

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 2017:507  
Douglas County School District

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was properly filed on April 20, 2017, by the mother and father (Mother, Father, respectively or Parents) of a then 5<sup>th</sup> grade student (Student) who attends a public charter school (School) in the Douglas County School District (District). By agreement of the Parties, the decision due date was extended to October 16, 2017 for the purpose of mediation. Student is currently identified as an eligible child with a disability under the Individuals with Disabilities Education Act.<sup>1</sup>

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 C.F.R. §§ 300.151 through 300.153.<sup>2</sup> SCO withdrew allegation number one per Parents' request and renumbered accordingly.

**COMPLAINT ALLEGATIONS**

Whether the School District violated Parents' rights and denied Student a free appropriate public education (FAPE) by:

1. Denying Parents' meaningful participation in the development of Student's Individual Education Program (IEP) by:
  - a. Failing to consider parental concerns and input relevant to the IEP;
  - b. Failing to provide requested documentation regarding the manner in which services and accommodations were being delivered to Student;
  - c. Failing to provide Student's complete educational records;
  - d. Failing to provide Prior Written Notices;

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

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

- e. Failing to convene an IEP meeting upon Parents' request or, in the alternative, failing to provide a PWN explaining the basis for its refusal;
2. Failing to consider the Independent Educational Evaluation (IEE)<sup>3</sup> obtained by the Parents;
3. Failing to develop, review and/or revise the 2016 IEP based on Student's individualized needs.

### SUMMARY OF PROPOSED REMEDIES

In order to resolve the Complaint, Parents propose School District perform the following, in summary:

1. District to convene an IEP meeting with required team members where the IEE is considered and Parents' concerns are addressed;
2. School district to provide a complete copy of Student's educational records, including data reporting on services, accommodations and modifications.

### FINDINGS OF FACT

After a thorough and careful analysis of the entire record,<sup>4</sup> the SCO makes the following FINDINGS:

#### Background -Pre 2016 IEP

1. At all times relevant to the Complaint, Student lived with Parents within the boundaries of District. Student switched to School, a public charter school, as a 5<sup>th</sup> grader for the 2016-2017 school year.<sup>5</sup>
2. Student was initially identified as a student eligible for special education with a specific learning disability in November of 2012 in the area of reading and writing under the IDEA and ECEA.<sup>6</sup>
3. Student's three-year reevaluation was conducted in October 2015 (2015 IEP), the year prior to his enrollment in School. At that time, Student was identified with a primary disability in Other Health Impairment (OHI) and secondary disability in Specific Learning Disability in the area of reading and writing. It is unclear why Student's primary disability switched to OHI except, per Mother, Student was having a very difficult time even entering the school due to

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<sup>3</sup> The term here refers to an educational evaluation obtained by Parents at their expense in May of 2016.

<sup>4</sup> The appendix, attached and incorporated by reference, details the entire record.

<sup>5</sup> Complaint; interview with Parents.

<sup>6</sup> Complaint. Exhibit A.

heightened levels of anxiety.<sup>7</sup> Student's Needs and impact of Disability statement provided that "[Student's] dyslexia impacts his reading and writing, he has difficulty putting his thoughts down on paper, he substitutes certain sight words for other sight words, his anxiety and difficulty managing intense emotion, in conjunction with his learning disability, has impacted his ability to share feelings and affects his self-confidence."<sup>8</sup>

4. Student's present levels were described as:
  - a) On the Woodcock-Johnson IV for calculation skills, Student scored in the 11<sup>th</sup> percentile on his calculation skills.
  - b) The iStation assessment showed that he still needed support in reading and spelling though no data was included in the IEP. However, the evaluation showed Student with difficulties in text fluency in the 8<sup>th</sup> percentile, comprehension in the 9<sup>th</sup> percentile, spelling in the 5<sup>th</sup> percentile and vocabulary in the 34<sup>th</sup> percentile. Overall, these scores placed Student at the second grade level.
  - c) Student's reading assessment using the Developmental Reading Assessment 2 (DRA2) places Student at a 1<sup>st</sup> grade level. It is notable that Student's score decreased by 2 over the summer break.
  - d) As for the social/emotional piece, Student has significant difficulty with learning and peer relationships and may require problem solving and emotional regulation skills.<sup>9</sup>
  - e) In the occupational therapy realm, Student uses a variety of sensory strategies such as compressive shirts and T stools. Student struggles with producing legible work in the classroom.<sup>10</sup>
5. The 2015 IEP contained a total of seven goals i.e. two goals in reading, two goals in writing, one goal in mathematics and two goals in social/emotional wellness. Along with the goals, the IEP provides a list of accommodations. The Service Delivery Statement provided for 120 minutes of direct services for social/emotional skills development, 96 minutes of specialized instruction inside the classroom, 528 minutes of specialized instruction outside the classroom and 20 minutes of direct Occupational Therapy services.<sup>11</sup>

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<sup>7</sup> Interview parents; Exhibit 1.

<sup>8</sup> *Ibid.*

<sup>9</sup> Mother reported that Student was seeing a private therapist to address his anxiety.

<sup>10</sup> Complaint. Exhibit 1.

<sup>11</sup> Exhibit 1.

6. The 2015 IEP was in effect at the start of the 2016-2017 school year.
7. Starting in September, Mother began communicating concerns to School staff regarding the support that Student was getting and issues around his math class, specifically as it pertained to Math Teacher. On September 8, 2016 when Mother e-mailed the Special Education Case Manager (Case Manager) and School Principal (Principal) requesting to know “how [Student’s] services [were] being provided, what [was] being provided, and how the teachers [were] integrating his needs.” Mother wrote that “[Student’s] grades were dropping and Student was experiencing meltdowns at home and general anxiety about not doing well.” Additionally, Mother wrote that she had become aware that School did not have an Elementary Learning Support Specialist (LSS).<sup>12</sup> Case Manager responded acknowledging that the elementary learning support specialist left unexpectedly and they were in the process of hiring for the position. In the meantime, she reported that the middle school LSS staff was providing some services and that teachers had Student’s list of accommodations. In addition, Case Manager directed Mother to speak to the teachers directly regarding Student’s in-class work and that Case Manager would “make sure that [Student’s] teachers have the support and understanding that they need to ensure [Student] is receiving his accommodations.”<sup>13</sup>
8. A few days later, on September 13, 2017, Mother e-mailed Principal and Case Manager stating, “we have seen a measurable impact on [Student’s] academic performance and mental and emotional state already in the weeks since school has started.” Again, Mother requested information stating “[w]e would appreciate knowing specifically how [School] will be supporting his need in the interim....It is critical [Student] be aware of how his needs will be met and which individuals he should seek support throughout the day.” On September 14, 2017, Mother e-mailed Principal regarding [Student] having a “pretty big breakdown last night” and wanting to set up a meeting to discuss the issue. Principal scheduled and held a meeting with Parents that same day. Parents contend that they informed Principal at that meeting that Math Teacher resembled the man who had abused Student both in appearance and in mannerisms and that they wanted Student removed from his class. Among other things, Parents voiced their desire for Student to change math classes by

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<sup>12</sup> Exhibit B2; Mother used the term “Elementary SPED teacher.” However, School uses the term Learning Support Specialist to refer to their special education staff.

<sup>13</sup> Exhibit B2; Interviews with Mother, Case Manager and Principal.

moving to the next level. They report proposing this option because they believed Student would have an opportunity to be challenged and build self-confidence.<sup>14</sup> After the meeting, Father sent a follow-up e-mail where he wrote “[t]eaching [Student] to deal with personalities that he feels uncomfortable or unsafe with and/or doesn’t get along with well is something we feel is important and a valuable life skill, however at this critical moment in his life it is not the time to be dealing with this lessons.”<sup>15</sup>

9. Based on the record and interviews with witnesses, the SCO finds that School was on notice that Student was being negatively impacted due to Math Teacher bearing a resemblance to Student’s past abuser (“math situation”) during the month of September. Mother e-mailed Principal regarding Student “experiencing meltdowns at home and general anxiety about not doing well.” A few days later Mother reported via e-mail they were seeing a “measurable impact on [Student’s] academic performance and mental and emotional state already in the weeks since school has started.” The next day, Mother sent an e-mail requesting a meeting because Student had “a pretty big breakdown.” Lastly, Father sent an e-mail following-up with the meeting with Principal expressing concern that it was not the time for [Student “to deal with “personalities he feels uncomfortable or unsafe with ....”<sup>16</sup>
10. On September 19, 2016, Principal scheduled another meeting to address Parent’s request but with Case Manager present. In attendance were Parents, School Principal and Case Manager. In response to the question of moving Student to a higher level math class, School Principal and Case Manager voiced their disagreement with that proposal stating that Student could not be in an advanced math class with a content related goal and that his scores showed that he was appropriately placed.<sup>17</sup> The meeting ended with Case Manager planning to follow-up with “Director.”<sup>18</sup>
11. Over a week later, on September 27, 2016, Case Manager e-mailed Mother to inform her that District Coordinator would be observing Student. Two days later, in response to an e-mail sent from Mother, Case Manager stated “we

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<sup>14</sup> Exhibit B2; Interviews with Parents, Principal and Case Manager.

<sup>15</sup> Exhibit B2.

<sup>16</sup> *Ibid.*

<sup>17</sup> Principal noted that Student’s MAP scores were 60 points lower than the lowest student in the 6<sup>th</sup> grade.

<sup>18</sup> Exhibit B2. It was unclear whether Case Manager was referring to District Coordinator or School Executive Director.

understand the urgency of your request and I know that District Coordinator has a plan to come and observe [Student] before fall break. She also repeated School's position that Student could not be placed in an advanced class with a content related goal." On September 29, 2016, District Coordinator e-mailed a similar response to Mother that Student could not be working towards advanced standards with a content related goal in that same area.<sup>19</sup>

12. On September 29, 2016, Mother e-mailed Principal and Case Manager expressing frustration that she was being instructed to communicate with teachers regarding Student's programming and how Student was receiving his services. Mother wrote it "is an unrealistic expectation to have parents be the bridge between [Student's] needs and the needs of the teacher/classroom/school given they don't know what technology is available, what aides, what program and what is content rich modification, among other things..."<sup>20</sup> School provided no further communication regarding the manner in which it was delivering services.
13. The SCO finds that School did not provide sufficient information or guidance to Parents regarding the manner in which Student's IEP was being implemented during the absence of an LSS teacher. Simply stating that "LSS staff are providing **some (emphasis added)** services" does not provide the Parent with the information necessary to know how Student's services and accommodations are being implemented. There is no evidence that further communication occurred to provide more information.
14. Approximately one week later, on October 5, 2016, Parents met with District Coordinator to discuss their ongoing concerns, lack of resolution regarding Student's math class and to discuss available options. They followed-up by providing District Coordinator a copy of a privately obtained Independent Educational Evaluation (IEE). On October 7, 2016, District Coordinator wrote to Parents saying she would review the report and get together with the team to discuss a reevaluation and look at specific goals that will benefit Student along with what classes will benefit Student. District Coordinator shared the IEE with Case Manager.<sup>21</sup>

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<sup>19</sup> Exhibit B2. District Coordinator also noted in an e-mail sent shortly after that Student's goal could fall under accommodations rather than an IEP goal.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

15. District's position at that time, and throughout the year, was that Student had to remain in his math class because he had a content-related goal and that a reevaluation would be necessary in order to determine whether the math goal was still appropriate and necessary. However, District Coordinator, in an e-mail to parent, acknowledged that if fluency is the area of need, it may fall under accommodations and not necessarily an IEP goal.

### 2016 IEP MEETINGS

16. Based on the following, the SCO finds that School denied Parents' meaningful participation because it failed to consider their concerns as it pertained to the emotional impact the math situation was having on Student, failed to provide required PWNs, failed to finalize the IEP or convene a 3<sup>rd</sup> IEP meeting upon Parents' request or in the alternative provide a PWN in response and failed to consider the IEE.
17. School conducted IEP meetings on October 26, 2016 and November 1, 2016. Present for the October 26, 2016 meeting were Mother, Father, Case Manager, Math Teacher, Science Teacher, Occupational Therapist, School Social Worker 1 and Special Education Teacher. Present for the November 1, 2016 IEP were Mother, Father, Case Manager, Occupational Therapist, Science Teacher, School Social Worker 1, and Special Education Teacher.<sup>22</sup> The parties agree that a draft IEP was provided to Parents at the first meeting.<sup>23</sup> The SCO finds that Parents brought a copy of the IEE to the meeting and that Case Manager brought a Notice for Consent to Re-evaluate.
18. From numerous accounts, the IEP meetings held October 26, 2016 and November 1, 2016 were tense with Parents and Case Manager at the nexus of that friction. One staff member reported that it did not appear that either side was listening to what the other had to say.<sup>24</sup>
19. The meetings discussions seemed to revolve around Student's math class, whether Student needed a math goal and if he had the ability to be in an advanced math class. However, the discussion did not include consideration of the IEE or how it fit in with the social emotional piece. Case Manager reports

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<sup>22</sup> Exhibit A, B2 and H.

<sup>23</sup> Interviews with Parents, Case Manager and Special Education Teacher.

<sup>24</sup> Interviews with Parents, Case Manager, Special Education Teacher and Occupational Therapist

that she felt Parents wanted Student to be in a higher-level math class because they didn't like Math Teacher, "didn't like his energy and didn't like the way Math Teacher phrased things to the students."<sup>25</sup>

20. Based on the record and the interviews, the SCO finds that Parents again disclosed the resemblance issue with Math Teacher, Student's past history of abuse and the negative impact it was having on Student.<sup>26</sup> Correspondingly, the SCO finds that School did not consider Parent's concern regarding the social/emotional effect the math situation had on Student and it was not addressed during the meeting.<sup>27</sup> Specifically, there is no evidence to demonstrate that School assessed the impact the situation with math was having on Student's social/emotional well-being, if it was impacting his access to the curriculum and what School could do to support Student.
21. There is no evidence that the IEP team considered the IEE at either of the IEP meetings.<sup>28</sup> In fact, School's position is that a signed Consent to Reevaluate was required before considering the information. Accordingly, SCO finds that School failed to consider IEE.
22. There is no evidence that the IEP team meaningfully considered ESY services for Student. While Case Manager reported that ESY was addressed at the meeting because School addresses it at every IEP meeting, there are no notes or documentation to support that assertion. On the contrary, a review of the present levels reported in Student's 2015 IEP and the present levels reported in the 2016 IEP show Student has made minimal, if any, progress especially in the area of reading. The 2015 IEP Present Levels indicate that, based on the Developmental Reading Assessment 2 (DRA2), Student's reading proficiency was documented to be at a mid-1<sup>st</sup> grade level. It also documented that his DRA2 score dropped from a 12 in May of 2015 to a 10 in August of 2015.<sup>29</sup> In the 2016 IEP, Student's Present Levels as it pertained to reading indicated that Student was instructional at the primer (kindergarten) level, which was actually lower

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<sup>25</sup> *Ibid.*

<sup>26</sup> Student was exposed to Math Teacher in three different settings throughout the week: Math, Project Based Learning and ELA.

<sup>27</sup> Interviews with Parents, Case Manager, Special Education Teacher, Math Teacher. The record reflects that Mother e-mailed Social Worker regarding Student being upset about something happening with Math Teacher and wanting her to check up on him. Exhibit B, page 28

<sup>28</sup> Special Education Teacher reported reviewing the IEE after the IEP meeting and incorporating some of the recommendations in his teaching.

<sup>29</sup> Exhibit A.

than what was reported in the 2015 IEP.<sup>30</sup> The SCO finds that School failed to meaningfully consider Student's eligibility for ESY services.

23. At the conclusion of the 2<sup>nd</sup> IEP meeting, Parents state that it was their belief that Case Manager was going to follow-up on some items and the IEP was not final. Case Manager states that she believed the IEP was final and that she proceeded accordingly.<sup>31</sup>
24. In support of Case Manager's assertion, Case Manager reports that on November 3, 2017 Parents sent her an e-mail requesting a copy of the draft IEP before it was finalized. She reports that this is evidence that it was finalized. However, on November 14, 2016, Case Manager sent Parents an e-mail titled "[Student's] Draft IEP."<sup>32</sup> On November 17, 2016, Mother responded with a proposed math goal and additional recommendations made by their advocate. Over a week later, on November 27, 2016, Case Manager reached out to District Coordinator to request guidance on how to respond to Mother.<sup>33</sup> On November 30<sup>th</sup>, 2016, Mother e-mailed Case Manager to check the status of her previous e-mail. On December 1, 2016, Case Manager e-mailed Mother and Father stating:

"[p]lease let us know what additional strengths you would like added to [Student's] IEP and I am happy to add them. I added all the strengths you previously sent me. In regards to the math goal, I again consulted with [Coordinator] and we determined that the goal proposed is not specific or measurable and does not address [Student's] skill deficit in math. The current goal which was agreed to at the meeting addresses that need. Is there something specific in math that you would like to be addressed in a goal...]"<sup>34</sup>

At no point in time did Case Manager convey to Parents that the IEP was finalized and that any changes to the document would require another meeting or an agreement to amendment. Rather, Case Manager inquires as to what Parents would like to have addressed and what other strengths can be added. Additionally, Case Manager did not issue a PWN in response to rejecting Parents proposed goal. Lastly, there is no documentation to support Case Manager's

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<sup>30</sup> *Ibid.*

<sup>31</sup> Interviews with Parents and Case Manager.

<sup>32</sup> Exhibit B2. Based on testimony from Case Manager and Principal, the computer program showed that it was finalized that same day, November 14, 2017.

<sup>33</sup> District Coordinator responded that an IEP meeting should be held and a PWN should be issued with the outcome.

<sup>34</sup> Exhibit B2.

assertion that School staff was aware that Student's IEP was final as of November 14, 2016. It is clear from e-mail communications, from a recording taken of a meeting among Principal, Parents and Advocate and from a letter written to School Executive Director that Parents were operating from a position that the IEP was still being discussed and developed and that they wanted another meeting. Even though the computer program School uses shows that IEP was finalized, SCO finds that all other evidence supports a finding that 2016 IEP was not finalized.<sup>35</sup>

### Reevaluation

25. Another barrier in the development of the IEP was the issue surrounding the Prior Notice and Consent for Reevaluation. School contends that Parents refused to sign a Prior Notice and Consent for Reevaluation in spite of their continued request starting at the October 26, 2016 IEP meeting. School asserts Parents refusal prevented them from assessing Student's current needs regarding math and whether he could be moved to a higher-level math class. Parents contend that they did not refuse. Rather, they state that due to the "emotional toll" testing placed on Student they were requesting more information, clarification and options for "building our body of data for [Student] in different ways."<sup>36</sup> Parents asked about using the 2015 reevaluation data and the IEE rather than doing more evaluations.<sup>37</sup> There is no evidence that Parents questions were answered.
26. The SCO finds Parents inquiry reasonable given the content of the Prior Notice and Consent for Reevaluation. First, the Consent outlines the areas to be evaluated as General Intelligence, Academic Performance, Social and Emotional Status, Health, Motor Abilities. The reason provided is that "[t]he team would like to reevaluate [Student's] academic abilities to identify current needs in all areas of academics. Parents have reported concerns that they do not feel that Student needs math support anymore." The Prior Written Notice provides:

"Results of [Student's] previous evaluation conducted in 2015 indicate that he demonstrated a significant deficit in math calculation skills as well as deficits in reading and writing. Parents have requested that math support and goals be removed from [Student's IEP], so a reevaluation is required to determine his

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<sup>35</sup> SCO notes that even if it was finalized, School failed to provide a copy to parents with a corresponding PWN, ensure distribution among school personnel, and issue PWNs regarding parent request for a goal and parent's request for a meeting to discuss "unresolved" issues.

<sup>36</sup> Exhibit B2.

<sup>37</sup> Exhibit B2. Interview with Parents, Principal and Case Manager.

current level of academic achievement. Additionally, a review of records or new testing may be completed in the others areas indicated in order to assist with eligibility determination.”<sup>38</sup>

The consent outlines 5 areas School wants to reevaluate but references the reason as the Parents’ issues with math support. It is unclear if School is attempting to determine eligibility overall, just in math or in other specific areas of concern. Without further context, the SCO finds that the Consent is overbroad in areas to reevaluate, especially in light of the recent reevaluation. Furthermore, the SCO finds that Parents’ actions did not amount to a refusal to sign Consent.

### Request for Meetings and Prior Written Notice

27. As previously discussed, the SCO finds that School failed to finalize the IEP. Correspondingly, and based on the following, the SCO finds that School failed to schedule and conduct an IEP meeting pursuant to Parents request to finalize the IEP or in the alternative, issue a PWN explaining reasons for not scheduling the meeting.
28. On December 6, 2016, Parents requested a meeting stating, “...we have not resolved what we discussed in his meeting. At the last meeting there were items that you were going to follow up with [District Coordinator] and [Principal]. We have not heard back about these items and are requesting that in addition to [Special Education Teacher] we all meet. We do not want to continue to drag this out but have some resolution so that we are meeting [Student’s] needs.” Case Manager requested guidance from School Coordinator but did not communicate with Parents. On December 15, 2016, Parents requested a meeting with Principal in order to address Student and ongoing concerns with his math class and the negative impact it was having on Student. During that meeting, Parents informed Principal that the IEP had not been completed and another meeting needed to be held with her in attendance. On January 11, 2017, in response to a letter from School Director, among other things, Parents wrote “In regards to his current IEP being in place since October. We have not finished this document, we have requested multiple times and on multiple occasions to meet in order to finalize his IEP. My understanding from his [Special Education Teacher] is that his old, expired IEP is being followed at this time. We explicitly request again that we meet and

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<sup>38</sup> Exhibit A.

write his IEP as a team.”<sup>39</sup> No IEP was scheduled nor was a PWN issued to communicate School’s reasons for not conducting an IEP.

### Request for Student’s Complete Educational Records

29. Parents requested a copy of Student’s cumulative and educational record verbally on January 31, 2017 and via e-mail on February 1, 2017.<sup>40</sup> Records initially provided were incomplete. On May 15, 2017, School, via their attorney, provided a complete educational record.<sup>41</sup> The SCO finds school failed to provide a complete copy of Student’s educational record in a timely manner. However, School has addressed this issue.

### Develop, Review and/or Revise the 2016 IEP

30. With respect to the allegation that School did not review, revise and develop the 2016 IEP based on Student’s individualized needs, the SCO agrees. Based on interviews with witnesses and the record, the majority of the time was spent discussing Student’s math goal. Parents’ input regarding Student’s anxiety and social/emotional well-being were not addressed. ESY was not addressed and the IEE was not considered in any meaningful way.

### Update

31. Parents informed SCO that they enrolled Student in a private school at the end of the 2016-2017 school year.

### CONCLUSIONS OF LAW

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

**Allegation one and two:** School District denied Parents’ meaningful participation in the development of Student’s IEP when it failed to finalize Student’s IEP, meaningfully consider parental concerns and input, failed to providing sufficient documentation regarding manner in which services and accommodations were being delivered to Student, failed to provide Student’s complete educational record in a timely manner, failed to provide prior written notices in response to parent’s

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<sup>39</sup> Exhibit B2.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

proposed goal, failed to schedule an IEP pursuant to Parent's request or issue a PWN providing reasons for its refusal and failed to consider parentally obtained IEE.

1. Under the IDEA, public school districts are required to provide children with disabilities with 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 (IEP) that is developed according to the IDEA's procedures. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's extensive procedural requirements relate to the development of the IEP, including the requirements that it be developed by a team of individuals with knowledge about the child and that it be based upon the input of the IEP meeting participants as well as evaluative data derived from valid, scientifically based assessments conducted in accordance with the IDEA's requirements. See, e.g., 34 C.F.R. §§300.301-300.304 and 300.320-300.324.
2. In the formative case of *Board of Education v. Rowley*, the United States Supreme Court stressed the importance of compliance with the IDEA's procedural requirements.

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

*Board of Education v. Rowley*, 458 U.S. 176, 205-206 (1982).

With the intention of developing an IEP that is tailored to the unique needs of the child, the IDEA places particular emphasis on collaboration among parents and school districts, requiring the parents be afforded the opportunity to participate and that their participation be meaningful, including giving careful

consideration to their concerns about their child. 34 C.F.R. §§300.321 (a)(1), 300.322, and 300.324 (a)(ii). This was recently underscored in *Endrew F.* in which the Supreme Court reasoned that developing an IEP that is reasonably calculated is a “fact-intensive exercise” that is “informed not only by the expertise of the school officials, but also by the input of the child’s parents or guardians.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_\_ (2017).

3. Additionally, it is well-established that where the procedural inadequacies seriously infringe upon the parents’ opportunity to meaningfully participate in the IEP process, the result is a “per se” denial of FAPE. *See, e.g., O.I. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11<sup>th</sup> Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6<sup>th</sup> Cir. 2004); *see also*, 34 C.F.R. §300.513(A)(2)(ii) (“In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ...[s]ignificantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child...”).
4. The IDEA provides that before a school district proposes or refuses to initiate or change the identification, evaluation or educational placement of a child with a disability, the school district must provide the parents with “prior written notice” (PWN) describing and explaining the basis for the school district’s action. 34 C.F.R. § 300.503.
5. In this case, the SCO concludes parents were denied meaningful parental participation. In support of that conclusion, the SCO finds that the IEP was not finalized and that School never conducted a meeting to address outstanding issues. As previously stated, at no point in time did Case Manager convey to Parents that the IEP was finalized and that any changes to the document would require another meeting or an agreed to amendment. There is no documentation that Case Manager provided Parents with the final IEP and the corresponding PWN pursuant to 34 C.F.R. § 300.503. Rather, Case Manager inquires as to what Parents would like to have addressed and what other strengths can be added. Additionally, Case Manager did not issue a PWN in response to rejecting Parents proposed goal pursuant to 34 C.F.R. §300.503. Lastly, there is no documentation to support Case Manager’s assertion that School staff was made aware that she had finalized Student’s IEP as of November 14, 2016 pursuant to 34 C.F.R. §300.323(d).

6. As for Parents request for an IEP meeting, Parents made their requests both verbally and via e-mail. While the SCO is aware that non-IEP meetings were happening concurrent to these requests, they did not take the place of an IEP because ultimately it is through the IEP meeting that student's needs and services are discussed and School's proposal of an offer of FAPE is made. While School contends that they were trying to address Parents' concerns and Student's needs by offering a reevaluation, School never responded to Parents questions and concerns regarding the consent. Given the nature of Parents' concerns, it is reasonable for Parents not to sign consent without being informed and having their questions answered.
7. During the two meetings held, School did not consider the parentally obtained IEE. District Coordinator and Case Manager had the IEE prior to 2016 IEP meeting. Parents brought a copy of the IEE to the IEP meeting. Nevertheless, the School team did not consider the content. While Case Manager contends that she could not consider the IEE unless Parents signed Consent to Reevaluate, SCO disagrees. Parents brought this information to the IEP team meeting in order to include it as part of the discussion. Accordingly, the SCO finds School's failure to consider the parentally obtained IEE pursuant to 34 C.F.R. §300.502(c)(1) denied the parent's meaningful participation.
8. With respect to documentation regarding the manner in which services and accommodations were being delivered, the SCO finds that the information School provided Parent insufficient and hindered Parent's meaningful participation. The 9<sup>th</sup> Circuit Case of *M.C. v. Antelope Valley Union High School District* highlights the importance of parent's meaningful participation through the IEP process, especially in order to be able to monitor and enforce the provisions contained in the IEP. This was recognized in the Court's reasoning.

"[I]n enacting the IDEA, Congress was as concerned with parental participation in the enforcement of the IEP as it was in its formation. See *Rowley*, 458 U.S. at 205 (discussing Congress's intent to "giv[e] parents and guardians a large measure of participation *at every stage of the administrative process*" (emphasis added)). Under the IDEA, parental participation doesn't end when the parent signs the IEP. Parents must be able to use the IEP to monitor and enforce the services that their child is to receive. When a parent is unaware of the services offered to the student -and, therefore, can't' monitor how these services are provided --FAPE has been denied..."

*M.C. v. Antelope Valley Union High School District*, 117 LRP 21748 (9<sup>th</sup> Cir. 2017), *petition for cert. filed*, (Aug. 28, 2017)(No. 17-325).

9. As for the complete educational records, the SCO found that School did not provide complete records in a timely manner pursuant 34 C.F.R. §300.613. However, the School remedied that issue and ultimately provided Student's complete educational records to the Parents.
10. Accordingly, based on the findings, SCO concludes that Parents were denied meaningful participation, resulting in a per se violation of Student's right to a FAPE and as a result failed to review, revise and develop Student's IEP according to Student's individualized needs.

**Allegation 3:** School District failed to develop, review and/or revise the 2016 IEP based on Student's individualized needs.

11. The recent *Andrew F.* decision has implications beyond academics for every IEP team, including this team. According to the Supreme Court's findings in the recent *Andrew F.* school districts must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017).
12. In this case School failed to consider or assess the social/emotional impact of Student's Math placement. Parents notified School of the situation. Throughout the first semester Parents communicated their concerns about their son's emotional well-being. Nevertheless, the conversation always stalled because of the focus on whether Student needed a math goal and not on what his social/emotional needs were. Additionally, as previously discussed, School failed to consider the IEE and any implications it might have for the development of the IEP. Lastly, School failed to meaningfully consider whether Student was eligible for ESY. For example and as previously noted, when just reviewing Student's present levels in the area of reading, Student made little to no progress from the previous year.
13. Accordingly, SCO finds that that School failed to develop, review and revise Student's 2016 IEP according to his needs pursuant to 34 C.F.R. §300.324.

### **REMEDIES**

The SCO has concluded that the School District committed the following violations of IDEA:

1. Failure to provide meaningful participation to the child's parents in the IEP process. (34 §§ 300.320, 300.322(f), 300.324, 300.501);
2. Failure to consider the parentally obtained IEE. (34 C.F.R § 300.502(b)(c));
3. Failure to develop, review and revise Student's IEP according to Student's individualized needs, specifically around Student's social emotional needs, ESY and SLD. (34 C.F.R. §§300.320, 300.324, 300.501(b));
4. Failure to provide written notice describing and explaining the basis for the school district's actions (34 C.F.R. § 300.503);

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

1. By no later than November 17, 2017, the School District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the School District is responsible. The CAP must, at a minimum, provide for the following:
  - a. Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than December 15, 2017.
  - b. Effective training concerning relevant policies and procedures to address the cited violations must be conducted for School administrators, special education case managers, and School District evaluators, including Charter school personnel. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department no later than December 15, 2017.
2. If Student attends a school within District, School shall convene an IEP meeting to review, revise and develop Student's IEP within 10 days of enrollment or attendance at District School. The IEP shall be conducted by a neutral facilitator; specifically someone not employed by the school district, and ensure attendance by the private evaluator if possible. District shall provide a

complete copy of any new IEP developed for Student within 7 days, including the prior written notice.

The Department will approve or request revisions of the CAP. Subsequent to the approval of the CAP, the Department will arrange to conduct verification activities to verify the School District's timely compliance with this Decision. Please submit the documentation detailed above to the Department as follows:  
Colorado Department of Education

Exceptional Student Services Unit  
Attn: Beth Nelson  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

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

#### CONCLUSION

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

Dated this 16<sup>th</sup> day of October, 2017.

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Jacqueline N. Esquibel, Esq.  
State Complaints Officer

#### Appendix:

- Complaint, dated April 20, 2017, pages 1-9
- Exhibit 1: Douglas County School District-Individualized Education program, pages 1-14
- Exhibit 2: Email correspondence, pages 1-12
- Exhibit 3: Douglas County School District-Prior Notice & Consent for Reevaluation, Pages 1-13

- Exhibit 4: Email correspondence, pages 1-2
- Exhibit 5: Guidance documents, pages 1-15
- Exhibit 6: Email correspondence, pages 1-16
- Exhibit 7: Email correspondence, pages 1-12
- Exhibit 8: Email correspondence, pages 1-9
- Exhibit 9: Email correspondence, page 1
- Exhibit 10: Email correspondence, pages 1-2
- Exhibit 11: Douglas County Schools-Notice of Meeting, pages 1-22
- Exhibit 12: Email correspondence, pages 1-3

Response, dated September 8, 2017, pages 1-17

- Exhibit A: Special Education records, pages 1-204
- Exhibit B: Email correspondence, pages 1-95
- Exhibit B2: Letter from Caplan and Earnest, re: records requested, pages 1- 342
- Exhibit C: Staff Involved, page 1
- Exhibit E: Douglas County School District-Progress Report
- Exhibit F: Programs for students with disabilities-Douglas County, pages 1-13
- Exhibit G: Email correspondence, pages 1-32
- Exhibit H: Additional documents provided by District during investigation

Reply, dated September 30, 2017

- Exhibit 13 Parent generated graphs. Transcript of Meeting held December 15, 2016, E-mail Correspondence with District Coordinator, Table of Student Achievement Percentiles, E-mail Correspondence
- Exhibit 14 Additional documents provided by Parents during investigation

**Interviews with:**

Father  
Mother  
District Coordinator  
School Director  
Principal  
Case Manager  
Middle School Special Education Teacher  
Occupational Therapist  
Math Teacher  
Special Education Teacher  
School Psychologist  
School Social Worker  
Language Arts Teacher  
High School Social Worker  
Advocate