



Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Respondents:

Date of Decision: June 18, 2013

Case #: C-0122-13

**COMPLAINT DECISION
AND ORDER FOR
CORRECTIVE ACTION**

On April 18, 2013 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"), attending _____ (hereinafter "District").

Consistent with 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. Pursuant to 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 District acted in compliance with the IDEA's discipline provisions when it removed the Student from school for a violation of a code of conduct without determining whether the removal constituted a change of placement consistent with 34 C.F.R. §§300.530(c) and 300.536.

Issue #2

Whether the District unilaterally determined the Student's placement and services during the disciplinary removal in violation of 34 C.F.R. §§300.530(d) and 300.531.

Issue #3

Whether the District expelled the Student without first determining whether the conduct in question was a manifestation of the Student's disability, in violation of 34 C.F.R. §300.530(e).

Issue #4

Whether the District provided the required parental notifications when imposing a disciplinary removal that constituted a change of placement pursuant to 34 C.F.R. §300.530(h).

Issue #5

Whether the District provided FAPE to the Student during the disciplinary removal by providing services by a highly qualified teacher consistent with 34 C.F.R. §§300.17, 300.18, and 300.530(d).

Issue #6

Whether the District provided adequate notice to the Parent that describes any evaluation procedures the District proposes to conduct, including the threat assessment by the District psychologist, pursuant to 34 C.F.R. §300.304(a).

Investigatory Process:

- Review of records consisting of the following:
 - Original letter of complaint and supporting documents;
 - The District's response to the allegations; and
 - The Student's education records.
- Follow up inquiries with the District.
- District staff questionnaires.
- Complainant and Parent questionnaires.

WDE provided the District and Complainant the opportunity to submit additional information for consideration throughout the investigation of this complaint.

Applicable Federal Regulations, State Statutes or Rules:

- 34 C.F.R. §300.17 Free Appropriate Public Education
- 34 C.F.R. §300.18 Highly Qualified Special Education Teachers
- 34 C.F.R. §300.304 Evaluation Procedures
- 34 C.F.R. §300.503 Prior Written Notice
- 34 C.F.R. §300.530 Authority of School Personnel
- 34 C.F.R. §300.531 Determination of Setting
- 34 C.F.R. §300.536 Change of Placement Because of Disciplinary Removals

Wyoming Statutes, Title 21

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 alleged violations of law 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 April 19, 2012 through April 18, 2013. However, the Student's earlier educational records were reviewed as part of this investigation and are referenced when deemed relevant to provide additional context.

Findings of Fact:

1. On January 14, 2013 the Student brought two knives to school. With the knives in her possession (but not brandished), the Student threatened harm to other individuals at school. The Student was in fifth grade at an elementary school in the District at the time of the incident.
2. The Student was identified in first grade as eligible for special education and related services as a student with a Speech or Language Impairment for articulation difficulties. While the Student was in second grade, the IEP team determined she also met eligibility criteria in the Specific Learning Disability category.
3. The Student's last comprehensive three-year evaluation prior to the disciplinary infraction was dated May 11, 2010. At the time of this evaluation, the District noted the following concern: "Hearing screening indicates some deficiency in her Right ear and no hearing in her Left ear. [Student] is scheduled to get ear surgery this summer."
4. The IEP in effect at the time of the disciplinary infraction was dated May 7, 2012. According to this IEP, the Student was not deaf or hard of hearing as indicated in the

Consideration of Special Factors section. The Student received 30 minutes five times per week of special education service in math to address her learning disability, and the related services of speech and counseling for 20 minutes each week. The IEP was silent with respect to the Student's hearing loss and any potential educational needs resulting from it.

5. District records indicate that school personnel first learned of the Student's disciplinary infraction through the parent of another student on January 16, 2013. The District conducted an investigation and confirmed the incident took place on January 14, 2013.
6. Attendance records indicate that on January 16, 2013 the Student was removed to the Behavioral Center within the District called the
7. At the time of the removal, the general curriculum for all fifth grade students included reading, writing, math, art, physical education, and music. Social studies and science were embedded into the 5th grade curriculum.
8. A letter dated January 21, 2013 from the Principal to the Superintendent contains the following salient points:
 - The Principal was recommending the Student be suspended through the remainder of the school year.
 - The District denied any prior knowledge of bullying involving the Student.
 - The Complainant objected to the Student's placement at .
 - The District recommended a psychiatric risk assessment for the Student, and the Complainant opposed this request.
9. Meeting notes from a January 28, 2013 meeting with the Complainant, the Student's mother, and representatives of the District indicate that the Principal told the Student on the day the knife incident was discovered (January 16, 2013) that she would be going to
10. The record does not specify the exact date or the manner in which the parent was provided notice of the disciplinary removal.
11. On January 17, 2013 the District proposed to conduct a reevaluation of the Student's continued need for special education and related services. The Prior Written Notice/Consent for Evaluation does not mention the disciplinary removal. The explanation of why the District proposed the evaluation included: "[Student's] 3-year re-evaluation is due this Spring (2013). To be in compliance with the State of Wyoming rules and

regulations governing special education, the school district needs to complete another evaluation to determine [Student's] present educational needs.”

12. On January 22, 2013 the District sent by Certified Mail a Notice of Expulsion and a Notice of Hearing for the Purpose of Expulsion.
13. The Expulsion Hearing took place on January 28, 2013.
14. A Notice of Team Meeting dated January 28, 2013 provided documentation to the Complainant that the Student's IEP team would be convened on January 30, 2013 for the purpose of conducting a Manifestation Determination and determining the setting or services during a disciplinary Change of Placement.
15. Relevant members of the Student's IEP team, including the Student and Complainant, conducted a Manifestation Determination on January 30, 2013 and determined that the Student's conduct was not a manifestation of her learning disability. Team recommendations included a note indicating that the IEP team would be reconvened after a determination is made at the Expulsion Hearing.
16. The Complainant offered his consent for a reevaluation on January 30, 2013 to include communication needs, social/emotional functioning, and hearing. The Complainant signed a second consent on February 6, 2013 when the assessment plan was expanded to include academic functioning.
17. Prior Written Notice dated January 31, 2013 memorialized the outcome of the January 30, 2013 Manifestation Determination and IEP meeting.
18. The January 31, 2013 decision of the Assistant Superintendent, who served as hearing officer at the Expulsion Hearing, supported “long-term suspension” until the remainder of the school year, ending May 31, 2013. The Decision further states: “The School District will provide tutoring services for [Student's] core subjects and to administer [Student's] assessments. The tutor or [Special Education Director] will be contacting you with the details. Please sign the enclosed tutoring agreement and return it to me in the enclosed envelope.”
19. The tutoring contract referenced above provides the following relevant information:
 - **Homework:** [Student's] homework will be provided by her teachers through the tutor. She will meet with the tutor up to 10 hours per week at a place designated by the tutor. Tutoring sessions will allow [Student] to ask questions and allow the tutor to monitor her progress. All quizzes and tests must be taken during the tutoring sessions in front of the tutor. All materials are to be brought to tutoring sessions and homework is expected to be turned in when due. [Student] will be tutored in reading, writing, and math, and the expectation will be two hours per day of tutoring.

- **Grade Expectation in Coursework:** All coursework is expected to be completed with a “C” average or better in a timely fashion.
 - **Behavior:**
 - a. Be Cooperative and respectful to tutor
 - b. No absences from the tutoring sessions
 - c. All homework completed when due
 - d. Stay on task
 - Failure to maintain this contract at any time will result in the loss of tutor privileges and the extension of the long-term suspension through the remainder of the year.
20. The District issued a Notice of Team Meeting on February 4, 2013 convening the team on February 6, 2013 for the purpose of determining the setting or services during a disciplinary change of placement. The Student’s IEP services remained the same, but the location for the service was amended to “community,” and the frequency of the counseling service was reduced to one time per month. Services moved to the community library.
 21. In a Prior Written Notice dated February 6, 2013 the District proposed to provide the Student services in Math, Speech, and Counseling consisting of 2 hours of tutoring daily. Services with the tutor were to begin on February 11, 2013.
 22. District records, including a tutoring calendar and the time sheets for two tutors, indicate that tutoring with the Student commenced on February 11, 2013, 16 school days after the Student was removed from her current placement for disciplinary reasons.
 23. According to confirmation received from the Professional Teaching Standards Board (PTSB), one tutor holds a Lifetime Substitute Teacher Permit and the other holds a Classroom Substitute Teacher Permit.
 24. A February 21, 2013 staff note indicates that the District provided contact information for an Audiologist, and asked the Complainant to call and schedule an audiological evaluation as soon as possible.
 25. A Notice of Team Meeting was issued on March 12, 2013, convening the IEP team on March 13, 2013 for the purpose of amending the Student’s IEP.
 26. On March 13, 2013 the Student’s IEP was amended to remove the Student’s counseling services at the Complainant’s request due to the fact that the Student was receiving private counseling service. The IEP Amendment also included the following information: “The required 3-year Re-evaluation that is in progress was discussed, an Audiology exam is needed, the school offered to assist in setting this appointment up, [Complainant] asked if that could happen to assist.”

27. The District issued Prior Written Notice dated March 13, 2013 regarding the IEP Amendment. The explanation of why the District proposed to terminate the counseling service on the Student's IEP was due to Complainant requesting to terminate the service due to the fact that the Student was receiving private counseling.
28. A staff note on March 14, 2013 indicated that the District assisted the family in setting up an appointment for an audiological evaluation.
29. The Audiologist evaluated the Student on March 26, 2013. Results of that evaluation confirm that the Student suffered from a communicatively significant hearing loss, most likely present for many years. The Audiologist opined that the level of hearing loss likely contributed to the Student's "social and academic under-achievements," and recommended that "amplification be implemented immediately to improve her ability to hear."
30. The District issued a Notice of Team Meeting on April 5, 2013 convening an IEP team meeting on April 25, 2013 for the purpose of reviewing evaluation results, determining eligibility, and developing an annual IEP.
31. An Evaluation Report and Eligibility Determination, dated April 25, 2013, summarized the assessment results as follows, in relevant part:
 - Academic assessments ranged from a low score in the 15th percentile in math fluency, to a high of the 45th percentile in reading fluency.
 - The Social/Emotional/Behavioral assessment, utilizing the Behavioral Assessment System for Children, Second Edition (BASC-2), resulted in ratings of clinically significant on the Internalizing Problems Composite, clinically significant on the Behavioral Symptoms Index, and average on the Adaptive Skills composite. In summary, the results of the BASC-2 rating scale showed very significant concerns for both teachers with [Student's] internalizing problems, especially her depressive symptoms. These scores indicate an extremely high degree of concern, and indicate [Student] is in great need of intervention to help her alleviate these markedly depressed symptoms. She is also exhibiting anxious symptoms to a significant degree, along with somatization. (Somatization is the degree to which a student complains of minor aches and pains, which can often mask anxious and depressed symptoms, especially with children.)
 - The results of the audiological evaluation indicate significant hearing concerns with [Student's] hearing.

- The results of the communication assessment indicate [Student] is now demonstrating age appropriate articulation, which does not impact her academic success.
32. The Student's annual IEP was drafted on April 25, 2013. Relevant portions of the IEP are summarized below:
- Consideration of Special Factors: All factors are checked "no," indicating that the student is not deaf or hard of hearing and that she does not require assistive technology.
 - Special education services include:
 - a. Reading for 50 minutes two times per week commencing May 1, 2013;
 - b. Math for 50 minutes three times per week commencing May 1, 2013;
 - c. ESY services commencing June 10, 2013.
 - Related services include:
 - a. Counseling 30 minutes one time per week commencing August 27, 2013;
 - b. Counseling 30 minutes two times per term commencing June 10, 2013.
 - Supplementary aids and services include, in relevant part:
 - a. Preferential seating due to Student's hearing loss, commencing August 27, 2013;
 - b. Teachers will check for understanding, commencing August 27, 2013;
 - c. Use of an FM system when Student is in classroom during instruction, commencing August 27, 2013.
33. Speech services were discontinued in response to the Student's progress with articulation skills.
34. The District produced a contact log documenting that speech language services were provided to the Student weekly during the disciplinary removal and the time period relevant to this complaint, up until the IEP team discontinued speech services.
35. The District provided no service provider logs or time sheets for a highly qualified special education teacher during the disciplinary removal and the time period relevant to this complaint. The District response to this complaint indicated that the special education teacher, who is certified and highly qualified, provided 30 minutes of service to the Student daily during tutoring time.
36. The Student was moved to an alternative setting for the disciplinary infraction for a total of 87 school days. The District provided tutoring service to the Student during Spring Break in March when school was not in session.

37. The Complainant continues to assert that the District conducted a risk assessment of the Student while she was subject to the disciplinary removal. Complainant contends that no consent was offered for any type of risk assessment.
38. In Complainant and Parent's response to questionnaires as part of this investigation, both identified the BASC-2 as the risk assessment administered by the District.
39. The District contends the administration of the BASC-2 was part of the Student's reevaluation, for which Complainant offered his consent on January 30, 2013 and again on February 6, 2013.

Conclusions:

Issues #1 through #4

1. The Student was previously identified as a learner with a disability under the Individuals with Disabilities Education Act (IDEA), and is entitled to all procedural and substantive protections contained herein.
2. The District's authority to remove students from a current placement is addressed in 34 C.F.R. §300.530. Salient points from this provision of the Federal Regulations include:
 - a. During the first 10 school days of any removal, a school district is free to discipline students without regard to disability. This is commonly referred to as the "FAPE free zone". 34 C.F.R. §300.530(b).
 - b. During the FAPE free zone, a school district is not required to provide any educational services to a student.
 - c. Consecutive days of removal beyond ten school days are always considered a change in placement, entitling a student to additional procedural protections. 34 C.F.R. §300.536.
 - d. Within ten school days of a removal that constitutes a change in placement, relevant members of a student's IEP team must conduct a Manifestation Determination. 34 C.F.R. §300.530(e).
 - e. Once a change in placement occurs, the parent must be provided with notice of that change and a copy of their Procedural Safeguards Notice. 34 C.F.R. §300.530(h).
 - f. During the period of the disciplinary removal beyond ten school days, an IDEA eligible student continues to be entitled to receive FAPE. The United States Department of Education has interpreted the IDEA to impose a modified FAPE standard in these circumstances.

In other words, while children with disabilities removed for more than 10 school days in a school year for disciplinary reasons must continue to receive FAPE, we believe the [IDEA] modifies the concept of FAPE in these circumstances to encompass those services necessary to enable the child to continue to participate in the general curriculum, and to progress toward meeting the goals set out in the child's IEP. An LEA is not required to provide children suspended for more than 10 school days in a school year for disciplinary reasons exactly the same services in exactly the same settings as they were receiving prior to the imposition of discipline. *71 Federal Register 46716.*

- g. Beginning on the eleventh day of a disciplinary removal in a school year, FAPE must be provided. *71 Federal Register 46717.* If the removal constitutes a change in placement, a student's IEP team must determine what educational services are necessary to enable a student to -
 - i. Continue to participate in the general education curriculum, although in another setting, and
 - ii. Progress toward meeting the goals set out in the student's IEP. *34 C.F.R. §§300.530(d) and 300.531.*

The general curriculum referenced above is the same curriculum as for nondisabled children. *34 C.F.R. §300.320(a)(1).*

- 3. Applying the relevant provisions of the IDEA to this Student, the disciplinary infraction occurred on January 14, 2013. However, the District did not become aware of it or take action until January 16, 2013.
- 4. The disciplinary removal commenced on January 16, 2013. In light of the fact that long-terms suspension or expulsion for the remainder of the school year was recommended, the decision to change the Student's placement for a disciplinary violation was made on January 16, 2013. (Some District records refer to the removal as a long-term suspension, while other records refer to it as an expulsion. The terminology utilized does not alter the District's obligation under the IDEA.)
- 5. Although the method of notice is not clear, the Complainant and parent had actual notice of the disciplinary removal on January 16, 2013 and participated in all subsequent meetings.
- 6. The IDEA does not require that parental notice take any particular form, but it must meet the requirements of the IDEA. *Letter to Clayton, 50 IDELR 77 (OSEP 2007).*
- 7. The Student's IEP team conducted a Manifestation Determination on January 30, 2013, within the time limit prescribed by law. The outcome of the Manifestation Determination dictates whether FAPE must be provided in the pre-disciplinary placement or in the

disciplinary setting. If the conduct for which the Student was disciplined was determined to be a manifestation of her disability, then the Student would have been returned to the pre-disciplinary placement, making the next step in the following paragraph unnecessary. However, in this case, the Student's IEP team determined that the conduct for which the Student was disciplined was NOT a manifestation of her disability, permitting the disciplinary removal to continue.

8. The IEP team was also convened on January 30, 2013 for the purpose of determining the setting and services during the disciplinary removal, but the team did not reach the issue of services during the disciplinary placement due to the Student's impending expulsion hearing.
9. The FAPE free zone ended on January 31, 2013. During the first 10 school days of the Student's disciplinary removal, it was appropriate for school personnel to determine what, if any, educational services would be provided to the Student. (No services are required in the FAPE free zone.)
10. Also on January 31, the District's Assistant Superintendent determined that the Student was expelled until the remainder of the school year, and that she would receive tutoring services in core subjects. The amount of the Student's service was administratively limited to two hours per day in the subjects of reading, writing, and math only according to the Tutoring Contract the Complainant and Student were required to sign.
11. February 1, 2013 was the 11th consecutive day of removal. By this date, the District was required to convene the Student's IEP team to determine what educational services were necessary to enable the Student to –
 - a. Continue to participate in the general curriculum, which must be the same as for nondisabled fifth graders, and include reading, math, writing, music, art, and physical education, embedding science and social studies into those services; and
 - b. Progress toward meeting the Student's IEP goals.
12. The Student's IEP team reconvened on February 6, 2013, beyond the federally mandated deadline.
13. On this date, the IEP team determined the services needed to enable the Student to progress toward meeting IEP goals, but the team did not address the services necessary to enable the Student to continue to participate in the general curriculum, although in another setting.
14. Planning for the Student's continued participation in the general curriculum during a disciplinary removal is a necessary component of FAPE. Failure of the District to meet this

obligation is a denial of FAPE. See *Fisher v. Friendship Public Charter Sch.*, 58 IDELR 287 (D.D.C. 2012). (Charter school's offer to provide IEP services but no general education services during an expulsion denied FAPE.)

15. The IEP team, rather than the District's administration, must determine the amount and type of services to be provided to the Student, as this represents FAPE in the disciplinary setting. The District was in error when it permitted the amount and type of services necessary for the Student to continue to participate in the general curriculum to be determined by the Assistant Superintendent rather than the IEP team.

Issue #5

16. The special education teacher meets the highly qualified requirements of Wyoming and IDEA consistent with 34 C.F.R. §300.18.
17. The amount of service actually provided by the special education teacher during the disciplinary removal is not documented in the Student's record or the District's response to this complaint.
18. The District contends the special education teacher provided 30 minutes of service daily during the Student's tutoring time. Accepting this contention as true, then the remaining 1.5 hours of service per day was provided by one of the tutors who are licensed as substitute teachers, not highly qualified teachers according to NCLB and IDEA.
19. The requirement to provide FAPE to eligible students with disabilities includes children who have been suspended or expelled from school. 34 C.F.R. §300.101(a).
20. FAPE means special education and related services that meet the standards of Wyoming. 34 C.F.R. §300.17.
21. Wyoming, like all other states accepting federal education funds, is bound by the highly qualified teacher requirements of the No Child Left Behind Act (NCLB). NCLB demands that all teachers of core academic subjects be highly qualified. 34 C.F.R. §200.55(b).
22. Core academic subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. 34 C.F.R. §200.55(c) and 34 C.F.R. §300.10.
23. Further, FAPE for this Student must include educational services to permit the Student to continue to participate in the general education curriculum and progress toward meeting IEP goals during the disciplinary removal.

24. Any instruction provided by the District in order to meet its FAPE obligation must be provided by highly qualified teacher(s) in the areas of the general curriculum consistent with the NCLB and IDEA mandate.
25. The District tutors providing service to the Student during the disciplinary removal are not considered highly qualified teachers according to PTSB. Therefore, those tutors are not able to provide instruction in core academic subjects needed to provide the Student an opportunity to participate in the general curriculum.
26. Further, this model of service delivery (utilizing tutors with a substitute teacher credential, and limiting the subjects to math, reading, and writing) did not provide sufficient opportunity for the Student to progress in other areas of the general curriculum.
27. In addition, the IDEA mandates compliance with specific requirements regarding physical education for students with disabilities. Physical education service must be made available to every child with a disability receiving FAPE, unless the school district enrolls children without disabilities and does not provide physical education. *34 C.F.R. §300.108(a)*. Even if a student is enrolled in a separate facility, the school district must ensure that the child receives appropriate physical education services. *34 C.F.R. §300.108(d)*.
28. The District provided no physical education services to the Student during the disciplinary removal, despite the fact that District records confirm physical education is a component of the general education curriculum in the Student's fifth grade year.
29. Also, as far back as the 2010 special education reevaluation, the District was on notice that the Student suffered from a significant hearing loss. The severity of the hearing loss was confirmed in the 2013 reevaluation. However, to date, the Student has received no services to address the educational, social/emotional, and behavioral implications of the hearing loss.
30. Although the District planned to implement supplementary aids and services to address the Student's hearing loss upon her return to the general education environment in the fall, this is not sufficient to address the Student's needs with respect to her hearing loss during the period of the disciplinary removal. The tutors assigned to the Student were not qualified to plan the types of accommodations, modification, or supplementary aids and services to address the Student's significant hearing loss.
31. The District did not provide FAPE to the Student during the disciplinary removal.

Issue #6

32. The IDEA requires that school districts provide parents with written notice of a proposal to conduct an evaluation under the IDEA. 34 C.F.R. §§300.503 and 300.304(a).
33. In this case, the District provided the Complainant with Prior Written Notice (PWN) on two different dates for the reevaluation during the period of time relevant to this complaint investigation. The first PWN, which proposed assessments in social/emotional functioning, communication, and hearing was dated January 17, 2013, and was signed by the Complainant on January 30, 2013. The second PWN was also dated January 17, 2013 and was signed by the Complainant on February 6, 2013. The second PWN was intended to permit the District to expand the evaluation by including the area of academic performance.
34. Social/emotional functioning was specifically included on both PWNs. In light of the long-standing concerns with the Student's confidence and social skills, and the severity of the disciplinary infraction, it was appropriate for the District to seek the Complainant's consent to evaluate the Student's social/emotional functioning.
35. The BASC-2 is an assessment tool utilized to assist in the evaluation of the Student's social/emotional functioning. It identifies different risk factors and risk levels. It is an appropriate tool for schools to utilize to assess a student's social/emotional functioning.
36. By virtue of the fact that the BASC-2 uses the term "risk," the Complainant appears to have assumed that the District conducted the psychiatric risk assessment over his objection.
37. The BASC-2 is not the equivalent of a psychiatric risk assessment.
38. A complete review of the record substantiates that the District did not conduct a psychiatric risk assessment.

Decision:

Issue #1

Whether the District acted in compliance with the IDEA's discipline provisions when it removed the Student from school for a violation of a code of conduct without determining whether the removal constituted a change of placement consistent with 34 C.F.R. §§300.530(c) and 300.536.

WDE finds that the District afforded the Student the procedural protections triggered by a removal that constitutes a change in placement, with the exception of the Decision issued specifically for Issue #2 below. Therefore, no violation is found.

Issue #2

Whether the District unilaterally determined the Student's placement and services during the disciplinary removal in violation of 34 C.F.R. §§300.530(d) and 300.531.

WDE finds that from the period of February 1, 2013 through February 6, 2013, the District unilaterally determined the Student's placement and services during the removal. In addition, the District's administration rather than the IEP team determined the Student would receive two hours of tutoring only in the core subjects of reading, writing, and math for the duration of the disciplinary removal. Therefore, WDE finds the District in violation.

Issue #3

Whether the District expelled the Student without first determining whether the conduct in question was a manifestation of the Student's disability, in violation of 34 C.F.R. §300.530(e).

WDE finds the Student's IEP team, including the Complainant, conducted a Manifestation Determination in a timely manner consistent with IDEA's requirements. Therefore, no violation is found.

Issue #4

Whether the District provided the required parental notifications when imposing a disciplinary removal that constituted a change of placement pursuant to 34 C.F.R. §300.530(h).

WDE finds that although the exact method of notice was unclear, the Complainant had actual notice of the disciplinary removal and all subsequent meetings. Therefore, the District met the notice requirements. No violation is found.

Issue #5

Whether the District provided FAPE to the Student during the disciplinary removal by providing services by a highly qualified teacher consistent with 34 C.F.R. §§300.17, 300.18, and 300.530(d).

WDE finds that the Student did not receive FAPE. The District failed to provide educational service to ensure that the Student continue to participate in the general education curriculum or to address her significant hearing loss. Further, services during the disciplinary removal were not provided by highly qualified teacher(s). WDE finds the District in violation.

Issue #6

Whether the District provided adequate notice to the Parent that describes any evaluation procedures the District proposes to conduct, including the threat assessment by the District psychologist, pursuant to 34 C.F.R. §300.304(a).

WDE finds no evidence to support a claim that the District failed to provide notice of evaluation procedures it proposed to conduct. WDE finds no violation.

Corrective Action Plan:

1. The District shall provide at least four (4) hours of inservice training to all special education staff and building administrator(s) regarding IDEA's discipline process, including the role of the IEP team and procedural safeguards.
2. The District shall provide at least two (2) hours of inservice training to all special education staff and building administrator(s) on the FAPE related needs of students with hearing impairments, including screening and evaluation of students with hearing difficulties, and the social/behavioral implications of hearing loss.
3. The inservice training requirements include:
 - a. The inservice training must be completed by October 1, 2013
 - b. The District shall provide WDE with the following documentation:
 - i. The date, time, location, agenda and presenters ten (10) days prior to the training; and
 - ii. Copies of any materials or handouts used, in addition to sign-in sheets documenting the attendance of all attendees within ten (10) days of completion of the mandatory inservice training.
4. The District shall provide a summary of at least three learning objectives met through the training and a description of how the objectives will result in a change in practice in the District within ten (10) days of the completion of the mandatory inservice training.
5. In resolving a complaint in which WDE finds a failure to provide FAPE, as part of its general supervisory responsibility WDE must address:
 - a. The failure to provide appropriate services, including corrective action appropriate to the needs of the Student, including compensatory services if warranted; and
 - b. Appropriate future provision of services for all children with disabilities, including the Student.

See 34 C.F.R. §300.151(b). Therefore, the District shall provide 174 hours of compensatory education to the Student in the areas of the 5th grade general curriculum

as determined by the IEP team. This amount was calculated utilizing two hours per day and the fact that the Student was denied FAPE during the entire 87 days of the disciplinary removal. Although some services were provided to the Student, these services were not sufficient to provide FAPE.

6. A highly qualified teacher(s) must provide the compensatory education services. *Letter to Anonymous*, 49 IDELR 44 (OSEP 2007).
7. The Student's IEP team shall meet within 15 days of the date of this decision to determine:
 - a. The specific areas of the curriculum to be addressed;
 - b. The impact of the Student's hearing loss on her ability to benefit from compensatory services and the need for specific accommodations, modifications, or supplementary aids and services; and
 - c. A plan for delivery of the compensatory services, considering the schedule of the Student and her family, the attention span and stamina of the Student, and the availability of staff.
8. This plan and evidence of Complainant's consent to implement the plan shall be provided to WDE within 20 days of the date of this decision. The plan shall include the following requirements:
 - a. Student absences from scheduled compensatory services due to illness shall be treated in the same manner as the school year. No make up services are required. A long-term illness shall cause the IEP team to reconvene to develop an alternate compensatory education delivery plan.
 - b. Staff absences shall require rescheduling at the convenience of the Complainant and Student.
 - c. In the event that the Complainant fails to make the Student available for compensatory services, the hours missed shall be deemed waived.
 - d. All compensatory service hours shall be delivered by June 1, 2014. Any remaining undelivered hours shall be deemed waived on that date.

NOTE: It is the responsibility of a school district to obtain any and all evaluative information, including medical or audiological information, necessary in order to properly identify a student's eligibility for services under the IDEA at no cost to the parent. See *Letter to Williams*, 21 IDELR 73 (OSEP 1994). The District cannot abdicate its evaluation responsibility by requesting that the parent obtain an evaluation necessary for the District to determine the Student's eligibility for services under the IDEA. *N.B. v. Hellgate Elem. Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008).

Although beyond the scope of this complaint, WDE strongly recommends the District discontinue its practice of relying on parents to schedule and obtain needed evaluative information, as occurred with the audiologist in this case.

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,

A handwritten signature in black ink, appearing to read 'T. Dobler', with a stylized flourish at the end.

Tiffany Dobler,
Special Programs Division Director

cc: District Superintendent
 District Board Chair
 Jim Rose, Interim Director of Public Instruction
 Mackenzie Williams, WDE Legal Counsel