

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

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**State-Level Complaint 2016:512  
Boulder Valley School District**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on May 9, 2016, by a parent challenging a school district's eligibility determination under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> The Parties agreed to try and resolve the Complaint through mediation and further agreed to extend the 60-day investigation timeline for that purpose. The Parties were unable to resolve the dispute in mediation. Consequently, the SCO resumed the state complaint investigation.

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**COMPLAINT ALLEGATIONS**

Parent's allegations are summarized as follows:

Beginning on or around September 23, 2015, Student was denied a free appropriate public education (FAPE) when:

1. The District failed to conduct a comprehensive evaluation of Student in all areas of suspected disability, including assessment in the area of social/emotional functioning.

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

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

2. The District improperly determined that Student was not eligible for special education by failing to consider information from a variety of sources, including parental input, medical providers, and social/emotional functioning.

### **FINDINGS OF FACT**

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

#### **Background:**

1. At all times relevant to the Complaint, Student was [age] years old and was residing with Parent inside the District's boundaries. Student has been diagnosed with severe Lyme Disease. As a result of this condition, Student has experienced chronic infections, fatigue, headaches, short-term memory lapses, difficulty concentrating, depression, and anxiety.<sup>4</sup> Based on increasing concerns for Student's social/emotional functioning, Parent began requesting that the District evaluate Student for special education as early as the spring of 2014.<sup>5</sup>
2. In addition to the challenges associated with her medical condition, Student has struggled with attendance since moving into the District for the 2011-12 school year. In the fall of 2012, Parent enrolled Student in the District's Online School for the flexibility afforded by 24 hour access to the learning environment. Despite the increased flexibility, Student failed to participate and make progress in her online courses. To improve Student's participation in Online School, the District urged Student to attend the "Learning Lab" in May and November of 2014. The Learning Lab is a drop-in lab where students can come for in-person assistance from teachers, counselors, and mentors to complete their academic course work. The Learning Lab differs significantly from a typical classroom in that it has a high teacher-student ratio and is very quiet, a setting that more closely resembles a library.<sup>6</sup> Students who have attendance problems are commonly referred to the Learning Lab to ensure that they complete their course work. Although the District strongly urged Student to attend the Learning Lab, she did not do so until the fall of 2015.<sup>7</sup>
3. Based on Student's lack of attendance and participation in the online program, the District initiated a truancy action in November of 2014. Student was adjudicated truant on

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

<sup>4</sup> Complaint, pp. 1-2.

<sup>5</sup> The allegation concerning the District's failure to evaluate Student in spring of 2014 was not accepted for investigation because the violation occurred more than one year prior to the filing of this Complaint. Consequently, this allegation is outside the jurisdiction of the state complaint process. 34 CFR § 300.153 (c). This jurisdictional restriction applies even if the alleged violation is continuing or the complainant is requesting compensatory services. *Questions and Answers on IDEA Part B Dispute Resolution Procedures* (OSERS 2013).

<sup>6</sup> Interviews with Special Education Teacher and School Counselor.

<sup>7</sup> Response at page 2; Interviews with Special Education Teacher and School Counselor.

August 17, 2015. Although Student has a history of truancy, she has never exhibited behavior indicating social maladjustment, such as substance abuse, disciplinary referrals, fighting or other antisocial behavior.<sup>8</sup>

4. Following the August 2015 truancy hearing, the District requested parental consent to conduct a special education evaluation. Parent signed consent for the evaluation on August 19, 2015.<sup>9</sup>

5. Student fully participated in the evaluation and regularly attended the Learning Lab during the assessment period, i.e., August 19 through September 23, 2016. This marks the first time that Student has demonstrated consistent attendance since she enrolled in the Online School in November of 2012. Notably, Parent brought Student to the Learning Lab and remained with Student for the entire time she participated in the lab.<sup>10</sup>

6. On September 23, 2015, the District's Eligibility Team determined that Student was not eligible for special education and related services.<sup>11</sup> After the Eligibility Meeting, Student's participation in Online School, including her attendance at the Learning Lab, sharply declined. Days after Student turned [age], Parent withdrew her from Online School. Student is now beyond the age of compulsory attendance and is not currently enrolled in any school in the District or another school district.<sup>12</sup>

#### **September 2015 Evaluation:**

7. First, Parent alleges that the District failed to conduct a comprehensive evaluation of Student. For the reasons explained below, the SCO agrees and finds that the District's evaluation was not sufficiently comprehensive to determine Student's eligibility for special education.

8. The September 2015 special education evaluation included the following assessments: completion of school health questionnaire; summary of reading and math performance and attendance for the 2011-2015 school years; Woodcock Johnson IV Test of Achievement; observations of Student in the Learning Lab; clinical interview of Parent conducted by School Psychologist; clinical interview of Student conducted by School Psychologist; Behavior Assessment System for Children, Second Edition (BASC2); and a summary of instructional and behavioral interventions and accommodations.<sup>13</sup>

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<sup>8</sup> Interviews with Parent, School Psychologist, Special Education Teacher, and School Counselor.

<sup>9</sup> In May of 2015, the Parties agreed to continue a pending truancy hearing to allow time for a special education evaluation. Parent did not timely return the consent form and was not fully cooperative during the evaluation process. Consequently, the evaluation was not completed prior the August 17 court date. Response at page 6.

<sup>10</sup> Interviews with Special Education Teacher and School Counselor.

<sup>11</sup> Exhibit E, pp. 2-4.

<sup>12</sup> Response at page 2; Exhibit N; Interview with Parent.

<sup>13</sup> Exhibit E.

9. Although the District utilized a variety of assessment tools and strategies relevant to the specific areas of need and concern, the evaluation lacked the data necessary to determine eligibility.<sup>14</sup> Most significantly, the evaluation lacked progress monitoring data, including Student's responses to the various instructional and behavioral interventions identified in the report. For example, the Evaluation Report identified specific interventions and accommodations previously provided to Student in the educational setting, including a reduced schedule, reading support, task organizers, individual guidance counselor meetings, and 1:1 instruction at Student's request. The report did not, however, provide any information describing when these interventions were provided and for how long. Moreover, the Evaluation Report did not provide any data demonstrating that Student was able to receive educational benefit from the identified interventions. Because more data is necessary to make the determination that Student can receive educational benefit from general education alone, the evaluation was not sufficiently comprehensive.

10. Further, the Eligibility Team concluded that Student's academic deficiencies or learning deficits were solely the result of her absences without sufficient evaluation data. The Evaluation Report specifically stated that "academic testing shows [Student's] overall academic skills to be similar to those of a typical [age] year old, which is roughly when [Student's] school attendance became a serious problem."<sup>15</sup> This conclusion was not supported by evidence or data that Student's academic deficits were the result of absences, as opposed to Lyme Disease or the associated social/emotional challenges described elsewhere in the Report. For example, the Report did not include RtI or MTSS data, comprehensive record review, grade history, or record of instruction documenting Student's academic performance prior to her demonstrated attendance problems. Instead, the Evaluation Report relied on observations that Student's performance and engagement improved during the three to four weeks she attended the Learning Lab. Although the SCO recognizes that establishing evidence of Student's prior academic performance is complicated due to the period of homeschooling, Evaluation Team did not attempt to establish this record. Relying on Student's performance in the Learning Lab for the assessment period, however, did not provide evidence sufficient to demonstrate that Student's academic deficits are due to lack of attendance alone.

11. Contradicting the conclusion that Student's academic deficits are the result of truancy, the evidence described in the Evaluation Report strongly indicates that Student's academic deficits may instead be the result of limited alertness, as indicated by an inability to manage and maintain attention, organize and attend, and prioritize environmental stimuli,<sup>16</sup> as well as the extreme anxiety and discomfort Student experiences in social settings.

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<sup>14</sup> ECEA Rule 2.08(3) provides eligibility criteria for SED. Relevant to this finding, the eligibility determination must include documentation that a "variety of instructional and/or behavioral interventions implemented within general education and the child remains unable to receive reasonable educational benefit." ECEA Rule 2.08(3)(c)(i).

<sup>15</sup> Exhibit E at page 13.

<sup>16</sup> Exhibit E at page 2.

### **Eligibility Meeting on September 23, 2015:**

12. On September 23, 2016, the District held an eligibility meeting to review the evaluation results and determine whether Student was eligible for special education and related services under the categories of Other Health Impairment (OHI) and Serious Emotional Disability (SED). Although the documentation from the meeting suggested that eligibility was only considered under the criteria for Other Health Impairment (OHI), the SCO finds that the Team also considered eligibility using the SED criteria. First, the evaluation included assessment tools, such as the BASC2 and clinical interviews, specifically intended to evaluate Student's social/emotional functioning for the specific purpose of determining eligibility under the SED category.<sup>17</sup> Further, School Psychologist recalled that she used the SED checklist to guide the eligibility discussion and was surprised that it was not included in the "Determination of Eligibility" paperwork. Finally, School Psychologist, School Counselor, and Special Education Teacher credibly recalled that this category was specifically considered by the Eligibility Team, and that Student was not found eligible under SED or OHI.

13. Essentially, the Team concluded that Student was not eligible because she makes progress when she is engaged in her academic work and "her illness does not appear to impact her ability to learn."<sup>18</sup> Throughout the discussion, District Team members focused exclusively on Student's academic performance in the Learning Lab.

14. Parent, through her attorney, repeatedly questioned the Eligibility Team's conclusion that Student's ability to access education was not impaired as a result of her social and emotional functioning. Relying on the results of the BASC2 and clinical interviews, Parent asserted that Student was overwhelmed by anxiety and could not participate in school or maintain in-person friendships with peers. Parent further asserted that Student's truancy was itself the result of "paralyzing anxiety."<sup>19</sup>

15. In response to Parent's concerns, various members of the Team stated that the evidence indicated that Student did well when she attended the Learning Lab during the assessment period and could therefore be properly served in the general education setting with accommodations for health conditions associated with Lyme Disease.<sup>20</sup> There is no credible evidence demonstrating that the Eligibility Team meaningfully considered how Student's social/emotional functioning impacted her ability to come to school or develop relationships with peers.

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<sup>17</sup> Interview with School Counselor, School Psychologist, and Special Education Teacher. School Psychologist reported that a clinical interview is a structured interview using the checklist for SED.

<sup>18</sup> Exhibit E at page 4 (Prior written notice dated September 23, 2016.)

<sup>19</sup> Interview with Parent.

<sup>20</sup> Exhibit E; Interviews with Parent, GAL, Special Education Teacher, School Counselor, and School Psychologist.

16. In contrast to the determination that Student was not eligible, the evaluation report provided clear evidence that Student was significantly impacted by social/emotional functioning in the educational setting. To begin, the results of the BASC2 indicated that Student has clinically significant scores, i.e., above the 98<sup>th</sup> percentile, in the following areas: internalizing problems, anxiety, somatization, and withdrawal. Summarizing the BASC2 results, the Report states that “[Student’s] raters endorsed items suggesting significant problems with anxiety, withdrawal, somatic complaints, and depression.”<sup>21</sup> Notably, these results were consistent between all three raters, i.e., Parent, School Counselor, and Special Education Teacher. Considering the consistency among raters, the Evaluator noted that “teacher reports should be interpreted with caution as [Student] has spent relatively little time with [School Counselor] and [Special Education Teacher], and the [Learning Lab] setting at [Online School] is unlike a typical classroom.”<sup>22</sup> Interestingly, the same caution was not exercised in concluding that Student’s academic deficits were the result of attendance problems based solely on her improved performance and increased engagement for the four weeks she attended the Learning Lab.

17. Further, the results of the BASC2 self-report indicated clinically significant scores in the following areas: attitude towards school, attitude towards teachers, social stress, sense of inadequacy, interpersonal relations, self-esteem, and self-reliance. In the areas of personal adjustment, the evaluator identified the following critical items: I never seem to get things right (true); nobody ever listens to me (true); I just don’t care anymore (true); other kids hate to be with me (often); I feel like my life is getting worse and worse (almost always); no one understands me (often); I feel sad (almost always); I hear voices in my head that no one else can hear (sometimes); I hate school (almost always); is easily annoyed at school (sometimes), and eats too little (sometimes).<sup>23</sup> In summary, the evaluator stated that Student’s “self-report suggests problems across the board” and “[Student’s] view of herself is a concern.”<sup>24</sup>

18. Consistent with the results of the BASC2, the clinical interviews conducted by School Psychologist with Parent and Student also provided significant evidence that Student’s social/emotional functioning impaired her academic performance and social development. Notably, Student insisted that Parent remain with her during the clinical interview with School Psychologist because she has “separation anxiety.”

19. Regarding Student’s mental health, Parent stated that Student reported “seeing shadows, hearing noises in the attic, sometimes seeing distinct individuals, and on occasion, seeing a little girl sitting at the top of the stairs looking at her.”<sup>25</sup> Further, Parent reported that Student worries about everything and has suffered serious bouts of depression that include suicidal ideation. Significantly, Student has been suicidal within the last six months. Consistent

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<sup>21</sup> Exhibit E at page 12.

<sup>22</sup> Exhibit E at page 11.

<sup>23</sup> Exhibit E at page 12.

<sup>24</sup> Exhibit E at page 12.

<sup>25</sup> Exhibit E at page 9.

with Parent's observations and concerns, Student reported that she is depressed and that nothing makes her happy or motivates her. Student also reported that she worries a lot, is very self-conscious, and is distracted by everything. When listening to music at home, Student reported that "she keeps one ear uncovered so she can listen for intruders."<sup>26</sup>

20. Regarding Student's social development, Parent stated that Student's primary social outlet is communicating with people she meets in online chat rooms. Student does not seem to have any friends outside of the ones she has met in chat rooms. According to Parent, Student prefers the company of her pets to friends and is surprised by conflict among her online friends. Consistent with Parent's interview, Student reported that she has no in-person friends but does have four or five online friends. Student stated that she can easily make friends online but shuts down in-person. Concerning social outings, Student reported she leaves her house once a week, typically for a trip to Walmart with Parent in the middle of the night. During these outings, Student stated that she doesn't like people seeing her and "gets stressed, tired, out of breath, and feels like people are looking at her and will throw things at her or bully her." Student would like to be "less anxious, less worried about what people think, and more confident."<sup>27</sup>

21. Regarding Student's academic performance, Parent stated that Student was anxious about attending school and would make herself sick to avoid going. In addition, Parent reported that Student has difficulty remembering the days of the week or what steps need to be taken to solve a problem or complete a task. Consistent with Parent's interview, Student reported that she is easily distracted, can't sit still, has memory problems, always forgets dates, and needs things explained to her several times.

22. Consistent with the results of the BASC2 and clinical interviews, observations of Student at the Learning Lab also provided evidence supporting a conclusion that Student's social/emotional functioning impairs her academic performance and social development. Student was observed by Special Education Teacher, School Counselor, and School Psychologist on nine occasions. Notably, Parent brought Student to the Learning Lab each day she attended and Student asked Parent to remain with her while she completed her coursework. Consequently, Parent was present for all observations.

23. Although the observations indicated that Student became increasingly more comfortable in the Learning Lab, she also demonstrated consistent and significant anxiety that impacted her performance. On August 31, 2015, Student arrived to the Learning Lab wearing pajama pants and house slippers and stated that she felt like passing out when she entered the room. On that same date, Special Education Teacher reported that Student needed step-by-step instructions for each stage of her assignment. Special Education Teacher further observed that Student worked very slowly and did not appear to know what she was supposed to do. When instructed on how to post comments to the class discussion board in language arts,

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<sup>26</sup> Exhibit E at page 10.

<sup>27</sup> Exhibit E at page 10.

Student stated that she was scared to post comments that could be seen by peers. On September 14, 2015, two weeks after she started coming to Learning Lab, Student again reported that she felt anxious and worried when she arrived at the Learning Lab. On that same date, Special Education Teacher reported that Student expressed some comments further demonstrating that Student had “little confidence in her academic abilities” and “was not able to remember some of the work she had previously completed.”<sup>28</sup>

24. Together, the BASC2, clinical interviews, and observations provided significant evidence that Student’s social/emotional functioning impaired academic performance and social development. This evidence contradicts the conclusion that Student is not eligible for special education and related services under the SED category.

### **CONCLUSIONS OF LAW**

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

**Allegation One:** The District failed to conduct a comprehensive evaluation when it concluded that Student’s academic deficits were solely attributable to lack of attendance without supporting data documenting Student’s responses to identified instructional and behavioral interventions or academic performance.

1. An evaluation under IDEA has two primary purposes: 1) to determine whether the child has a disability, and because of the disability needs special education and related services, and 2) to help the IEP team determine the child’s specific needs. 34 CFR 300.304(b)(1)(i)-(ii); *see also* 71 Fed. Reg. 46548. In evaluating students for eligibility, the school district must comply with IDEA’s procedural requirements concerning special education evaluations. Specifically, the school district must:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability;
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability;
- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- (4) Ensure that assessments and other evaluation materials are selected and administered without racial or cultural bias, are provided in the child’s native

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<sup>28</sup> Exhibit E at page 9.



language, are valid and reliable, and are administered by trained and knowledgeable personnel;

- (5) Select assessments relevant to specific areas of educational need;
- (6) Assess the child in all areas of suspected disability;
- (7) Make an eligibility determination by a group of qualified professionals and the child's parents.

34 C.F.R. §§ 300.304 – 300.306.

2. In this case, the SCO concludes that the evaluation was not sufficiently comprehensive for determining eligibility because it did not include data demonstrating Student's responses to identified instructional and behavioral interventions or evidence of Student's academic performance from a period prior to demonstrated attendance problems. To be considered eligible under the SED category, the Eligibility Team must consider documentation that "a variety of instructional and/or behavioral interventions were implemented within the general education and the child remains unable to receive reasonable educational benefit from general education." ECEA Rule 2.08(3). As detailed in Finding of Fact (FF ) (10), the Evaluation Report listed specific instructional interventions and accommodations that have been provided to Student at various times, such as a reduced schedule, reading support, and individual guidance counselor meetings. Although the Report identified the various interventions and accommodations provided, it did not include any data on when they were provided, the duration, or Student's response to specific interventions. Based on the list of interventions/accommodations previously provided, the Eligibility Team concluded that Student could benefit from accommodations in the general education setting without the need for specialized instruction. Because this conclusion was not based on any data concerning Student's response to these interventions, the evaluation was not sufficiently comprehensive in this area.

3. Similarly, the SCO concludes that the evaluation did not provide data demonstrating that Student's academic deficits were due to lack of attendance and not the social/emotional challenges that are well documented in the Report. As detailed in FF (11), the Team concluded that Student performed at a level typical for a [age] year old student simply because this was when her attendance became a serious problem. The Team made this conclusion without any evidence, e.g., comprehensive record review, grade history, or record of instruction from a period when Student was attending school, to support the conclusion that her academic deficits were due to lack of attendance and not the result of Lyme Disease or the comorbid emotional challenges described elsewhere in the Evaluation Report. Recognizing that truancy itself may trigger the obligation to conduct a special education evaluation under Child Find, the District should have conducted a more comprehensive evaluation before reaching the conclusion that Student could benefit from instruction with accommodations in the general education setting. *Department of Education, State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Hawaii 2001).

**Allegations Two:** The District’s eligibility determination is inconsistent with Student specific data concerning her social/emotional functioning, resulting in a denial of FAPE.

4. To be eligible for educational services under IDEA, a child must have one of the 13 qualifying impairments, *and*, “by reason thereof, needs special education and related services.” 34 C.F.R. § 300.8; ECEA Rule 2.8. Thus, it is not enough that a child has one of the qualifying disabilities – the child must also require “specially designed instruction ... to meet the unique needs of the child” as a result of that disability. *Id.*; *see also*, 34 C.F.R. § 300.39. To resolve a state complaint that challenges a school district’s eligibility determination, the SCO must first determine whether the school district followed the relevant procedures and standards required for making the determination and if so, whether the resulting determination is consistent with and supported by child-specific facts, i.e., evaluation data and other data in the record. *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-6 (OSERS 2013). For the reasons explained below, the SCO concludes that the District’s eligibility determination was inconsistent with evidence of Student’s social/emotional functioning.

5. To be eligible under the category of SED a student must have emotional or social functioning which prevents the child from receiving reasonable educational benefit from general education. ECEA Rule 2.08(3)(a). The student must exhibit one or more of four identified characteristics over a long period of time and to a marked degree, including the inability to build or maintain interpersonal relationships that significantly interferes with social development, and/or a tendency to develop physical symptoms or fears associated with personal or school problems. ECEA Rule 2.08(3)(a)(ii) and (iv). As detailed in FF (15)-(23), Student clearly demonstrated both the inability to build or maintain interpersonal relationships and a tendency to develop physical symptoms or fears associated with school problems. As evidenced by the results of the BASC2, Student demonstrated clinically significant concerns in the areas of internalizing problems, somatization, withdrawal, and anxiety. Although the Eligibility Team acknowledged that Student exhibited significant concerns in the area of social/emotional functioning, it nevertheless concluded that these factors did not impair her ability to access her education.

6. In addition to experiencing one of the identified emotional conditions, a student must exhibit “impairment in social/emotional functioning as demonstrated by an inability to build or maintain interpersonal relationships which significantly interfere with the child’s social development.” Social development is further defined as “those adaptive behaviors and social skills which enable a child to meet environmental demands and assume responsibility for his or her own welfare.” ECEA Rule 2.08(3)(b)(ii). In this case, the Eligibility Team failed to consider the impact of Student’s emotional functioning on social development consistent with ECEA Rule 2.08(3). As detailed in FF (14)-(19), the Eligibility Team focused exclusively on Student’s

academic work in the Learning Lab and did not meaningfully consider the impact of her social/emotional functioning on social development, including her ability to build and maintain relationships and function independently in a school environment.

7. By focusing exclusively on Student's history of truancy and brief academic performance at the Learning Lab, the Team discounted or minimized the evaluation data documenting significant deficits in social/emotional functioning, resulting in an eligibility determination that was not consistent with Student specific data or the eligibility criteria for SED. Truancy, however, does not excuse a school district's IDEA obligations. To the contrary, truancy may heighten or implicate a school district's IDEA obligations. As discussed above, truancy may trigger the district's obligation to evaluate. *Department of Education, State of Hawaii v. Cari Rae S.*, 35 IDELR 90 (D. Hawaii 2001). For students who have already been determined eligible, truancy may implicate IEP development and implementation concerns. *Joaquin v. Friendship Pub. Chart Sch.*, 66 IDELR 64 (D.D.C. 2015). Consequently, school districts should carefully evaluate their various obligations under IDEA for students with excessive absences.

### REMEDIES

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

- a) Failure to conduct sufficiently comprehensive evaluation, in violation of 34 C.F.R. §§ 300.304-305;
- b) Failure to determine eligibility consistent with student specific data and SED eligibility criteria, in violation of 34 C.F.R. § 300.306 and ECEA Rule 2.08(3).

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

- 1) **By August 19, 2016**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
  - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than September 9, 2016.
  - b) Effective training must be conducted for all special education administration staff, including any staff who serve as the District's special education designee, concerning the policies and procedures, and how truancy may implicate IDEA obligations. This training must be provided no later than December 9, 2016.
  - c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than December 14, 2016.

**2) Compensatory Education Services for Failure to Properly Determine Eligibility.**

- a) The District shall reconvene the Eligibility Team to determine eligibility consistent with this Decision and, as appropriate and necessary, develop an IEP. The District's obligation to determine eligibility and develop an IEP will not be triggered unless Parent enrolls Student in a school within the District. If Parent accepts this remedy, she must notify the District's Legal Counsel and CDE of her intent to enroll Student. If Parent has not enrolled Student in a school within 10 days of receiving this Decision, the District will be excused from providing this remedy.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Joyce Thiessen-Barrett  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

**NOTE:** Failure by the District to meet any of the timelines set forth above will adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the Department.

**CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 26<sup>th</sup> day of July, 2016.

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### **Complaint, pages 1-11.**

Exhibit 1: Notice of truancy hearing.  
Exhibit 2: Email correspondence.  
Exhibit 3: Consent for evaluation.  
Exhibits 4 and 5: No documentation provided.  
Exhibit 6: Eligibility determination dated September 2015.  
Exhibit 7: Prior written notice dated September 2015.  
Exhibit 8: Evaluation Report dated September 2015.  
Exhibit 9: Email Correspondence.  
Exhibit 10: Remedial attendance plan.  
Exhibit 11: 2014 health care plan.  
Exhibit 12: Memorandum to truancy court.  
Exhibit 13: Physician letter.  
Exhibit 14: District exhibit submitted in truancy matter.  
Exhibit 15: Draft evaluation report.  
Exhibit 16: Email correspondence.

### **District's Response, pages 1-5.**

Exhibit A: Email correspondence and consent for evaluation.  
Exhibit B: Documentation requested provided in Exhibits A and E.  
Exhibit C: Notice of meeting.  
Exhibit D: Evaluation Report.  
Exhibit E: Eligibility Determination.  
Exhibit F: Documentation requested provided in Exhibit E.  
Exhibit G: Class schedule.  
Exhibit H: Documentation regarding attendance.  
Exhibit I: Transcript.  
Exhibit J: Correspondence regarding request for IEE.  
Exhibit K: Witness contact list.  
Exhibit L: Enrollment history.  
Exhibits M and N: Email correspondence.  
Exhibit O: 2015 health care plan.  
Exhibit P: 2015 504 Plan.

**Parent chose not to submit a Reply.**

**Interviews with:**

- Parent
- Guardian ad Litem
- Special Education Teacher
- School Counselor
- School Psychologist