

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

State-Level Complaint 2010: 518
Colorado Springs School District 11

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint), dated 11/16/2010, was properly filed on 12/20/2010.

The Complainants are the mother and father of a child with a disability. To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))¹ and to protect the anonymity of the Complainants and their child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

[Parents], Complainants, [Parents];
[Parent], Mother, [Parent];
[Father], Father, [Father];
[Student], Child of [Parents], [Student];
[Student's] age of [Age], [Age];
[School], [School];
[Current School], [Current School];
Colorado Springs School District 11, [District];
[Special Education Director], Interim Executive Director of Special Education, [Special Education Director];
[School Principal], School Principal, [School Principal];
[Special Education Teacher], [School] Special Education Teacher, [Special Education Teacher];
[General Education Teacher], General Education Teacher, [General Education Teacher];
[School Psychologist], School Psychologist, [School Psychologist]; and
[District's Legal Counsel], [District's Legal Counsel].

The Complaint consisted of 13 pages and Exhibits "A" through "L."

¹ FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

The State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations. The investigation is limited to alleged violations that occurred between the dates of 12/20/2009 and 12/20/2010.³

The SCO identified the overriding issues and, therefore, the scope of the investigation as:

1. Whether the District committed procedural violations of the IDEA or Colorado's Exceptional Children's Educational Act⁴ in conjunction with the April 2010 IEP and, if so, whether the procedural violations denied [Student] a free appropriate public education (FAPE).
2. Whether the District failed to maintain confidentiality of the [Student's] education records in violation of §§ 300.610 through 300.627.

The District's [Special Education Director] was notified of [Parents'] allegations in a letter dated 12/21/2010. The letter, which included a complete copy of the Complaint and all supporting documentation, was received by the District on 12/22/2010.

On 1/6/2011, the SCO timely received the District's 6 page Response and Exhibits "1" through "6." [Parents] received a copy of the District's Response and all supporting documentation on 1/7/2011.

On 1/12/2011, the SCO timely received the [Parents'] 4 page Reply. On 1/12/2011, the SCO confirmed that the District received [Parents'] Reply and sent a copy via US Mail.

On 1/18/2011, the SCO requested additional information from the District. The SCO received this additional documentation on 1/19/2011 and marked it as Exhibits "7" and "8." On 1/19/2011, the SCO sent [Parents] a copy of Exhibits 7 and 8 via certified mail.

On 1/19/2011, the SCO interviewed [Special Education Teacher] and [General Education Teacher] by telephone.

On 1/20/2011, the SCO interviewed [Parent] by telephone.

On 1/21/2011, the SCO interviewed [School Psychologist] and [Special Education Director] by telephone.

² Final Regulations implementing the IDEA at 34 CFR Part 300.

³ The SCO's jurisdiction to investigate is limited to alleged violations that did not occur more than one year prior to the date the Complaint is received. § 300.153(c).

⁴ Hereafter, the IDEA, 20 U.S.C. § 1400, *et seq.* and its implementing regulations at 34 CFR Part 300 will be referred to by regulation number (e.g., § 300.000 or Section 300.000) and Colorado's Exceptional Children's Educational Act (ECEA), 1 CCR 301-8, 2220-R-1.00, *et seq.*, will be referred to by rule number (e.g., Rule 1.00(0)).

On 01/27/2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

[Parents'] Complaint contains two allegations,⁵ summarized as follows:

1. The April 2010 Individualized Education Plan (IEP) was completed without the [Parents'] participation; and
2. On or about 7/05/2010, [Student's] confidential records were mailed to [Parents] from a staff member's private residence which suggests that the [Student's] confidentiality may have been breached.

Proposed Remedy. Concerning allegation #1), [Parents] proposed that the District be ordered to take steps to ensure that the violation, if found, does not recur.⁶ Concerning allegation #2), [Parents] proposed that disciplinary action be taken against the District for violation, if found, of [Student's] confidentiality.

THE DISTRICT'S RESPONSE

The District's Response denied each of the Complaint allegations. The Response is summarized as follows:

Allegation #1. [Parent] attended and participated in the 4/2/2010 IEP team meeting and signed the Extended School Year (ESY) document dated 4/8/2010.

Allegation #2. The District did not breach [Student's] confidentiality concerning the education records sent to [Parents].

PARENTS' REPLY

[Parents] filed a 4 page Reply without additional documentation. The Reply is summarized as follows:

Allegation #1. Reiterated allegation that the April 2010 IEP was completed without [Parents'] participation. Reiterated allegations previously identified as beyond the SCO's jurisdiction to investigate.

Allegation #2. Reiterated allegation that use of staff member's residence on return mailing label suggested [Student's] confidentiality was breached. Raised new allegation beyond the SCO's jurisdiction to investigate.

⁵ The remainder of [Parents'] Complaint allegations were not accepted since they were either beyond the SCO's jurisdictional one-year statute of limitations or because the allegation did not articulate a violation of the IDEA.

⁶ [Parent] identified this proposed remedy in a telephone conversation with State Complaint's Officer Jeanine Pow on 12/20/2010.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁷ the SCO makes the following FINDINGS:

Factual Background.

1. At all times relevant to the Complaint, [Student] was [age] years of age, and eligible for special education and related services.
2. At all times relevant to the Complaint, [Student] attended school within the District. During the 2009-2010 academic year, [Student] attended [School] in the District. For the 2010-2011 academic year, [Parents] requested that [Student] be allowed to transfer to a different school. The District granted [Parents'] request and [Student] presently attends [Current School], another school within the District.⁸

4/2/2010 IEP.

3. Notice of Meeting. District invited [Parent] to attend [Student's] annual IEP meeting.⁹ Although the IEP meeting had to be rescheduled several times, the meeting scheduled for 3:45 p.m. on 4/2/2010 was at a date and time agreed upon by [Parent] and the District.¹⁰ The Notice of Meeting provided to [Parent] identified that the purpose of the meeting was to "review and update [Student's] present level of functioning, needs, goals and objectives, and to develop a plan to provide special education and related services."¹¹
4. Meeting. On 4/2/2010, [Parent] attended the annual IEP review meeting at [School].¹² [Student], [Special Education Teacher], [General Education Teacher], and [School Psychologist] also attended this meeting.¹³ [Special Education Teacher] served as the Special Education Designee.¹⁴
5. Due to equipment problems, [Special Education Teacher] was not able to display the draft IEP on the overhead projector.¹⁵ When [Special Education Teacher] realized that the overhead

⁷ Appendix A, attached and incorporated by reference, details the entire Record.

⁸ Complaint; and Response.

⁹ Exhibit K at page 2.

¹⁰ Reply; and interviews with [Special Education Teacher] and [Parent].

¹¹ Exhibit K at page 2.

¹² Exhibit 1; and interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

¹³ Exhibit K at page 6; and interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

¹⁴ Interviews with [Special Education Teacher] and [Special Education Director].

¹⁵ Complaint at page 11; and interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

projector was not working, she printed a hard copy of the draft IEP and distributed it to all participants for review during the meeting.¹⁶

6. At the meeting on 4/2/2010, the IEP team reviewed the draft IEP and discussed the following topics:¹⁷

- [Student's] present level of academic achievement, including results of AimsWeb;
- [Student's] progress on annual goals and objectives;
- [Student's] current needs;
- Placement in the Least Restrictive Environment (LRE);
- Extended School Year (ESY) eligibility and services; and
- [Parent] concerns, including changes in [Student's] behavior observed at home.¹⁸

7. [Parent] participated in the 4/2/2010 IEP meeting by engaging in conversation with the IEP team about [Student's] progress and instructional needs, asking questions about the results and accuracy of progress monitoring, and expressing her desire to keep [Student's] placement in the LRE defined as inside the regular classroom at least 80% of the time.¹⁹

8. The IEP meeting ended at approximately 4:55 p.m. when the [General Education Teacher] left.²⁰ After [General Education Teacher] left, [Special Education Teacher], and [School Psychologist] answered [Parent's] general questions about [Student's] upcoming triennial review²¹ and discussed [Parent's] concerns that [Student] was being bullied.²² Although there is disagreement as to the status of the IEP when [General Education Teacher] left the meeting, all IEP team members agreed that the IEP meeting ended when [General Education Teacher] left at 4:55 p.m.²³

9. The parties disagree about whether the IEP dated 4/2/2010 was completed by the IEP team at the meeting on 4/2/2010. [Parents] assert that the IEP was not completed on 4/2/2010 because [Special Education Teacher] could not get the overhead projector to work and [General

¹⁶ Although [Parent] denied receiving a copy of a draft IEP at the meeting, the SCO finds it more likely than not that [Special Education Teacher] distributed a hard copy to all participants. Interviews with [Parent], [General Education Teacher], [Special Education Teacher], and [School Psychologist].

¹⁷ There is disagreement regarding the specific content of the discussion. No one at the meeting took notes and the meeting was not recorded. Due to the lapse of time, witnesses could recall general topic areas, but all had difficulty recalling specific details about the substance of those topical discussions.

¹⁸ Exhibit K; and interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

¹⁹ Interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

²⁰ *Id.*

²¹ [Student's] triennial evaluation was due September of 2010. Exhibit 1 at page 17.

²² Interviews with [Parent], [Special Education Teacher], and [School Psychologist].

²³ Interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

Education Teacher] had to leave the meeting early.²⁴ The District asserts that the IEP document was completed with [Parent's] participation at the meeting on 4/2/2010.²⁵ Based on the credible evidence in the record, the SCO finds it more likely than not that the IEP dated 4/2/2010 was completed by the IEP team at the meeting on 4/2/2010. Specifically,

- Despite the lack of a working overhead projector, the IEP team was able to review and make changes to [Student's] draft IEP.²⁶
- The topics relevant to the annual review of [Student's] IEP were discussed by the IEP team while [General Education Teacher] was present.²⁷
- With the exception of [Parent], all IEP team members understood that [Student's] IEP was completed on 4/2/2010.²⁸
- All IEP team members agreed that, at the conclusion of the meeting, [Parent] had not yet decided whether to accept the ESY services that the IEP team found [Student] eligible to receive at the team meeting on 4/2/2010.²⁹
- On or about 4/5/2010, [Parent] informed [Special Education Teacher] that she would accept the ESY services discussed and offered at the 4/2/2010 meeting. On 4/8/2010, the IEP team members signed the ESY services referral and eligibility document.³⁰
- Although [Parent] did not believe that [Student's] IEP had been completed at the meeting on 4/2/2010, [Parent] did not request that the IEP team reconvene to finish [Student's] IEP or express any concerns about [Student's] IEP when she called [Special Education Teacher] to accept ESY services or when she later signed the ESY services document.³¹
- Although [Student] received ESY services under the plan developed at the IEP meeting on 4/2/2010, [Parent] never requested an IEP meeting to complete [Student's] IEP or expressed concerns that the IEP had not been completed.³²
- From 4/2/2010 through the filing of this Complaint, [Parents] never requested an IEP team meeting to complete or discuss [Student's] IEP.³³ [Parents] have not expressed any dissatisfaction with the content of [Student's] 4/2/2010 IEP.³⁴

²⁴ Complaint at page 11.

²⁵ Response at page 2.

²⁶ Interviews with [General Education Teacher], [Special Education Teacher], and [School Psychologist].

²⁷ Interviews with [Parent], [General Education Teacher], [Special Education Teacher], and [School Psychologist].

²⁸ Interviews with [General Education Teacher], [Special Education Teacher], and [School Psychologist].

²⁹ Interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

³⁰ Exhibit K at page 1; and interviews with [Parent], [Special Education Teacher], [General Education Teacher], and [School Psychologist].

³¹ Interviews with [Special Education Teacher] and [Parent].

³² Interviews with [Parent], [Special Education Teacher] and [Special Education Director].

³³ Complaint; Reply; and Interviews with [Parent], [Special Education Teacher], and [Special Education Director].

³⁴ *Id.*

10. Since [Parent] participated in the meeting on 4/2/2010 during which [Student's] IEP was developed and completed, the SCO finds that the 4/2/2010 IEP was completed with [Parent's] participation.

11. Due to technical difficulties with a new computer program, [Special Education Teacher] was unable to print a copy of the final IEP document and provide it to [Parent] at the conclusion of the IEP team meeting on 4/2/2010.³⁵ Specifically, [Special Education Teacher] was not able to print a copy of the IEP without the word "draft" appearing on the pages.³⁶

12. On 4/22/2010, [Parent] removed [Student] from [School]. [Parent] and [District] agreed that [Student] would receive home-bound instruction for the remainder of the academic year.³⁷

13. [Student's] most recent IEP, dated 9/2/2010, was developed at an IEP meeting in conjunction with [Student's] triennial evaluation at [Current School]. [Parents] attended this IEP team meeting and are satisfied with the special education services [Student] is receiving at [Current School].³⁸

Confidentiality of [Student's] education records.

14. In a letter dated 5/20/2010, [Parents] requested [Student's] education records.³⁹ On 7/5/2010, [Father] notified [School Principal] that they believed certain records were missing from the documents they had received from the District.⁴⁰ On or about 7/5/2010, [School Principal] called [Special Education Teacher] and asked her to copy [Student's] records and mail them to [Parents].⁴¹

15. The relevant portion of the District's policies and procedures concerning student confidentiality and the removal of student's records from the School provides as follows:

All special education files need to be kept confidential and in a secure location. Each school site posts a list of staff allowed to access special education files and maintains a record of individuals accessing files.

IEP's distributed to staff (special education primary provider, school social worker, nurse, general education teacher, etc.) also need to be treated in a confidential matter. Under no

³⁵ [School] was a pilot program in the District for testing new technology and IEP forms. This new technology was tested for the first time at [Student's] IEP meeting on 4/2/2010. Glitches experienced in this meeting have since been resolved. Interviews with [Special Education Teacher] and [Special Education Director].

³⁶ Interviews with [Special Education Teacher] and [School Psychologist].

³⁷ Complaint at page 8; and Interview with [Parent].

³⁸ Exhibit 8 at page 1; Complaint at page 10; and interview with [Parent].

³⁹ Exhibit 4 at page 1. [Parent] removed [Student] from [School] due to concerns that [Student] was being bullied by other students. On the advice of an attorney, [Parent] requested [Student's] school records with the hope that the records would contain information related to bullying. Interview with [Parent].

⁴⁰ Exhibit I at page 2.

⁴¹ Exhibit 4 at page 3; and Interview with [Special Education Teacher].

circumstances should student files be taken by staff to their homes.⁴²

16. On or about 7/6/2010, and as directed by [School Principal], [Special Education Teacher] went to [School] and copied the educational records requested by [Parents].⁴³

17. [Special Education Teacher] sealed copies of [Student's] educational records in manila envelopes and took them directly from [School] to the post office. [Special Education Teacher] mailed the records via certified mail. [Special Education Teacher] provided her home address as the return address to ensure that she would receive notification when the envelopes had been delivered.⁴⁴

18. Based on the credible evidence in the record, the SCO finds that [Special Education Teacher] followed District policy and did not take [Student's] records home with her before mailing them to [Parents].

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact (FF), the SCO enters the following CONCLUSIONS OF LAW:

Allegation #1: Whether 4/2/2010 IEP was completed without [Parent's] participation.

1. The development of a student's IEP is a collaborative process that "places special emphasis on parental involvement." *Systema v. Academy School District No. 20*, 538 F.3d 1306, page, (10th Cir. 2008). The IDEA provides procedural safeguards to ensure that parents have the opportunity to participate in the IEP process. *Id.*

2. To ensure that parent's have the opportunity to participate in the IEP process, public agencies (here, the District) must "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate." § 300.322 (a). This includes:

- (1) Notifying parents early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.
- ...
- (3) Indicat[ing] the purpose, time, and location of the meeting, and who will be in attendance; and
- ...

§ 300.322 (a) through (b) (1) and (f).

⁴² Exhibit 6 at page 1.

⁴³ Exhibit 4 at page 3; and interview with [Special Education Teacher].

⁴⁴ Interview with [Special Education Teacher].

3. Consistent with § 300.322, the District provided [Parents] with the opportunity to participate in the development of [Student's] IEP. (FF #3). Specifically, the District provided sufficient notice of [Student's] annual IEP meeting on 4/2/2010. (FF #s 3 and 10).

4. [Student's] 4/2/2010 IEP was developed and completed with [Parent's] participation at the 4/2/2010 IEP meeting. (FF #s 4, and 6 through 10). The SCO is not persuaded by [Parents'] argument that the IEP was not completed at the 4/2/2010 IEP meeting because the overhead projector was not working. The IEP team was able to review and make changes to [Student's] IEP at the 4/2/2010 IEP meeting. (FF #9). The SCO is not persuaded by [Parents'] argument that the IEP was not completed at the 4/2/2010 IEP meeting because the [General Education Teacher] had to leave early. The IEP meeting had concluded and the IEP was completed at the time [General Education Teacher] left the meeting. (FF # 8).

Allegation #2: Whether District breached [Student's] confidentiality.

5. "Each participating agency (here, the District) must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages." § 300.623 (a). The District's own policy further provides that "[u]nder no circumstances should student files be taken by staff to their homes." (FF# 16).

6. The District did not violate [Student's] confidentiality in responding to [Parents'] request for copies of [Student's] education records. [Special Education Teacher] followed District policy and did not take [Student's] records home with her. (FF #s 15, and 17 through 19).

REMEDIES

Having found no violation of the IDEA, the SCO orders no remedies.

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 16th day of February, 2011.

Candace Hawkins

Candace Hawkins, Esq.
State Complaints Officer

Appendix A

2010:518 Record

Complaint, pages 1 through 13;

Exhibit A: Not relevant and not considered.

Exhibit B: Not relevant and not considered.

Exhibit C: Not relevant and not considered.

Exhibit D: Not relevant and not considered.

Exhibit E: Not relevant and not considered.

Exhibit F: Not relevant and not considered.

Exhibit G: Doctor's Statement concerning [Student's] diagnoses dated 6/28/2010.

Exhibit H: Statement signed by [Parent] concerning [Student's] education records.

Exhibit I: Prior Notice and Consent to Evaluate signed by [Parent] on 8/21/2010.

Exhibit J: Email exchange between [Parent] and [School Principal] dated 7/5/2010-7/9/2010, pgs.1-4.

Exhibit K:

ESY dated 4/8/2010, pg. 1.

Prior Notice of Special Education Action dated 4/2/2010, pg. 2;

Overview of Parent's Rights and receipt of Procedural Safeguards Notice signed by [Parent] 4/2/2010, page 3;

IEP dated 4/2/2010, pages 10-24;

Consent for release of information signed by [Parent] on 4/2/2010, page 25;

Not relevant and not considered, pages 26-27.

Exhibit L: Guidance regarding FERPA

Reply, pages 1-4

Response, pages. 1-5;

Exhibit 1: IEP dated 4/2/2010, ESY dated 4/8/2010, pages 1-21.

Exhibit 2: Contact information for [Student's] IEP Team.

Exhibit 3: List of District staff with knowledge of Complaint allegations.

Exhibit 4: Correspondence between [Parent] and various District staff dated from 5/17/2010 to 7/16/2010, pages 1-6.

Exhibit 5: District policy regarding student records, pages 1-10.

Exhibit 6: District policy regarding education records in general, pages 1-5.

District's Supplement to Record:

Exhibit 7: Unsigned IEP dated 9/2/2010, pages 1-28.

Exhibit 8: Signature pages for IEP dated 9/2/2010, pages 1-5.

Telephone Interviews:

- [General Education Teacher] and on 1/19/2011
- [Special Education Teacher] on 1/19/2011
- [Parent] on 1/20/2011
- [School Psychologist] on 1/21/2011
- [Special Education Director] on 1/21/2011