



Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION SPECIAL PROGRAMS DIVISION SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Respondent:

Date of Decision: March 30, 2012

Case #: C-0118-12

COMPLAINT DECISION AND ORDER FOR CORRECTIVE ACTION

On January 30, 2012 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by _____, (hereinafter "Complainant") alleging violations of special education law with respect to _____ (hereinafter "Student"), by Respondent _____ (hereinafter "District").

Pursuant to 34 C.F.R. §§300.151 through 300.153 of the Federal Regulations implementing the Individuals With Disabilities Education Act (IDEA), WDE conducted an investigation into the allegations raised in the complaint. Consistent with the IDEA, Federal Regulations, and the Wyoming Department of Education Chapter 7 Rules, WDE issues the following Findings of Fact, Conclusions, Decision, and Order for Corrective Action.

Complaint Issues:

Issue #1

Whether the Student was denied a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101 as follows:

- a. Whether the Student's IEP was reasonably calculated to meet the Student's unique educational needs pursuant to 34 C.F.R. §300.324.
- b. Whether the District failed to provide special education and related services to the Student in accordance with the Student's Individualized Education Program (IEP) pursuant to 34 C.F.R. §§300.34, 300.39, and 300.320 through 300.324.
- c. Whether the District appropriately responded to the Student's lack of IEP progress in accordance with 34 C.F.R. §300.324(b).

Issue #2

Whether the District acted in compliance with W.S. §§21-4-311 through 21-4-314, which address safe school climate and harassment, intimidation or bullying at school with respect to the Student. WDE's authority to investigate violations of Wyoming Law is in accordance with the Department of Education Chapter 7 Rules, Section 7(b).

Investigatory Process:

- Review of records consisting of the following:
 - Original letter of complaint and supporting documents;
 - District's response to the allegations; and
 - The Student's special education records.
- Follow up inquiries with the District.
- Follow up inquiries and interview with the Complainant.
- Interview with the local Police Department.
- The District and Complainant were given the opportunity to submit additional information to WDE for consideration throughout the investigation of this complaint.

Applicable Federal Regulations or State Statutes or Rules:

34 C.F.R. §300.17 Free Appropriate Public Education

34 C.F.R. §300.34 Related Services

34 C.F.R. §300.39 Special Education

34 C.F.R. §§300.320 through 300.324 Individualized Education Programs

34 C.F.R. §300.101 Free Appropriate Public Education

W.S. §§21-4-311 through 314 Safe School Climate Act

Wyoming Department of Education Rules, Chapter 7

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate allegations of violations that occurred not more than one year prior to the date the complaint was received. In light of this limitation, the investigation and any findings of noncompliance will be limited to the period commencing January 31, 2011 to January 30, 2012.

Findings of Fact:

Issue#1

1. The Student is a learner with a disability in 7th grade within the District.
2. At the time the complaint was filed, the Student's most recent IEP had been drafted in another Wyoming school district serving students in a virtual environment. That IEP was dated March 11, 2011. The Student was identified as a learner with an Emotional Disability. According to the documentation, the Student enrolled in the virtual environment in February 2011.
3. Measurable Annual Goals from the March 11, 2011 IEP are summarized as follows:
 - Goal Number 1:
 - Baseline: Student reports having headaches and stomach aches frequently. He has been identified feeling stressed and worried at times and needing to remember to take steps to stay calm.
 - Target: Student will state and apply at least two strategies to use to handle anxiety. In addition Student will work to improve his coping skills to build self-esteem as well as positive strategies towards handling depression.
 - Method of Measurement: Student report, Teacher/counselor report.
 - Goal Number 2:
 - Baseline: [Student] is currently able to answer with between 30 and 40% accuracy.
 - Target: Given [Student's] current math abilities he will be able to multiply and divide decimal and whole numbers with 80% accuracy over the length of the IEP year.
 - Method of Measurement: K12 math course performance, informal assessments.

- Goal Number 3:
 - Baseline: Currently [Student] is working at the 4th grade level in literature.
 - Target: Given [Student's] current reading levels he will be able to read a 5/6 grade appropriate passage and be able to answer questions with 80% accuracy about the stories main characters, plot, and draw conclusions from what he has read over the length of the IEP year.
 - Method of Measurement: K12 course performance, informal assessments.
- Goal Number 4:
 - Baseline: [Student] is currently working at the 4th grade level in writing.
 - Target: Given [Student's] current writing ability levels he will be able to, when given a 5/6 grade level prompt, be able to brain storm, outline, and draft a written draft, using correct writing mechanics over the course of the IEP year.
 - Method of Measurement: K12 course work, informal assessments.

4. Special Education and Related Services in the March 2011 IEP include:

Special Education	Frequency	Duration (Amount)	Location
Specialized Inst. Reading/Writing	2.0 per month	30.0/0.0	Virtual Classroom
Specialized Inst. Math	2.0 per month	30.0/0.0	Virtual Classroom
Related Services	Frequency	Duration (Amount)	Location
Counseling	2.0 per week	30.0/0.0	Virtual Counseling Room

5. Supplementary Aids and Services included clarification of directions, separate location to work, extended time on assignments and tests, and a Behavior Plan which was comprised of: "If [Student] is getting stressed – remind him to use his strategies to calm himself down."
6. The current District convened a team meeting for the Student by sending a Notice of Team Meeting to the Complainant. The Notice was dated September 6, 2011, and the meeting was to be held on September 6, 2011. On the second page of the Notice of Team Meeting, the Complainant indicated she would attend the meeting by checking the appropriate box and signing the form. The Complainant's signature was dated September 13, 2011.
7. The Prior Written Notice (PWN) dated September 6, 2011 states that the District will adopt and amend the IEP from the previous district. The PWN further states:

[Student] will continue services in Math for 50 minutes weekly in the resource room, Language Arts for 500 minutes weekly in the resource classroom, and

counseling for 2x weekly will be replaced with social work services for 1x per week per parent approval.

[Student] received an evaluation at the ... during the summer of 2011 and they listed his handicapping condition as autistic. The reports were requested and our team will conduct an assessment through the school system for autism. [Student] presently is being serviced under the handicapping condition of emotional disability. [Student] receives services for language arts and math; plus, he will be working with social work services instead of counseling 2x per week to address his anxieties by using strategies. The [prior district] had a behavior plan under his accommodations, however, the comment addressed redirecting him to use his strategies to target his behaviors.

8. The Special Education and Related Services were formally amended in September 2011 as follows:

Special Education	Frequency	Duration (Amount)	Location
Language Arts	Weekly	500 Minutes	Resource Room
Math	Weekly	250 Minutes	Resource Room
Related Services	Frequency	Duration (Amount)	Location
School Social Work Services	1x per week	Until 3/11/11	School Wide

9. Supplementary Aids and Services included clarification of directions; separate location to work; extended time on assignments and tests; and redirect Student to task by visual or verbal cue.
10. The Behavior Plan was eliminated from the IEP when revised in September 2011.
11. The September 2011 IEP revision utilized the same Measurable Annual Goals as stated in the March 2011 IEP as described in paragraph 3 above.
12. The District planned an evaluation of the Student in the Prior Written Notice, Consent for Evaluation form dated September 13, 2011. The form indicates that the team was proposing to evaluate the student for initial eligibility. Although neither option was checked to indicate whether additional assessments were necessary, the team proposed to assess the Student in the areas of academic performance, communication skills, general intelligence, social, emotional, vision, and other, including “update dev. History, screen hearing and vision.”
13. The Complainant signed her consent for the evaluation as proposed on September 13, 2011.

14. All of the Student's teachers signed verification on September 22, 2011 that they had been made aware of the Student's accommodations in his IEP.
15. A Notice of Team Meeting was completed on November 3, 2011, convening the team on November 10, 2011 for the purpose of reviewing evaluation results and determining eligibility or changes in eligibility.
16. An Evaluation Report and Eligibility Determination was completed on November 10, 2011. The Summary of Individual Assessments states, in relevant part, that the team determined:

The Student's handicapping condition should be changed to Autism. He demonstrates behavioral problems in the areas of communication and initiating and sustaining conversation. He looks down and communicates in a soft voice. Socially he avoids making eye contact and has difficulty relating to others. He makes social mistakes. He exhibits reactions to changes in his routine and appears depressed. He has made a suicide attempt. Cognitively he learns best when pictures or written words are present. He lacks organization skills and lacks common sense. [Student] displays unusual reactions to loud noises and appears clumsy and uncoordinated.

Cognitive ability falls within the low average range. Strength is found in nonverbal abstract reasoning. Weakness is found in nonverbal problem solving.

Academic achievement is significantly below average and he continues to require specialized instruction in reading, written language, math, and socialization/social skills.

17. PWN dated November 10, 2011 documents that the team proposed to change the Student's disability category from Emotional Disability to Autism. There is no indication that the IEP was changed after this evaluation.
18. The District provided periodic reports of the Student's IEP progress as follows:

Measurable Annual Goal		
<ul style="list-style-type: none"> • Baseline: Currently [Student] is working at the 4th grade level in literature. • Target: Given [Student's] current reading levels he will be able to read a 5/6 grade appropriate passage and be able to answer questions with 80% accuracy about the stories main characters, plot, and draw conclusions from what he has read over the length of the IEP year. • Method of Measurement: K12 course performance, informal assessments. 		
DATE	November 9, 2011	January 27, 2012
DATA TO SUPPORT MEASURABLE PROGRESS	Books to 4 th grade level.	Curriculum at 3 rd grade

		level
NARRATIVE TO DESCRIBE PROGRESS	Maintaining 80%.	Doing great at this level. Drawing conclusion 80%.
Measurable Annual Goal		
<ul style="list-style-type: none"> • Baseline: [Student] is currently working at the 4th grade level in writing. • Target: Given [Student's] current writing ability levels he will be able to, when given a 5/6 grade level prompt, be able to brain storm, outline, and draft a written draft, using correct writing mechanics over the course of the IEP year. • Method of Measurement: K12 course work, informal assessments. 		
DATE	November 9, 2011	January 27, 2012
DATA TO SUPPORT MEASURABLE PROGRESS	Prompts at 4 th grade level. Writing more – paragraph essays w/ help from peers.	Just wrote a personal narrative.
NARRATIVE TO DESCRIBE PROGRESS	Pers narr. 2 nd quarter.	It was written and organized as a class.
Measurable Annual Goal		
<ul style="list-style-type: none"> • Baseline: [Student] is currently able to answer with between 30 and 40% accuracy. • Target: Given [Student's] current math abilities he will be able to multiply and divide decimal and whole numbers with 80% accuracy over the length of the IEP year. • Method of Measurement: K12 math course performance, informal assessments. 		
DATE	November 4, 2011	January 27, 2012
DATA TO SUPPORT MEASURABLE PROGRESS	Multi digit X 90%. Single digit ÷ 19/30.	Multiply-multi digit 50%, single digit 95%. Multi digit division 0%.
NARRATIVE TO DESCRIBE PROGRESS	[Student] struggles to focus and show his skills consistently.	[Student] does not like working with multi digits as well as single digits.
Measurable Annual Goal		
<ul style="list-style-type: none"> • Baseline: Student reports having headaches and stomach aches frequently. He has been identified feeling stressed and worried at times and needing to remember to take steps to stay calm. • Target: Student will state and apply at least two strategies to use to handle anxiety. In addition Student will work to improve his coping skills to build self-esteem as well as positive strategies towards handling depression. • Method of Measurement: Student report, Teacher/counselor report. <p style="text-align: center;">NO PROGRESS REPORTED</p>		

19. The Student's grade report for his seventh grade year indicates that the Student received the following grades:

Course	Quarter 1	Quarter 2	Semester 1
Basic Language Arts	B 87	B 84	B 85
Basic Language Arts	C 78	B 86	B 83
PE	A 90	B 81	B 85
Data Processing	C 71	F 37	F 54
Social Studies	C 75	C 72	C 74
Science	F 43	F 57	D 61
Basic Math	B 87	D 66	B 80

20. Social work services logs document that the Student received services at least 1 time per week.
21. Teacher reports documented that the Student did not always accept the IEP accommodations offered to him. For example, the Student no longer wanted tests read orally to him.
22. In an interview with WDE, the Complainant expressed concern that the Student's educational needs were not met. Specifically, the Student received no accommodations in regular education classes, did not make educational progress, and failed science and data processing last semester.
23. Although outside of the investigatory timeframe for this complaint, the Student's IEP team convened on February 16, 2012 for the purpose of drafting his annual IEP. The Complainant indicates that she believes the Student's needs are being met and that the District and IEP Team are now helping the Student.

Issue #2

24. The Complainant expressed concern that the Student was the victim of several bullying incidents at school. It is the Complainant's belief that another student or a group of students sexually abused the Student. Other bullying issues have been ongoing for a number of years, making the Student afraid to attend school, and his "disability worse."
25. A September 15, 2011 narrative report completed by the District documents that an "alleged bullying incident" occurred in fifth hour. The Student reported name-calling and physical aggression by other students. It was happening daily. The classroom teacher spoke to the other students, who did not corroborate the Student's version of events.
26. The Student received a 2.25 day In School Suspension for fighting on November 9, 2011. The discipline record indicates that the Student pushed and punched another student.
27. Additional narratives were included in the Student's educational records. The following summarizes salient points:
 - January 19, 2012: The Student's parents filed a sexual assault complaint with the police regarding a locker room incident. The District interviewed the students involved and then met with the entire physical education department and law enforcement to set up a plan to monitor and prevent future incidents. Law enforcement opened an investigation into the incident. Disciplinary action is pending the outcome of the investigation.
 - January 20, 2012: The Student's father reported that the Student was being called names and pushed in PE class. Student and teacher interviews were conducted. The incident was not substantiated.
28. Contact logs submitted by the District contain multiple entries evidencing reciprocal contact between the Complainant and the District. Some of those contacts documented other concerns regarding bullying. The following is a chronological list of contacts mentioning bullying concerns:
 - September 15, 2011: Bullying incident (described in paragraph 22 above).
 - October 25, 2011: Student upset about bullying incident.
 - December 8, 2011: Student is coming home sad and crying because other students threw his binder in the trash. Counselor spoke to the other students.
 - January 25, 2012: Complainant very upset about locker room incident (described in paragraph 24 above).

29. The District implemented a bullying prevention program during the 2011-2012 school year. "Bully Proofing Your School" lessons were delivered in five different sessions commencing October 17, 2011 and concluding on February 9, 2012.
30. On February 16, 2012, the District convened a meeting to develop a school safety plan for the Student. The Student's Parents attended the meeting and agreed to the safety plan as documented.
31. In response to this complaint, the District submitted a copy of its Policy Prohibiting Harassment, Bullying and Violence. Bullying is defined as "any written or verbal expression, physical act or gesture that is intended to cause emotional distress or physical injury upon a pupil, teacher, administrator or other school personnel and has the effect of substantially creating an intimidating, hostile or offensive employment or educational environment." The District policy requires an investigation upon receiving a report of bullying. "The designated investigator shall make a written report to the Human Resources Director and building upon completion of the investigation . . . The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy."
32. Law enforcement involved in the ongoing investigation was interviewed as part of this complaint investigation. A law enforcement investigatory report is not yet available. The investigating officer commented that he did not consider the matter to be a sexual assault, and saw no continuing or ongoing threats to the Student's safety.

Conclusions:

Issue #1

1. The Student is identified as a learner with a disability under the Individuals with Disabilities Education Act (IDEA).
2. The District is obligated to ensure that the Student receives FAPE by providing special education and related services reasonably calculated to provide the Student educational benefit. See *34 C.F.R. §§300.17 and 300.101*.
3. The most authoritative view is that a child's educational benefit must be more than de minimus -- there must be some tangible gain in abilities. One of the leading cases interpreting Rowley's "some educational benefit" to mean more than "de minimus" is *Polk v. Central Susquehanna Intermediate Unit 16*, 441 IDELR 130 (3rd Cir. 1988).

There, the court held that IDEA "calls for more than a trivial educational benefit" and requires an IEP to provide "significant learning" and confer "meaningful benefit."

4. The unique needs of a student with a disability encompass more than a mastery of academic subjects. Unique needs are broadly construed to include academic, social, health, emotional, physical and vocational needs, all as relating to the provision of preschool, elementary and secondary education services. *See County of San Diego v. California Special Educ. Hearing Office*, 24 IDELR 756 (9th Cir. 1996).
5. The IEP must contain measurable annual goals designed to meet the Student's needs that result from his disability, and meet each of the other needs that result from the Student's disability. 34 C.F.R. §300.320(a)(2).
6. The IEP must also contain Special Education Service, and if appropriate, Related Service. Special education is defined as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability . . ." "Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction to address the unique needs of the child that result from the child's disability, and to ensure access of the child to the general curriculum . . ." 34 C.F.R. §300.39.
7. Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 C.F.R. §300.34.
8. Educational benefit is measured by progress toward IEP goals and in the general curriculum.
9. The District must provide periodic reports of the Student's IEP progress toward meeting the annual goals or to take steps to address the lack of progress. 34 C.F.R. §§300.320(a)(3) and 300.324(b)(ii)(A).
10. As applied to this Student, the September 2011 IEP, as amended, does not address all of the Student's needs identified in the November 2011 Evaluation Report and PWN. Specifically, the team indicated that the Student required specialized instruction in reading, written language, math, and socialization/social skills. The IEP contains annual goals in the areas of reading, written language, math, and anxiety reduction. Specialized instruction is provided in the areas of math and language arts. The IEP is silent with respect to any specialized instruction in the area of socialization or social skills.

11. Although the IEP provides for the Related Service of School Social Work Service, it is unclear whether those services are provided to address the Student's anxiety issues or the Student's need for social skills. Regardless, no specialized instruction in the area of socialization or social skills was noted on the IEP.
12. With respect to the Student's documented need for specialized instruction in the area of socialization or social skills, the IEP in place during the investigatory timeframe does not address the Student's need.
13. It is clear from the record that the Student's teachers were made aware of the specific IEP accommodations. If the Student was no longer willing to avail himself of the IEP accommodations, the IEP should have been reviewed and possibly revised to address his current needs.
14. The periodic reports of progress in November 2011 and January 2012 verify that the Student was not making consistent progress in three of the four goals. The reading goal reduced the expectations from working at a 4th grade level to a 3rd grade level; the writing goal contains such a general statement of the Student's skills that no progress can be inferred; and the math goal reports a reduction in some skills. Overall, no progress was documented.
15. No progress was reported on the anxiety reduction goal. It appears as though that goal was no longer active, but the IEP was never modified to address the change.
16. Based on a convergence of information provided in the Student's records, it is reasonable to conclude that the IEPs in place during the investigatory timeframe were not reasonably calculated to provide the Student with meaningful educational benefit.

Issue #2

17. Wyoming statute prohibits harassment, intimidation, and bullying in schools. School districts are required to have policies prohibiting such conduct and providing for an investigation upon complaint. See *W.S. §§21-4-311 through 315*.
18. Consistent with Wyoming law, the District has a policy in place to address bullying.
19. The District responded to each incident of bullying reported by the Student, his Father, or Complainant.
20. The District implemented a bullying prevention curriculum, and provided it to all classes at all grade levels.

21. A safety plan for the Student was developed as a result of ongoing concerns.
22. The most serious incident of reported bullying occurred in January 2012. That incident is currently under the jurisdiction of law enforcement. Disciplinary action is pending the outcome of the investigation.
23. Although more formal reports documenting the outcomes of investigations may have been helpful to the Complainant to understand the District's response, the District complied with its policy and the mandates of Wyoming law.
24. The Complainant concurs that the environment and the services the Student is now receiving are much improved from the time the complaint was filed.
25. Based on the totality of the information reviewed, it is reasonable to conclude that the District complied with its bullying policy and Wyoming statute. Further, no denial of FAPE or educational benefit resulted from the manner in which the incidents were handled by the District.

Decision:

Issue #1

Whether the Student was denied a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101 as follows:

- a. Whether the Student's IEP was reasonably calculated to meet the Student's unique educational needs pursuant to 34 C.F.R. §300.324.

WDE determines that the Student's IEP did not address the need for specialized instruction in social skills, and therefore, was not reasonably calculated to meet his unique educational needs. The District is in violation.

- b. Whether the District failed to provide special education and related services to the Student in accordance with the Student's Individualized Education Program (IEP) pursuant to 34 C.F.R. §§300.34, 300.39, and 300.320 through 300.324.

WDE determines that the District did not provide services consistent with the IEP in the area of anxiety reduction. No services were provided to address this goal. The District is in violation.

- c. Whether the District appropriately responded to the Student's lack of IEP progress in accordance with 34 C.F.R. §300.324(b).

WDE determines that the District failed to appropriately respond to the Student's lack of IEP progress until the February 2012 amendment of the Student's IEP. The District is in violation.

Issue #2

Whether the District acted in compliance with W.S. §§21-4-311 through 21-4-314, which address safe school climate and harassment, intimidation or bullying at school with respect to the Student. WDE's authority to investigate violations of Wyoming Law is in accordance with the Department of Education Chapter 7 Rules, Section 7(b).

Although the District could have kept better records of investigations regarding allegations of bullying, WDE determines after a thorough review of the records that the District followed its policy and is in compliance with state laws regarding bullying. The District's responses were appropriate, and no denial of FAPE resulted. WDE finds no violation.

Corrective Action Plan:

1. The District shall provide targeted technical assistance to the special education staff at the school the Student attends. The four (4) hours of technical assistance must be completed within 45 days of the date of this decision according to the following requirements:
 - a. The technical assistance shall address the entire IEP process, specifically targeting the requirement to address the Student's unique educational needs identified through evaluation in the IEP, drafting measurable annual goals, reporting measurable progress, and appropriately responding to a lack of progress.
 - b. The District retains the discretion to designate a District administrator or contract with an outside expert to provide the technical assistance.
 - c. The District shall utilize this complaint decision and the violations outline therein to provide targeted assistance to assist staff in understanding the root causes of these violations.
 - d. Upon completion of the technical assistance, the District shall verify staff understanding of the violations in the Student's IEP and progress monitoring

documents by proposing the necessary changes to the documents to remediate the deficiencies and bring the IEP and progress monitoring documentation into compliance with the IDEA.

2. The District shall provide WDE with the following documentation:
 - a. The date, time, location, and name of the trainer(s) within fifteen (15) days of the date of this decision; and
 - b. Copies of any materials or handouts used, the agenda, all sign-in sheets documenting the attendance of special education staff, and the verification of understanding as described in paragraph 1(d) above within ten (10) days of completion of the mandatory technical assistance.
3. All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainant.

Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Division at 307-857-9285 or 800-228-6194.

Sincerely,



Stephanie Weaver
Deputy Director of Special Education
Special Programs Division

cc: _____, Superintendent
_____, Board Chair
Cindy Hill, Superintendent of Public Instruction
Samuel Shumway, WDE Legal Counsel
Christine Steele, Instructional Leader, Operations