

WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS UNIT  
SPECIAL EDUCATION COMPLAINT INVESTIGATION

**Complainants:**

Protection & Advocacy System, Inc.  
7344 Stockman Street  
Cheyenne, WY 82009

Case #: 2010-2

**COMPLAINT DECISION  
AND  
ORDER FOR  
CORRECTIVE ACTION**

**District:**

**Date of Decision:** April 9, 2010

On February 12, 2010 the Wyoming Department of Education (WDE) received a letter of complaint and supporting documentation filed by Protection & Advocacy, representing [REDACTED], Parent, (hereinafter "Parent") alleging violations of special education law with respect to [REDACTED] (hereinafter "Student"), by [REDACTED] County School District No. [REDACTED] (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 in the complaint. Consistent with the IDEA, Federal Regulations, and the 2007 Wyoming Education Rules governing Services for Children With Disabilities, WDE issues the following Findings of Fact, Conclusions, Decision, and plan for Corrective Action.

**Complaint Issues:**

**Issue #1**

Whether the Parent was denied participation in an Individual Education Program (IEP) team meeting in which educational placement decisions regarding the Student were made in violation of 34 C.F.R. §§300.321, 300.322, and 300.327.

**Issue #2**

Whether the Student was denied a Free Appropriate Public Education (FAPE) by:

- a. Failing to appropriately address the Student's behavioral needs in his IEP as required by 34 C.F.R. §300.324.
- b. Failing to provide the Student FAPE in the Least Restrictive Environment (LRE) requirements in violation of 34 C.F.R. §§300.114 through 300.118, and
- c. Failing to make placement decisions by an IEP team consistent with 34 C.F.R. §§300.322, 300.324, and 300.327.

**Issue #3**

Whether the District denied the Parent's request for an Independent Educational Evaluation (IEE) in violation of 34 C.F.R. § 300.502(b) through (e).

**Issue #4**

Whether the District failed to issue Prior Written Notice (PWN) before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student in accordance with 34 C.F.R. §300.503.

**Investigatory Process:**

Review of records consisting of the following:

- Original letter of complaint and supporting documents.
- Documentation provided by the District, including the Student's entire special education record.
- Over 5.2 hours of digitally recorded team meetings.

Follow-up questionnaires with:

- Director of Special Education
- Case Manager

The District and Parent were given the opportunity to submit additional information to WDE for consideration during the investigation of this complaint.

**Applicable Federal Regulations or State Rules:**

- 34 C.F.R. §§300.320 through 300.328 Individualized Education Programs (IEP)
- 34 C.F.R. §300.101 Free appropriate public education (FAPE).
- 34 C.F.R. §§300.114 through 300.118 Least Restrictive Environment (LRE)
- 34 C.F.R. §300.503 Prior notice by the public agency.
- 34 C.F.R. §300.502 Independent Educational Evaluation (IEE)

2007 Wyoming Education Rules, Chapter 7 (effective for the relevant time period in this Complaint.)

**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 from the date the Complaint was received. In light of this limitation, any findings of noncompliance will be limited to the period commencing February 13, 2009 and ending February 12, 2010. However, in order to fully understand the needs of the Student and the position of the District, the Student's special education history relevant to his enrollment in the District was thoroughly reviewed.

**Relevant Timeline:**

The following timeline was developed based on a review of the Student's records and is considered to be an accurate representation of the events relevant to this Complaint.

DATE	EVENT
██████████	Admission to Wyoming Behavioral Institute (██████████) from ██████████ School District.
██████████	Discharged from ██████████ Recommendation: Structure, parenting skills and support, medication management, and inpatient treatment.
██████████	Letter from the day treatment facility stating they will not accept Student due to negative behaviors.
██████████	Meeting at the day treatment facility. Not an IEP meeting due to lack of

DATE	EVENT
	regular education teacher. Recommendation: Homebound or 1:1 in the [REDACTED] School District.
[REDACTED]	Initial IEP meeting in the current District. Placement: Self-contained behavioral classroom, with BIP. Parent consent for special education provided.
[REDACTED]	Functional Behavioral Assessment conducted.
[REDACTED]	Behavior Intervention Plan developed.
[REDACTED]	Police intervention required due to Student aggression.
[REDACTED]	IEP meeting, including [REDACTED] and [REDACTED]. Recommendation: 60-day evaluation at a Board of Cooperative Education Services (BOCES). Placement: Homebound based on Parent's disagreement with District's recommendation.
[REDACTED]	Functional Behavioral Assessment updated.
[REDACTED]	Homebound services commenced.
[REDACTED]	IEP meeting. Recommendation: 60-day evaluation at BOCES. Placement: Homebound based on Parent's disagreement. Parent requested an IEE.
[REDACTED]	Homebound progress report. Progress emerging on goals, but poor attendance.
[REDACTED]	IEP meeting. Placement: Homebound. Making progress, but poor attendance.
[REDACTED]	Letter from District to BOCES requesting placement and evaluation of Student.
[REDACTED]	IEP meeting. Recommendation: Residential. Placement: Homebound services based on Parent's disagreement.
[REDACTED]	IEP meeting. Recommendation: 30-day evaluation at BOCES. Placement: [REDACTED] with homebound services until admission to [REDACTED]
[REDACTED]	Admitted to [REDACTED] per IEP placement.
[REDACTED]	Suicide attempt at [REDACTED].
[REDACTED]	Admit to [REDACTED] after suicide attempt at [REDACTED]. Admission documents indicate Student is a high suicide risk, out of control, aggressive and disruptive.
[REDACTED]	IEP amended without a team meeting to reflect goals while hospitalized at [REDACTED]. After discharge, previous IEP goals to be implemented.
[REDACTED]	[REDACTED] documents poor prognosis. Recommendation: Long term residential treatment. Discharge from [REDACTED] against medical recommendations to Parent.
[REDACTED]	IEP meeting. Recommendation: Residential for next year, Placement: Residential (BOCES) next year in August 2009 with homebound service until admitted to BOCES.
[REDACTED]	Last day of school for the 2008-2009 school year.
[REDACTED]	IEP meeting. Placement: [REDACTED] School Resource Room. IEP contained one goal: "Responsible Class Behavior." BIP present.
[REDACTED]	Safety Plan developed.
[REDACTED]	Student out of control. Police intervention. 1.5-day suspension.
[REDACTED]	Text threatening suicide. Police intervention.
[REDACTED]	Text threatening another student with "shanking them." Police intervention. 8-day suspension.
[REDACTED]	Threat Assessment completed.
[REDACTED]	IEP meeting. Recommendation: Residential. Placement: Homebound due

DATE	EVENT
	to Parent disagreement with residential placement. District to "explore residential." IEP contained one goal: "Achieving Socially Responsible Behavior."
	District left voice message for Parent to arrange an IEP meeting.
	District left voice message for Parent to arrange an IEP meeting.
	District left voice message for Parent to arrange an IEP meeting.
	District left voice message for Parent to arrange an IEP meeting.
	Letter to Parent regarding truancy.
	District left voice message for Parent to arrange an IEP meeting.
	Letter to Parent requesting an IEP team meeting on [REDACTED].
	Notice of Team Meeting for [REDACTED]
	District left voice message for Parent regarding IEP meeting.
	Parent requested postponement of meeting due to family issues.
	Meeting rescheduled. Notice of Team Meeting for [REDACTED]
	Truancy Referral to County and Tribe.
	Student's last day of attendance in the District. Absences considered unexcused.
	IEP meeting cancelled by Parent.
	Meeting rescheduled. Notice of Team Meeting for [REDACTED]
	District left voice message reminder for Parent regarding the [REDACTED] IEP meeting.
	District left voice message reminder for Parent regarding the [REDACTED] IEP meeting.
	District left voice message reminder for Parent regarding the [REDACTED] IEP meeting. Parent returned call stating she would be unavailable due to leaving town for family issues. District requested Parent to meet prior to leaving town. Parent declined.
	District left a voice message for Parent to request her telephonic participation in the IEP meeting.
	IEP meeting without Parent. Recommendation: Residential treatment. Prior Written Notice indicates Parent has not participated in the team planning process since [REDACTED]
	An undated letter of complaint received from the Parent's representative.

**Findings of Fact:**

1. At all times relevant to this Complaint, the Student was enrolled in the District.
2. The Student is identified as having an emotional or behavioral disability and eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA).
3. Throughout the period of Student's enrollment in the District, his attendance remained poor with many unexcused absences. During the 2009-2010 school year, the Student was absent at least 52% of whole or part days that school was in session. When the Student

attended school, he was tardy for class on 42% of those days for at least one class period. A truancy referral was made to local officials in January 2010.

4. The Student has a long history of lack of success across educational environments. Academically, the Student is at least 2 years below grade level in all areas.
5. The Student attended a therapeutic day school the majority of his educational career since age eight (8) years through his discharge for behavioral concerns in October 2008.
6. After being unsuccessfully discharged from the therapeutic day school program, the Student enrolled in the District in [REDACTED]
7. The Student has been admitted twice to [REDACTED], a psychiatric facility for children, due to out-of-control behaviors. The first admission was in [REDACTED]. The second admission was in [REDACTED]
8. Residential treatment was recommended each time the Student was discharged from [REDACTED]
9. The District convened 10 IEP meetings and drafted 9 different IEPs in the 1.3 years the Student was enrolled in the District prior to this Complaint.
10. The Parent attended each of the IEP meetings, either telephonically or in person, with the exception of the IEP meeting convened on [REDACTED].
11. The IEP team recommended residential treatment in 8 of the 10 IEP meetings. The Parent staunchly opposed residential treatment for the Student. In response to the Parent's opposition, the District provided homebound instruction rather than a residential placement.
12. Each IEP implemented by the District is summarized below:

Meeting Date	IEP Goals and Benchmarks	Placement	IEP Start Date
[REDACTED]	<ol style="list-style-type: none"> <li>1. Student will follow behavioral rules and expectations outlined in the student handbook and will earn 80% of his behavior points daily.               <ul style="list-style-type: none"> <li>• Student will be respectful while at school at least 80% of the school day.</li> <li>• Student will be responsible while at school at least 80% of the school day.</li> <li>• Student will be safe while at school 100% of the school day.</li> </ul> </li> <li>2. Student will increase his reading lexile by 100 points.               <ul style="list-style-type: none"> <li>• Student will complete comprehension activities with 80% accuracy at his reading lexile in 2 out of 3 opportunities.</li> <li>• Student will complete vocabulary activities with 80% accuracy in 2 out of 3 opportunities.</li> </ul> </li> <li>3. Student will complete expository and narrative</li> </ol>	Resource Room at [REDACTED] School	[REDACTED]

	<p>writing and score basic.</p> <ul style="list-style-type: none"> <li>• Student will write an expository essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> <li>• Student will write a narrative essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> </ul> <p>4. Student will maintain an 80% or higher on math activities at the [redacted] grade level on 2 out of 3 opportunities.</p> <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete [redacted] grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>5. Student will increase all areas of responsibility toward school by 50%.</p> <ul style="list-style-type: none"> <li>• Student will learn at least two coping strategies to improve communication skills with adults and by the end of the IEP year he will be able to state two coping strategies to improve communication skills when asked.</li> <li>• Student will be respectful toward students and adults 25% of the time by the end of second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> </ul>		
[redacted]	<p>1. Student will demonstrate responsibility for his education by meeting 2 of 2 objectives.</p> <ul style="list-style-type: none"> <li>• Student will comply with reasonable requests by the teacher/tutor 70% or more of the time.</li> <li>• Student will complete 4 of 5 assignments within the specified time frame.</li> </ul> <p>2. Student will follow behavioral rules and expectations outlined in the student handbook and will earn 80% of his behavior points daily.</p> <ul style="list-style-type: none"> <li>• Student will be respectful while at school at least 80% of the school day.</li> <li>• Student will be responsible while at school at least 80% of the school day.</li> <li>• Student will be safe while at school 100% of the school day.</li> </ul> <p>3. Student will increase his reading lexile by 100 points.</p> <ul style="list-style-type: none"> <li>• Student will complete comprehension activities with 80% accuracy at his reading lexile in 2 out of 3 opportunities.</li> <li>• Student will complete vocabulary activities with 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>4. Student will complete expository and narrative</p>	Home-bound	[redacted]

	<p>writing and score basic.</p> <ul style="list-style-type: none"> <li>• Student will write an expository essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> <li>• Student will write a narrative essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> </ul> <p>5. Student will maintain an 80% or higher on math activities at the [redacted] grade level on 2 out of 3 opportunities.</p> <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete [redacted] grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>6. Student will increase all areas of responsibility toward school by 50%.</p> <ul style="list-style-type: none"> <li>• Student will learn at least two coping strategies to improve communication skills with adults and by the end of the IEP year he will be able to state two coping strategies to improve communication skills when asked.</li> <li>• Student will be respectful toward students and adults 25% of the time by the end of second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> </ul>		
[redacted]	<ol style="list-style-type: none"> <li>1. Student will demonstrate responsibility for his education by meeting 4 of 5 objectives. <ul style="list-style-type: none"> <li>• Student will comply with reasonable requests by the teacher/tutor 70% or more of the time.</li> <li>• Student will complete 4 of 5 assignments and homework within the specified timeframe.</li> <li>• Given an individual activity, Student will be on task 80% of the time.</li> <li>• Student will engage in no physical aggression towards the teacher/tutor.</li> <li>• Student will remain in his assigned area unless permission has been given by teacher/tutor to leave it.</li> </ul> </li> <li>2. Student will increase his reading lexile by 100 points. <ul style="list-style-type: none"> <li>• Student will complete comprehension activities with 80% accuracy at his reading lexile in 2 out of 3 opportunities.</li> <li>• Student will complete vocabulary activities with 80% accuracy in 2 out of 3 opportunities.</li> </ul> </li> <li>3. Student will score basic or above on a state or district expository and narrative writing assessment.</li> </ol>	Home-bound	[redacted]

	<ul style="list-style-type: none"> <li>• Student will write an expository essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> <li>• Student will write a narrative essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> </ul> <ol style="list-style-type: none"> <li>4. Student will increase his math skills by meeting 2 of 2 objectives. <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete █ grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> </li> <li>5. Student will increase all areas of responsibility toward school by 50%. <ul style="list-style-type: none"> <li>• Student will identify 2 methods to effectively communicate his thoughts and feelings to adults.</li> <li>• Student will engage in socially appropriate behavior when interacting with others 25% of the time by the end of the second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> <li>• Student will identify 2 coping strategies to utilize when feeling frustrated/angry in class/tutor session.</li> </ul> </li> </ol>		
█	<ol style="list-style-type: none"> <li>1. Student will demonstrate responsibility for his education by meeting 5 of 6 objectives. <ul style="list-style-type: none"> <li>• Student will comply with reasonable requests by the teacher/tutor 70% or more of the time.</li> <li>• Student will complete 4 of 5 assignments and homework within the specified timeframe.</li> <li>• Given an individual activity, Student will be on task 80% of the time.</li> <li>• Student will engage in no physical aggression towards the teacher/tutor.</li> <li>• Student will remain in his assigned area unless permission has been given by teacher/tutor to leave it.</li> <li>• Student will increase his attendance to 60% of scheduled sessions.</li> </ul> </li> <li>2. Student will increase his reading lexile by 100 points. <ul style="list-style-type: none"> <li>• Student will complete comprehension activities with 80% accuracy at his reading lexile in 2 out of 3 opportunities.</li> <li>• Student will complete vocabulary activities with 80% accuracy in 2 out of 3 opportunities.</li> </ul> </li> <li>3. Student will score basic or above on a state or district expository and narrative writing</li> </ol>	Home-bound	█

	<p>assessment.</p> <ul style="list-style-type: none"> <li>• Student will write an expository essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> <li>• Student will write a narrative essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> </ul> <p>4. Student will increase his math skills by meeting 2 of 2 objectives.</p> <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete █ grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul>		
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	<ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete █<sup>h</sup> grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>5. Student will increase all areas of responsibility toward school by 50%.</p> <ul style="list-style-type: none"> <li>• Student will identify 2 methods to effectively communicate his thoughts and feelings to adults.</li> <li>• Student will engage in socially appropriate behavior when interacting with others 25% of the time by the end of the second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> <li>• Student will identify 2 coping strategies to utilize when feeling frustrated/angry in class/tutor session.</li> </ul>		
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	<p>of 2 objectives.</p> <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete █ grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>5. Student will increase all areas of responsibility toward school by 50%.</p> <ul style="list-style-type: none"> <li>• Student will identify 2 methods to effectively communicate his thoughts and feelings to adults.</li> <li>• Student will engage in socially appropriate behavior when interacting with others 25% of the time by the end of the second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> <li>• Student will identify 2 coping strategies to utilize when feeling frustrated/angry in class/tutor session.</li> </ul> <p>IEP AMENDMENT:</p> <p>Delete current goals 1 through 5.</p> <p>Add Goal:</p> <ol style="list-style-type: none"> <li>1. Student will comply with reasonable requests by the teacher/tutor 70% or more of the time.</li> <li>2. Student will complete 4 of 5 assignments within the specified timeframe.</li> </ol>	BOCES	█
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	<p>district expository and narrative writing assessment.</p> <ul style="list-style-type: none"> <li>• Student will write an expository essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> <li>• Student will write a narrative essay, when provided with a writing prompt, from idea development through the final draft and score basic.</li> </ul> <p>4. Student will increase his math skills by meeting 2 of 2 objectives.</p> <ul style="list-style-type: none"> <li>• Student will master addition fluency at 100%.</li> <li>• Student will complete █ grade math problems at 80% accuracy in 2 out of 3 opportunities.</li> </ul> <p>5. Student will increase all areas of responsibility toward school by 50%.</p> <ul style="list-style-type: none"> <li>• Student will identify 2 methods to effectively communicate his thoughts and feelings to adults.</li> <li>• Student will engage in socially appropriate behavior when interacting with others 25% of the time by the end of the second quarter, 50% by the end of the third quarter and 75% of the time by the end of the IEP year.</li> <li>• Student will identify 2 coping strategies to utilize when feeling frustrated/angry in class/tutor session.</li> </ul>		
█	<p>1. Responsible class behavior.</p> <ul style="list-style-type: none"> <li>• Remain on task.</li> <li>• Respond appropriately to rules and authority.</li> <li>• Work constructively on independent activities.</li> <li>• No physical aggression.</li> </ul>	Resource Room at █ High School.	█
█	<p>1. Achieving socially responsible behavior.</p> <ul style="list-style-type: none"> <li>• Demonstrate appropriate behavior in public places.</li> <li>• Recognize authority and follow instructions.</li> </ul>	Home-bound	█

- Each IEP drafted by the District indicated that the Student's behavior interfered with his learning. A Behavioral Intervention Plan was incorporated into the Student's IEPs, and Functional Behavioral Assessments were conducted.
- During the █ IEP team meeting, the Parent, through her representative, requested an Independent Educational Evaluation (IEE).
- In response to the Parent's request and as part of the IEP planning process, the District offered a residential evaluation at BOCES as the IEE.

16. The Student's aggressive and noncompliant behavior continued to escalate in [REDACTED] and [REDACTED], necessitating police intervention on three occasions.
17. The Student's behavior included threatening harm to other students. Charges are pending in Juvenile Court.
18. The Student was suspended for 9.5 days as a result of these incidents in the [REDACTED] school year.
19. The last day the Student attended school was [REDACTED].
20. The District made multiple attempts to secure the Parent's participation in the [REDACTED] IEP meeting. The District contacted and/or left messages for the Parent on at least 14 occasions regarding the IEP meeting. The meeting was rescheduled three times, and the District offered the Parent an opportunity to participate telephonically.
21. The District was unable to convince the Parent to attend the IEP meeting, and proceeded to convene the IEP team on [REDACTED].
22. The Prior Written Notice issued on [REDACTED] after the meeting documenting that the District proposed residential treatment as the Student's placement. However, no IEP was drafted after the [REDACTED] IEP meeting.
23. This Complaint was filed on February 12, 2010.

**Conclusions:**

1. The Student's behavior significantly impeded his learning over many years. Academic progress was limited or absent due to the chronic and severe nature of the Student's behavioral difficulties.
2. Poor attendance contributed to the Student's limited academic progress.
3. Despite these behavioral challenges, the Student has a right to receive a Free Appropriate Public Education (FAPE) in conformity with his Individualized Education Program (IEP). 34 C.F.R. §§300.17 and 300.101.
4. IEPs must be drafted in compliance with the IDEA's provisions outlined in the Federal Regulations at 34 C.F.R. §§300.320 through 300.328.

**Issue #1**

5. IEP teams must be convened at least annually for the purpose of reviewing an annual IEP. The IEP team must also be convened to address any lack of expected progress. 34 C.F.R. §300.324(b). The Student's IEP team met 6 times during the time period relevant to this Complaint in order to address the Student's lack of progress.

6. The Parent is a required member of the Student's IEP team. 34 C.F.R. §300.321(a)(1). Additionally, the District must ensure that the Parent is a member of any group that makes decisions on the educational placement of the Student. 34 C.F.R. §§300.327 and 300.501(c). The Parent participated in each IEP team meeting, either telephonically or in person, except the IEP team meeting convened on February 9, 2010.
7. A meeting may be conducted without the Parent in attendance if the District was unable to convince the Parent to attend. It is the District's obligation to keep detailed records of its attempt to arrange a mutually agreed upon time and place for the IEP meeting. 34 C.F.R. §300.322(d). In this case, the District made 14 attempts, either telephonically or in writing, to secure the Parent's participation in an IEP team meeting at a mutually agreed upon time.
8. In this case, it was imperative that the IEP team be convened, as the Student had attended school only 14 days since the last IEP meeting on [REDACTED], and he had been absent since [REDACTED]. The Student's IEP was not meeting his educational needs or resulting in progress, and it was imperative that the IEP team address the Student's lack of progress.
9. The District would have been in violation of the IDEA had it failed to convene the IEP team to address the Student's lack of progress.
10. The Parent's lack of cooperation with IEP process in [REDACTED] cannot be used to avoid making difficult decision about the Student's need for a residential placement. The District's only other choice was to delay the revision of an IEP that was not meeting the needs of the Student, which is a violation of the IDEA. In a similar circumstance, the United States District Court, Northern District of California, recognized this dilemma when parents refused to participate in an IEP meeting. The court noted the district had only two choices: finalize the IEP without parents, or violate its duty to have an IEP in effect for the child. In light of these choices, the district was justified in holding the IEP meeting without the parents present. *E.P. v. San Ramon Valley Unified Sch. Dist.*, 48 IDELR 66 (N.D. Cal. 2007).
11. In another case where the parent refused to cooperate with the school district in completing a student's IEP, the First Circuit Court of Appeals held that an implementation delay stemmed from the parents' lack of cooperation. In that case, the parents, alone, bore the responsibility for the implementation delay. *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 49 IDELR 180 (1<sup>st</sup> Cir. 2008). See also, *J.G. v. Briarcliff Manor Union Free Sch. Dist.*, 54 IDELR 20 (S.D. N.Y. 2010), where the district

made multiple attempts to include parents in an IEP team and ultimately conducted the meeting without the parents present, the actions of the school district were held to be reasonable; and *Winkelman v. Parma City Sch. Dist.*, 53 IDELR 215 (N.D. Ohio 2009), where the District made three attempts to schedule an IEP meeting, including moving the meeting to a different date at parent request, and ultimately going forward with the meeting without parents in attendance. "The Court finds it important to emphasize the great pains Defendant Parma City School District Board of Education went through to comply with the complex laws that govern these issues, expending a great deal of time and effort while experiencing continued difficulties with the cooperation of Plaintiffs." The court found no denial of FAPE.

12. It is possible that a district's failure to schedule an IEP meeting at a mutually agreed upon time and place can amount to a denial of FAPE. When a district displays a "lackluster" effort to contact the parents to arrange an IEP meeting, parents are effectively denied participation in the IEP process. In the *Ridgefield* case, the school failed to respond to a parent's request to reschedule a meeting. "The duty to take steps to find a mutually agreed on time assumes good faith attempts to agree by both sides." *Mr. and Mrs. M. v. Ridgefield Board of Education*, 47 IDELR 258 (D. Conn. 2007).
13. In another case where the district's "lackluster" efforts lead to a denial of FAPE, the Court ruled that scheduling an IEP meeting without asking the parents about their availability and then ignoring the parents' request to reschedule, offering instead to use the speakerphone, was insufficient to meet the district's obligation to ensure parental participation. *Drobnicki v. Poway Unified Sch. Dist.*, 109 LRP 73255 (9<sup>th</sup> Cir. 2009).
14. The instant facts surrounding the Student can be readily distinguished from the *Ridgefield* and the *Drobnicki* cases. In light of the exigent circumstances regarding the Student's attendance and the multiple attempts (14) to convince the Parent to attend the IEP meeting, the District made good faith efforts to schedule the IEP meeting at a mutually agreed upon time and place.
15. The District was justified in conducting the [REDACTED] IEP meeting without the Parent in attendance based on the Parent's refusal to attend any meeting time suggested by the District or participate telephonically as she had done in the past, and the exigent circumstances surrounding the Student.

## Issue #2

16. The IEP team must consider the use of positive behavioral interventions and supports, and other strategies when a student's behavior impedes the child's learning or that of others. 34 C.F.R. §300.324(a)(2) and (b)(2).
17. Further, a student has the right to receive FAPE in the Least Restrictive Environment (LRE). A school district must ensure that a continuum of alternative placements is available to meet the needs of a student. Special classes or separate schools should occur only if the nature and severity of a disability is such that a student cannot be successful in regular classes with the provision of supplementary aids and services. 34 C.F.R. §§300.114 through 300.118.
18. For a student whose behavior impedes learning, these two provisions are very much intertwined. It is frequently the case that behavioral difficulties result in more restrictive placements.
19. Each IEP documented that the Student's behavior interfered with his learning and/or the learning of others.
20. The District conducted Functional Behavior Assessments and developed a Behavior Intervention Plan in [REDACTED].
21. Additionally, during the period of time relevant to this complaint, several IEPs contained specific behavioral goals with short-term objectives or benchmarks to address the Student's behavioral needs. Specifically, the [REDACTED], and [REDACTED] IEPs contained specific behavioral goals.
22. When the Student attended the [REDACTED] School within the District commencing in [REDACTED] the Student's IEP contained a Behavior Intervention Plan in addition to the point system used generally for all students in the [REDACTED] School.
23. The District attempted to appropriately address the Student's behavioral needs in each IEP implemented, given that nearly each IEP represented a compromise position between the District and the Parent, with the District recommending residential treatment to meet the Student's behavioral needs and the Parent refusing.
24. It is well documented in the Student's records and in the digital recordings of the IEP meetings that District professionals did not believe that a traditional school placement within the District was appropriate for the Student. The District routinely reiterated that a residential placement was LRE for the Student.
25. It is also well documented in the Student's records and the digital recordings of the IEP meetings that the Parent consistently opposed a placement in a residential setting.

26. The IDEA does not require that every child with a disability be placed in the regular classroom regardless of individual abilities or needs. These decisions must be made on an individual basis. *71 Federal Register 46587*. A student is not required to “try out” each level of LRE and “fail” before the student moves to a more specialized or restrictive setting. *Memorandum #95-9, 21 IDELR 1152 (OSEP 1994)*.
27. Because the Parent staunchly opposed a residential evaluation or placement, the District capitulated to the Parent’s refusal, effectively providing what the District knew to be an inappropriate placement for the Student.
28. The District, in an apparent effort to appease the Parent, continued to provide services that were inappropriate and insufficient to address the Student’s high level of needs, thereby denying the Student a FAPE in the LRE.
29. Also, it appears as though the District “gave up” on academic instruction for the Student despite the fact that academically he was several years behind his peers. The [REDACTED] and [REDACTED] IEPs do not contain academic goals. It is unlikely that an IEP for the Student without academic goals would provide the Student FAPE.
30. Although the [REDACTED] and [REDACTED] IEPs were not adequate to address the Student’s academic or behavioral needs, that fact alone does not result in a remedy. As in a recent 10<sup>th</sup> Circuit Court of Appeals case, “ ... liability under IDEA is determined not by imagining the possibilities of what might have been, but rather by determining whether the preponderance of the evidence indicates that the school district’s procedural failures resulted in a denial of educational benefit to the student. As the district court points out, such an inquiry implicitly seems to require determining whether the school district’s actions caused the student to suffer an educational loss. And on the facts of this case, there is strong evidence indicating that, regardless of what actions the school district did or did not take in Fall 2003, [the student’s] poor attitude and bad habits would have prevented her from receiving any educational benefit.” *Garcia v. Bd. Of Educ. Of Albuquerque Public Schools*, 49 IDELR 241 (10<sup>th</sup> Cir. 2008). As applied to the Student, the Parent’s refusals to make the Student available for residential treatment, in addition to the Student’s poor attendance and history refusals to participate in programming serves to minimize the District’s liability for failing to pursue an appropriate placement for the Student or including academic goals in the [REDACTED] and [REDACTED] IEPs.
31. In addition, the District failed to finalize an IEP after the [REDACTED] IEP meeting. The Prior Written Notice indicates that the District’s placement proposal was a residential setting, but no IEP was drafted to crystallize the District’s plan. In failing to

finalize the IEP after the [REDACTED] IEP meeting, the District violated the procedural due process rights of the Student and Parent.

32. The controlling case in the 10<sup>th</sup> Circuit Court of Appeals is the *Sytsema* case. The 10<sup>th</sup> Circuit concluded that the parents' withdrawal from the IEP process made the district's procedural violations harmless. The parents withdrew from the IEP process when they learned that the district intended to deliver services in a placement environment with which they disagreed. *Sytsema v. Academy Sch. Dist. No. 20*, 50 IDELR 213 (10<sup>th</sup> Cir. 2008).
33. In light of the Parent's withdrawal from the IEP process, and the fact that the Parent would not accept any residential placement, the procedural violation committed by the District in failing to finalize the Student's [REDACTED] IEP did not deprive the Student FAPE.

#### **Issue #3**

34. The Parent, through her representative, requested an IEE at the [REDACTED] IEP meeting.
35. WDE is without authority to address this Issue because it occurred more than one year prior to receipt of this Complaint pursuant to 34 C.F.R. §300.153(c).

#### **Issue #4**

36. The District must provide Prior Written Notice to the Parent a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the Student. 34 C.F.R. §300.503.
37. A review of the Student's records during the relevant time period confirmed that each time the District proposed or refused to initiate or change the Student's special education service, the appropriate Prior Written Notice was given.

#### **Decision:**

#### **Issue #1**

Whether the Parent was denied participation in an Individual Education Program (IEP) team meeting in which educational placement decisions regarding the Student were made in violation of 34 C.F.R. §§300.321, 300.322, and 300.327.

**WDE determines that the District was justified in proceeding with the IEP team without the Parent under the facts of this investigation. No violation.**

**Issue #2**

Whether the Student was denied a Free Appropriate Public Education (FAPE) by:

- a. Failing to appropriately address the Student's behavioral needs in his IEP as required by 34 C.F.R. §300.324.

**WDE determines that the IEPs implemented by the District adequately addressed the Student's behavioral concerns to the extent that the IEPs contained adequate behavioral objectives, and the District reconvened the team to address the Student's lack of behavioral success. No violation.**

- b. Failing to provide the Student FAPE in the Least Restrictive Environment (LRE) requirements in violation of 34 C.F.R. §§300.114 through 300.118.

**WDE determines that the District failed to provide the Student FAPE in the LRE. The District is in violation of the requirement to provide the Student FAPE in the LRE. However, in light of the Parent's refusal to agree to the residential setting identified as the Student's LRE, and the Student's poor attendance, WDE further determines that the resulting harm was not caused by the actions of the District.**

- c. Failing to make placement decisions by an IEP team consistent with 34 C.F.R. §§300.322, 300.324, and 300.327.

**WDE has previously determined under Issue #1 that the District complied with the IDEA in making placement decisions by a properly convened IEP team. No violation.**

**Issue #3**

Whether the District denied the Parent's request for an Independent Educational Evaluation (IEE) in violation of 34 C.F.R. § 300.502(b) through (e).

**WDE is without authority to address this issue because it exceeds the permissible one-year time period for complaint investigations. No decision is reached.**

#### **Issue #4**

Whether the District failed to issue Prior Written Notice (PWN) before proposing or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student in accordance with 34 C.F.R. §300.503.

**WDE determines that the District provided Prior Written Notice consistent with IDEA's requirements. No violation.**

#### **CORRECTIVE ACTION PLAN:**

In light of the deficiencies and confusion surrounding LRE, technical assistance is warranted in this case. The District shall provide at least 2 hours of inservice training to key special education staff, including all case managers, on the requirements of LRE, the continuum of placements, and the obligations of the team to make decisions and propose services based on the unique needs of the child. The inservice training must be completed by May 30, 2010. The District shall provide WDE with the following documentation:

- a. The date, time, location, agenda and presenters for the training by May 1, 2010; and
- b. Copies of any materials or handouts used, in addition to sign-in sheets documenting the attendance of special education staff within 10 days of completion of the mandatory inservice training.
- c. All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainants.

Pursuant to WDE's general supervisory authority, and its responsibility to address the appropriate future provision of services for all children with disabilities, this Complaint Decision, in redacted form, will be posted on the WDE website for public viewing. See 34 C.F.R. §300.151(b).

Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Unit at 307-857-9285 or 800-228-6294.

Sincerely,

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

Encl: WDE LRE Reference Guide

cc: [REDACTED], Superintendent  
[REDACTED], Board Chair  
Dr. James McBride, Superintendent of Public Instruction  
Tania Hytrek, WDE Legal Counsel