

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 2015:508**  
**Jefferson County Public School District**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was initially filed on May 17, 2015, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> On the same date that the Complaint was filed, the Parties agreed to try and resolve the Complaint allegations through mediation, and for that purpose, the Parties agreed to extend the 60-day investigation timeline. On June 18, 2015, the SCO was notified that the mediation resulted in impasse. Consequently, the state complaint process was reinstated to resolve the allegations accepted for investigation.

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified four 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**

1. Whether the failure to provide extended time on several assignments in math and English in the fall of 2014 amounted to a material failure to implement Student's 2013 IEP, resulting in a denial of a free appropriate public education (FAPE).
2. Whether the District erred in determining that Student was no longer eligible for special education and related services on December 8, 2014 because:
  - a. The District did not inform Parents that the purpose of the IEP meeting was to determine whether Student continues to be child with a disability;

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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).

- b. The District did not gather input from Parents to identify whether additional data or assessments were needed for reevaluation, and did not inform Parents of their right to request an assessment to determine whether Student continues to be a child with a disability;
  - c. The District did not conduct a comprehensive reevaluation that addressed all areas of suspected disability, including a suspected reading disability, and evaluations in assistive technology and speech language;
  - d. The eligibility determination team did not include a member who could interpret evaluation data; and
  - e. The District did not provide or review IEP progress reports.
3. Whether the District improperly denied Parent’s request for an independent educational evaluation (IEE) on or around December 19, 2014.
4. Whether the District erred in determining that Student was not eligible for special education and related services on March 31, 2015 because:
- a. The IEP team did not include a member who could interpret evaluation data;
  - b. The District did not consider input from Parents, including the private evaluation obtained by them, in making the determination.

### **FINDINGS OF FACT**

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

#### **Background:**

1. Student is [age] and resides with his Parents within the boundaries of the District. At all times relevant to the Complaint, Student attended Middle School.
2. Student was initially determined eligible for special education and related services as a child with a Specific Learning Disability (SLD) in December of 2011 in the area of written expression.<sup>4</sup> At this time, the team noted that Student was “behind in the area of writing when compared to others his age.”<sup>5</sup> For example, Student was writing simple one-paragraph pieces without detail when other students his age were writing multiple paragraphs using details and

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

<sup>4</sup> Exhibit L, pp. 1-3.

<sup>5</sup> Exhibit L, p. 3.

conventions. To meet Student's needs in the area of written expression, the IEP team determined that he needed two hours of direct services and .25 hours of indirect (consultative) services each week from a special education teacher in the area of written language.<sup>6</sup> Student received these services between December of 2011 and December of 2013.

3. In December of 2013, Student's IEP team determined that he no longer needed direct instruction in the area of written expression to access the general education curriculum, and consequently, the IEP team eliminated all direct specialized instruction from the IEP. Because the IEP team determined that the educational services Student needed in the area of written language skills could be met by providing consultative support to Student's general education teachers, the IEP provided .25 hours of indirect services each week.<sup>7</sup> In addition, the IEP team adjusted Student's accommodations to provide appropriate support in the general education classroom, e.g., adding checks for understanding, study guides, access to a word processor for writing prompts, and the ability to use extended time and take quizzes and tests outside of the general education classroom as requested by Student.<sup>8</sup> Parents did not dispute the change in services following this IEP meeting.

4. During the 2013-14 school year, Student performed very well academically with the minimal services described on his December 2013 IEP. Several indicators demonstrated that Student was performing at grade-level and able to access the general education curriculum with accommodations and indirect support. First, state-level testing (TCAP) indicated that Student was proficient in writing, his identified area of need, as well as reading, and was advanced in math as compared to same grade peers. Second, Student earned "A"s and "B"s in all of his classes.<sup>9</sup> Finally, Student made progress on his IEP goal in the area of written expression in the spring of 2014.<sup>10</sup> Notably, Student's academic performance during this time was accomplished without any specialized instruction.

#### **IEP Implementation during the Fall of 2014:**

5. First, Parents allege that Student was not provided with the accommodations described on the December 2013 IEP during the fall of 2014. Specifically, Parents allege that Student was not provided with extended time for several assignments in Math and English. The SCO does not agree. Based on the facts described below, the SCO finds that Student's teachers were knowledgeable about the requirements of Student's IEP and provided the identified accommodations in accordance with the IEP.

6. In general, teachers in the District are notified that they have a student with an IEP in their classroom through a flagging system in Infinite Campus and by email from the student's

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<sup>6</sup> Exhibit L; Response.

<sup>7</sup> Exhibit A, p. 5.

<sup>8</sup> Compare Exhibit A, p. 6 with Exhibit L, p. 8.

<sup>9</sup> Exhibit H (1).

<sup>10</sup> Exhibit H (4).

special education case manager. In this case, Student's teachers were informed that Student had an IEP that included an accommodation for extended time.<sup>11</sup>

7. In addition to being informed that Student was entitled to extended time, Student's teachers provided this accommodation for the specific assignments at issue. On September 8, 2014, Parent emailed English Teacher because Student had received a low grade on an assignment. Parent informed English Teacher that Student had an IEP and should receive extended time to complete assignments. In response, English Teacher informed Parent that Student received the low grade because he only completed 2/3 of the assignment. Further, English Teacher informed Parent that she knew Student had an IEP and was allowed extended time. In fact, she offered Student an opportunity to take the assignment home on Friday and complete it for a higher grade, but he had declined to do so. Parent followed-up by asking English Teacher if Student could still complete the assignment. English Teacher assured Parent that Student would have an opportunity to complete the missing assignment. To follow through with her assurances to Parent, English Teacher made specific arrangements for Student to complete the assignment before she went on leave.<sup>12</sup> Moreover, Student received an A in English during the term this assignment was made.<sup>13</sup> Based on the facts described here, the SCO finds that Student received accommodations consistent with his IEP in English.

8. At the beginning of the 2014-15 school year, Student's Math Teacher reminded Student that he was allowed extended time after noticing that Student had turned in a test with incomplete answers. Math Teacher then contacted Parent to inform her of his conversation with Student and his plan to place a permanent pass in Student's planner to remind him that he could use extended time whenever he felt it necessary. Math Teacher stapled the pass into Student's planner and spoke with him again to ensure Student understood how to access this accommodation. Notably, Student's final grade in math for this semester was an A.<sup>14</sup> Based on the facts described here, the SCO finds that Student received accommodations consistent with his IEP in Math.

#### **December 2014 Eligibility Determination:**

9. On November 12, 2014, the District requested parental consent to reevaluate Student because the upcoming IEP meeting was a triennial. The consent form informed Parents that the District was seeking consent to reevaluate because "additional evaluation data are needed to determine if your child continues to be eligible for special education services or to determine your child's educational needs."<sup>15</sup>

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<sup>11</sup> Interview with Special Education Director and Special Education Case Manager; Exhibit A, pp. 1-5; Exhibit J, pp. 1-10.

<sup>12</sup> Exhibit J, pp. 7-8.

<sup>13</sup> Exhibit H (2), p. 2.

<sup>14</sup> Response, Exhibits H (1) and H (2).

<sup>15</sup> Exhibit D (1).

10. Based on a review of existing information, the District proposed to reevaluate Student because additional data were needed. The areas to be evaluated were identified as academic performance and health. Consistent with the proposal to reevaluate, the form included two available boxes that Parents could check, one box to indicate that they consented, and the other to indicate that they refused consent for the reevaluation.<sup>16</sup> On November 16, 2014, Parents signed and returned the consent form with the box checked to indicate that they refused to provide consent for the reevaluation.<sup>17</sup>

11. Upon receiving the consent form, Special Education Teacher contacted Parents to ask why they had refused consent for reevaluation. According to Special Education Teacher, Parent refused consent because she did not want Student to be pulled from class and miss instruction due to an evaluation. In addition, Parent did not think that an evaluation in the areas identified on the consent form, i.e., academic performance and health, were necessary. Special Education Teacher explained the requirement for a triennial reevaluation and the parties agreed that the reevaluation would consist of a review of existing information and that no additional formal evaluation data were necessary.<sup>18</sup>

12. On November 19, 2014, immediately following her conversation with Parent, Special Education Teacher sent a new prior notice and consent for evaluation form to Parents. The changes made to the form are consistent with the conversation described by Special Education Teacher. First, the new form notified Parents that no additional evaluation data were needed to determine eligibility. Consistent with the proposal to review existing information, the form did not identify any proposed areas for further evaluation. In addition, the consent form now contained a box to indicate an agreement that “no additional evaluation data are needed.” Finally, the form advised Parents that they had a right to request an assessment if they disagreed with the District’s determination that no additional data were needed.<sup>19</sup>

13. Parent returned the consent form on November 19, checking the box to indicate that she consented to reevaluation. Parent did not, as Special Education Teacher expected, check the box to indicate that she agreed that no additional evaluation data were needed.<sup>20</sup> The District did not notice this discrepancy until Parents filed this Complaint.<sup>21</sup> During this time, Parents did not express to any District staff that they had specific areas of concern that they wanted Student evaluated in or that they were expecting an evaluation. As described further below, Parents did not bring up the need for an evaluation or concerns that Student had not been evaluated in a specific area at the IEP meeting in December. It is unclear whether Parent changed her mind following the conversation with Special Education Teacher or inadvertently checked the wrong box. Regardless, any violation related to the District’s failure to conduct

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<sup>16</sup> Exhibit D (1), p. 3.

<sup>17</sup> Exhibit D, pp. 1-3.

<sup>18</sup> Interview with Special Education Teacher and Parents.

<sup>19</sup> Exhibit D (2), p. 1-3.

<sup>20</sup> Exhibit D (2), p. 3; Interview with Special Education Coordinator.

<sup>21</sup> Response at page 4.

additional assessments after receiving the consent form was remedied by the evaluation conducted in March of 2015.

**IEP Meeting on December 8, 2014:**

14. On December 8, 2014, the District convened a properly noticed IEP meeting for the purpose of discussing existing data to determine whether Student continued to be eligible for special education services.<sup>22</sup> The IEP team included Assistant Principal, Special Education Coordinator, Special Education Teacher, and three of Student's general education teachers.<sup>23</sup> The notice of meeting clearly informed Parents that the purpose of the meeting was "to discuss appropriate evaluation data to determine whether your child continues to be eligible for special education services."<sup>24</sup> Consequently, the SCO finds that Parents were properly notified about the purpose of the December 2014 IEP meeting.

15. At the meeting, the IEP team discussed the evaluation report, including TCAP scores, academic performance in class, and progress on Student's IEP goal.<sup>25</sup> Parents have complained that the IEP team did not present or discuss progress on Student's IEP goal at the meeting. The SCO does not agree. Student had one annual IEP goal to "increase written language level from partially proficient to proficient in the area of correct grammatical structures and paragraph writing."<sup>26</sup> Both the prior written notice and the evaluation report indicated that Student met this IEP goal as evidenced by his TCAP score and academic performance in class and his achievement of this goal was discussed at the IEP meeting.<sup>27</sup> Accordingly, the SCO finds that Student's progress on his IEP goal was reported to Parents and discussed at the IEP meeting.

16. The body of evidence, described above, indicated that Student was proficient in reading and writing, and advanced in math when compared to same-grade peers. Moreover, Student had demonstrated proficiency in writing, his identified areas of need, without receiving any direct specialized instruction during the previous year. Student's academic performance also demonstrated that he was able to access and make progress in the general education curriculum with accommodations alone. Because Student could receive educational benefit without specialized instruction and support, the IEP Team appropriately concluded that Student was no longer eligible for special education services under IDEA.<sup>28</sup>

**IEE Request:**

17. Disputing the outcome of the December eligibility meeting, Parents contacted the District's Special Education Department to request an IEE. On December 19, 2014, Special

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<sup>22</sup> Exhibit C (1), p. 1.

<sup>23</sup> Exhibit B (1), p. 1;

<sup>24</sup> Exhibit C (1).

<sup>25</sup> Exhibits B (1) and E.

<sup>26</sup> Exhibit A, p. 7.

<sup>27</sup> Exhibits B (1) and E.

<sup>28</sup> Exhibit B (1); Interviews with Special Education Teacher and Parents.

Education Director contacted Parents concerning their request for an IEE and requested consent for the District to conduct its own evaluation because it had not conducted its own formal assessment as part of Student's reevaluation in December of 2014. Although Parents agreed to allow the District to conduct its own evaluation, they also informed Special Education Director that they would be pursuing a private evaluation at the same time.<sup>29</sup>

18. Following this conversation, Special Education Director and other Special Education Department staff worked with Parents to fully explain the assessments that the District would be conducting to ensure that the evaluation addressed Parents areas of concern and that the proposed assessments would not be duplicative of ones that Parents were pursuing through their private evaluation.<sup>30</sup> After multiple communications to clarify the District's proposed evaluation, Parents provided their written consent on January 9, 2015. The prior notice and consent for evaluation identified the assessments that would be used for the evaluation in the areas of academic performance, and social and emotional status.<sup>31</sup> At no time during these communications did Parents request an assistive technology assessment or express any concern that Student needed to be evaluated in this area.

19. According to the District, the parties agreed that the private evaluation Parents were pursuing would serve as a compliment to the District's evaluation.<sup>32</sup> The District expected that Parents would request an IEE if they disagreed with the District's evaluation. Parents, however, did not share the same understanding. Instead, Parents believed that the District had granted their request for an IEE, even though the District was conducting its own evaluation. Because the District agreed to treat the private evaluation as complimentary to its own, Parents reasonably expected the District to pay for it. Recognizing that Parents did not have the same understanding regarding the IEE, the District has reimbursed Parents for the private evaluation and related travel expenses.<sup>33</sup> Consequently, this allegation has been remedied.

#### **Eligibility Meeting on March 31, 2015:**

20. On March 31, 2015, the District convened a properly noticed eligibility determination meeting that included the following participants: Parents, Advocate, Special Education Director, Assistant Special Education Director and Literacy Specialist, Assistant Principal, English Teacher, Social Worker, Special Education Teacher/Case Manager, Math Teacher, Science Teacher, and Principal.<sup>34</sup>

21. At this meeting, the eligibility team reviewed Student's education records from Kindergarten through eighth grade, 2011 evaluation data, and the 2015 evaluation data,

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<sup>29</sup> Exhibit J, p. 14;

<sup>30</sup> Exhibit J. pp. 14-26.

<sup>31</sup> Exhibit D (3).

<sup>32</sup> Response at page 12.

<sup>33</sup> Interviews with Parents and Special Education Director and copy of issued check.

<sup>34</sup> Exhibit B(2).

including the private evaluation recently obtained by Parents. Parents received a copy of the evaluation report on or around, February 27, 2015, in advance of the eligibility meeting.<sup>35</sup>

22. The 2015 Evaluation data included the following assessment results:<sup>36</sup>

- Woodcock Johnson III to assess written expression. The results indicated average scores in written expression, above average scores in writing samples, and below average scores in broad written language, basic writing skills, writing fluency, and spelling.
- A writing Curriculum Based Measurement (CBM) that revealed weaknesses in spelling.
- The Test of Written Language, 4<sup>th</sup> Edition (TOWL-4). The results indicated that Student was above average in vocabulary, punctuation, logical sentences, and sentence combining. Student scored above average in contextual conventions and story composition. Consistent with the CBM, Student scored below average in spelling.
- Classroom observations. Student was observed in Language Arts class by a member of the eligibility team during a writing assignment. In addition, teacher reports were obtained from Language Arts, Math, Science, and Social Studies. The reports consistently noted that Student is average or above-average when compared to grade-level peers. Student does use extended time for some assignments.
- Student's performance on State and District assessments over time. By sixth grade, Student was testing as advanced in math, proficient in reading, and partially proficient in writing. By seventh grade, Student was testing as advanced in math, and proficient in reading and also in writing.
- The Behavior Rating Inventory of Executive Functioning (BRIEF) which indicated parental concerns related to working memory.

23. In addition, the Eligibility Team reviewed the results from the private evaluation obtained by Parents in February of 2015. This report included the following assessment results:<sup>37</sup>

- The Woodcock Johnson, 4<sup>th</sup> Edition. The assessment results indicated Student has well developed verbal skills, superior fluid reasoning skills, and average working memory. Student was below average in letter-pattern matching.
- The Comprehensive Test of Phonological Processing, 2<sup>nd</sup> Edition (CTOPP-2). The assessment results indicated Student was average in phonological awareness and rapid

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<sup>35</sup> Exhibit F; Exhibit J, p. 27.

<sup>36</sup> Exhibit F.

<sup>37</sup> Exhibit 44.



symbolic naming, and below average in rapid picture naming skills. The assessment also indicated that Student's knowledge of phonics was inconsistent and that he had weaknesses in decoding and fluency, characteristics consistent with a diagnosis of developmental dyslexia.

- The Wechsler Individual Achievement Test, 3<sup>rd</sup> Edition (WIAT-III). The results indicated average listening comprehension and reading comprehension. The assessment also indicated Student had limited ability in receptive vocabulary and was below average on phonemic decoding of nonsense words.
- The Test of Word Reading Efficiency, 2<sup>nd</sup> Edition (TOWRE). The results of this assessment indicated Student was below average on sight word efficiency and phonemic decoding efficiency.
- Gray Oral Reading Test-5 (GORT-5). The results of this assessment indicated that Student is in the average range for reading fluency and below average in comprehension and oral reading. The scores also indicated that Student is limited in the areas of decoding and fluency in a manner that is consistent with a diagnosis of developmental dyslexia.

24. Contrary to Parents' allegation, a school psychologist was not required to interpret the evaluation data presented at the eligibility meeting. In general, a school psychologist is involved in evaluations where there is a need for a cognitive assessment, mental health assessment, or executive functioning. Although the District had concerns in the area of executive functioning, Student did not present and Parents did not raise concerns in the areas of cognitive functioning or mental health. To assess executive functioning, the District conducted the Behavior Rating Inventory of Executive Functioning (BRIEF). In this case, Social Worker was present at the meeting and qualified to interpret the results. Even though the BRIEF may also be administered by a school psychologist, it is common practice for this assessment to be administered by a social worker. Moreover, it is the District's typical practice to employ either a school psychologist or social worker to administer this assessment based on availability.<sup>38</sup>

25. For all other assessments administered, Special Education Case Manager was qualified to administer and interpret the assessments and observations he conducted as part of Student's evaluation.<sup>39</sup> In addition to the special education staff, including Special Education Director and Literacy Specialist, School Principal and Assistant Principal had extensive knowledge of grade-level instruction and were all qualified to interpret Student's performance on state and district assessments, grades, and classroom performance to determine whether Student was performing at grade-level in the area of concern.<sup>40</sup> Consequently, the SCO finds

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<sup>38</sup> Interviews with Special Education Director, Special Education Case Manager, and CDE Consultant.

<sup>39</sup> Interviews with Special Education Case Manager and Special Education Director.

<sup>40</sup> Interviews with Special Education Director, Special Education Case Manager, and CDE Consultant.

that a school psychologist was not required to interpret assessment data because members of the eligibility team were otherwise qualified to interpret the data.

26. The Eligibility Team, including Parents, unanimously agreed that the evaluation data, which included the private evaluation obtained by Parents, were “sufficiently comprehensive to appropriately identify Student’s special education and related service needs.”<sup>41</sup> Moreover, the private evaluation obtained by Parents, considered and referenced by the District in making the eligibility determination, included assessments in the areas of reading, speech language, and math, even though Student’s academic performance did not indicate concerns in this area.<sup>42</sup> Consequently, Parents allegation that the District’s evaluation was not comprehensive is not supported by credible evidence.

27. At the meeting, Parents actively participated in the eligibility determination by challenging some of the data, making specific recommendations, asking questions, and robustly debating Student’s needs.<sup>43</sup> In response to parental input, other members of the team asked clarifying questions, answered specific questions related to the body of evidence, and referenced data to support their professional opinions. In fact, the District agreed with Parents that Student demonstrated weakness in areas of written expression, i.e., spelling. Parents position that the District did not meaningfully consider the private evaluation appears to come from the assumption that Student is eligible for special education and related services based on weakness in spelling and his diagnosis of dyslexia alone, without consideration of his ability to perform at grade-level.

28. Although the team did not dispute the areas of weakness identified in the evaluation, i.e., spelling, or Student’s diagnosis of dyslexia, the team disagreed with Parents that Student needed specialized instruction to access and receive reasonable benefit from the general education curriculum. Throughout the meeting, the Special Education Director competently redirected the team to discuss and consider the impact these weaknesses had on Student’s ability to receive reasonable educational benefit from the general education curriculum.<sup>44</sup>

29. The District’s eligibility determination is consistent with Student specific data presented at the meeting. Despite having an acknowledged weakness in a component of written expression, i.e., spelling, Student was performing at grade-level in the area of written expression as a whole because the weakness in spelling was not so severe that it pulled the entire realm of written expression down below grade-level. District members of the eligibility

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<sup>41</sup> Exhibit B (2) p. 6; Exhibit 59 (Several times during the eligibility meeting, Parents, through an advocate, clearly indicate agreement with comprehensiveness of evaluation).

<sup>42</sup> Exhibit B (2). Parents sent a letter to the District on March 27, less than two business days prior to the meeting, requesting an AT and SLP evaluations. Exhibit J, pp. 70-71.

<sup>43</sup> Parents delegated their participation in this meeting to an advocate. Although District staff tried to elicit input directly from Parents several times during the meeting, Parents preferred to participate through their advocate rather than ask or answer questions directly. Accordingly, the SCO equates the participation of the advocate to that of Parents.

<sup>44</sup> Exhibit B (2) p. 6; Exhibit 59.

team noted that the body of evidence clearly demonstrated that Student is able to make progress in the general education curriculum adequate for his grade-level using accommodations and general education interventions. Accordingly, the team properly concluded that Student does not need specialized instruction as a result of his disability and is therefore not eligible for special education services under IDEA.

### **CONCLUSIONS OF LAW**

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

#### **Allegation One: The District properly implemented Student's IEP in the fall of 2014.**

1. In this case, Parents have alleged that Student was not provided with extended time in Math and English class in the fall of 2014, in accordance with his IEP. The SCO does not agree. Under IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the District, must implement a student's IEP in its entirety. 34 CFR § 300.323(c). To satisfy this obligation, the District must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR § 300.323(d)(2).

2. In addition to informing teachers of their responsibilities regarding a student's IEP, the District must ensure that the IEP is being implemented, which includes ensuring that all identified accommodations are being provided. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. It follows that the failure to provide accommodations identified on a student's IEP, could result in a failure to implement the IEP.

3. In this case, Student's teachers were adequately informed and knowledgeable about the accommodations identified on the IEP. Moreover, the credible evidence in the record supports a conclusion that Student was provided with extended time in accordance with his IEP. For example, email correspondence between Parents and English and Math Teacher demonstrated that both teachers were knowledgeable that Student was to be provided with extended time for assignments and detailed the provision of extended time on the assignments specifically raised by Parents in their Complaint. Accordingly, the SCO concludes that Student was provided with extended time, in accordance with his IEP during the fall of 2014.

**Allegations Two and Four: The District properly determined that Student was no longer eligible for special education and related services in March of 2015.**

4. Parents have alleged that the District erred in determining that Student was no longer eligible for special education and related services as a child with a Specific Learning Disability (SLD) in December of 2014 and March of 2015. For the reasons explained more fully below, the SCO concludes that the District properly determined that Student was no longer eligible for special education and related services in March of 2015. This conclusion is based on finding that the District complied with IDEA in making its determination, and that the determination itself was consistent with student specific data. Because the District properly determined eligibility in March of 2015, the SCO further concludes that the allegations concerning the December 2014 eligibility determination have been rendered moot. Consequently, the SCO need not address specific allegations concerning the December 2014 eligibility determination.

5. Specifically, Parents have argued that the District erred in determining Student's eligibility because it did not conduct a comprehensive evaluation, it did not meaningfully consider the private evaluation obtained by Parents, and it did not invite a school psychologist to the eligibility determination meeting. Concerning the comprehensiveness of the evaluation, the SCO concludes that the District conducted a comprehensive evaluation in all areas of suspected disability.

6. The IDEA has specific procedural requirements that prescribe how a school district must evaluate a student to determine whether he is eligible for special education. 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 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; and

- (7) Make an eligibility determination by a group of qualified professionals and the child's parents.

34 C.F.R. §§ 300.304 – 300.306.

For a child suspected of having an SLD, the evaluation must also include an observation of the child in the child's learning environment to document the child's academic performance and behavior in the areas of difficulty. 34 C.F.R. § 300.310.

7. In this case, the District evaluated Student in the area of written expression, the identified area of need, using a variety of assessment tools and strategies. The evaluation included a variety of norm-referenced assessments, such as the TOWL-4, a writing CBM, WIST, and subtests of the Woodcock Johnson III. In addition, the District conducted a formal observation of Student performing a writing exercise in class, and reviewed Student's performance on state and district assessments over time, teacher observations/reports, grades, and classroom performance, including writing samples. In accordance with IDEA's evaluation procedures, the District used a variety of assessment tools and strategies to gather relevant information in the area of suspected disability and did not rely on a single measure, such as Student's grades, in conducting its evaluation.

8. Notably, Parents agreed at the March 2015 eligibility meeting that the District's evaluation, combined with the private evaluation obtained by them, was comprehensive and that no further data were necessary to determine eligibility. In fact, the District coordinated the specific assessments it was proposing to conduct with Parent. And at no time prior to the completion of the evaluation in February of 2015 did Parents indicate that they had concerns in the areas of speech language impairment and reading, as alleged in their Complaint. Moreover, Student's academic performance did not reasonably indicate concerns in these areas. Consequently, the SCO concludes that the District's evaluation was sufficiently comprehensive and assessed Student in all areas of suspected disability.

9. Parents also assert that the District predetermined eligibility by failing to include a school psychologist and by failing to consider the private evaluation obtained by them. The SCO first addresses the allegation that the District predetermined eligibility by failing to include a school psychologist on the eligibility team. In determining eligibility in the category of SLD, the team must include at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech language pathologist, or remedial reading teacher. 34 CFR § 300.308(b). There is no requirement in state or federal regulation that requires a school psychologist to attend an eligibility meeting for a student suspected of having an SLD. In declining requests from stakeholders to include such a requirement, the U.S. Department of Education (E.D.) explained that "this allows specific qualifications of the members to be made at the local level, so that the composition of the group may vary depending on the nature of the child's suspected disability, the expertise of local staff, and other relevant factors." 71 Fed. Reg. 46650 (Comments to the 2006 federal IDEA regulations).

10. In this case, the eligibility team included members who were qualified to interpret the variety of assessment results and other student specific data. For example, Special Education Case Manager was qualified to administer and interpret the assessments results for the TOWL-4, Woodcock Johnson III, WIST, CBM, and the formal observation of an in-class writing exercise. The School Principal, Assistant Principal, Literacy Specialist, and general education teachers were qualified to assess the data related to Student's grades, writing samples, district and state assessments, and classroom performance. Finally, Social Worker was qualified to administer and interpret the BRIEF. Although school psychologists are also qualified to administer the BRIEF, the District employs both school psychologists and social workers to administer this assessment depending on local resources. Together, the eligibility team included members who were qualified to interpret the evaluation data without including a school psychologist. Allowing the District to determine the eligibility team's composition based on the expertise of its staff and the nature of Student's suspected disability is the reason the E.D. declined to include a requirement that a school psychologist attend eligibility meetings for students suspected of having an SLD. Consequently, the SCO concludes that Student's eligibility team was composed in accordance with IDEA and did not require attendance by a school psychologist.

11. Parents also allege that the District denied them a meaningful opportunity to participate in the eligibility determination by failing to consider the private evaluation obtained by them in February of 2015. The SCO does not agree. The IDEA's procedural requirements for evaluation and determination of eligibility place special emphasis on parental involvement. 34 C.F.R. §§ 300.305(a)(2) and 306(a); *See also Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10<sup>th</sup> Cir. 2008)(IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement.") Meaningful parent participation is prevented when an educational agency has made its determination prior to the meeting. *See Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2003).

12. 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. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692 (10<sup>th</sup> 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 and discusses privately obtained evaluations, based on the individual needs of the student. *Id*; *See Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005).

13. In this case, the District reviewed and considered the private evaluation shared by Parents at the eligibility determination meeting on March 31, 2015. Prior to the meeting, Parents provided the District with a copy of the private evaluation that was reviewed by several

members of the eligibility team in advance of the meeting. In addition, the private evaluation was reviewed at the eligibility meeting itself. Moreover, the eligibility team agreed to include the private evaluation in the body of evidence it was using to determine Student's eligibility. During the course of the three and one-half hour eligibility meeting, Parents robustly participated in the eligibility determination meeting by providing input, making recommendations, and debating Student's eligibility. Consequently, the SCO concludes that Parents had a meaningful opportunity to participate in the eligibility determination meeting, even though they strongly disagreed with the outcome.

14. Parents argue that the District failed to properly consider the private evaluation because, in their opinion, the private evaluation and Student's clinical diagnosis of dyslexia sufficiently established Student's eligibility as a child with an SLD, despite his grade-level academic performance. A diagnosis of dyslexia or demonstrated weakness in an area of written language, such as spelling, does not equal eligibility for special education. 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 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. In this case, the body of evidence demonstrated that Student was achieving at or above grade-level in written expression, the identified area of weakness, and able to receive reasonable benefit from general education without any specialized instruction.

15. Finally, Parents seem to assume that Student is eligible because he should be performing at above grade-level due to his superior cognitive ability. Certainly, a student with high cognition who is identified as gifted in some areas may also be identified as having an SLD. In recent guidance, OSEP reminded school districts that high cognition is not a bar to eligibility for special education. *Letter to Delisle*, 62 IDELR 240 (OSEP 2013); *see also Memo to State Directors of Special Education*, 65 IDELR 181 (OSEP 2015). Relevant to this case, OSEP also reminds school districts that they must rely on a variety of assessment tools and strategies and cannot rely on a single measure, such as a cut score, as the sole basis for determining eligibility. *Id.* Consistent with OSEP guidance and IDEA, the District used a variety of assessment tools and strategies in evaluating Student and did not rely solely on one measure, such as Student's grades. To be eligible for special education, however, the student must still demonstrate a need for special education as a result of disability. 34 C.F.R. § 300.8; ECEA Rule 2.8; *D.A. v. Meridian Joint Sch. Dist. No. 2*, 65 IDELR 289 (9th Cir. 2015)(Holding that the school district did not err in finding student with Asberger's Syndrome ineligible for IDEA services because his disability did not adversely impact educational performance). The body of evidence, comprised of a variety of data, demonstrated that Student was able to receive reasonable benefit from the general education curriculum without specialized instruction. Contrary to Parents' position, the SCO concludes that the District properly determined that Student was not eligible under IDEA for special education and related services and that the District's eligibility determination was consistent with student specific data.

### **Allegation Three: IEE request**

16. Parents allege that the District denied their request for an Independent Educational Evaluation (IEE). Parents have the right to request an IEE at public expense if they disagree with an evaluation conducted by the district. That right, however, does not arise until the public agency (*i.e.*, the District) conducts its own evaluation with which the parent disagrees. 34 CFR § 300.502(b)(5). In response to a parent's request for an IEE, the District has two options: 1) provide the IEE at public expense, or 2) request a due process hearing to demonstrate that its evaluation of the student was appropriate. 34 CFR § 300.502. While the regulations do not set a specific time by which school district must respond to the request, the school district must respond without unnecessary delay. *Id.*

17. In this case, Parents and the District had different understandings concerning the private evaluation obtained by Parents in February of 2015. Parents requested an IEE in December of 2014. In response, the District asked Parents for permission to conduct its own evaluation first since it had not conducted additional assessments. Parents provided consent for the District to conduct the requested evaluation and also informed the District that they would be pursuing a private evaluation at the same time. Although the District expected that Parents would request an IEE if they disagreed with the District's evaluation, Parents expected that the District was granting their request for an IEE and would be paying for the private evaluation. Because the District admitted that it viewed the private evaluation as a compliment to its own evaluation and worked with Parents to ensure that they were not duplicating assessments, the SCO concludes that Parents were reasonable in expecting the District would pay for the evaluation. In fact, the District labels the private evaluation an IEE and includes it in the description of the evaluation in its prior written notice. These facts, taken together, support Parents understanding that the District intended to use the private evaluation results to make the eligibility determination and would therefore be paying for it. Because the District has compensated Parents for the cost of the private evaluation, the allegation concerning the provision of the IEE has been remedied.

### **REMEDIES**

Because the SCO has concluded that the District did not violate IDEA as alleged by Parents in this Complaint, 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 13<sup>th</sup> day of August, 2015.

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### Complaint, pages 1-10.

Exhibit 1: Private evaluation dated 9/2015.  
Exhibits 2-30: Email correspondence.  
Exhibit 31: Evaluation reported dated 12/2014.  
Exhibits 32-33: Email correspondence and prior evaluation report.  
Exhibit 34: Private assessment report dated 2/2015.  
Exhibit 35: District evaluation report dated 2/2015.  
Exhibits 36-58: Email correspondence and miscellaneous content.  
Exhibit 59: Recording of 3/2015 eligibility meeting.  
Exhibit 60: Grade Report for 2014-15.  
Exhibit 61: Letter to Delisle (OSEP 2013)  
Exhibit 62: Letter to Lillie (OSEP 1995)  
Exhibit 63: Article from Wright's Law  
Exhibit 64: Article from The National Center on Accessible Education Materials.

### Reply, pages 1-6.

### Response, pages 1-24.

Exhibit A: IEP dated December 2013.  
Exhibit B (1)-(2): Prior Written Notices for 2014-15 school year.  
Exhibit C (1)-(2): Notices of meeting issued during 2014-15 school year.  
Exhibit D (1)-(3): Consents for evaluation issued during 2014-15 school year.  
Exhibit E: Evaluation report dated December of 2014.  
Exhibit F: Evaluation report dated March of 2015.  
Exhibit G: Student transcript.  
Exhibit H(1)-(4): Grade summary reports, district/state assessment reports, and IEP progress report.  
Exhibit I: District Special Education Manual.  
Exhibit J: Email correspondence.  
Exhibit K: Contact information of relevant witnesses.  
Exhibit L: IEP dated December 2011.  
Exhibit M: Termination of literacy plan.  
Exhibit N: Certified mail receipt.

### Interviews with:

- Parents
- Private Therapist
- Special Education Director
- Special Education Teacher
- Special Education Case Manager