's identified levels of performance and educational needs. Although similar language was used from the previous IEP goals and objectives, the SCO finds each objective was modified to reflect increases in achievement and complexity of skills. The SCO further finds that the IEP accommodations and modifications were changed to reflect Student's needs and that the services were modified to address changes to Student's goals and objectives.

Parent Participation in the 4/8/10 IEP Meeting

23. In an email dated 1/21/10, Parent asked Case Manager if a date for Student's IEP meeting had been set. Case Manager responded to Parent that the IEP meeting had been scheduled for 2/16/10 and that a notice of meeting would be sent home with Student that day.
24. In an email dated 1/23/10, Parent notified Case Manager that the date of 2/16/10 would not work and provided Case Manager with alternate dates. Case Manager responded to Parent on 2/9/10 and indicated that the IEP meeting had been rescheduled for 2/23/10.
25. In an email dated 2/16/10, Case Manager informed Parent that the IEP notice of meeting would be sent home with Student that day and asked Parent if the Parent would be receiving the report from the private evaluation. Case Manager indicated that a draft IEP would be sent to Parent. Case Manager also indicated that if a copy of the private evaluation report was not available prior to the time the draft IEP was completed, *"it is a draft and changes if needed, can always be made later."* (emphasis added).

26. In an email to Case Manager dated 2/18/10, Parent indicated that the private evaluator had suggested postponing the IEP meeting until Parent received the written report. According to the email, the private evaluator recommended taking Student out of the general education math class immediately and to provide Student with one on one basic math instruction; one on one spelling and writing instruction; and to change to a different reading program. In an email that same day, Case Manager responded that the IEP meeting had been rescheduled for 3/18/10.
27. In an email to Case Manager dated 2/19/10, Parent communicated that Parent would like to keep the 2/23/10 IEP meeting date. Case Manager contacted Parent by phone and sent a follow-up email that confirmed that the IEP would be postponed until 3/18/10. Further, Case Manager communicated that a draft of the new IEP would be ready 2/23/10. Case Manager emphasized that it was a *draft IEP and that changes could be made prior to or at the meeting on 3/18/10 based on new information.* (emphasis added). District did not create any further drafts of Student's IEP.
28. Parent was provided with a draft IEP dated 3/18/10. The SCO finds that the 3/18/10 draft IEP reflected Student's current levels of academic achievement and functional performance. The SCO finds that the objectives for each goal included increases in reading grade level to the fourth grade and increases in the complexity of skills for writing and math. Further, the SCO finds that the 3/18/10 draft IEP also reflected changes to Student's accommodations and modifications. Although, the IEP goals remained the same as the 2/24/09 IEP, similar language was used in the IEP objectives, and some objectives were continued from the 2/24/09 IEP, the SCO finds that the 3/18/10 draft IEP reflected different content from the 2/24/09 IEP.
29. In an email to Parent dated 3/9/10, Case Manager indicated that it was *unlikely anything would change on the draft IEP until the 3/18/10 IEP meeting where it can be discussed as a team.* (emphasis added).
30. In an email to Case Manager on 3/12/10, Parent notified Case Manager that Parent would have an Advocate (Advocate) in attendance at the 3/18/10 IEP meeting.
31. In an email to Case Manager on 3/15/10, Parent indicated that the private evaluation report had been received over the weekend. In interviews with the SCO, Parent and District gave differing accounts on when the private evaluation report was provided to District. Although the SCO cannot determine the exact date, the SCO finds that District was provided with the private evaluation report before the 4/8/10 IEP meeting.
32. The private evaluation report contained 22 recommendations. Relevant to this Complaint, the recommendations included:
 - a. Student's program should be as intensive as feasible. Student's curriculum requires a high degree of individualization. Student needs a great deal of one on one instructional time and should continue to receive special education services outside of the general classroom for reading, writing and math skills. Student's program needs to provide a mechanism for Student to continue to learn other subject matter given Student's severe reading and writing difficulties.

- b. A paraprofessional should be available to assist Student in the classroom. Lecture notes taken in class may be useful for Student to review with Parent at home. Student should receive individualized instruction to review classroom learning.
- c. Student's special education program must address Student's dyslexia in an intensive way. Student requires remedial reading instruction from someone highly skilled and experienced in working with children with dyslexia. Student's program should incorporate highly structured, explicit, systematic phonics-based instruction. A focus of remediation should be improving Student's reading fluency using techniques such as guided, oral repetitive reading and speed drills. "Orton-Gillingham and its derivative programs such as Wilson (including the supplementary Fluency program) are appropriate programs. The *Read Naturally* and Great Leaps programs are other programs that incorporate these features, but others based on similar theoretical principals *are certainly also appropriate.*" (emphasis added).
- d. Student's IEP should specify systematic and intensive efforts to enhance vocabulary development. Student needs on-going help with spelling and needs to work on automatic recognition of sight words. Student might benefit from a supplementary spelling program such as Scientific Spelling or the Spellography program. Student's teachers should assist Student in finding phonetically controlled readers to provide additional reading experience which may help improve reading fluency.
- e. Student's IEP should include remediation in writing including work on mechanics (e.g., capitalization, punctuation and higher-level writing skills such as sentence structure and paragraph organization). Structured programs such as Step Up to Writing may help ensure Student's writing remediation is appropriately structured and comprehensive. Student currently uses Co-Writer independently which is beneficial to Student. However, Student should get more direct instruction from a teacher targeting specific writing skills.
- f. Student's IEP should incorporate systematic and intensive efforts to enhance Student's math skills. Student has severe weaknesses in mastery of basic math facts and conceptual confusion about basic math computational procedures. Student should get individualized instruction outside of the regular classroom that is appropriate to Student's skill level, "rather than trying to keep up with a sixth grade math curriculum in the regular math classroom."
- g. It is important Student's skill development is carefully monitored to ensure corrective measures such as intensifying the level of intervention can be undertaken in a timely manner.
- h. Student's IEP should include appropriate accommodations including appropriate spelling expectations. Credit should not be deducted from assignments for spelling errors except on spelling test. Student should receive oral testing and should receive accommodations on standardized tests including extended time. Student should also have preferential seating (as indicated in Student's IEP).

- i. Student should continue to receive mental health support on a regular basis that focuses on improving social relationships. Student should have a safe place or person to go to as needed when at school.
 - j. Student should continue to receive speech language team services to address Student's communication and vocabulary enrichment needs.
 - k. Student should have access to and training on computer-based text reading system to enable Student to access curriculum in subject matter classes.
 - l. Student should be strongly encouraged to continue learning to type. Student should be permitted to type assignments whenever possible.
33. In a letter dated 3/15/10 from Advocate to School Principal and Case Manager, Advocate cited Student's lack of progress at School and the private evaluation results as evidence Student was not receiving a FAPE in the LRE. Advocate further indicated there was no evidence of progress in any of the goals, objectives, accommodations, and modifications from previous year IEPs. Advocate wrote, "We therefore are informing you that we will attend [Student's] annual IEP on 3/18/10 as has been previously scheduled. But we will not accept the continued presentation of an IEP that ignores and denies [Student] FAPE in the LRE and that clearly demonstrates that [Student] is not receiving an appropriate education." According to the letter, "We are thus providing written notice today, 3/15/2010, to [District] that [the parents] are seeking unilateral placement for [Student] at [Private School]." The letter also indicated District should pay for the Private School placement for the upcoming school year and any future school years. The letter further indicated that, if District refused, Parents would file a State Complaint. As a result of the letter, the meeting was rescheduled with Parent's agreement to 4/8/10.
34. On 3/29/10, Advocate wrote a letter to District's Attorney (Attorney) indicating that at the 4/8/10 IEP meeting, "we will be requesting [District to] provide Student with an appropriately trained one to one tutor trained in Student's disability." The tutoring would include extended school year (ESY) services over the summer. The letter further reiterated the request for placement at [Private School] at District's expense. Finally, the letter indicated that Advocate had another engagement and that the 4/8/10 meeting could last no longer than an hour.
35. On 4/6/10, Parent provided District with a letter from Clinical Social Worker at area Hospital. The letter, addressed to "Whom It May Concern," indicated that Clinical Social Worker met Student in November 2009 for a psychiatric evaluation and provided Student with cognitive behavioral therapy over a period of months. However, the letter did not include information about which assessments were conducted in the psychiatric evaluation or the assessment results. The letter further indicated that Student's anxiety and learning needs have impeded Student's ability to succeed in the average school setting. In the letter, Clinical Social Worker indicated that Student would benefit from a more supportive and structured classroom environment and a change in school setting.
36. On 4/7/10, Attorney emailed Advocate in response to the 3/29/10 letter. Attorney indicated that the IEP team would take the time required to develop an appropriate IEP, but given the nature of the issues and requests the Advocate has raised, the meeting would likely proceed for longer than an hour. Attorney noted that District

would proceed and that, if issues or questions arose that would require the team to reconvene, District would proceed accordingly. Advocate responded to Attorney stating that Advocate's 3/29/10 letter outlined the parents' and Advocate's intent to remediate the harm to Student and reiterated that they would leave the meeting after one hour. Attorney sent another email to Advocate and offered to reschedule the IEP meeting to allow for more time. However, no response from Advocate was received and the 4/8/10 meeting was held as scheduled.

37. According to an audio recording of the 4/8/10 IEP meeting, the following discussions occurred:

- a. Advocate read a prepared statement which restated that Student was denied a FAPE in the LRE and requested compensatory educational services of a one to one tutor and private school placement because District's IEP was inappropriate. Advocate stated "If those present from District and Attorney do not wish to discuss with us these appropriate compensatory services for [Student] then we do not believe it is appropriate for us to continue to sit here and listen to [District] continue to defend this discriminatory act toward [Student] with a denial of FAPE in the LRE."
- b. District responded that the IEP had not yet been developed and that the purpose of the meeting was to develop the IEP.
- c. Parents restated their disagreement with the draft IEP and maintained that it included the same IEP content as previous years. Parents further cited the private evaluation results, expressed disappointment with certain School staff and blamed District for Student's anxiety.
- d. District responded that they were having an IEP meeting, not a hearing and that the points raised by Advocate were an IEP team decision. District reiterated that the IEP was a draft. District acknowledged receiving the private evaluation report, but wanted to discuss the results as an IEP team.
- e. Advocate asked if District was going to provide the requested one to one tutor.
- f. District reiterated that they hadn't discussed the IEP yet.
- g. After a brief break, Advocate and Parents returned to the IEP meeting. Advocate announced "[Parents] and I would like to inform you that we no longer feel that it would be to [Student's] educational benefit to continue to stay here." "We sent [District] plenty of information demonstrating that [Student] has not been making progress. We have sent [District] a letter stating what we feel [Student] needs to make progress through compensatory services and we feel that it is no longer to [Student's] benefit for us to stay here and listen to this IEP. So, we are choosing to leave right now."
- h. Parents and Advocate left the meeting after less than 45 minutes.

38. The remainder of the IEP team consisting of Case Manager, Learning Specialist, Math Teacher, Special Education Director, Special Education Coordinator, Speech Language Pathologist and Speech Language Pathologist Assistant, Occupation

Therapist, School Psychologist, School Social Worker, District Assistive Technology Representative (SWAAAC), and Attorney continued to proceed with the IEP meeting. According to District, the meeting continued an additional two to three hours.

39. Based on interviews of School staff by the SCO, the IEP team discussed each section of Student's IEP including Student's present levels of academic achievement and functional performance, the private evaluation report and letter from Clinical Social Worker. The team reviewed, modified, and added goals and objectives to Student's IEP. The Team also reviewed and modified Student's accommodations and modifications as well as Student's special education and related services.
40. Of the recommendations in the private evaluation report, District was already implementing several recommendations including: provision of one on one instruction; instruction outside of the general classroom; accommodations to continue learning other subject matter; paraprofessional or learning specialist in Student's classes; reading instruction using Read Naturally; vocabulary development; writing remediation; math skills development; spelling accommodations; mental health support; and speech services. District previously offered Parent additional writing instruction, but Parent declined the services (see Finding of Fact⁶ 5). District added recommendations from the report to Student's 4/8/10 IEP including accommodations for reading and allowing Student to type assignments. However, District disagreed with the recommendation to remove Student from general education math instruction. Although District did not remove Student from the general education math class, District did include direct instruction in basic math facts outside of the general education classroom in Student's IEP.
41. On 4/9/10, District sent the parents prior written notice of the 4/8/10 IEP and indicated that the IEP would be implemented 4/19/10. The prior written notice indicated that District refused the private school placement at public expense and the private tutoring requested by the parents because the IEP team determined that Student could be served in a public school setting through the 4/8/10 IEP. District requested consent to conduct assessment in the area of social/emotional functioning and a release to communicate with Clinical Social Worker regarding her assessments. Parent did not subsequently respond to District's request for consent to evaluate or the release of information.
42. In an email to Parent dated 4/15/10, Case Manager informed Parent that, per Student's new IEP, Student would be returning to the general education math class with support from Learning Specialist and a paraprofessional on Monday 4/19/10. However, Parent responded that "[Student] will not be returning to [general education] math class."
43. In a letter dated 4/19/10 from Advocate to Sped Director, Advocate restated Advocate's perspective of events leading up to and through the 4/8/10 IEP meeting. In the letter, Advocate indicated that Parents had come to the meeting in good faith. However, the Advocate also wrote "that we were not going to remain [at the 4/8/10 IEP meeting] unless our request for compensatory services was respected and addressed."

⁶ Hereinafter FF.

44. Attorney responded to Advocate in a letter dated 4/26/10. In the letter, Attorney disputed Advocate's version of events, particularly the statement that Parents had come to the meeting in good faith. Attorney wrote "Your clients were invited and encouraged to participate, but elected to leave. [District] had no alternative but to continue the meeting and complete the IEP." The 4/26/10 letter also noted that Parents had not responded to District's request for consent to evaluate and that the implementation of the IEP began 4/19/10, but Student had been absent from school.
45. On 5/5/10, Parent wrote a letter to District indicating District was not providing Student with appropriate math instruction. Parent informed District that Student would start School at a later time and reiterated Student would not be attending general education math class.
46. On 5/10/10, Case Manager emailed Parent information on ESY services available to Student. Case Manager asked Parent to respond as to whether Student would be utilizing ESY services by 5/19/10. Parent did not respond to the ESY notification because Parent believed Student would continue to get the same educational programming.
47. On 5/11/10, School Principal responded to Parent and wrote that math was given great consideration during the 4/8/10 IEP meeting. School Principal further indicated that Student had missed a significant amount of instructional time and was missing all math instruction except for math fact practice with Case Manager.
48. The SCO finds that District made multiple efforts to ensure parent participation and input into Student's 4/8/10 IEP development. District rescheduled Student's IEP meeting to accommodate Parent. District sought information about the privately obtained evaluation. Even after the 4/8/10 IEP meeting, District continued to seek information about Student's needs as identified by Clinical Social Worker, but Parent would not respond to District.
49. The SCO finds that District repeatedly informed Parent that the 3/18/10 draft IEP was not final and could be changed based on input and information provided by Parent.
50. The SCO finds that Parents had full opportunity to participate in IEP process, but did not avail themselves of that opportunity. Because Parents refused to discuss anything other than the previously requested compensatory services and subsequently left the 4/8/10 IEP meeting before substantive IEP discussions, the SCO finds that Parents refused to participate in developing Student's 4/8/10 IEP.
51. The SCO further finds that District carefully considered all information in the private evaluation report and letter from Clinical Social Worker. The SCO also finds that the draft IEP from 3/18/10 was modified to include private evaluation assessment results and recommendations which were reflected in the final 4/8/10 IEP.
52. The SCO finds that Parent did not cooperate with District in efforts to obtain information about Student from private providers, to implement Student's IEP, and to provide ESY services to Student subsequent to the 4/8/10 IEP meeting

Highly Qualified Teachers and Service Providers

53. District provided SCO with documentation of the academic degrees of Teachers and Related Service Providers. Each Special Educator and Related Service Provider who worked with Student held at least a Bachelor's degrees and most held Master's Degrees. District also provided SCO with documentation of the licensure information of the Teachers and Related Service Providers who worked with Student. Each Special Educator and Related Service Provider held licenses with appropriate endorsements issued through the Colorado Department of Education.
54. Case Manager was trained in a variety of reading programs including Wilson, Read Naturally, Reading Mastery. Case Manager had also worked with numerous children with dyslexia over her 13 years as a special educator.
55. When Case Manager was absent, Student received specialized instruction from the SLP or a substitute special education teacher. Although substitutes covering for Case Manager did not have the specific training in Student's reading programs, Case Manager offered to make-up the reading program instruction missed when Case Manager was absent. However, because of Student's inconsistent attendance, the SCO was unable to determine if Student actually received the offered reading instruction.
56. Case Manager also worked with the paraprofessionals who worked with Student. Case Manager informed the paraprofessionals about lesson plans and supervised the paraprofessionals' implementation of Student's IEP. Additionally, District provided documentation of the training District provided to the paraprofessionals who worked with Student which included training in behavior, reading – including phonics, and math.
57. Learning Specialist had been trained in Wilson reading instruction and had worked with hundreds of children who had dyslexia or other learning disabilities since 1995. Learning Specialist was qualified to provide services to Student and other students with similar disabilities.
58. Learning Specialist was not absent during the 2009-2010 school year. Learning Specialist was assigned to Student's math class and was present in the class even when Student was not.
59. The SCO finds that Student's Teachers were appropriately licensed. Student's Teachers were trained in reading programs and had experience in working with Student and other students with similar disabilities. SCO further finds that paraprofessionals who worked with Student were supervised by Case Manager and were trained in providing supports to Student and other students with similar disabilities.

Reevaluation

60. Student received a triennial reevaluation in March of 2008. According to Student's IEPs, Student's next triennial reevaluation was due 3/19/11.
61. During the relevant time period for this Complaint, Parent did not request a reevaluation, and none of the School staff working with Student referred Student for a reevaluation.

62. As part of Student's March 2008 reevaluation, District conducted a functional behavioral assessment (FBA) per Parent's request to review Student's anxious behaviors of crying, anxious looks, and resisting school. It was noted in the evaluation report that the assessment results should be interpreted with caution because Student had been absent ten out of the twenty two school days over which the evaluation was conducted.
63. Both Parent and District staff stated that Student's school anxiety began prior to the time period relevant to this Complaint. Further, Student's 2/24/09 IEP included mental health services to address Student's behavioral needs. The SCO finds that Student was demonstrating anxiety prior to the relevant time period in this Complaint and that nothing in Student's behavior related to school anxiety indicated a need for an reevaluation during the relevant time period.
64. Additionally, the SCO finds that Student made modest academic progress despite Student's frequent absences (FF 21). The SCO finds that Student's academic progress did not indicate a need for reevaluation during the relevant time period for this Complaint.

Least Restrictive Environment (LRE)

65. Student's IEPs from 2/24/09 and 4/8/10 identified Student's placement in the LRE was inside the regular class 40% to 79% of the time. There is no dispute that Student needed specialized instruction outside of the regular class.
66. Student received direct instruction outside of the regular class in Case Manager's Learning Lab class. The students in the Learning Lab had a variety of disabilities. Although some students had more significant disabilities, several of the students also had learning disabilities.
67. Based on Student's dual enrollment arrangement in the 2008-2009 school year, Student participated in general education classes and activities including art, music, science, health, computer, typing, physical education, non-fiction, social studies, and all field trips.
68. Based on Student's dual enrollment arrangement in the 2009-2010 school year, Student participated in the general education classes including health and science specials (specials were classes which provided hands on activities for students), Fast ForWord, basic math, and literacy including accelerated reading (A/R). Further, Student was involved in a peer group facilitated by School Social Worker. Student received direct instruction outside of the general classroom for reading.
69. Per the private evaluation report from 3/10/10, a recommendation was for Student to receive individualized math instruction outside of the regular classroom. Another recommendation was for Student to be placed with children who are experiencing similar levels of difficulty as Student.
70. Parent alleged Student spent more time in the learning lab than in general education classes. However, Student's dual enrollment arrangement resulted in Student attending School on a part-time basis which limited Student's access to general education classes. Further, after the 4/8/10 IEP meeting, Parent refused to send Student to the general education math class and only allowed Student to receive

Case Manager's math facts instruction which was provided outside of the general classroom. The SCO finds that Parent's own actions limited Student's access to the LRE.

71. Parent subsequently requested District to place Student at Private School which exclusively serves children with disabilities. In District's 4/9/10 Prior Written Notice, District indicated the private placement and private services were unnecessarily restrictive. The SCO agrees with District that Private School would be a more restrictive setting for Student because Student would not be educated with nondisabled peers.
72. Despite the make-up of the students in the Learning Lab class, the SCO finds Student was educated with non-disabled peers when participating in the general education classes. The SCO further finds that Student made progress on IEP goals and objectives and, based on Student's performance in general education math assessments (*see* FF 17(b)), made progress in the general education curriculum in this LRE placement.

ANALYSIS AND CONCLUSIONS OF LAW

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

As a preliminary matter, the SCO would like to address District's contention that Parent's Complaint did not contain sufficient facts to meeting the State Complaint requirements.

1. Any organization or individual may file a signed written complaint under the procedures described in 34 C.F.R. §§ 300.151 through 300.152. The complaint must include, among other things, a statement that a public agency has violated a requirement of Part B of the Act or its implementing regulations and the facts on which the statement is based.
2. The IDEA requires State Education Agencies to adopt written procedures for resolving complaints that meet the requirements of 34 C.F.R. § 300.153 by providing for the filing of a complaint with the SEA.
3. The Colorado Department of Education (CDE) recently revised and adopted its State Level Complaint procedures on 5/4/10. Consistent with the minimum complaint requirements articulated in § 300.153, the CDE State Complaint Procedures provide that the required content of the Complaint includes a statement that the IDEA Part B program participant has violated a requirement of Part B of the IDEA and the background information (including copies of all IEPs and other documents relevant to the Complaint) and facts on which the statement is based that identify persons, actions, and/or omissions which serve as the basis of the Complaint. CDE State Complaint Procedures, ¶ 3(a-b).
4. The SCO determines whether to accept or reject the Complaint for investigation. If the Complaint is accepted, the SCO shall initiate an investigation concerning the allegations contained in the Complaint. CDE State Complaint Procedures, ¶ 6(c).

5. In this case, the SCO determined that Parent's eight page Complaint and over 390 pages of attachments contained sufficient facts to accept the Complaint and initiate an investigation.

Issue I: Whether District failed to develop an individualized education program (IEP) with appropriate content that would confer educational benefit to Student.

6. Under the IDEA, each child with a disability is entitled to a free appropriate public education (FAPE). A FAPE is tailored to the unique needs of the child by means of an IEP. An IEP provides a FAPE if *it provides the child with a basic floor of opportunity* that consists of access to specialized instruction and related services which are individually designed to provide educational benefit. *Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982).
7. Although Parent argues that *K.L. v. Mercer Island*, 46 IDELR 273 (W.D. Wash. 2006), presents a higher FAPE standard than *Rowley*, the *Mercer* district court case was overturned by the 9th Circuit Court of Appeals which affirmed that the *Rowley* FAPE standard still applies. *K.L. v. Mercer Island*, 575 F.3d 1025 (9th Cir. 2009).
8. A FAPE is not meant to maximize a child's potential. However, a child's IEP must be reasonably calculated to confer educational benefit. *Rowley* (see also *Thompson R2-J Sch. Dist. v. Luke P.*, 540 F.3d 1143, 1150 (10th Cir. 2008), Student's IEP must confer some educational benefit). The educational benefit must be more than de minimus. *Urban by Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720 (10th Cir. 1996).
9. When determining whether a FAPE has been provided, it must first be determined whether the procedural requirements of the Act have been met. Adequate compliance with the prescribed procedures would in most cases assure an IEP with substantive content that is reasonably calculated to provide educational benefit. *Rowley; O'Toole v. Olathe Unified Sch. Distr. No. 233*, 144 F.3d 692 (10th Cir. 1998).
10. Relevant to this Complaint, the IDEA requires IEPs to contain the following content:
 - a. A statement of the child's present levels of academic achievement and functional performance including how the child's disability affects the child's involvement and progress in the general education curriculum. 34 C.F.R. § 300.320(a)(1).
 - b. A statement of measurable annual goals including academic and functional goals that are designed to meet each of the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum. The goals must also be designed to meet each of the child's other educational needs that result from the child's disability. 34. C.F.R. § 300.320(a)(2).

- c. For children who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives. 34 C.F.R. § 300.320(a)(2)(ii).
 - d. A statement of services that enable the child to advance appropriately toward attaining the annual goals and enable the child to be involved in and progress in the general education curriculum. The services must also enable the child to be educated and participate with other children with disabilities and nondisabled children. 34 C.F.R. § 300.320(a)(4).
11. However, nothing in 34 C.F.R. § 300.320 shall be construed to require additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or information under one component of a child's IEP that is already contained under another component of the child's IEP. 34 CFR § 300.320(d).
 12. Although the instructional methods may be addressed in an IEP if the IEP team determines that specific instructional methods are necessary for the child to receive FAPE, there is nothing in the Act that requires an IEP to include specific instructional methodologies. Fed. Reg. Vol. 71, No. 156, Aug. 14, 2006,⁷ p. 46665.
 13. Additionally, parents do not have a right to compel a district to provide a specific program or employ a specific methodology in providing for the education of their [disabled] child. *Systema v. Academy Sch. Dist. No. 20*, 46 IDELR 71 (D. Colo. 2006) citing *Lachman v. Ill State Bd. Of Educ.*, 852 F.2d 290 (7th Cir. 1988).
 14. Parent cites *Letter to LoDolce*, U.S. Department of Education, Office of Special Education Programs (OSEP), 50 IDELR 106 (2007), as supporting the contention that methodology is required IEP content. Parent's citation to *Letter to LoDolce*, which refers to whether independent evaluators could recommend specific methodologies and IEP team consideration of independent educational evaluations, was taken out of context. In reading the full text of *LoDolce*, OSEP does not suggest that methodology is required IEP content.
 15. The SCO concludes that Student's IEPs contained the required content. Student's present levels of academic achievement and functional performance were thoroughly documented in the IEPs (FF 9, FF 17). The IEPs contained annual goals and short term objectives, including math goals, that were designed to meet Student's needs as identified in the present levels of academic achievement and functional performance (FF 10, FF18). The IEPs contained a statement of accommodations and modifications, as well as services to be provided to Student and the dates when services would begin (FF 11-12, FF 19-20). The content of the 3/18/10 draft IEP and the 4/8/10 final IEP was updated and modified in comparison to the content of the 2/24/09 IEP (FF 28). Although Parent complains that specific methodologies, specific locations and persons, and Student work were not included on IEP, such information was not required content under the IDEA.
 16. The SCO further concludes that the 2/24/09 IEP and the 4/8/10 IEP were developed to confer educational benefit to Student. Student made progress, albeit modest, under the 2/24/09 IEP (FF 21). Student's 4/8/10 IEP objectives reflected increased academic achievement and levels of complexity (FF 22). The SCO also finds that Student's IEPs were implemented even though Student did not meet individually with the SLP (FF 13). In this respect, then, there were no violations of the IDEA.

⁷ Hereinafter Preamble.

Issue II. Whether District failed to consider the concerns of and information provided by Parent in developing Student's IEP.

17. In developing a child's IEP, the IEP team must consider –
 - a. The concerns of the parents for enhancing the education of their child. 34 C.F.R. § 300.324(a)(1)(ii).
 - b. The most recent evaluation of the child. 34 C.F.R. § 300.324(a)(1)(iii)
18. The IEP team must also revise the IEP to address information about the child provided to, or by, the parents. § 300.324(b)(1).
19. Districts are required to consider parents suggestions and, to the extent appropriate, to incorporate them into the IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10th Cir. 1998).
20. However, predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. (see *Ms. S. ex. rel. G. v. Vashon Island School Dist.*, "A district may not enter an IEP meeting with a 'take it or leave it' position." 337 F.3d 1115, 1131 (9th Cir. 2003). Predetermination of an IEP is a procedural error that hinders the parent's participation in the IEP process in violation of the IDEA. *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (C.D. Cal. 2008) However, a draft IEP is not evidence of predetermination. *Davis v. Kanawha County Bd. Of Ed.*, 48 IDELR 159 (S.D. W.Va. 2007).
21. Additionally, if a parent shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child. 34 C.F.R. § 300.502(c)(1).
22. However, consideration of privately funded educational evaluations does not mean the IEP team must agree or adopt the evaluation recommendations. *TS v. Bd. Of Ed. Town of Ridgefield*, 10 F.3d 87 (2nd Cir. 1993).
23. Finally, parents' refusal to participate in the IEP process effectively precludes their own meaningful participation in the IEP process. *Sytsema v. Academy Sch. Dist. 20*, 538 F.3d 1306 (10th Cir. 2008).
24. The SCO concludes that District provided Parent full opportunity to participate in the development of Student's 4/8/10 IEP. District rescheduled IEP meetings to accommodate Parent (FF 48) and repeatedly informed Parent that the 3/18/10 draft IEP could be changed before or at Student's IEP meeting (FF 49). When informed that the scheduled IEP meeting could only last for one hour, District offered to reschedule the meeting (FF 36). District fully considered the private evaluation report provided by Parent. (FF 51). However, the parents refused to participate in the IEP meeting unless District addressed their request for compensatory services and left before substantive IEP discussions occurred (FF 50). Further, subsequent to the IEP meeting, Parent continued to be

uncooperative with District's efforts to implement Student's 4/8/10 IEP. (FF 52). In this respect, then, there were no violations of the IDEA.

Issue III. Whether District failed to ensure services delivered to Student were provided by trained staff.

25. Each person employed as a special education teacher in the state must be highly qualified as a special education teacher. 34 C.F.R. § 300.156(c).
26. According to the IDEA's highly qualified teacher requirements, teachers must have obtained full state certification as a special education teacher or passed the State special education teacher licensing examination, and hold a license in the State as a special education teacher. The teacher must also hold at least a bachelor's degree. 34 C.F.R. § 300.18(b).
27. Special education teachers shall hold Colorado teacher's certificates or licenses with appropriate endorsements in special education. Rules for the Administration of the Exceptional Children's Educational Act (ECEA) 1 Colo. Code. of Reg. 301-8, 2220-R-3.04(1)(a).⁸
28. Additionally, related services personnel who deliver services in their discipline or profession must have qualifications that are consistent with any state approved or state recognized certification, licensing, registration or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services. 34 C.F.R. § 300.156(b).
29. In Colorado, all related services personnel providing services to children with disabilities shall hold Colorado special services licenses or certificates with appropriate endorsements. For those areas for which special services licenses or certificates are not available, appropriate licenses from the state regulatory agency or professional organization are required. ECEA Rule 3.04(1)(b).
30. Under the IDEA, paraprofessionals and assistants may be used to assist in the provision of special education and related services to children with disabilities, but must be appropriately trained and supervised, in accordance with State law, regulation or written policy. 34 C.F.R. § 300.156(b).
31. In Colorado, each school district has the power to employ on a voluntary or paid basis, teachers' aides and other auxiliary, nonlicensed personnel to assist licensed personnel in the provision of services related to instruction or supervision of children. § 22-32-110(1)(ee), C.R.S.
32. Each Administrative Unit determines the qualifications and competencies required for paraprofessionals and shall assure and document that they meet the requirements for supervision of non-certified personnel as mandated under § 22-32-110(1)(ee) C.R.S.; ECEA Rule 3.04(1)(e).
33. The SCO concludes that the teachers and related service providers working with Student met the highly qualified special education teacher requirements of the IDEA and the ECEA. Teachers and related service providers who worked with Student held current licenses issued by CDE and held at least a bachelor's

⁸ Hereinafter ECEA and Rule number (e.g., ECEA Rule 0.00).

degree. (FF 53, FF 59). Student was provided with specialized instruction by qualified special education and related services providers (FF 55). Although Case Manager offered to make up missed reading instruction due to Case Manager's absence, such services may not have been received due to Student's inconsistent attendance (FF 55). Finally, the paraprofessionals working with Student were trained and supervised by licensed personnel (FF 59). In this respect, then, there were no violations of the IDEA.

Issue IV: Whether District failed to evaluate Student when conditions warranted because Student demonstrated limited progress and/or regression in skills.

34. According to the IDEA, an evaluation means procedures used in accordance with §§ 300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. 34 C.F.R. § 300.15.
35. However, screening used to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for special education and related services. 34 C.F.R. § 300.302.
36. The IDEA requires a public agency to conduct a reevaluation of a child with a disability under the following circumstances:
 - a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation. 34 C.F.R. § 300.303(a)(1).
 - b. If a reevaluation is requested by the child's parent or teacher. 34 C.F.R. § 300.303(a)(2).
 - c. At least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b)(2).
37. Failure to reevaluate a student when conditions warrant a reevaluation is a procedural violation that may result in a denial of FAPE. *Bell v. Bd. Of Ed. Of Albuquerque Public Sch.*, 52 IDELR 161, (D. N.M. 2008)
38. The SCO concludes that District was not obligated to conduct a reevaluation of Student. Student was not due for a triennial reevaluation (FF 60). Neither Parent nor School staff requested or referred Student for a reevaluation during the relevant time period (FF 61). There was no indication a reevaluation was necessary based on Student's academic progress (FF 64). Although Parent challenges the efficacy of District progress monitoring data collection systems, the progress monitoring system used by District adequately measured the progress in Student's reading programs (FF 4). Further, normal progress monitoring of reading interventions is not an evaluation. Finally, there was no indication that Student required a reevaluation based on Student's behaviors related to anxiety during the relevant time period (FF 63). In this respect, then, there were no violations of the IDEA.

Issue V: Whether District failed to educate Student in the least restrictive environment (LRE) to the maximum extent appropriate.

39. The IDEA requires each public agency to ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids & services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2).
40. However, each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum must include the alternative placements listed in the definition of special education and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. 34 C.F.R. § 300.115(a-b).
41. In determining whether the LRE mandate has been violated, the court must first determine whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. *LB v. Nebo Sch. Dist.*, 379 F.3d 966 (10th Cir. 2004).
42. The SCO concludes that Student was being educated to the maximum extent appropriate in the LRE consistent with Student's IEP. Student required instruction outside of the general education classroom (FF 65). In accordance with the IDEA continuum of alternative placements, Student was provided with resource room instruction in conjunction with regular class placement (FF 65, FF 66). Student's progress in the general education math class (FF 72) demonstrated Student could be satisfactorily educated in the regular classroom with supplemental aids and services. Finally, but for Parents' actions, Student would have been educated in the regular classroom with non disabled students (FF 67, FF 68, FF 70) In this respect, then, there were no IDEA violations.

REMEDY

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

CONCLUSION

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

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

Dated this 19th day of July, 2010.

Stephanie D. Lynch, Esq.

Appendix A Record

Complaint Documents

4/9/10 Prior Written Notice with Progress Reports from 2/24/09 IEP.
4/8/10 IEP.
3/18/10 Draft IEP.
5/19/09 Prior Written Notice with 2/24/09 IEP and Progress Reports from 3/19/08.
4/8/10 IEP Present Levels of Performance with Parent's notes.
2/24/09 IEP Present Levels of Performance with Parent's notes.
Packet comprised of Student's schedules, School's Accelerated Reading Program information, 2008-2009 District Home school dual enrollment application, Vision Therapy Home Activities and information, Home school lesson plans, PACE program information, calendar of home training assignments.
Various emails between Parent and Case Manager with Parent's notes.
Various samples of Student's assignments.
Packet comprised of District's 2009-2010 school year calendar, Student's report cards, various emails between Parent and Case Manager, samples of Student's assignments, Student's attendance records, 4/8/10 IEP present levels of performance (Fast ForWord page), Parent's notes.
Packet comprised of Student's attendance 2009-2010 school year, 4/8/10 IEP present levels of performance (health status, impact of disability on access to and progress in the general curriculum, educational needs pages), Student's 2006-2007 report card, Student's 2007-2008 report card, Student's 2008-2009 report card, Parent's notations.
Packet comprised of Parent's notes, various emails between Parent and Case Manager, School schedule, District's 2009-2010 school year calendar, 2009-2010 Homeschool dual enrollment application, Student's class schedules, correspondence between Parent and School, 3/15/10 Letter from Advocate to Principal and Case Manager, 4/19/10 Letter from Advocate to Special Education Director, 5/11/10 Letter from Principal to Parents, diagrams of preferential seating, samples of Student's assignments, Student's 2009-2010 report card, 4/8/10 IEP present levels of performance social/emotional/behavioral functioning page, Wilson Reading Certification information, 3/10/10 private evaluation report, 4/6/10 letter from Clinical Social Worker, District's SWAAAC evaluation report, Student's class schedules, District's mission statement, Student's picture.

*Parent's Reply

Audio recording (CD-ROM) of 4/8/10 IEP meeting.
Letters from Advocate to District dated 1/10/08, 1/28/08, 2/18/08, and 3/12/08.
Letters from School Principal dated 1/28/08 and 2/12/08.
1/23/08 IEP meeting transcripts.
Receipts for Vision Therapy and PACE program.
Parent's notes, Student's 2008-2009 class schedule, 2008-2009 Homeschool dual enrollment application, School's Accelerated Reading program information.
Parent's notes, Student's Progress Monitoring Report 9/4/09-6/1/10, Wilson Reading program certification, blank Wilson progress monitoring charts, and blank Wilson lesson plans, and excerpts from International Dyslexia Association fact sheets.
Private evaluation-page 13 recommendations #9-16.
Parent's notes, page from 1/28/08 IEP meeting transcript, present levels of performance page from 9/26/07 IEP.
Parent's notes, Student's 2009-2010 class schedule by day, page from 3/2/09 dual enrollment application.
Handwritten math problems-multiples sheet.
Excerpt from *Different Learners*, by Jane Healy, Ph.D.
Excerpts from *Diagnosing Dyslexia in the School-Age Child*.
Private evaluation-page 3, cognitive testing scores.
Excerpt from unknown document "Testing and Evaluation" p.2.
4/8/10 IEP Present Level of Performance pages: cognitive functioning documenting private evaluation report results.
Parent's notes, pages from 1/23/08 IEP meeting transcript.

Excerpts from *Teaching the Dyslexic Child to Read*, pp.265, 271, 281; *Overcoming Dyslexia*, pp.258, 266; *Straight Talk about Reading*, Louisa Moats (various pages-some unnumbered), Information on Lindamood Bell reading program, CDE Specific Learning Disabilities guidelines pp. 56, 88, 101; private evaluation-page 12, recommendations #5-8.

Parent's notes, Fact Sheet #69, International Dyslexia Association, *Multisensory Teaching*.

Parent's notes regarding teacher training, page from 1/23/08 IEP meeting transcript, District's paraprofessional training transcripts, various emails between Case Manager and Parent, *Disconnect, the Real "D" Word: A School Practitioner's Perspective on Dyslexia*, by Dr. Ed Steinberg and Daphne Pereles article published in International Dyslexia Association (Winter 2008).

Parent's notes, International Dyslexia Association statistics, copy of Colorado House Bill 08-1233.

10/25/05 IEP present levels of academic performance page.

Parent's notes, Math class-Principal's exam scores, Student's math performance summary.

Private evaluation report page-8: CTOPP scores, written expression and math.

4/8/10 IEP present levels of performance-classroom observations, private evaluation report-page 4 cognitive results and page 6 achievement testing results.

Parents notes and information on Fast ForWord program, excerpt from unknown book - p.259.

Advocate's letter to Special Education Director, dated 4/22/10.

International Dyslexia Association Fact Sheets: #68, *Orton-Gillingham-Based and/or Multisensory Structured Language Approaches*, #49 *Social and Emotional Problems related to Dyslexia, Spelling*, #56 *Why home School a Dyslexic Child, Testing for Dyslexia, Testing and Evaluation*.

List of records supplied to private evaluator, email to Parent from private evaluator with Student's Oral Reading Quotient from GORT-IV assessment.

Parent's notes, AIMSweb progress monitoring charts.

Typed list of Parent questions regarding Case Manager sworn statement, page from transcript of 1/23/08 IEP meeting.

Emails between Parent and Case Manager, Student's daily class schedule 2009-2010 school year, 4/8/10 IEP present levels of performance page.

10/25/05 IEP present levels of performance pages – cognitive testing report, 10/24/06 IEP meeting participation page, Case Manager sworn statement pages 1-5.

Student's report cards 2009-2010 school year.

Parent's notes, 4/8/10 IEP present levels of performance page social-emotional and physical performance.

** Several documents were duplicates and were only listed once within the record.*

Interview with Parent 7/12/10.

Additional Documents Supplied by Parent 7/12/10

Article *"Reexamining Rowley: A New Focus in Special Education Law"* by Scott F. Johnson, Esq.
 Letter to SCO dated 7/11/10 in response to District correspondence to SCO 6/24/10

District's Response

- Attachment A-1: Student's 4/8/10 IEP.
- Attachment A-2: Student's 2/24/09 IEP.
- Attachment A-3: Parent's 2008-2009 Homeschool Dual Enrollment application.
- Attachment A-4: Parent's 2009-2010 Homeschool Dual Enrollment application.
- Attachment A-5: Student's attendance records 8/17/09-6/4/10.
- Attachment A-6: 4/19/10 email from Parent to Case Manager.
- Attachment A-7: 5/11/10 letter to Parents from School Principal.
- Attachment A-8: 04/09/10 Prior Written Notice and 2/24/09 IEP progress reports through 4/8/10.
- Attachment A-9: Fast ForWord progress tracker reports, AIMSweb progress monitoring reports 9/4/09-6/1/10, 8/11/08-6/5/09, Student's math progress summary for 2009-2010.
- Attachment A-10: Students 2009-2010 report card, 4/8/10 IEP progress report through 6/4/10.
- Attachment B-1: Private Evaluation Report dated 3/10/10.
- Attachment B-2: 9/10/10 email from Case Manager to Parent
- Attachment B-3: 3/29/10 letter from Advocate to Attorney.
- Attachment B-4: 4/7/10 email from Attorney to Advocate.
- Attachment B-5: 4/7/10 second email from Attorney to Advocate.
- Attachment B-6: 4/26/10 Letter from Attorney to Advocate.

Attachment B-7: 4/8/10 Letter from Case Manager to Parents regarding 4/8/10 IEP.
Attachment C-1: 6/6/10 Case Manager - Sworn Statement, teacher license, teacher assessment, list of Case Manager reading program experience.
Attachment C-2: Case Manager professional development questionnaire and academic transcripts.
Attachment C-3: Learning Specialist - teaching license, professional development transcript, and academic transcripts.
Attachment C-4: Math Teacher - teaching license and academic transcripts.
Attachment C-5: Literacy Teacher – CDE teacher licensure information, professional development information, and academic transcripts.
Attachment C-6: Occupational Therapist - CDE professional special services licensure information and academic transcripts.
Attachment C-7: School Social Worker - CDE professional special services licensure information and academic transcripts.
Attachment C-8: Speech Language Therapist - CDE professional special services licensure information and academic transcripts.
Attachment C-9: Paraprofessional I – professional development information.
Attachment C-10: Paraprofessional II – professional development information.
Attachment C-11: Paraprofessional III – professional development information.
Attachment D-1: Student’s Assistive Technology evaluation report 2/17/10.
Attachment D-2: 4/1/10 Letter from private Clinical Social Worker.
Attachment E-1: 2/4/10 Notice of 2/23/10 IEP meeting, 3/8/10 Notice of 3/18/10 IEP meeting, 3/19/10 Notice of 4/8/10 IEP meeting.
Attachment E-2: Student’s 2010 ESY information.
Attachment F: Various emails between District and Parent from August 2009 through June 2010.
Attachment G: District Policies and Procedures for programs for students with disabilities and screening and testing of students,

District Additional Information requested by SCO received 6/22/2010

2008-2009 school year calendar.

Interviews 6/30/2010 District Staff: Case Manager, School Social Worker, Learning Specialist.

SCO supplement to the Record:

Information from Read Naturally and Reading Mastery websites, Information from Private School website.