



# Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS DIVISION  
SPECIAL EDUCATION COMPLAINT INVESTIGATION

**Complainant:**

**Respondent:**

Case #: C 0173-11

**COMPLAINT DECISION**

**Date of Decision:** December 12, 2011

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On October 13, 2011 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by \_\_\_\_\_, (hereinafter "Complainants") 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 allegation raised in the complaint. Consistent with the IDEA, Federal Regulations, and the Wyoming Department of Education Rules, Chapter 7, WDE issues the following Findings of Fact, Conclusions, and Decision.

**Investigatory Process:**

- Review of records consisting of the following:
  - Original letter of complaint and supporting documents.
  - The Student's special education file.
- District records regarding private school consultation and proportional share calculations.

- Follow up email correspondence with the Complainants, including private evaluation results.
- 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 Rules:**

34 C.F.R. §300.37	Services Plan
34 C.F.R. §§300.130 through 300.144	Children with Disabilities Enrolled by Their Parents in Private Schools
34 C.F.R. §§300.320 through 300.323	Individualized Education Programs
34 C.F.R. §300.324	Development, Review, and Revision of IEP
34 C.F.R. §300.101	Free Appropriate Public Education (FAPE)
Wyoming Department of Education Chapter 7 Rules	

**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 October 14, 2010 to October 13, 2011. However, in order to fully understand the needs of the Student, the concerns of the Complainants, and the position of the District, the Student's special education history was thoroughly reviewed.

**Complaint Issue:**

Whether the District provided equitable services to the Student consistent with 34 C.F.R. §§300.132 through 300.135 and 300.137 through 300.144, including whether the District failed to consider the results of the most recent evaluation, failed to develop the service plan consistent with federal law, and failed to develop a service plan based on the Student's needs.

**Findings of Fact:**

1. The Student attends first grade at a private parochial school located within the boundaries of the District.

2. The Student previously received special education services by virtue of a speech-language impairment while in preschool through the Wyoming Department of Health Early Intervention and Education Program.
3. The Student has never been enrolled in the District, as the Complainants have chosen to enroll the Student in a private parochial school.
4. The Complainants offered their consent for a reevaluation of the Student's special education needs on September 14, 2010.
5. The District conducted a reevaluation of the Student and issued an Evaluation Report on October 14, 2010. Based on evaluation results, the District determined the Student continued to be a child with a disability and continued to need special education services in the area of articulation.
6. The Complainants offered their consent for the provision of special education services according to the Student's Private School Services Plan on October 14, 2010.
7. The District provided evidence of consultation with the private parochial school regarding the type of equitable participation in federal special education funding agreed upon between the District and the school. The proportionate amount of federal funds to be allocated on behalf of all children at the private parochial school was identified. It was determined that the District would provide Speech Language services up to the allotted amount in fulfillment of the proportional share requirement. A representative of the private parochial school and the District signed the written documentation regarding consultation on August 29, 2011.
8. The District convened a Private School Services Plan meeting on September 28, 2011. The Complainants participated in the meeting, as well as a representative of the private school.
9. The Student's Private School Service Plan identified a measurable annual goal in the area of articulation with speech-language service one (1) time per week for 20 minutes. The Complainants indicated in writing on the signature page that they participated in the meeting, but did not agree with the amount of service. The meeting notes indicate that the Complainants requested speech-language service two (2) times per week for 45 minutes.
10. The District proposed to implement the Private School Service Plan in a Prior Written Notice dated September 28, 2011. The Prior Written Notice also indicated that Complainants had the option of enrolling the Student in the District, where an IEP and placement to provide FAPE would be implemented.
11. The District provided speech-language services to the Student consistent with the Private School Service Plan.

12. The Complainants filed this complaint after efforts to have the District increase the amount of speech-language service to the Student to 45 minutes twice per week were unsuccessful.
13. The Complainants confirmed that the three (3) evaluation reports were offered to the District on October 26, 2011.
14. On October 28, 2011, the Complainants submitted via email additional information for this investigation consisting of the reports from three (3) evaluations regarding the Student's need for speech-language services for 45 minutes twice per week.

**Conclusions:**

1. The Student is identified as a learner with a speech-language disability and eligible for service under the Individuals with Disabilities Education Act (IDEA).
2. Once identified as eligible for service under the IDEA, a student who is enrolled in a public school is entitled to receive FAPE. If the Student were enrolled in the District, it would be obligated to ensure that the Student received 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 Federal Regulations implementing the IDEA explicitly provide that children with disabilities enrolled by their parents in private schools do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in public schools. 34 C.F.R. §300.137(a). See also *Questions and Answers on Service Children with Disabilities Placed by Their Parents in Private Schools* (OSEP 2011).
4. Therefore, because the Complainants chose to exercise their right to enroll the Student in a private school, the District is not obligated to provide FAPE to the Student.
5. Under the IDEA, school districts have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal special education funds that the school district has determined, after consultation, to make available to the private schools population of parentally placed private school children with disabilities. "How, where, and by whom special education and related services will be provided for parentally placed private school children is determined through the consultation process." See 34 C.F.R. §300.134(d). See also *Questions and Answers on Service Children with Disabilities Placed by Their Parents in Private Schools* (OSEP 2011).
6. The IDEA Regulations state that "[p]arentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools."

34 CFR 300.138 (a)(2). See also *Fowler v. Unified Sch. Dist. No. 259*, 26 IDELR 1301, fn. 4 (10<sup>th</sup> Cir. 1997).

7. The formula for determining the proportionate share of the District's IDEA funds to be expended on parentally placed private school children with disabilities is based on the total number of eligible parentally placed children with disabilities attending private schools located within the boundaries of the District in relation to the total number of eligible public and private school children with disabilities within the District's jurisdiction. See 34 C.F.R. §300.133(a). See also *Provisions Related to Children with Disabilities Enrolled by Their Parents in Private Schools*, (U.S. Department of Education, Office of Non-Public Education 2008). The District provided evidence that the proportionate share amount was appropriately calculated according to the IDEA requirements.
8. WDE is without authority to compel a school district within the State to spend an amount on a parentally placed private school student in excess of the proportional share of IDEA funds identified by the Federal formula.
9. The amount or type of service the Student receives is based only on a proportional share of the District's Federal special education funds planned in consultation with the private school and its representatives, not the Student's individual needs.
10. Although the Complainants expressed concern that the District did not take into account the Student's individual needs as evidenced in the reports from private providers when developing the Private School Service Plan, this concern does not alter the decision for two reasons:
  - a. As previously noted in Conclusion #5 above: "How, where, and by whom special education and related services will be provided for parentally placed private school children is determined through the consultation process." See 34 C.F.R. §300.134(d); and
  - b. The Complainants did not offer the District copies of the reports until October 26, 2011, well after this complaint was filed.
11. The Complainants also expressed frustration that the Private School Service Plan was not developed consistent with the procedures for an IEP. However, it is important to note that the IDEA Regulations state that a "services plan must, **to the extent appropriate**, be developed, reviewed, and revised consistent with §§300.321 through 300.324." 34 C.F.R. §300.138(b)(2).
12. This requirement has been interpreted by the U.S. Department of Education, Office of Special Education Programs (OSEP) to mean that a services plan is required to meet the

IEP content requirements described in the IDEA to the extent appropriate, and only in relation to the services that are to be provided. See *Questions and Answers on Service Children with Disabilities Placed by Their Parents in Private Schools* (OSEP 2011).

13. The District has met this obligation through parental participation in a meeting to develop the Student's Private School Service Plan, providing the Complainants with Prior Written Notice and notice of the Procedural Safeguards available under the IDEA, development of a Private School Service Plan containing a measurable goal and evidence of progress, and also developing the plan based on a review of the previous year's Private School Service Plan.
14. In summary, the Student was not individually entitled to receive FAPE, the District met its Federal obligation to expend a proportional share of IDEA funds in consultation with the private school representatives, the District appropriately developed a Private School Service Plan for the Student, and the District provided services according to the Student's Private School Services Plan.

**Decision:**

Whether the District provided equitable services to the Student consistent with 34 C.F.R. §§300.132 through 300.135 and 300.137 through 300.144, including whether the District failed to consider the results of the most recent evaluation, failed to develop the service plan consistent with federal law, and failed to develop a service plan based on the Student's needs.

**WDE finds no violation with respect to the planning of or implementation of equitable services provided to the parentally placed private school Student.**

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,



Peg Brown-Clark  
State Director of Special Education  
Special Programs Division Director

cc:

Superintendent  
Board Chair  
Cindy Hill, Superintendent of Public Instruction  
John Masters, WDE Legal Counsel