

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

State-Level Complaint 2012: 513
Jefferson County School District, R-1

DECISION

INTRODUCTION

This state-level complaint (Complaint) was properly filed on December 5, 2012, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

Based on the written Complaint and a telephone interview with Parent on December 5, 2012, 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 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

PARENT'S COMPLAINT ALLEGATIONS

Parent's Complaint contained two allegations, summarized as follows:

1. The IEP developed on October 4, 2012, was not reasonably calculated to confer educational benefit because:
 - a. The IEP goal developed for written expression did not include appropriate grade level standards, as Parent requested;
 - b. The IEP did not include a goal related to keyboard skills, as Parent requested; and
 - c. The IEP offered a placement, i.e., placement in an SIED program rather than placement in a general education setting with a one-on-one aide trained in ABA, that failed to educate Student in the least restrictive environment (LRE).

¹ 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.*

² 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. Parent was denied the opportunity for meaningful participation in the development of Student's educational program when Student's IEP team failed to consider her proposals for goals and placement at the October 4, 2012, IEP meeting.

Summary of Proposed Remedies. Parent proposed that Student's IEP be amended to include the goal for written expression requested by Parent and a goal for keyboarding, and that Student be immediately placed in the general education setting at a specific school with a one-to-one paraprofessional trained in ABA.

SUMMARY OF THE DISTRICT'S RESPONSE

Denying allegation one, the District asserted that Student's current IEP is reasonably calculated to provide a free appropriate public education in the least restrictive environment. In support of this assertion, the District submitted documentation showing that Student's IEP is tailored to [Student's] unique strengths and needs, including documentation that Student is making progress on [Student's] IEP goals and objectives, and in the general education curriculum.

Denying allegation two, the District asserted that Parent has had a meaningful opportunity to participate in the development of Student's current IEP. In support of this assertion, the District submitted documentation showing that Parent received appropriate notice of IEP meetings, actively participated in Student's October 2012 IEP meeting, and had her questions and concerns addressed at the meeting and in subsequent correspondence.

SUMMARY OF PARENT'S REPLY

Parent did not submit a reply. Parent submitted additional documentation, as requested by the SCO, on January, 23, 2013.³

FINDINGS OF FACT (FF)

After thorough and careful analysis of the entire record,⁴ the SCO makes the following FINDINGS:

Factual Background:

1. At all times relevant to the Complaint, Student was [age] years of age, a resident of the District, and eligible for special education and related services as a child with a significant identifiable emotional disability (SIED).⁵ For the 2011-2012 school year, Student received core academic instruction in a self-contained, center-based SIED program at Former School. In May

³ This documentation has been marked as Exhibit F.

⁴ The appendix, attached and incorporated by reference, details the entire record.

⁵ Exhibit 1, p. 1.

of 2012, Student's IEP team determined that [Student] would continue to receive core academic instruction in an SIED program for the coming 2012-2013 school year. Although Mother agreed with Student's placement in the SIED program, she did not agree with the District's determination that Student would be receiving [Student's] educational programming and IEP services at a different location, i.e., School, alleging that Student had not received proper educational services when [Student] attended School during the 2010-2011 school year.

2. Student's Parents are divorced and share educational decision making authority.⁶ Since December of 2008, Student has primarily resided with Father in Colorado and has spent time with Mother in [State] during school breaks, such as summer break, spring break, and any holiday or school in-service longer than 3 days.⁷ Father is aware of this Complaint, but does not agree with Mother's allegations or proposed remedies.⁸

Allegation One: Student's October 2012 IEP violated the IDEA because it did not include a writing objective aligned with grade-level standards or a keyboarding goal, and failed to offer a placement that educated Student in the least restrictive environment.

3. On October 4, 2012, the District convened a properly noticed IEP meeting for the annual review and revision of Student's IEP. The properly constituted IEP team included Mother, Father, District Special Education Director, School Principal, Special Education Teacher, General Education Teacher, School Social Worker, Speech Language Pathologist, School Nurse, Mother's Advocate, and District's Legal Counsel.⁹ The IEP meeting lasted approximately three hours and thirty minutes.¹⁰

Writing Goal

4. Mother has alleged that the writing objective developed at Student's October 2012 IEP meeting was not appropriate because the criteria failed to align with fourth-grade standards for writing. At the October 2012 IEP meeting, the School team proposed a writing objective that would require Student to write a five sentence paragraph on one topic that included a topic sentence, three details, and a concluding sentence onto paper or with the use of a computer.¹¹ In response, Mother requested that the proposed writing objective be modified to require that

⁶ Exhibit D, p. 1; Interviews with Mother and Father.

⁷ Exhibit D, p. 1; Interviews with Mother and Father.

⁸ Interview with Father.

⁹ Exhibit 1, p. 2; Interviews with Mother, Mother's Advocate, Father, Special Education Teacher, School Social Worker, and Special Education Director.

¹⁰ Interviews with Mother, Mother's Advocate, Father, Special Education Teacher, School Social Worker, and Special Education Director.

¹¹ Exhibit 1, p. 9.

Student write a three-paragraph essay because this criteria reflected fourth-grade standards in writing.¹² Mother also requested that the word “independently” be added to the objective.¹³

5. The team discussed Mother’s concerns in the context of Student’s current strengths and needs in the area of writing.¹⁴ As documented in the IEP section on present levels of academic achievement and functional performance (PLAAPF), Student has difficulty with writing.¹⁵ Although the IEP team concluded that Student was capable of writing in complete sentences, [Student] continued to struggle with capitalization, spelling, punctuation, and had significant difficulty writing on any topic other than video games.¹⁶ At the beginning of the school year, Student’s writing was characterized by random topics and words, no punctuation, and random capitalization. Special Education Teacher reported it was difficult to understand what Student was writing about or to identify sentences because [Student’s] writing lacked topical coherence and punctuation.

6. While Special Education Teacher acknowledged that the proposed criteria did not reflect fourth-grade standards, she explained that Student would be overwhelmed by a three-paragraph essay at [Student’s] current skill level. More importantly, she was concerned that Student would “shut down” if the objective was too far beyond [Student’s] current level of functioning because Student struggles with emotional regulation and coping skills, as a result of [Student’s] disability.¹⁷ Historically, writing has caused significant frustration for Student.¹⁸ And when frustrated, Student has been observed to avoid work, whine, put [Student’s] head down on [Student’s] desk and refuse to work, vocalize frustration, and throw [him/herself] on the floor and cry—though [Student] has not been observed throwing [him/herself] on the floor during the 2012-2013 school year.¹⁹

7. Following this discussion, Student’s IEP team agreed to increase the level of mastery from 75% to 80% and add the word “independently,” as Parent requested, but determined that the objective was otherwise appropriate for Student’s needs and current level of functioning.²⁰ Mother reiterated her request that Student’s writing goal be modified in correspondence sent to Special Education Director on October 21, 2012.²¹ Consistent with the discussion during the IEP meeting, the District responded that “[t]he School team does not feel it is necessary to

¹² Exhibit 1, p. 9; Exhibit 8, p. 46; Interviews with Mother, Mother’s Advocate, Special Education Teacher, and Special Education Director.

¹³ Exhibit 1, p. 9.

¹⁴ Exhibit 1, pp. 9; Interviews with Special Education Teacher and Special Education Director.

¹⁵ Exhibit 1, p. 5.

¹⁶ Exhibit 1, p. 5; Interview with Special Education Teacher.

¹⁷ Exhibit 1, p. 7; Interview with Special Education Teacher.

¹⁸ Exhibit 1, Exhibit 9, and Exhibit 10; Interviews with Special Education Teacher and Special Education Director.

¹⁹ Exhibit 1, pp. 6-7; Exhibit 10; Interviews with Special Education Teacher, Assistant Special Education Director, and School Social Worker.

²⁰ Exhibit 1, p. 12; Interviews with Special Education Teacher, Special Education Director, and Mother.

²¹ Exhibit 8, p. 46.

change the previously written objective due to [Student's] current writing skills and functioning."²²

8. According to the October 2012 IEP, Student's annual goal in the area of writing states that [Student] will increase [Student's] written language level by meeting the following objective: [Student] will, independently, write a five sentence paragraph on one topic that includes a topic sentence, three details, and a concluding sentence on paper or with the use of a computer in four out of five trials.²³ The baseline for this goal was three out of five trials, with support. This goal was measurable and addressed an identified area of academic need.

9. Student has made progress on this IEP objective and writing skills.²⁴ And although [Student] is not yet performing at grade-level for writing, Student's 2012-2013 report card indicated that [Student] is progressing toward the fourth-grade level standard for writing and has improved significantly from the beginning of the school year.²⁵ In the specific areas of using writing effectively, applying effective writing techniques, and applying conventions, Student is progressing toward fourth-grade standards. In the area of evaluating [Student's] own writing strategies and performance, Student is meeting fourth-grade standards. Student's performance in writing has decreased slightly since 2011-2012, but the decrease was not significant.²⁶ While Student was not yet performing at grade level in either school year, [Student] ended the 2011-2012 school year meeting fourth grade writing standards in two out of the four areas evaluated, whereas [Student] has been marked as meeting the standard in one out of four areas for the first trimester of the 2012-2013 school year. Further, the SCO notes that Student was retained in the third-grade for the 2011-2012 school year, giving [Student] more practice and familiarity with the writing curriculum for that school year.²⁷

10. Finally, Special Education Teacher reported that Student has significantly improved [Student's] ability to focus on a single topic and to write on topics other than video games, since the beginning of the school year. For example, if Student is asked to write about [Student's] favorite pizza, [Student] may "wander" from the assignment by writing about other pizzas, but [Student] will stick to the general topic of pizza. And although Student continues to struggle with punctuation and consistently writing complete sentences, it is now possible to discern what Student is writing about and that a string of words is a sentence.²⁸

²² Exhibit 1, p. 12.

²³ Exhibit 1, p. 17.

²⁴ Exhibit 4B, p. 3.

²⁵ Exhibit 4A, p. 1.

²⁶ Exhibit 4B and Exhibit F, p. 2.

²⁷ Mother confirmed that Student was retained in third grade for the 2011-2012 school year.

²⁸ Interview with Special Education Teacher.

Keyboarding Goal

11. Mother has alleged that Student's IEP is not appropriate because it does not include a keyboarding objective as part of [Student's] writing goal. Mother requested a keyboarding goal to ease Student's frustration with handwritten assignments.²⁹ During the IEP meeting, Student's team discussed Mother's request in the context of Student's difficulty with writing. As documented in the PLAAFP statement of the October 2012 IEP, keyboarding is very difficult for Student and "causes much frustration" when used to complete written assignments.³⁰ Because keyboarding causes Student significant frustration, Special Education Teacher expressed concerns that adding a keyboarding objective would likely interfere with Student improving [Student's] writing skills, as writing is also a major source of frustration for Student.³¹ Based on this discussion about Student's current level of functioning and frustration with both writing and keyboarding, Student's IEP team decided not to add a keyboarding goal so that Student could focus on the mechanics of writing.³² Although Student does not have a formal keyboarding objective, Student has regular access to the "Dance Mat Typing" program to support keyboarding, a program [Student] appears to enjoy and engages in weekly.³³ Access to this program is consistent with the recommendations submitted by the occupational therapist at Student's IEP meeting.³⁴ In addition, Student may choose whether to complete a written assignment by hand or computer.

Placement

Background: Placement during the 2011-2012 school year.

12. During the 2011-2012 school year, Student attended Former School where [Student] received core academic instruction in a self-contained SIED program, with opportunities for inclusion in the general education environment for lunch, recess, and specials, i.e., art, music, and physical education.³⁵ The SIED classroom provided the small group instruction, low student-teacher ratio, and mental health support required to address Student's academic and social needs, such as "low tolerance for work completion and time on task".³⁶ In general, Student participated in the general education environment for specials, recess, and lunch.³⁷

13. From January to March of 2012, Student also participated in the general education classroom for core academic instruction each afternoon for approximately one hour and forty-

²⁹ Complaint, p. 5; Exhibit 8, p. 46

³⁰ Exhibit 1, p. 5.

³¹ Interview with Special Education Teacher; School Social Worker, Special Education Director.

³² Exhibit 1, pp. 5 and 7.

³³ Exhibit 1, p. 5; Interview with Special Education Teacher.

³⁴ Exhibit 1, p. 7. The occupational therapist was excused from the IEP meeting and her report was recorded in the PLAAFP statement.

³⁵ Exhibit 9, pp. 1, 4, and 15.

³⁶ Exhibit 9; Interview with Assistant Special Education Director.

³⁷ Exhibit 9, p. 4.

five minutes.³⁸ In evaluating Student's performance in the general education classroom, Student's special education teacher and general education teacher reported that Student's distractibility, fidgetiness, need for consistent redirection to stay focused on work, and "resistance to non-preferred academic topics" interfered with [Student's] ability to learn in a "larger, integrated setting."³⁹ Rather than participate in the math, science and social study lessons with typical peers, Student preferred to spend much of the time reading in the back of the room.⁴⁰ When expectations to participate in the general education classroom were increased, Student "fell apart" and chose to complete [Student's] grade-level work in the smaller classroom setting, informing teachers that "the regular classroom was too distracting and there were too many books."⁴¹ Student also informed [Student's] special education teacher that "he did not want to be firmly reminded by a teacher when [Student] is off-task in front of a large group of typical peers."⁴²

14. On May 15, 2012, the District convened a properly constituted IEP team to discuss Student's placement and services for the 2012-2013 school year.⁴³ Student's IEP team discussed Student's needs, including the efforts to provide core academic instruction in the general education classroom described above, and determined that the least restrictive environment for Student continued to be "a small group setting with intense therapeutic support and opportunities for integration into the general education setting."⁴⁴ Accordingly, the IEP team concluded that Student would begin the 2012-2013 school year in a self-contained SIED program similar to the one that had been successful for [Student] at Former School.⁴⁵ All IEP team members, including Mother, agreed that this placement was appropriate to meet Student's current academic and social needs.⁴⁶

15. At this meeting, the District also notified Parents that the location of Student's SIED classroom would need to change for the 2012-2013 school year because Former School did not have a fourth-grade SIED classroom.⁴⁷ On May 24, 2012, Assistant Special Education Director notified Parents that the District had chosen School as the location "selected for [Student] to receive the services as described on [Student's] IEP."⁴⁸

³⁸ Exhibit 10, p. 4.

³⁹ Exhibit 10, p. 4.

⁴⁰ Exhibit 10, p. 4.

⁴¹ Exhibit 10, p. 4.

⁴² Exhibit 10, p. 4.

⁴³ Exhibit 10; Interview with Assistant Special Education Director.

⁴⁴ Exhibit 10, pp. 4-5.

⁴⁵ Exhibit 10, p. 5.

⁴⁶ Exhibit 10; Interview with Assistant Special Education Director, Mother, Mother's Advocate, and Father.

⁴⁷ Exhibit 10; Response; Interview with Assistant Special Education Director, Mother, and Mother's advocate.

⁴⁸ Response; Exhibit C, p. 22.

16. While Father agreed with the proposed location, Mother vehemently disagreed and demanded that Student be enrolled at Former School or another school within the District.⁴⁹ Mother opposed Student enrolling at School because she did not believe that [Student] had received appropriate special education services when previously attending School during the 2010-2011 school year and that the School staff had not communicated with her as frequently as she thought they should have.⁵⁰

17. On August 14, 2012, Mother emailed Special Education Director and Assistant Special Education Director to inform them that she refused to consent to Student's "LRE placement" at School. Mother further clarified that she refused to consent to "placement" at School "if [Student] would have any of the previous service providers from [Student's] [third-grade] school year," and would only consent to "placement" at a school other than Former School after she had had an opportunity to "observe the classroom and speak to the teacher and aides first hand."⁵¹ In this email, Mother did not indicate in any way that she disagreed with the special education and related services described on Student's May IEP, including the SIED program, or that she was requesting that Student be placed in the general education environment with a one-to-one paraeducator. In essence, the concerns Mother expressed were not related to *what* special educational programming and services were to be provided, but *where* they would be provided and by *whom*.

18. On August 17, 2012, in direct response to Mother's email, Special Education Director informed Mother that the District had determined that the best location to implement Student's IEP for the 2012-2013 school year would be School because it offered the same SIED programming that had been successful for Student during the 2011-2012 school year and it was also Student's neighborhood school.⁵² The letter further clarified that the concerns expressed by Mother related to *where* Student's IEP would be implemented, i.e., location, and not the special education and related services described in Student's IEP, i.e., placement. The letter clearly informed Mother that location, i.e., what classroom or school a student will attend, is an administrative decision under the ECEA. Regarding Mother's concerns about bullying that had allegedly occurred when Student previously attended School, Special Education Director informed Mother that the District took allegations of bullying very seriously and that her concerns had been referred to the Community Superintendent. Finally, Special Education Director noted that she disagreed with Mother's allegations concerning the past provision of

⁴⁹ Complaint; Response; Exhibit C, pp. 12-13; Interviews with Mother, Mother's Advocate, Father, Special Education Director, and Assistant Special Education Director.

⁵⁰ Interview with Mother; Complaint; Exhibit C, pp. 22-28; Exhibit D, pp. 10-15. Mother filed a state complaint in 2011 concerning these allegations. A final decision was not rendered as the parties resolved the dispute in mediation. Review of state complaint file.

⁵¹ Exhibit C, p. 22.

⁵² Exhibit C, p. 12.

special education services at School and assured her that the educators and service providers working with Student were qualified and competent to implement [Student's] IEP.⁵³

19. In response to the letter from Special Education Director, Mother reiterated her concerns about bullying to the District Community Superintendent and further clarified that her concerns about Student attending School included the location of the SIED classroom in a "portable bungalow in the back of the school campus," the lack of natural light in the classroom, and the lack of stimulating or colorful bulletins on the classroom walls.⁵⁴ In a subsequent email to School Principal on August 28, 2012, Mother indicated that she would only "consent to placement at [School]" if Student received the mental health services described in [Student's] IEP from the same school psychologist who worked with [Student] at Former School, rather than the social worker assigned to work with [Student] at School.⁵⁵

20. On August 29, 2012, Mother's Advocate sent School Principal an email stating that School was an "inappropriate LRE placement" for Student.⁵⁶ Mother's Advocate informed School Principal that Mother's first choice for placement was at Former School in general education with a one-to-one "ABA aide," mental health support provided by Former School Psychologist, and transitional support from Former School Special Education Teacher. Mother's second choice for placement was at another specific school within the District in the SIED program with mental health support provided by Former School Psychologist.

Placement: October 2012 IEP meeting.

21. At Student's October 2012 IEP meeting, Mother provided the IEP team with a note from Student's pediatrician in [State] stating that she had diagnosed Student with Autism Spectrum Disorder and recommended "ABA-- through insurance-- flexibility, plan, meltdown, organization, etc."⁵⁷ Mother asked if Student's IEP team had the ability to consult with an autism specialist trained in applied behavioral analysis (ABA) who could provide input on the strategies and interventions in place for Student.⁵⁸ Mother informed the IEP team that she was "specifically requesting input on appropriate writing interventions and that the district provide a 1-1 ABA trained therapist to consult on [Student's] writing goals and behavior progress."⁵⁹ The IEP team discussed Mother's request for consultation and agreed to consult with the District's autism consultant, Area Coordinator, and to provide any feedback concerning

⁵³ Exhibit C, p. 12.

⁵⁴ Exhibit C, p. 24; Interviews with Mother, Mother's Advocate, Special Education Director, and Assistant Special Education Director.

⁵⁵ Exhibit C, p. 25.

⁵⁶ Exhibit C, p. 7.

⁵⁷ Exhibit 1, p. 8; Exhibit D, p. 3.

⁵⁸ Exhibit 1, p. 9.

⁵⁹ Exhibit 1, p. 9; Interview with Special Education Director, Special Education Teacher, School Social Worker, Mother, and Mother's Advocate.

strategies and interventions to Parents.⁶⁰ With regard to Mother's request for a one-to-one ABA trained therapist, the IEP team determined that Student did not require such support due to the success of the strategies currently in place.⁶¹

22. After discussing Student's strengths and needs, proposed goals and objectives, accommodations, services, and input from Parents, the IEP team determined that Student would "continue to receive support primarily through the SIED program" due to [Student's] "inability to stay focused on a task and follow through work completion with a large student to teacher ratio."⁶²

23. Following the IEP meeting, Mother requested that the following statement be added to Student's IEP: [Mother] is still reluctant about whether [School] is the appropriate placement for [Student].⁶³ Mother further stated that she wanted her disagreement with this placement to reflect her preference that Student be "placed" at Former School.⁶⁴ In this email, Mother did not indicate that she disagreed with Student's IEP program or services, or that she opposed placement in the SIED program over placement in general education. Rather, Mother disagreed with where Student was attending school.

24. Based on FF 12-23 above, the SCO finds that the essence of Mother's dispute about Student's current special education program concerns the location of Student's IEP services, including the specific individuals who will be providing services, and not placement in the SIED program. Further, Mother's request concerning a one-to-one aide trained in ABA did not amount to a request for change in placement as she was asking for consultative services and direct support in writing, not that Student be placed in the general education environment with a one-to-one aid.

Student's progress during the 2012-2013 school year.

25. In accordance with Student's October 2012 IEP, Student receives most of [Student's] core academic instruction in a self-contained SIED program and participates in the general education environment for first period (home-room, guided reading, and daily language instruction), lunch, recess, and specials, i.e., art, music and physical education.⁶⁵ Like the SIED program at Former School, the SIED program at School provides small group instruction, a higher teacher-to-student ratio, and mental health support. Because the ultimate goal of the SIED program is to fully integrate students into the general education environment, a student's

⁶⁰ The Area Coordinator conducted her assessment and provided feedback to Student's IEP team at a meeting on December 20, 2012. Exhibit 12.

⁶¹ Exhibit 1, p. 9.

⁶² Exhibit 1, pp. 5-10, and 13; Interviews with Special Education Director, School Social Worker, Special Education Teacher, Father, Mother, and Mother's Advocate.

⁶³ Exhibit 8, p. 44; Exhibit, p. 11.

⁶⁴ Exhibit 8, p. 44.

⁶⁵ Exhibit 1, pp. 5 and 13.

participation in the general education environment is increased, and the supports in place are gradually faded back, based on the student's performance and individual needs.⁶⁶

26. Members of Student's October 2012 IEP team, including Special Education Teacher, School Social Worker, Special Education Director, and Father, all agree that Student is doing well at School and that [Student's] current placement is appropriate relative to [Student's] current strengths and needs.⁶⁷ In support of this assessment, Student has demonstrated progress on all but one of [Student's] current IEP goals and objectives and is performing at grade-level in all core academics, with the exception of writing and reading.⁶⁸ In the area of writing, perhaps Student's area of greatest need, [Student] has improved significantly since the beginning of the year.⁶⁹

27. Further, Student has demonstrated consistent progress in attending general education classes independently and [Student's] overall participation in the general education environment has increased. First, Student has successfully participated in the general education environment for specials, lunch, and recess, without additional support from the SIED program and staff.⁷⁰ Second, Student has successfully participated in the general education environment for first period, which includes daily check-in and guided reading. At the beginning of the school year, Special Education Teacher reported that she or a paraeducator was present to provide Student with support and redirection, as needed. Based on Student's performance during this class, however, Special Education Teacher has been able to fade back her support and no longer comes to this class to provide support to Student. In addition, Area Coordinator, also the District's autism specialist, observed Student during this class on October 29, 2012, and reported that Student "did not stand out in any way from other students" in the classroom and required individual prompting by the teacher on only one occasion.⁷¹ Finally, Student has also been participating in the general education environment for social studies/science, since November of 2012. At this time, Special Education Teacher is present in this classroom to provide support to Student, as needed, and to assist the general education teacher with small group instruction. According to Special Education Teacher, Student gets fidgety in large group instruction and often needs more redirection. Based on Student's progress in this class, Special Education Teacher has gradually faded the support she provides and expects that [Student] will be participating in this class without any support from her or other SIED program staff by mid-February, 2013.

⁶⁶ Interviews with Special Education Director, Assistant Special Education Director, School Social Worker, and Special Education Teacher.

⁶⁷ Interviews with Special Education Director, School Social Worker, Special Education Teacher, and Father.

⁶⁸ Exhibits 4A and 4B.

⁶⁹ Exhibit 4A.

⁷⁰ Interviews with Special Education Director, Assistant Special Education Director, School Social Worker, and Special Education Teacher.

⁷¹ Exhibit 12, p. 10.

28. Finally, in her interview, Mother stated that she ultimately filed this Complaint because she believed that Student's behavior was regressing.⁷² In support of Student's need for one-to-one support, Mother asserted that a behavioral incident that occurred on November 6, 2012, where Student smeared feces in a school bathroom, would not have happened if Student had had a one-to-one aide. Because the incident occurred in a school bathroom, it is unlikely that a one-to-one aide could have prevented the behavior. Further, School staff immediately addressed the incident and Student has not repeated the behavior. Finally, Student has made progress on [Student's] behavioral goals and the documentation provided by Mother does not support a finding that Student's behavior has regressed.⁷³

Allegation Two: Mother's participation in the development of Student's educational program.

29. Mother has alleged that she was not provided with a meaningful opportunity to participate in the development of Student's October 2012 IEP. The SCO disagrees. Based on the credible evidence in the record, as detailed below, the SCO finds that the District has not, in any way, prevented Mother from active and meaningful participation in the development of Student's educational programming.

30. The IEP itself clearly documents that Mother and Mother's Advocate actively participated in the October 2012 IEP meeting by providing input about Student's strengths and needs, asking questions, and requesting changes to Student's programming. In response, the IEP team documented and considered Mother's input and made changes to Student's IEP that the team determined were appropriate for Student's current needs and level of functioning.⁷⁴ Following the IEP meeting, Mother and Mother's Advocate submitted three-pages of requested changes to Student's IEP. The District addressed Mother's concerns by responding to each request in writing, and by including them, where appropriate, in Student's IEP.⁷⁵

31. Mother has also alleged that she has not been provided with a meaningful opportunity to participate in Student's educational programming because the District is not following the 2012-2013 communication plan, a proposed agreement between Mother and School Administration concerning communications about Student. In relevant part, the communication plan provides that Parents will receive IEP progress reports at the end of each trimester (in accordance with Student's IEP), that Special Education Teacher will email Parents work samples used to monitor Student's progress every Thursday, that Parents will have a fifteen minute phone conference every Monday with Special Education Teacher and Principal, and that Special Education Teacher and School Principal will serve as primary contacts for parental concerns.⁷⁶ Because Former School offered a communication plan to Mother while

⁷² Interview with Mother.

⁷³ Interview with Mother; Exhibit 4B, pp. 4-5; Exhibit F, pp. 20-46.

⁷⁴ Exhibit 1, pp. 5-10; Interviews with Special Education Director, Special Education Teacher, School Social Worker, Mother, Mother's Advocate, and Father.

⁷⁵ Exhibit 1, pp. 11-12; Exhibit 8, p. 44-46.

⁷⁶ Exhibit E.

Student was in attendance for the 2011-2012 school year, School offered a similar plan for the 2012-2013 school year, all in an effort to provide Mother with an accurate and timely response to any concerns she may have that are related to Student's education.⁷⁷ Mother initially rejected the communication plan because it included Father in the weekly phone conference and was held on a day she was not available.⁷⁸

32. The communication plan is not part of Student's IEP. Although the communication plan is referenced on the additional information pages of Student's IEP, it is not listed as part of the services and accommodations provided in Student's IEP. Further, the references to the communication plan for reporting progress on behavioral goals/strategies and occupational therapy do not require that Student's progress be reported in a manner not already required by the IEP, i.e., at the end of every trimester.⁷⁹

33. Second, even if the communication plan was part of Student's IEP, the District has gone above and beyond what the plan would require. Notably, Special Education Teacher emails Mother Student's daily point sheets, i.e., the documentation used to monitor Student's progress on behavioral goals, every school day, even though this is not part of the communication plan.⁸⁰ When appropriate, Special Education Teacher includes comments regarding difficulties Student had, the behavioral strategies that were utilized to address the situation, and the outcome.⁸¹ In addition, Special Education Teacher conducts a phone-conference with Mother every Tuesday morning to discuss Student's progress for the previous week.⁸²

34. Meeting all of the written demands of a parent does not constitute meaningful participation.⁸³ On August 29, 2012, Mother's Advocate sent School Principal a six-page email of complaints and demands, many of which suggest a misunderstanding of the District's obligations under IDEA, and informed the District that Mother would be willing to attend an IEP meeting, but would "not agree to anything, unless every item below is resolved per her written request."⁸⁴ Such conditional participation in an IEP meeting is not consistent with the IDEA's requirements for parent participation at 34 CFR § 300.322(a).

⁷⁷ Exhibit B, pp. 1-2; Exhibit E; Interview with Special Education Director.

⁷⁸ Interview with Mother; Exhibit C, p. 30.

⁷⁹ Exhibit 1, pp. 10 and 12.

⁸⁰ Exhibit C, pp. 30-46; Exhibit F, pp. 20-46; Interview with Special Education Teacher.

⁸¹ Exhibit F, pp. 20-46.

⁸² Interviews with Special Education Teacher and Mother.

⁸³ Exhibit C, pp. 7-11, 18, 22-24, 28-29, 36, and 44 (emails from Mother to various District and School staff illustrative of conditional participation in IEP meetings).

⁸⁴ Exhibit C, pp. 7-11.

CONCLUSIONS OF LAW

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

Allegation One: Student's October 2012 IEP is reasonably calculated to confer educational benefit.

1. Mother has alleged that Student's October 2012 IEP was not reasonably calculated to confer educational benefit when the annual goal for writing lacked grade-level criteria, there was no goal for keyboarding, and offered a placement that violated the least restrictive environment requirement. Any analysis of the appropriateness of an IEP must begin with the standard established by the United States Supreme Court in *Rowley v. Board of Education*, 458 U.S. 176 (1982), in which the Court set out a two-pronged analysis for determining whether an IEP has offered a FAPE. The first part of the analysis looks to whether the IEP development process complied with the IDEA's procedures; the second looks to whether the resulting IEP was reasonably calculated to confer some educational benefit upon the child. *Id.* at 207; see also *Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). If those two questions are satisfied in the affirmative, then the IEP is appropriate under the law.

2. Under the first "prong" of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA's procedures. The procedural requirements concerning the development of a student's IEP include whether the IEP meeting was properly noticed, the IEP team included the required participants, the IEP itself contained all of the required content, and parents were afforded the opportunity to meaningfully participate in the development of their child's IEP. See 34 CFR §§ 300.320-324. Aside from the allegation that she was not afforded the opportunity for meaningful participation at the October 2012 IEP meeting, discussed directly below, Mother has not alleged that the District violated any of these other procedural requirements when developing Student's IEP. Further, there is no evidence that the District failed to follow any of these procedural requirements when developing Student's IEP or that Student's IEP lacked the required content. (FF 3-11.)

3. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10th Cir. 2008). Although the emphasis on parental involvement does not mean that a parent has veto power over an IEP team decision, meaningful parent participation is prevented 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.*, 337 F.3d 1115, 1131 (9th Cir. 2003) ("A district may not enter an IEP meeting with a 'take it or leave it' position."); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9th Cir. 2003). When parents are prevented from meaningful participation because an aspect of their child's IEP, such as educational methodology or placement, has been predetermined, the

resulting procedural violation denies the student a free appropriate public education. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

4. On the other hand, courts have found that parents have been afforded an opportunity for meaningful participation when an educational agency, here the District, considers their suggestions and requests, and to the extent appropriate, incorporates them into their child's IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692 (10th Cir. 1998). Consideration does not mean simply agreeing to whatever parents have suggested or requested. Rather, meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parents' questions, incorporates some suggestions or requests into the IEP, and discusses privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *Id*; See *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

5. In this case, Mother was provided with an opportunity for meaningful participation in the development of Student's October 2012 IEP because the meeting was properly noticed; Mother and her advocate attended the meeting and actively participated by providing input; and the District considered Mother's suggestions and requests, as demonstrated by the give-and-take discussions concerning Student's goals, and incorporated some of those suggestions into Student's IEP. For example, the District agreed to modify Student's writing objective to include "independently," to consult with their autism specialist regarding the strategies and interventions currently in place for writing and behavioral goals, and responded to Mother's request for further changes to Student's October IEP. (FF 3-11, 21-23, and 29-34).

6. When, as here, a student's IEP is developed in compliance with the IDEA's procedural requirements, *Rowley* holds that a certain degree of deference is to be given to the resulting IEP. "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrates 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 206. Thus, as long as the IEP is procedurally compliant, the specialized knowledge and expertise of the professional educators can reasonably be relied on in determining that the resulting IEP is substantively appropriate. *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1318 (10th Cir. 2008)(relying on *Rowley v. Board of Education*, 458 U.S. 176 (1982)).

7. Mother has alleged that Student's IEP is not substantively appropriate because the writing goal was not written as she requested and it lacked a goal for keyboarding. A student's IEP must include a statement of measurable annual goals, including academic and functional goals, that are designed to: 1) meet the needs that result from the student's disability to enable [Student] to be involved in and make progress in the general education curriculum, and 2) meet each of the student's other educational needs that result from [Student's] disability. 34 CFR § 300.320 (a)(2). While annual goals are required to be measurable, meaningfully related

to educational needs, and designed to provide access and ensure progress in the general education curriculum, there is no requirement that they be measured by a specific assessment tool or criteria. 71 Fed. Reg. 46662 (Comments to the 2006 federal IDEA regulations). There is also no requirement that an IEP contain a set-number of goals, as long as there is an annual goal that addresses each area of need. See 34 CFR § 300.320 (a)(2).

8. Here, the SCO concludes that the October 2012 IEP was substantively appropriate because it contained a writing goal that addressed an area of academic need and was developed in consideration of Mother's input and in the context of Student's needs and current level of functioning. (FF- 4-7.) The goal developed by Student's IEP team was consistent with Student's needs and level of functioning in the area of writing, as documented in the PLAAFP statement, and took into account the impact that Student's emotional disability has on learning. For example, at the time the IEP was developed, Student's writing was characterized by incomplete sentences, lack of punctuation, random words and capitalization, and an inability to write coherently about any topic other than video games. The goal that Mother proposed, which required Student to write a five-paragraph essay, was well beyond [Student's] current level of functioning and likely to cause a level of frustration that would impede [Student's] progress. (FF 4-10.) Because Student's IEP team discussed Mother's concerns and had valid reasons for refusing to incorporate them into the IEP, the SCO concludes that their professional judgment is entitled to considerable deference in determining that Student's IEP is substantively appropriate.

9. Similarly, the SCO concludes that the IEP team's decision not to include a keyboarding goal, as Mother requested, was also substantively appropriate. Here, Student already had an annual IEP goal designed to increase [Student's] written language level. (FF 4 and 11.) Accordingly, IDEA regulations would not require that [Student] have additional goals in this area. Further, the IEP team discussed Mother's request that Student have a keyboarding goal, in light of Student's current level of functioning in the area of writing and the significant frustration Student has historically exhibited with both keyboarding and writing. (FF 11.) The IEP team's determination that a keyboarding goal at this time would interfere with Student's progress in writing was consistent with the impact that [Student's] disability has on learning. Finally, Student is being provided access to keyboarding, including the "Dance Mat Typing" program, consistent with occupational therapy recommendations in [Student's] IEP. (FF 11.) Because Student's IEP team discussed Mother's concerns and refused to incorporate her request for valid reasons, the SCO concludes that their professional judgment is again entitled to considerable deference.

10. The analysis now turns to Mother's allegation that the October 2012 IEP failed to offer an appropriate placement in the least restrictive environment (LRE). The SCO does not agree with Mother's characterization of this allegation or dispute as one concerning placement. (FF 12-24.) Rather, the SCO has found that Mother's dispute with the District concerns *where* Student was attending school. At both the May and October 2012 IEP meetings, Mother agreed with Student's placement in the SIED program. (FF 14 and 23.) Notably, Mother disagreed with

Student's attendance at School, not the SIED program, at Student's October 2012 IEP meeting. (FF 23.) Her request for a one-to-one aid trained in ABA was for purposes of consulting with Student's team and providing instruction in writing. It was not a request that Student be placed in the general education environment with a one-to-one paraeducator. (FF 21.) Accordingly, the SCO analyzes this allegation based on the finding that Mother disagrees with the location of Student's educational program, and not the program itself, i.e., placement.

11. Generally, a student's "placement" means the provision of special education and related services provided in the student's IEP, not the physical location in which the IEP is implemented and the services are provided. Although placement is not specifically defined in IDEA, the term refers to a point along the student's continuum of placement options, while location is the where the child receives the services, such as a particular school or classroom. 71 Fed. Reg. 46588 (Comments to the 2006 federal IDEA regulations).

12. In Colorado, a decision concerning the location, i.e., the specific school, classroom, or teacher, where a Student's IEP will be implemented is not an element of "placement" and is one that can be made unilaterally by the District. The ECEA specifically provides that:

The terms "placement" or "educational placement" are used interchangeably and mean the provision of special education and related services and do not mean a specific place, such as a specific classroom or specific school. Decisions regarding the location in which a child's IEP will be implemented and the assignment of special education staff responsibilities shall be made by the Director of Special Education or designee. ECEA Rule 4.03 (8)(a).

Because location is not an element of placement, it is not an IEP team decision and Parents do not have the right to be included in the decision. Thus, the failure to include Mother in the decision that Student's IEP would be implemented at a particular location, i.e., School, does not amount to a procedural violation of IDEA or ECEA and cannot be attacked on procedural grounds. Rather, it can only be challenged on substantive grounds, i.e., that the particular school sought is necessary for Student to receive a free appropriate public education.

13. There is no evidence that Student required a particular school, such as Former School, to receive a free appropriate public education. (FF 12-24.) Although Mother has demanded that Student only be taught by particular teachers that she has approved, Student's IEP team has never determined that [Student] required a particular classroom or teacher to receive a free appropriate public education. *Id.* Instead, Student's IEP team has determined that Student needs to receive core academic instruction in a small classroom with a lower student-teacher ratio, such as the SIED program at School, with opportunities to participate in the general education environment. (FF 21-23.) Further, Student is making progress on [Student's] IEP goals and in the general education curriculum while attending School. (FF 25-28.)

14. Even if Mother's allegation could be fairly characterized as a violation of the LRE requirement, the SCO concludes that Student's placement is appropriate for [Student's] current educational needs. In essence, the IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and attend the school they would attend if not disabled. 34 CFR §§ 300.114 and 116. Before considering more restrictive placements, the IEP team must consider educating the student in the general education classroom, with supplemental aids and services. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966 (10th Cir. 2004); *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). That said, the LRE requirement does not come at the expense of a student's right to a free appropriate public education-- meaning that if a student's placement does not provide educational benefit and a more restrictive setting does, the student is entitled to be placed in a more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2nd Cir. 2008).

15. Following the discussion of Student's strengths and needs, proposed goals and objectives, modification and accommodations, consideration of supplemental aids and services, and parental input, including Mother's request that Student's team consult with an autism specialist and that Student receive one-to-one ABA instruction in writing, Student's IEP team concluded that Student should continue to receive support through the SIED program based on [Student's] inability to stay focused on non-preferred tasks and complete work in the larger integrated setting. (FF 21-23.) At the end of this meeting, Student's IEP team, including Mother, agreed that placement in the SIED program was the least restrictive environment appropriate for Student's needs. Making this determination based on the above considerations complied with the IDEA's procedural requirements concerning placement in the least restrictive environment. Further, Student is attending the same school [Student] would be attending if [Student] did not have a disability as School is [Student's] neighborhood school. (FF 18.)

16. Since the beginning of the 2012-2013 School year, Student has made progress on [Student's] IEP goals and in the general education curriculum. (FF 20-28.) Notably, Student has also made progress by increasing [Student's] independent participation in the general education environment. In addition to specials, lunch, and recess, Student attends morning check-in and reading, and social studies/science in the general education environment. Currently, Student attends morning check-in and reading, without assistance from Special Education Teacher or a paraeducator. While Special Education Teacher has been attending social studies/science class to provide support, Student is making consistent progress and she expects that [Student] will be able to attend this class without support by mid-February. Student's participation in the general education environment for core academic classes has increased significantly from the 2011-2012 school year where Student "fell apart" when expectations to participate in the general education classroom were increased, often choosing to complete [Student's] coursework in the smaller, SIED classroom. (FF 13-14 and 25-28.) Student's demonstrated progress in the classroom, academically and socially, supports a conclusion that Student's IEP, including placement in the SIED program, is reasonably calculated to confer educational benefit, meaning that it is substantively appropriate.

Allegation Two: Mother meaningfully participated in the development of Student’s IEP.

17. Mother has alleged that the District has not provided her with the opportunity to meaningfully participate in the development of Student’s educational program. The SCO disagrees. As discussed above, the SCO concluded that the District afforded Mother the opportunity to meaningfully participate in the development of Student’s October 2012 IEP. (FF 29-34.)

18. Notably, the District has gone above and beyond what is required by IDEA and Student’s IEP to communicate Student’s progress to Mother. Student’s Special Education Teacher emails Mother the daily point sheet used to track Student’s progress on [Student’s] behavioral goals, often including feedback concerning what strategies had been successfully utilized that day, on a daily basis. And every Tuesday, Student’s Special Education Teacher calls Mother to discuss Student’s progress during the previous week, providing Mother with an opportunity to discuss any concerns. (FF 32-33.)

Conclusion

19. The IEP developed at the October 2012 IEP meeting is appropriate for Student’s unique strengths and needs and is reasonably calculated to confer educational benefit in the least restrictive environment. Student’s IEP team considered Mother’s specific requests for modification to the writing goal and the addition of a keyboarding goal, but determined that the requests were not appropriate based on Student’s needs. Because Student’s IEP was procedurally compliant, including meaningful consideration of Mother’s requests, it was entitled to deference. Finally, the District has gone beyond what is required by IDEA to provide Mother with the opportunity to meaningfully participate in the development of Student’s educational program.

REMEDIES

Because the District has not violated the IDEA, no remedies are ordered.

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 31st day of January, 2013.

Candace Hawkins

Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-5.

Exhibit A: Prior written notice and IEP dated 10/4/2012.

Exhibit B: Meeting notes and correspondence from Parent to District.

Exhibit C: Correspondence between Mother and District staff.

Exhibit D: Miscellaneous documentation, including statement from a private pediatrician.

Exhibit E: 2012-2013 proposed communication plan.

Exhibit F: Documentation submitted by Parent on 1/23/13, including selected daily point sheets and grades for the 2011-2012 school year.

Parent did not submit a Reply. Parent provided additional documentation requested by the SCO on 1/23/2013. This documentation was marked as exhibit F.

Response, pages 1-8.

Exhibit 1: Student's IEP dated 10/4/12.

Exhibit 4a: Report card for 2012-2013 school year.

Exhibit 4b: IEP progress reports.

Exhibit 5: Attendance records.

Exhibit 6: District calendar for the 2012-2013 school year.

Exhibit 8: Correspondence between Mother and District staff.

Exhibit 9: Student's IEP dated 10/11/2011.

Exhibit 10: Student's IEP dated 5/15/2012.

Exhibit 11: Tracking report.

Exhibit 12: Documentation of IEP meeting on 12/20/2012.

Interviews with:

- Mother on 12/5/12 and 1/17/2013.
- Mother's Advocate on 1/17/2013.
- Special Education Director on 1/11/2013.
- Special Education Teacher on 1/11/2013.
- Assistant Special Education Director on 1/11/2013.
- School Social Worker on 1/11/2013.
- Father on 1/16/2013.