



Wyoming Department of Education

Jim Rose, Interim Director

320 West Main Street

Riverton, WY 82501

Phone: 307-857-9250 Fax: 307-857-9257 Website: edu.wyoming.gov

WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Respondents:

Case #: C-0128-12

**COMPLAINT DECISION AND
ORDER FOR CORRECTIVE
ACTION**

Date of Decision: May 31, 2012

On April 2, 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"), attending _____ (hereinafter "District A"). In light of the fact that the Complainant resides within the attendance boundaries of _____ (hereinafter "District B"), that District has also been given an opportunity to respond to the allegations raised in the complaint.

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 Issue:

Whether special education and related services were provided in conformity with the Student's IEP consistent with 34 C.F.R. §§300.320 through 300.324, thereby providing the Student a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101.

Investigatory Process:

- Review of records consisting of the following:
 - Original letter of complaint and supporting documents;
 - Response of District A to the allegations;
 - Response of District B to the allegations; and
 - The Student's special education records.
- Follow up inquiries with the Districts.
- The Complainant was provided opportunities to submit responses to a questionnaire provided by WDE. No response was received.
- The Districts 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. §300.101 Free Appropriate Public Education

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

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 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 April 3, 2011 to April 2, 2012.

Findings of Fact:

1. The Complainant is the biological parent of the Student. The Complainant resides within the attendance boundaries of District B.
2. In April 2010 the Student was residing in a Special Family Habilitation Home with a licensed caregiver (hereinafter "Caregiver").

3. The Complainant, as guardian for the Student, provided authorization for the Caregiver to make educational decisions for the Student. The Complainant's signature was dated April 26, 2010.
4. The Student was enrolled in District A in May 2010.
5. The Caregiver completed the District A enrollment forms and signed as the "Parent or Guardian."
6. The enrollment form indicated that the Student had previously attended an elementary school in another district distinct from District A or District B.
7. The Caregiver completed District A's Student Medical Information form on behalf of the Student. The Caregiver offered her consent as Parent or Guardian to obtain medical care in the event of an emergency, administer over the counter medications to the Student, and permitted the use of Essential Oils in the event of minor injury. The Caregiver withheld consent for District A to access medical information regarding the child.
8. The Student is a learner with a disability and receives special education and related services under the Individuals with Disabilities Education Act. The Student is a learner with significant cognitive, communicative, mobility, and physical impairments requiring intervention throughout his day with all aspects of his education, including self help, daily living skills, and tube feeding. The Student is also nonverbal and is diagnosed with visual impairments. He is also reported to have been diagnosed with Autism.
9. As a recipient of care from the Wyoming Department of Health, Behavioral Health Division, Developmental Disabilities Section (hereinafter "Behavioral Health"), an Individualized Plan of Care was developed on behalf of the Student by his Behavioral Health team. This plan identified the Complainant as the Student's legal guardian, responsible for all decisions regarding the Student. The most recent Individualized Plan of Care was dated June 1, 2011.
10. At the time the complaint was filed, the Student was attending 6th grade in District A.
11. The annual IEP in effect for the period of time relevant to this complaint was drafted on April 26, 2011 when the Student was attending fifth grade. In the Consideration of Special Factors section of the IEP, the team affirmed the following:
 - The Student's behavior impedes his learning or that of others.
 - The Student has communication needs.
 - The Student is deaf or hard of hearing.
 - The Student is blind or visually impaired.
 - The Student requires assistive technology devices or services.

12. The following goals and benchmarks were included in the April 2011 IEP:

GOAL	BENCHMARKS	PROGRESS
<p>Math: [Student] has increased the amount of time he will hold an object. [Student] will place ten objects into a container independently on verbal counting prompt. [Student] will demonstrate this task and performance will be documented on data collection sheets.</p>	<ol style="list-style-type: none"> 1. With verbal counting prompt, [Student] will independently release 3 out of 10 objects into desired container. 2. With verbal counting prompt, [Student] will independently release 5 out of 10 objects into desired container. 3. With verbal counting prompt, [Student] will independently release 8 out of 10 objects into desired container. 4. With verbal counting prompt, [Student] will independently release 10 out of 10 objects into desired container. 	<p>10/2011: Daily data collection. [Student] will release objects into a container when verbally prompted with physical assistance.</p> <p>12/2011: Daily data collection. [Student] will release two and sometimes three objects into a container without physical assistance when given the verbal prompt to do so. Behaviors of hitting self and others are interfering with progress. Increased absences are creating regression concerns.</p> <p>3/10/2012: Daily data collection. [Student] has decreased in independently releasing objects into the container. He will not release any objects into a container and he fights hand-over-hand assistance.</p>
<p>Texture: [Student] tolerates hand-over-hand assistance to scan and select matching textures. [Student] will independently select and match textures when given two textures to select from 70% of the time, on verbal prompt. [Student] will demonstrate this task and it will be recorded on the data collection sheets.</p>	<ol style="list-style-type: none"> 1. [Student] will match textures 1 out of 5 trials. 2. [Student] will match textures 3 out of 5 trials. 3. [Student] will match textures 5 out of 0 trials. 4. [Student] will match textures 7 out of 10 trials. 	<p>10/2011: Daily data collection. [Student] will identify one texture correctly.</p> <p>12/2011: Daily data collection. [Student] continues to identify one texture correctly. He will sometimes match a second texture correctly.</p> <p>3/10/2012: Daily data collection. [Student] does not correctly identify any textures;</p>

		often throwing the objects behind him and off the table. He is resistant to hand-over-hand assistance.
Communication: [Student] will select a preferred activity when given a choice of activities by giving the 3-Dimensional symbol to the presenter 100% of the time.	<ol style="list-style-type: none"> 1. [Student] will select a preferred activity by moving a 3-Dimensional symbol toward the presenter 70% of the time. 2. [Student] will select a preferred activity by moving a 3-Dimensional symbol toward the presenter 100% of the time. 3. [Student] will select a preferred activity by moving a 3-Dimensional symbol toward the presenter 70% of the time. 4. [Student] will select a preferred activity by moving a 3-Dimensional symbol toward the presenter 100% of the time. 	<p>10/2011: Daily data collection. [Student] will present a 3-Dimensional symbol to the presenter about 50% of the time. Because of behaviors it is unsure if it is actually the preferred activity.</p> <p>12/2011: Daily data collection. [Student] will present a 3-Dimensional symbol to the presenter about 60% of the time. He occasionally does not want to carry out the activity he has selected.</p> <p>3/10/2012: Daily data collection. When presented with two 3-Dimensional symbols, [Student] will select any symbol; throw it on the floor or behind his back and laugh. When presented with the activity that he selected, he often resists the activity.</p>
DLS: [Student] will munch 6-8 times on an infa-dent brush 3-4 times out of 5 opportunities. Using an infa-dent brush, [Student] will munch 6-8 times out of 10 trials. [Student] will demonstrate task and performance will be logged on the data collection sheet.	<ol style="list-style-type: none"> 1. Using an infa-dent brush, [Student] will munch 5-7 times 5 out of 10 trials. 2. Using an infa-dent brush, [Student] will munch 5-7 times 7 out of 10 trials. 3. Using an infa-dent brush, [Student] will munch 6-8 times 5 out of 10 trials. 4. Using an infa-dent brush, [Student] will munch 6-8 times 7 out of 10 trials. 	12/2011: [Student] will use the infadent brush 6-8 times 5 out of 10 trials. [Student] has been agitated and less compliant over the past 5 weeks.
PT: [Student] will demonstrate	1. [Student] will maintain a	5/19/11: [Student] has

<p>improved gross motor skills, by observation, to allow improved functional mobility within the school environment.</p>	<p>prone extension position for 10 continuous seconds on 2 out of 3 trials, 3 of 3 sessions.</p> <p>2. [Student] will maintain his balance standing double leg on a compliant surface without loss of balance for 30 seconds on 3 of 3 trials, 3 of 3 sessions.</p> <p>3. [Student] will maintain a half kneeling position, left or right leg up, for 10 seconds 2 of 4 trials, 3 of 3 sessions.</p>	<p>improved with holding a prone extended position for short periods of time; 3-5 seconds. Progress has been slow with [Student]. He hasn't been consistent during therapy; working well one day and then being defiant the next. Overall he is showing signs of progress.</p> <p>10/2011: [Student] is not holding a prone extended position for 10-15 seconds and is able to maintain his balance on a compliant surface for 5 seconds. [Student] continues with slow progress overall, but recently has been demonstrating continued improvements in core strength/stability.</p> <p>12/2011: [Student has significantly declined in function this quarter secondary to changes made with his medical care. [Student] is no longer participating in PT willfully, he has returned to aggressive behaviors and has been unable or unwilling to complete therapy sessions as asked.</p> <p>3/20/2012: [Student] has not made any progress this past quarter. [Student] has been seen only a few sessions during this last quarter and has not been able to progress to where he was prior to his decline in function.</p>
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<p>OT: [Student] will improve his fine motor and developmental motor skills for more age appropriate interaction within a variety of environments demonstrated by performing tasks correctly in 8/10 given opportunities.</p>	<ol style="list-style-type: none"> 1. [Student] will push a ball using both hands away from his body 4/5 trials. 2. [Student] will follow one step directions during activity 4/5 times. 3. [Student] will tolerate sensory diet of textures and pressure to decrease adversity to hands for 15 minutes. 4. [Student] will hold object in hand for 1 minute 4/5 trials. 	
<p>SLP: [Student] will use object or gestures to indicate language functions by meeting the criteria in the following objectives.</p>	<ol style="list-style-type: none"> 1. [Student] will use a symbol or gesture to request an object or action 4 out of 5 opportunities. 2. [Student] will use a symbol or gesture to protest an object or action 4 out of 5 opportunities. 3. [Student] will use a symbol or gesture to make a choice between objects or actions 4 out of 5 opportunities. 4. [Student] will use a symbol or gesture to respond to a yes/no question 4 out of 5 opportunities. 	<p>12/2011: [Student] continues to be inconsistent at using his object symbols to request an object or action. On a good day he will use the swing object to indicate he wants to swing more 7 out of 10 times. [Student] has been agitated and less compliant over the past 5 weeks.</p>

13. The following special education services were identified in the Student's IEP:

SPECIAL EDUCATION	FREQUENCY	DURATION (AMOUNT)	LOCATION	PROJECTED START DATE
Self contained Room	450 minutes	4 Xs a week	Paraeducation Room	5/10/2011
Self contained room	310 minutes	1 x a week	Paraeducation room	5/10/2011
Reading and Math Instruction	35 minutes	4 Xs a week	Life Skills classroom	5/10/2011
ESY Services: Life Skills	20 Xs a summer	5 Xs a week	Life Skills classroom	6/20/2011 – 7/31/2011
Orientation and Mobility	40 minutes	3 Xs a year	Paraeducators room, LSC	5/10/2011

Speech-Language	20 minutes	2 Xs a week	SLP/LSC	5/10/2011
PROGRAM MODIFICATIONS				
Transfer chair	As needed	1 year	All school areas	5/10/2011
Paraeducator	Daily, 310 minutes	1 year	All school areas	5/10/2011
Weighted vest, blanket & swing	30 minutes, 2 Xs a day	1 year	Paraeducator room, LSC	5/10/2011
Object board and buttons	Daily	1 year	All school areas	5/10/2011
Braille	Daily	1 year	Any	5/10/2011
3-D Texture communication tools	Daily	1 year	Any	5/10/2011
SUPPORTS FOR SCHOOL PERSONNEL				
Training to be determined as needed	As needed	1 year	Any	5/10/2011

14. The Student participated in the _____ in November 2011. He was evaluated by a team of professionals, including a Physical Therapist, Audiologist, Occupational Therapist, Physical Therapist, Speech Language Clinician, Vision Rehabilitation Therapist, Augmentative Communication Specialist, Psychologist, and Nutritionist. The evaluation produced many different recommendations to increase self-sufficiency and communication, while reducing maladaptive behaviors.
15. On November 4, 2011, Complainant wrote to the Principal of District A expressing her disappointment with the service the Caregiver was providing to the Student. The letter indicated that the Complainant would be more involved in the Student's education in the future.
16. In December 2011, District A team notes indicate that the Complainant continued to be dissatisfied with the efforts of the Caregiver on behalf of the Student. Concerns were expressed by District A regarding Complainant's requested changes to the Student's diet and medications. It was explained that a doctor's order was needed.
17. The Principal of District A sent Complainant a letter dated December 21, 2011 regarding the need for medical information about the Student. The letter indicates that an authorization for District A to receive medical information was enclosed, requesting that Complainant sign and return the document.

18. January 5, 2012 documentation from District A staff notes that the Caregiver requested the school to provide an all liquid diet for the Student. The Caregiver stated that since the Student had visited with Complainant over break, Complainant had fed him an all liquid diet and changed his medications, indicating that is why the Student is "so messed up now." The Caregiver expressed frustration when told a doctor's order was necessary for dietary and medication changes.
19. On February 2, 2012, team meeting notes from District A document staffs' concern regarding the Student's increasingly violent behavior and lack of progress being intertwined with his medical needs. Frustration by the team was expressed because the Caregiver cannot consent to medical assessments, which are needed for the purpose of educational programming.
20. The Student's IEP was amended on February 13, 2012. Representatives from District B participated telephonically in the meeting to amend the IEP. A summary of the changes indicates:

Due to safety concerns, [Student] will be placed on home-bound instruction beginning February 13, 2012 for an undetermined duration. He will receive educational services based on his IEP for 35 minutes a day and speech services 30 minutes twice a week.

[Student] will be transported to [Name of Town] on Thursday afternoons for OT and PT services.

[Special Education Director] in [District B] and [Case Manager in District B], the resident district, were included in the meeting via the phone.

[District B Special Education Director] questioned if this placement was the least restrictive environment (LRE) and still allowed for FAPE, which based on safety concerns of [Student] as well as staff, this is the least restrictive environment and still allows for FAPE.

[Caregiver] was unsure if the home-bound instruction would work based on the Waiver and that [Student] would probably be in [Name of Town] two to three days a week.

21. A February 23, 2012 letter from District A alerted the county District Attorney to the Student's excessive absences.

22. A March 12, 2012 letter from District A to the Department of Family Services reports that the Student missed 27 days of school (3 for medical reasons) since January 4, 2012.
23. The Student's IEP was also amended on March 15, 2012. The summary of changes states:
[Student] is currently on home-bound instruction for the safety of himself and staff, due to his explosive behavior. [Student] was placed on home-bound with home instruction on February 13, 2012. [Student] was not available for services until February 29, 2012. Between February 29, 2012 and March 15, 2012, [Student] was seen in the home-bound setting six times. The instruction was met with explosive behavior of screaming, hair pulling, pulling on clothes, and hitting of self and staff. Due to the continued safety concern for [Student] as well as the staff, [Student] will not be seen for services until which time that an IEP meeting can take place.
24. The Student's IEP was again amended on March 19, 2012. The summary of changes states:

Following a meeting with [District B], [Department of Family Services], [District A], and [Caregiver], it was determined for [Student] to be placed in a residential facility for a 90-day evaluation by April 1, 2012, following the 90 day evaluation educational placement will be determined.

[Complainant] was unable to attend this meeting. Paperwork on the 90 day residential facility placement will be provided to her by DFS.

Home-bound services will stay as they are with direction that if [Student] hits, pulls on clothing, or pulls hair the session will be terminated for the day. Home-bound services will be continued until residential placement, or April 1, 2012, whichever comes first.
25. Staff meeting notes throughout March 2012 document increased concerns with safety as the Student's behavior and attendance continue to decline. District A indicates that the Complainant was unwilling to have the Student attend a residential placement for the purpose of an evaluation, yet the Caregiver was not making the Student regularly available for IEP services.
26. Staff notes from District A document that homebound services were not successful when provided. The Student was uncooperative, and at times, aggressive. Staff frequently terminated the homebound sessions when the Student was aggressive.

27. Homebound services were last provided to the Student by District A on April 2, 2012. After that date, District A was unable to confirm the whereabouts of the Student or where he was residing. District A confirms it has notified the county District Attorney regarding the Student's continued absence from school.
28. District B confirms that the Complainant enrolled the Student on May 7, 2012, but he has not yet been available for any scheduled services. District B continues its efforts to communicate with the Complainant.

Conclusions:

1. The Student is identified as a learner with a disability under the Individuals with Disabilities Education Act (IDEA).
2. The district of residence 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 Student is a learner with severe and complex multiple disabilities and health needs. His educational needs are functional rather than academic, with present levels of performance consistent with developmental expectations of a much younger child.
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. Children who have severe cognitive disabilities may not require instruction in the general-curriculum, yet they are indisputably eligible for special education and related services under the IDEA. For these students, education may consist of daily living and self-care skills. *See, Timothy W. v. Rochester, N.H. Sch. Dist., 441 IDELR 393 (1st Cir. 1989), cert. denied, 493 U.S. 983, 110 LRP 44498 (1989).*
6. It is the obligation of the district of residence to provide special education and related services reasonably calculated to result in some educational benefit as measured by progress toward IEP goals, or to take steps to address the lack of progress.
7. As applied to this Student, the April 2011 IEP, as amended through April 2012, represents a progression of decreased Student progress with a corresponding increase in maladaptive behaviors, rising to the level of a significant safety risk for both the Student and District A staff.

8. District A suspected that medical concerns and medication changes may have been responsible for the Student's deteriorating behavior and declining progress, but efforts to obtain consent from the Complainant to gather medical information went unanswered.
9. Although it is unlikely that FAPE would be provided to such a high needs student in 35 minutes daily as the Student's IEP was amended on March 5, 2012, the Student was not made available for those services on a regular basis, and District A continued to request permission to gather relevant medical information in an effort to develop a more appropriate plan for the Student.
10. The obligation of District A to address a lack of progress was significantly hampered by the confusion and lack of cooperation between the Caregiver and Complainant with respect to the individual acting as the IDEA parent.
11. In certain, limited circumstances, it is possible for someone other than the biological or adoptive parent to be designated to act in place of the parent. 34 C.F.R. §300.30(a)(4) states: *Parent* means an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.
12. It is possible that the Caregiver could have been designated as the IDEA parent under the authority of the IDEA. However, that did not happen in this case based on the application of another provision under the IDEA definition of parent (in relevant part):

The biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of the section to act as a parent, must be presumed to be the parent for the purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. 34 C.F.R. §300.30(b).
13. Reading these two provisions in harmony as the IDEA requires, dictates a conclusion that the biological parent, or in this case, the Complainant, continued to act as the parent as evidenced by her interactions with District A, the November 2011 letter sent to District A, and her declaration in the Individualized Plan of Care that she was to retain all decision making authority.
14. The Complainant's grant of limited educational decision making to the Caregiver was not sufficient to divest her of the authority to act as the IDEA parent because the Complainant continued to act as the IDEA parent. Under the law, the Complainant must be presumed to be the parent for the purposes of IDEA decision-making.

15. As the IDEA parent, it was necessary to have the Complainant's consent to access medical records or permit an evaluation of the Student in order to develop an appropriate IEP that provided FAPE. It was particularly important in this case because of the suspicion that the child's medical and medication needs may have been interfering with his successful education.
16. However, once any district finds itself in the untenable position of needing evaluative information in order to appropriately plan for a Student coupled with the inability to obtain consent from the IDEA parent for the evaluation, a district must act in order to safeguard a child's right to receive FAPE. IDEA dispute resolution procedures are equally available to a district, as well as a parent, for that very purpose. *See 34 C.F.R. §300.507.*
17. This complaint is further complicated by the involvement of two districts. The result was that neither district had a clear understanding of which district was responsible for ensuring the provision of FAPE for this Student: District A where the Student is receiving care, or District B where the IDEA parent resides?
18. Wyoming has addressed this residency question in a 2009 opinion of the Office of the Attorney General. This 2009 opinion relies on a Wyoming Supreme Court decision from 1933 in which the Court directs a school district to consider the purpose of the child's presence based on the intent of the parents when determining residency. The Court noted, "a child may be considered a resident of the district, no matter how recently he has come in, if he has come with the bona fide intention of remaining permanently." *State ex rel. Sch. Dist. No. 1, Niobrara County v. Sch. Dist. No. 12, Niobrara County*, 18 P.2d 1010, 1013 (Wyo. 1933). The Court offered the following relevant example:

Free instruction in the district school, open to residents of the district only, cannot be claimed as a matter of right by . . . children boarded out in a boarding house in the district by parents living in another district under an agreement that reserved the right of the parents to take them back at any time. *Id.* at 1013-1014.

. . .

In construing statutes dealing with the right of children to attend school as affected by the matter of residence, the courts have generally held that the residence entitling a child to school privileges is to be distinguished from domicile, the narrow meaning of the term "residence." *Id.* at 1013.
19. It is clear from the record that the Complainant parent in this case removed her child from the Caregiver at will, returning the Student to her own home in District B for extended periods of time, ultimately enrolling the Student in District B, as any IDEA parent would have

the right to do. Based on the actions of the Complainant and the exercise of her parental authority to remove the Student at will from the Caregiver, the Complainant remained the IDEA parent on behalf of the Student.

20. Based on the Wyoming Supreme Court decision **and the fact that this parent never evidenced her intent to have another individual act in place of the IDEA parent**, the Student's temporary domicile in District A was not sufficient to create residency for the purpose of IDEA FAPE responsibilities. The Student remained a resident of District B for the purposes of FAPE responsibilities. Therefore, District B should have had both the opportunity and responsibility to ensure the development of an IEP reasonably calculated to provide FAPE to the Student.
21. Further confounding this Student's educational programming was District B's lack of knowledge regarding the Student's residency or the Student's enrollment in District A until later in the school year. Of important note is the fact that the Student was previously enrolled in a third school district prior to enrolling in District A. It was not feasible for District B to ensure the provision of FAPE for a Student about whom it had no knowledge.
22. Whether District A or District B were responsible for ensuring FAPE for this Student does not alter the fact that neither the Complainant nor the Caregiver were cooperating with either district to help ensure FAPE for this Student. Having a clear understanding of which district was responsible for ensuring FAPE would have accomplished little to assist this Student because the cooperation of the IDEA parent was not forthcoming.
23. WDE, as the State Educational Agency (SEA), is ultimately responsible to ensure that the requirements of the IDEA are carried out. *34 C.F.R. §300.149*. In fulfilling its general supervisory responsibility, WDE must proactively ensure compliance with the IDEA and address the failure of any district to provide appropriate services for a child under the IDEA and to ensure the appropriate future provision of services for all children with disabilities. *See 34 C.F.R. §300.151(b)*. To that end, WDE finds both District A and District B in violation of its duty to provide services consistent with an IEP reasonably calculated to provide FAPE.

Decision:

Whether special education and related services were provided in conformity with the Student's IEP consistent with 34 C.F.R. §§300.320 through 300.324, thereby providing the Student a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101.

WDE finds that District A and District B are in violation of their respective duties to provide and/or ensure the provision of FAPE consistent with the Student's IEP, thereby

denying him FAPE. However, as a threshold matter, the lack of cooperation on the part of the Complainant in permitting access to the Student for the purpose of developing an appropriate IEP and the confusion about whether the Complainant or the Caregiver was acting as the IDEA parent caused the underlying violation and any corresponding deprivation of educational benefit to the Student. As a result, no Student specific corrective action is ordered.

Corrective Action Plan:

District A and District B shall review this complaint decision in its entirety with the respective administrators (in a manner protecting the Student's confidentiality) in each district to alert the administrators of each district's responsibility to ensure the provision of FAPE for students with disabilities residing within its borders and attending public school. It is important for administrators to have a clear understanding that identification of the IDEA parent will have direct implications for determining which district is responsible for ensuring a student is offered an IEP reasonably calculated to provide educational benefit, or FAPE. District A and District B must submit verification of this review in the form of administrators' signatures, the date upon which the review took place, and a summary of the content of the review.

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 of District A
, Board Chair of District A
Superintendent of District B
, Board Chair of District B
Cindy Hill, Superintendent of Public Instruction
Samuel Shumway, WDE Legal Counsel
Christine Steele, Instructional Leader, Operations