

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Individuals with Disabilities Education Act (IDEA)<sup>1</sup>

**State-Level Complaint 2015:519**  
**District 5, Cherry Creek School District**

**DECISION**

**INTRODUCTION**

This pro-se, state-level complaint (Complaint) was properly filed on November 13, 2015 by the mother (Mother) of a child identified as a child with a disability under the IDEA. Mother brings this Complaint against District 5, Cherry Creek School District (School District).

Based on the written Complaint, dated October 29, 2015, and a telephone interview with Mother on November 13, 2015, the State Complaints Officer (SCO) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATION**

Mother's Complaint raised the following allegation, in summary:

Whether the School District violated Mother's right to meaningful participation in the IEP process from November 14, 2014 to present by refusing to consider placement options.

**Summary of Proposed Remedies.** To resolve the Complaint, Mother proposed that Student be transferred to a school with a traditional calendar.

**FINDINGS OF FACT**

After a thorough and careful analysis of the entire record, the SCO makes the following FINDINGS:

1. At all times relevant to the Complaint, Student has lived with Mother within the boundaries of the School District. Student currently attends School #2 and previously attended School #1. Student has been identified as a student with a disability, eligible for special education and related services under the IDEA and ECEA.<sup>3</sup>

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

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

<sup>3</sup> Complaint, School District's Response, Exhibit A, and Interviews with Mother and Special Education Director.

2. Between November 14, 2014 and November 14, 2015, Student's IEP team, including Mother, held two IEP meetings at School #1.<sup>4</sup>
3. On April 7, 2015, the IEP Team, including Mother, met for an annual review of Student's IEP, which included a discussion about information provided by Mother, and agreed on Student's IEP.<sup>5</sup>
4. In or about June 2015, Mother applied for an Intra-District Transfer to School #3, which was denied on June 3, 2015 due to a lack of available space in Student's grade-level. Mother subsequently applied for an Intra-District Transfer to School #3, which was also denied on June 12, 2015 due to lack of available space. Both School #3 and School #4 follow a traditional school calendar.<sup>6</sup>
5. In or about July 2015, at Mother's request, the School #1 team conducted a comprehensive multidisciplinary reevaluation, which included information provided by Mother. Mother was provided with and signed a Prior Notice & Consent for Reevaluation on July 27, 2015.<sup>7</sup>
6. On August 31, 2015, the IEP team met at School #1. Mother attended the meeting with an advocate and actively participated in the discussion. Mother related her concerns regarding Student's difficulties with transitions after returning from breaks at School #1, which follows a year-round calendar rather than a traditional school calendar. The IEP team identified and discussed Student's needs, including Student's needs for predictability in transitions. Mother also provided the IEP team with a doctor's note recommending that Student be "[p]laced in a more traditional school setting with a continuous schedule [sic] and structured environment." Mother's concerns, including the advantages and disadvantages of switching schools and the school breaks involved in schools with a traditional calendar versus a year-round calendar, were discussed and noted in the August 31<sup>st</sup> IEP.<sup>8</sup>
7. The August 31, 2015 IEP specifically notes how the current IEP data from Student's goals indicate that Student has been successful in accessing both the school day and the curriculum and that Student successfully transitioned between settings and activities throughout the school day. School #1 team members noted that the data did not indicate that the year-round calendar was impacting Student's ability to learn. The IEP team identified accommodations and predictable structures, including them in the IEP to assist Student during transitions.<sup>9</sup>
8. At the August 31<sup>st</sup> IEP meeting Mother also advised the IEP team of the family's impending move into School #2's boundary area. School #2 also follows a year-round calendar, but a

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<sup>4</sup> Exhibit A and Interviews with Mother and Special Education Director.

<sup>5</sup> School District's Response, Exhibits A and B, and Interviews with Mother and Special Education Director.

<sup>6</sup> School District's Response, Exhibit C, and Interviews with Mother and Special Education Director.

<sup>7</sup> Exhibit B.

<sup>8</sup> School District's Response, Exhibits A, F, and 1, and Interviews with Mother and Special Education Director.

<sup>9</sup> Exhibit A and Interviews with Mother and Special Education Director.

different schedule than School #1. It was noted by the IEP team that if Student attended School #2, Student would follow a different schedule at School #2 than at School #1. In an effort to provide Student with continuity in the school setting and to avoid the schedule change and potential disruption for Student, the IEP team, including Mother, determined that Student would remain at School #1 with transportation as a related service.<sup>10</sup>

9. On September 21, 2015, Mother advised District of the family's change of residence and Student was transferred to School #2. Student has attended School #2 since approximately October 20, 2015.<sup>11</sup>

### **CONCLUSIONS OF LAW**

#### **School District did not violate Mother's right to meaningful participation in the IEP process from November 14, 2014 to present.**

1. The IDEA requires local education agencies such as the School District to provide eligible students with disabilities with a FAPE, by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized educational program ("IEP") developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's procedural requirements for developing, reviewing, and revising the IEP require a school district to timely convene an IEP meeting with the required participants (including the child's parents) in order to review the student's progress, new evaluative information, parent concerns, etc., in order to develop a current education plan. In the development of an IEP, parents must be afforded the opportunity to attend and meaningfully participate, which includes giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1), 300.324(a)(ii) and 300.501(b).
2. In the seminal *Rowley* case, the Supreme Court explained that the IDEA established a procedure that would involve full participation of all concerned parties, including parents, at every stage of the process. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 at 205-206 (1982). The IDEA thus requires educational agencies, teachers, and parents to jointly prepare and update an IEP tailored to the unique needs of the child, specifying the child's present educational performance, annual goals,

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<sup>10</sup> School District's Response, Exhibits A and G, and Interviews with Special Education Director and Mother. SCO notes that the IEP team members also discussed the School District's administration and Board of Education's proposal to change the calendars of both School #1 and School #2 from a year-round to a traditional school calendar within the next school year. Special Education Director also offered Mother the option of revisiting her request for Student to attend a school with a traditional school calendar if the School District's Board of Education did not act on the change of the calendars.

<sup>11</sup> Complaint, School District's Response, Exhibit G, and Interviews with Mother and Special Education Director. SCO notes that the reason Student was transferred to School #2 is unclear.

required services, and criteria for evaluating progress. *Id.* at 181. The IDEA’s procedural requirements for developing a student’s IEP are specifically designed to provide a collaborative process that places particular importance on parental involvement.

[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrate[s] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

*Rowley*, 458 U.S. at 205-206.

3. Typically, contemplation of the two prong analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley, supra* at 206-207. “[The inquiry in cases brought under IDEA] is twofold. First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” *Id.* It is well-established, however, that where the procedural inadequacies seriously infringe upon the parents’ opportunity to meaningfully participate in the IEP process, the result is a “per se” denial of FAPE. *See, e.g., O.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11<sup>th</sup> Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6<sup>th</sup> Cir. 2004); *see also*, 34 C.F.R. § 300.513(a)(2)(ii) (“In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child...”).
4. Mother alleges in this case that School District denied her meaningful participation regarding placement in the IEP process from November 14, 2014 to present because School District refused to consider placement options, specifically Mother’s request for Student to attend a school that follows a traditional school calendar. SCO concludes otherwise.

5. In June 2015 Mother appropriately attempted to enroll Student in two different schools with traditional school calendars through the Intra-District Transfer Request process, but was unsuccessful for reasons that have nothing to do with the IEP process. Mother also appropriately raised the issue of placement in terms of Student's attendance at a school with a traditional school calendar rather than a year-round calendar with Student's IEP team on August 31, 2015. After a thorough review of the documentation and interviews with Mother and Special Education Director, SCO concludes that the IEP team, including Mother, discussed and considered Mother's concerns and designed Student's IEP accounting for Student's needs.<sup>12</sup> Accordingly, SCO finds that Mother was provided with meaningful participation in the IEP team's discussion and decision regarding placement.

### **REMEDIES**

Because the SCO has concluded that the School District has not violated the IDEA, no remedies are 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 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

This 7<sup>th</sup> day of January, 2016.

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Lisa A. Weiss, Esq.  
State Complaints Officer

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<sup>12</sup> SCO notes that the IEP team determined that Student would remain at School #1, however, it remains unclear whose decision, miscommunication, or process led to Student being transferred to School #2 instead of remaining at School #1.

## APPENDIX

### **Complaint, dated October 29, 2015, pages 1-2**

Exhibit 1: Correspondence, dated August 25, 2015

### **School District Response, dated December 21, 2015, pages 1-8**

- Exhibit A: April 7, 2015 IEP; August 31, 2015 IEP; Team Member Excusals; Determination of Eligibility, dated August 31, 2015; Evaluation Report, dated April 15, 2015
- Exhibit B: Notice of Meeting, dated March 4, 2015; Prior Notice & Consent for Reevaluation, dated July 27, 2015; Notice of Meeting, dated August 11, 2015
- Exhibit C: Intra-District Transfer Requests; Correspondence, dated June 4, 2015
- Exhibit D: List of School District personnel with knowledge of Complaint allegations
- Exhibit E: School District policies
- Exhibit F: Correspondence, dated August 25, 2015
- Exhibit G: Transfer form; School assignment form; Special Needs Transportation Request forms

### **Interviews with:**

Mother  
Special Education Director