

WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS UNIT  
SPECIAL EDUCATION COMPLAINT INVESTIGATION

**Complainants:**

[REDACTED]

Case #: 2010-4

**District:**

[REDACTED]

**COMPLAINT DECISION  
AND  
ORDER FOR  
CORRECTIVE ACTION**

**Date of Decision:**

[REDACTED]

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On February 22, 2010 the Wyoming Department of Education (WDE) received a letter of complaint and supporting documentation filed by [REDACTED], Complainants, (hereinafter "Complainants") alleging violations of special education law with respect to [REDACTED] (hereinafter "Student"), by [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 District failed to provide special education and related services to the Student in accordance with his Individualized Educational Program (IEP) pursuant to 34 C.F.R. §§300.34, 300.39, 300.320, and 300.324.

**Issue #2**

Whether unilateral changes were made in the special education services provided to the Student resulting in removal of the Student from the general classroom in violation of the IEP pursuant to 34 C.F.R. §300.324.

### **Issue #3**

Whether the Student was denied an opportunity to participate in physical education (P.E.) pursuant to 34 C.F.R. §300.108.

### **Issue #4**

Whether the District failed to issue Prior Written Notice 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.
- The 2009-2010 Student Handbook.

Follow up questions were asked of the District and Complainants.

The District and Complainants 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. §300.17	Free appropriate public education
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. §300.108	Physical Education
34 C.F.R. §300.503	Prior notice by the public agency
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, the investigation will be limited to the period of time between the Student's enrollment in the District on [REDACTED], and [REDACTED].

**Findings of Fact:**

1. At all times relevant to this Complaint, the Student was enrolled in the District, having been enrolled on [REDACTED].
2. The Student is identified as having a Cognitive Disability.
3. While attending his prior school, the Student received the majority of his instruction in a special education resource room and attended general education only for art, music, or other socialization opportunities.
4. The Student's IEP team met on [REDACTED]. An IEP was drafted for the 2009-2010 school year, which commenced on [REDACTED]. Relevant content of the IEP includes:
  - a. The Student's behavior does not impede his learning.
  - b. The Student would participate in the PAWS statewide assessment with accommodations.
  - c. A summary of the goals include:
    - i. Increase reading skills to second grade level.
    - ii. Increase language arts skills to a second grade level.
    - iii. Increase basic math skills to second grade level.
    - iv. Increase his interpersonal skills necessary to be successful in the workplace.
    - v. Increase communication skills in the areas of receptive and expressive language.
    - vi. Demonstrate improvement in the areas of receptive and expressive language.
    - vii. Maintain his gross motor skills and implement sensory diet strategies necessary for him to participate appropriately in class.
    - viii. Demonstrate ability to complete classroom tasks that require visual motor and visual perceptual skills.
    - ix. Increase self-advocacy.
  - d. Each special education goal contained short-term objectives.
  - e. A summary of the special education and related services includes:
    - i. Special education for all academics and life skills.
    - ii. Regular physical education.
    - iii. Speech-Language Pathology.
    - iv. Occupational Therapy.
    - v. Physical Therapy.

- vi. Transportation.
  - f. It was determined that the Least Restrictive Environment (LRE) for the Student was the special education classroom.
5. Prior Written Notice was issued on [REDACTED] proposing to:
    - a. Increase academic instruction time.
    - b. Decrease pullout time for occupational and physical therapy.
    - c. Decrease pullout time for speech/language therapy.
    - d. Add school social work services to address peer relations/self-advocacy.
  6. [REDACTED] the District issued a report of progress on the Student's IEP goals. The report documents the Student's progress as follows:
    - a. Academic gains are noted in special education.
    - b. Progress is emerging in counseling.
    - c. No concerns were noted in occupational therapy.
    - d. Good progress is noted in speech/language therapy.
  7. On [REDACTED] the District issued a report of progress on the Student's IEP goals. The report documents the Student's progress as follows:
    - a. Progress is noted in the special education goals and objectives.
    - b. The Student is not making progress in counseling. He "is not able to stop himself speaking out of turn and making comments about other students."
    - c. No concerns are noted in the area of occupational therapy.
    - d. Progress is noted in speech/language therapy.
  8. The IEP team reconvened on [REDACTED] to review and revise the Student's IEP. Relevant documentation on the Student's revised IEP includes:
    - a. "Parents have concerns about [Student] being bullied at school. He is not wanting to come to school. He has a hard time making new friends. [Student] needs opportunities to be with age appropriate peers."
    - b. The team indicates that the Student's behavior did not impede his learning.
    - c. The Present Levels of Academic Achievement and Functional Performance indicate that "[Student] is able to be redirected, but he is not able to stop himself speaking out of turn and making comments about other students at this time."
  9. The [REDACTED] IEP contained very similar goals as the August 20, 2009 IEP, slightly amending the goal addressing interpersonal skills.
  10. The [REDACTED] Prior Written Notice indicates the following changes were proposed:
    - a. Add School Social Work Services.

- b. Discontinue special transportation.
  - c. Add OT/PT consult services.
  - d. Decrease general education by one class period to address concern that the Student is overwhelmed.
11. The Student's schedule indicates that he ceased attending P.E. on [REDACTED] and started attending Art on the same date. A [REDACTED] email from the Case Manager indicates that the Complainants were not informed of the change.
12. The 2009-2010 Student Handbook indicates that all students are given the choice of whether to participate in P.E. as an elective course.
13. The [REDACTED] email from the Case Manager indicates that the Student would have the assistance of a 1:1 paraprofessional at transition times during his day. However, this service is not documented in the Student's IEP.
14. The District provided School Social Worker service logs confirming that the Student received social work services from the beginning of the school year to present.
15. Discipline records document the following behavior infractions:
- a. [REDACTED] – Punching another student resulting in lunch detention.
  - b. [REDACTED] – Pushing another student resulting in lunch detention.
  - c. [REDACTED] – Dishonesty resulting in lunch detention.
  - d. [REDACTED] – Fighting resulting in an "Interim School Setting."
  - e. [REDACTED] – Hitting another student. The consequence was not clear.
16. This Complaint was filed with WDE on [REDACTED]

**Conclusions:**

- 1. The Student transferred to the District commencing with the 2009-2010 school year.
- 2. The Student's records document that he is a learner with significant educational needs, including academics, gross and fine motor, speech/language, social and behavioral.
- 3. Pursuant to the IDEA, the Student has a right to receive free appropriate public education (FAPE) in conformity with his IEP.
- 4. The right to FAPE includes the right to receive special education and related services designed to meet the Student's needs that result from his disability, to enable him to be involved in and make progress in the general education curriculum, and meet each of the Student's other education needs that result from his disability. 34 C.F.R. §300.320(a)(2).

## Issue #1

5. The [REDACTED] IEP contains a goal to increase the Student's interpersonal skills, and the Prior Written Notice issued for the IEP indicates that School Social Work services were added to address peer relations and self advocacy.
6. However, School Social Work Services were not listed as a Related Service on the Student's IEP.
7. Despite having no Social Work Related Service on the Student's IEP, the [REDACTED] report of progress on the Student's IEP goals contains documentation that "Progress is emerging" on the Student's social work goal.
8. It is the duty of a school district to keep accurate records of services provided to special education students in conformity with IEPs. School Social Worker provider logs produced by the District indicate the Student regularly received social work services since the beginning of the school year, even when that service was not listed on the Student's IEP.
9. Further adding to the confusion is the [REDACTED] Prior Written Notice indicating the District proposes to "[REDACTED]." It appears as though School Social Work Services were added as a Related Service to this IEP beginning in January, but the Social Worker provider logs indicate the Student received the service from the beginning of the school year.
10. It is the responsibility of the District to provide sufficient specificity in the IEP to provide notice to the Complainants of the services the Student is receiving. 34 C.F.R. §300.320(a)(4). The amount of services to be provided must be sufficiently stated in the IEP, so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. *Notice of Interpretation*, Appendix C to 34 C.F.R. Part 300, Question 51 (1999 regulations).
11. With respect to the School Social Work Services, the IEP of [REDACTED] lacks sufficient specificity to be clear to the Complainants. The amount of service was not sufficiently stated.
12. As a result, WDE is unable to conclude that the District provided School Social Work Services to the Student in accordance with his IEP.
13. With respect to the 1:1 services of a paraprofessional, those services do not appear on the Student's IEP. If the Student needed the service in order to benefit from his education, the services should have been included in the Student's IEP. If the service

was provided but not documented on the Student's IEP, then the IEP does not contain a sufficient statement of the Student's special education and related services.

14. WDE is unable to conclude that the District provided special education and related services to the Student in accordance with his IEP.

### **Issue #2**

15. The District must ensure that the Student's IEP team develops the Student's IEP. The Complainants, as parents, are mandatory members of that team. 34 C.F.R. §§300.321 and 300.322.
16. The [REDACTED] Prior Written Notice indicates that the Student's participation in general education would decrease by one class period based on the Student's need for additional structure. Documentation supports that this change was a team decision, including the Complainants.
17. It does not appear that unilateral changes were made to the Student's IEP.

### **Issue #3**

18. The status of the Student's P.E. class is not clear from the Student's records. Schedules indicate he ceased attending P.E. on [REDACTED]. However, the Student's IEP contained a goal to maintain his gross motor skills. It is not clear how that goal would be implemented if the Student ceased attending P.E. class.
19. Further, the Student has a right, as a component of FAPE, to participate in P.E. class if it is provided to other students in his grade. This right encompasses the responsibility of the District to provide appropriate supports, including Adaptive Physical Education if warranted.
20. Since the Student was enrolled in P.E., and his IEP addressed gross motor skills, the decision to remove the Student from that class should have been a team decision.
21. The IEP team should have considered the Student's right to participate in P.E., as well as the Student's unique needs as part of the IEP process. At a minimum, the IEP team should have determined how the Student's gross motor needs would be met without P.E. class, or if any supplementary aids and services could have been provided to the Student in order to be successful in P.E. class.

#### Issue #4

22. 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.
23. A review of the Student's records during the relevant time period confirmed that the appropriate Prior Written Notice was given prior to implementing the Student's [REDACTED] IEP and prior to revising the IEP on [REDACTED]
24. However, Prior Written Notice should have been given prior to removing the Student from P.E. class because the Student's IEP contained gross motor goals and also because he, like all other [REDACTED] grade students at the school, had a right to participate in P.E. class. As a learner with a disability, the Student has a right to receive appropriate supports or services in P.E. The Complainants should have been given the opportunity to participate in the decision to remove the Student from P.E., or object to the District's decision.

#### Decision:

#### Issue #1

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

**WDE determines that the District failed to provide special education and related services to the Student in conformity with his IEP with respect to the School Social Work services and the provision of 1:1 assistance during the Student's school day. WDE finds the District to be in violation on this issue.**

#### Issue #2

Whether unilateral changes were made in the special education services provided to the Student resulting in removal of the Student from the general classroom in violation of the IEP pursuant to 34 C.F.R. §300.324.

**WDE determines that no unilateral changes were made to the Student's IEP resulting in removal of the Student from the general classroom. WDE finds no violation on this issue.**



### Issue #3

Whether the Student was denied an opportunity to participate in physical education pursuant to 34 C.F.R. §300.108.

**WDE determines that the Student was denied the opportunity, like all other [REDACTED] graders, to participate in a P.E. class. WDE finds the District to be in violation on this issue.**

### Issue #4

Whether the District failed to issue Prior Written Notice 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 for the [REDACTED] IEP and the [REDACTED] IEP, but failed to provide Prior Written Notice before removing the Student from P.E. WDE finds the District in violation on this issue.**

### **CORRECTIVE ACTION PLAN:**

1. Within ten (10) days of the date of this decision, the District must reconvene the IEP team for the purpose of determining an appropriate plan for the Student, including:
  - a. Whether the Student desires to participate in P.E. class and the appropriate supplementary aids and services necessary for him to participate should he so choose.
  - b. Whether the Student needs the assistance of a 1:1 paraprofessional aid in order to benefit from special education.
  - c. Whether the Student's behavior impedes his learning or that of others.
  - d. Whether the Student needs a functional behavior assessment and behavioral intervention plan in order to benefit from his special education.
2. Documentation of the team meeting, participants, and outcome shall be submitted to WDE within five (5) days of the meeting.
3. In light of the deficiencies and confusion surrounding IEP documentation, 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:

- a. The requirements of drafting IEPs with sufficient specificity to accurately provide parents notice of the special education and related services to be provided in the IEP.
- b. The requirements for including physical education on IEPs if necessary in order for a special education student to participate in P.E.
- c. The affirmative obligation to issue Prior Written Notice.
- d. The affirmative obligation to address whether a student's behavior interferes with learning and the use of positive behavioral interventions and supports within the IEP.
- e. The affirmative obligation of the District to address bullying types of behavior for special education students.

The inservice training must be completed by June 1, 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.

**Recommendations:**

WDE recommends that the District utilize its mandatory bullying policy to address the Complainants' concerns regarding the Student being picked on or being afraid to attend school. It is mandatory that the District comply with the Wyoming Safe Schools Climate Act through enforcement of its own policy.

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).


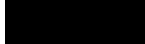
Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Unit at 307-857-9285 or 800-228-6194.

Sincerely,

A handwritten signature in cursive script that reads "Peg Brown-Clark".

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

cc:

, Superintendent  
, Board Chair  
Dr. James McBride, Superintendent of Public Instruction  
Tania Hytrek, WDE Legal Counsel