



Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Case #: C-0140-11

Respondent:

**COMPLAINT DECISION
AND ORDER FOR
CORRECTIVE ACTION**

Date of Decision: September 17, 2011

On July 19, 2011 the Wyoming Department of Education (WDE) received a letter of complaint and supporting documentation filed by _____, (hereinafter "Complainants") alleging violations of special education law with respect to _____ (hereinafter "Student"), by Respondent _____ County School District No. (hereinafter "District").

Pursuant to 34 C.F.R. §§300.151 through 300.153 of the Federal Regulations implementing the IDEA, WDE conducted an investigation into the allegations 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, Decision, and Order for Corrective Action.

Complaint Issues:

Issue #1

Whether the Student was denied a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101 as follows:

- a. Whether the Student's IEP was reasonably calculated to meet _____ unique educational needs pursuant to 34 C.F.R. §§300.320 through 300.324.

- b. Whether the District failed to provide special education and related services to the Student in accordance with the IEP by making unilateral changes to the Student's ESY services in violation of 34 C.F.R. §§300.22 and 300.320.
- c. Whether the Student's IEP was reviewed to address lack of progress consistent with 34 C.F.R. §300.324(b).

Issue #2

Whether the Complainants were denied the opportunity to request a reevaluation consistent with 34 C.F.R. §300.303(b).

Issue #3

Whether the District provided the Complainants with prior written notice in response to the Complainants' request for a reevaluation of the student in accordance with 34 C.F.R. §300.503.

Investigatory Process:

- Review of relevant records consisted of the following:
 - Original letter of complaint and supporting documents.
 - Documentation provided by the District.
 - Communication log provided by the Complainants
- Follow up inquiries with the District.
- The District and Complainants were given the opportunity to submit additional information to WDE for consideration during the investigation of this complaint.
- Follow up questionnaire to the Parents

Applicable Federal Regulations or State Rules:

34 C.F.R. §300.17 Free Appropriate Public Education
34 C.F.R. §300.22 Individualized Education Program
34 C.F.R. §300.101 Free Appropriate Public Education
34 C.F.R. §300.303 Reevaluations
34 C.F.R. §§300.320 through 300.324 Individualized Education Programs
34 C.F.R. §300.503 Prior Written Notice
Wyoming Department of Education Rules, Chapter 7

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate alleged violations of the IDEA and Wyoming laws that occurred not more than one year from the date the complaint was received. The Student's recent educational records were thoroughly reviewed. However, in light of the limitation period for complaints, any findings of noncompliance will be limited to the period commencing July 20, 2010 to July 19, 2011.

Findings of Fact:

1. At all times relevant to this complaint, the Student was a resident of and attending school within the District.
2. The Student has a history of having seizures, and receives medication and neurological follow up for a seizure disorder.
3. The Student was determined eligible in another state under Part C of the IDEA. relocated to Wyoming with family, where services for language delays continued in the early childhood program.
4. The Student was evaluated by at three (3) years of age to determine eligibility under Part B of the IDEA. was determined eligible under Part B upon entering preschool, and an IEP was developed.
5. The Student was reevaluated in 2005 by with the assistance of the . The Student was also diagnosed as meeting the criteria for Pervasive Developmental Disorder (NOS) on the Autism Spectrum, and from General Anxiety Disorder, Selective Mutism, and Disruptive Behavioral Disorder (NOS). At the conclusion of this reevaluation, the disability category in which the Student was determined eligible under the IDEA was amended to the Autism category.
6. At the time of the 2005 reevaluation, the Student's general cognitive abilities fell within the Borderline to Low Average ranges, with a Verbal IQ of 61, a Performance IQ of 84, and a Full Scale IQ of 71.
7. The Student was again reevaluated by the DDD in July 2007 to assist with transition planning from preschool to kindergarten for the 2007-2008 school year. The Student's

¹ The Department of Health, Division of Developmental Disabilities (DDD) is the state agency responsible for providing FAPE to eligible preschoolers age three (3) to five (5) with disabilities under the IDEA. The DDD contracts with to provide preschool services in

needs were described as "complex and challenging due to young age and multiple cognitive, physical, and psychological issues." The evaluator diagnosed Autistic Disorder based on many factors, including: lack of successful peer relationships; marked impairment in the ability to use nonverbal language to communicate or regulate social interaction; lack of social and/or emotional reciprocity; lack of spontaneous seeking to share enjoyment, interests, or achievements with others; delay in the development of spoken language; marked impairment in initiating and sustaining conversation; repetitive, stereotyped and idiosyncratic language; stereotyped and repetitive motor mannerisms, persistent preoccupation with parts of an object; inflexible adherence to specific, nonfunctional routines; and preoccupation with one or more restricted patterns of interest that is abnormal in either intensity or focus.

8. In March 2010, the District determined that there was no need to conduct a reevaluation of the Student at the point of the three-year reevaluation. The March 29, 2010 Notice of No Need to Conduct a Reevaluation states, in relevant part:

The school district or public agency has determined that a three-year reevaluation is not needed to determine that your child continues to be a child with a disability and to determine the educational needs of your child.

[Student] continues to qualify as a student with autism as demonstrated by continued below grade level proficiency in academic areas, written language, Language Arts, math as monitored by Reading Street Assessments, NWEA MAP, DIBELS, Star Reading and Star Math. [Student] continues to make slow progress academically which is commensurate with ability. [Student] sometimes has difficulty expressing self or letting others know about wants and needs. [Student] continues to need support in Speech Language and also with OT services.

9. The Complainants agreed with the District's decision that a reevaluation was not needed, signing their consent on March 30, 2010.
10. The District issued a Prior Written Notice on May 10, 2010 proposing the following: "Annual review/determine placement and classroom for next year continued para support as well as transition to new school (sic)"
11. This Prior Written Notice was issued prior to convening the IEP team for the Student's annual IEP review. It was issued the same date as the Notice of Team Meeting on May 10, 2010, convening the team for a May 27, 2010 meeting.
12. The following IEP goals, objectives, and reports of progress are present in the May 2010 IEP:

Measurable annual goal	Benchmarks or short-term objectives	Reports of progress
<p>[Student] will increase reading fluency by using sound blending, recognition of HFW, and contextual clues to decode enabling to read at level 1 Reading A to Z, or an equivalent of 2.3 grade level by the end of the school year.</p>	<ol style="list-style-type: none"> 1. [Student] will use beginning consonant blends, and digraphs with vowel patterns for long and short vowel sounds to decode unfamiliar words. 2. [Student] will use decoding by recognizing common root words in decoding longer words using common prefixes and suffixes. 3. [Student] will decode using root words and read endings s, ed, ing, er, est. 4. [Student] will write using complete sentences to form a paragraph as a response to a writing prompt. 	<p>10/29/10; MAP RIT 139. [Student] continues to use sound blending to decode new words. has stronger reading skills than MAP score indicates. 1/11/11: MAP RIT 168 assisted. Last year 154. [Student] needs to have more confidence in abilities. has more skills than is showing us. has success with materials at 1.2-1.6 GE. 4/20/11: DIBELS Level 1 and 2 Progress Monitoring materials. Level 1 accuracy – 54%. Level 2 accuracy – 51%. [Student] is accurately identifying 67% of 7 initial blends. read 80 out of 100 Fry Sight words 0-100 with a few small prompts from teacher. With the help of a scribe, [Student] is able to verbalize a paragraph in response to a writing prompt in 2 out of 2 trials.</p>
<p>[Student] will use number sense, and number relationships in problem solving situations with 80% accuracy on writing numbers to 500, adding and subtracting two digit numbers with no regrouping as well as identify numbers 1-100 in and out of sequence.</p>	<ol style="list-style-type: none"> 1. [Student] will add and subtract to solve meaningful problems as given through simple story problems. 2. [Student] will write correctly numbers in sequence to 500. 3. [Student] will add and subtract two-two digit numbers without regrouping. 4. [Student] will tell time to the half hour and count like coins to \$1.00. 	<p>10/27/10: MAP RIT fall math 162. [Student] continues to increase level of accuracy in math. 1/11/11: MAP RIT winter math 163. [Student] continues to make slow progress in math. Changing concepts is difficult for can write numbers to 100 using an organized pattern page. RIT last year was 155. 4/2/11: Teacher made assessments – using addition and subtraction on simple story problems: 60% accuracy. Writing numbers</p>

Measurable annual goal	Benchmarks or short-term objectives	Reports of progress
		<p>to 500 – reversing 1-9. Adding and subtracting two-digit without regrouping – 25% accuracy. Can identify all coins and their values except quarters – can skip count 5s and 10s to 100. Received 77% on most recent math test. [Student] is working hard in math and is receiving lots of support. 5/20/11: Teacher-made assessments – using addition and subtraction on simple story problems: 70% accuracy. Writing 0-300 80%. Writing 301 to 500 80% with support – reversing 5 and 6. Adding 2-digit numbers with and without regrouping to 70% accuracy. Identifying coins and values except quarters. Skip counting 5s and 10s to 50 with 70% accuracy.</p>
<p>[Student] will improve communication skills as measured by the following objectives and documented through observation and data charts.</p>	<ol style="list-style-type: none"> 1. [Student] will produce /r/ in syllables with 90% accuracy. 2. [Student] will produce /r/ in words with 90% accuracy. 3. [Student] will produce /r/ in sentences with 90% accuracy. 	<p>10/29/10: Objective 1 = 80% Objective 2 = 77% Objective 3 = 60% [Student] is making good progress with the /r/ sound and is working hard. 01/13/11: Objective 1 = 88% Objective 2 = 79% Objective 3 = 65% [Student] continues to make good progress with the /r/ sound and is needing fewer cues. 03/17/11: /r/ medial words – emerging with 2 sessions of 90% or greater. [Student] is making progress in therapy. is working on correcting /r/ in the medial position of words.</p>

Measurable annual goal	Benchmarks or short-term objectives	Reports of progress
		<p>has one more session of producing this skill with 90% or greater to meet this objective.</p> <p>05/19/11: /r/ final words – mastered with 90% or greater accuracy. Vocalic /r/ words – emerging.</p> <p>[Student] has made good progress in therapy this quarter. has mastered the production of medial /r/ words. is doing well at this skill. I have no concerns at this time.</p>

13. The following services were noted on the Student's May 2010 IEP:

Service	Frequency	Duration	Location	Start Date
Academic Instruction	daily	60 minutes	resource room	5-27-2010
Support staff in the regular ed room for spelling, math, writing classroom assignments	daily	120 minutes	regular education classroom	5-27-2010
ESY services	daily	1 hour 4 hours	special ed regular classroom	6-10-2010
Occupational Therapy	3 x week	60 minutes	OT room	5-27-2010
Speech-Language Pathology	1 x week	20 minutes	SLP room	5-27-2010
Seizure plan	daily	one year	all school	5-27-2010
Structured setting	daily	one year	all settings	5-27-2010
Hands on activities, opportunity for movement	daily	one year	all settings	5-27-2010

Service	Frequency	Duration	Location	Start Date
Graphs and charts for visual aids	daily	one year	all settings	5-27-2010
Small group instruction for new concepts – peer buddy	daily	one year	academic instruction	5-27-2010
Daily note book communication with parent	daily	one year	classroom	5-27-2010

14. The May 2010 IEP LRE justification indicated that the Complainants chose for the Student to attend an elementary school outside of their neighborhood school.
15. A communication notebook was utilized between home and school to facilitate the transfer of information regarding the Student. On October 26, 2010, the Complainants requested that the Student be reevaluated despite the earlier decision that a reevaluation was unnecessary.
16. The District's response to this complaint reported that the special education teacher had a conversation with the Complainants on October 29, 2010 regarding the request for a reevaluation. The special education teacher explained to the Complainants that if the student were reevaluated, would not continue to qualify as a student with Autism because was not demonstrating any of the signature behaviors of Autism. The Complainants were reported to be very upset by this information.
17. In the District's response, the Director of Special Education (Director) reported that telephoned the Complainants on October 29, 2011 after this conversation between the Complainants and the special education teacher. According to the Director, after a discussion regarding who could select the evaluator, the Complainants indicated they were not interested in the District conducting a reevaluation of the Student.
18. In a letter dated November 3, 2011, the Complainants indicated they continued to have questions and concerns regarding the Student's level of cognitive functioning. The Complainants reiterated that they were told if the Student were reevaluated, would lose the Autism diagnosis. The Complainants indicated that they would not permit the District to reevaluate the Student as a result of this belief.
19. An entry in the communication notebook by the District on November 3, 2010, indicated that the request for reevaluation was best discussed in a meeting to "clear up any misunderstandings."

20. The Complainants expressed concern several times in the communication notebook regarding the Student's frustration level, difficulty with spelling and reading, indicating that had only a first grade reading level in an entry on March 11, 2011.
21. Prior Written Notice was issued on April 22, 2011 proposing the following: "The school district is proposing to hold [Student's] annual IEP conference. During the meeting, an evaluation that will be done outside the district will also be discussed by the team at the request of the parents."
22. A Notice of Team Meeting was also completed on April 22, 2011, convening the team on May 20, 2011 for the purpose of developing an annual IEP.
23. The Student's IEP was amended on May 9, 2011 prior to the May 20, 2011 annual IEP team meeting. The following changes were documented:
 - Measurable Annual Goal Number 1
 - Currently states: [Student] will increase reading fluency using sound blending, recognition of HFW, and contextual clues to decode enabling to read a Level 1 Reading A to Z, or an equivalent of a 2.3 grade level by the end of the school year with 80% accuracy.
 - Change to: [Student] will increase reading fluency using sound blending, recognition of HFW, and contextual clues to decode enabling to read at level 1 DIBELS progress monitoring materials, or an equivalent of 2.0 grade level by the end of the school year with 65% accuracy.
 - Measurable Annual Goal Number 2
 - Currently states: [Student] will use number sense, and number relationships in problem solving situations with 80% accuracy on writing numbers to 500, adding and subtracting two digit numbers with no regrouping as well as identifying numbers 1-100 in and out of sequence.
 - Change to: [Student] will use number sense, and number relationships in problem solving situations with 70% accuracy on writing numbers to 500, adding and subtracting two digit numbers with no regrouping as well as identifying numbers 1-100 in and out of sequence.
24. Prior Written Notice of the proposed IEP Amendment was issued on May 9, 2011. The Notice indicated, "The School district is proposing to take this action because is not making enough progress to meet portions of current goals and objectives."
25. A May 20, 2011 periodic report of progress toward meeting the annual goal indicates that the Student achieved 69% accuracy on DIBELS level 1, and 68% accuracy on DIBELS level

2. The narrative states: “[Student] is accurately identifying 80% of 7 initial blends. has maintained 80 out of 100 Fry Sight words with a few small prompts from teacher. has also maintained ability to verbalize a paragraph in response to a writing prompt in 2 out of 2 trials.
26. The IEP Team convened on May 20, 2011 for the Student’s annual meeting. The annual IEP was drafted the same date.
27. The following goals and objectives are present in the May 20, 2011 IEP:

Measurable annual goal	Benchmarks or short-term objectives
<p>Baseline: 68 % accuracy on 2nd grade level, is able to find the main idea 0 out of 4 trials. [Student] will use the reading process to apply a variety of comprehension strategies before, during and after reading according to the following objectives:</p>	<ol style="list-style-type: none"> 1. Given a passage at the 2nd grade level, [Student] will read with 75% accuracy as measured by DIBELS next progress monitoring materials. 2. Given a passage at the 2nd grade level, [Student] will identify the main idea in the form of a short sentence and two details to support the main idea in 3 out of 4 trials as measured by DIBELS next progress monitoring materials. 3. [Student] will identify words that fit into a given family (i.e. sharing a common phonic element) with 80% accuracy as measured by teacher made assessments. 4. [Student] will distinguish between root words/base words with suffixes and prefixes to 80% accuracy as measured by teacher-made assessments.
<p>Baseline: In math, [Student] is adding 2 digit numbers with and without regrouping to 70% accuracy. is using addition and subtraction to solve meaningful problems to 70% accuracy on simple story problems when they are read aloud and discussed with teacher. [Student] is able to identify all coins and their values except quarters and can skip count 5s and 10s with 70% accuracy. is able to write numbers in sequence from 0 – 300 with 90% accuracy and from 301 – 500 with 70% accuracy with support from teacher. Goal: [Student] will use the math process to apply a variety of Number Operations and Concepts according to the following objectives:</p>	<ol style="list-style-type: none"> 1. [Student] will count numbers from 0 – 1000 with 80% accuracy as measured by teacher-made assessments. 2. [Student] will count by 2s, 5s, and 10s to 100, 3s to 30, and 4s to 40 with 80% accuracy as measured by teacher-made assessments. 3. [Student] will count backwards from a given number (greater than 10) with 80% accuracy as measured by teacher-made assessments. 4. [Student] will add and subtract three digit numbers with regrouping to 80% accuracy as measured by teacher-made assessment. 5. [Student] will identify the value of a collection of coins to \$1.00 by “counting

Measurable annual goal	Benchmarks or short-term objectives
	on" to 80% accuracy as measured by teacher-made assessments.
[Student] will correctly articulate speech sounds in conversational speech as measured by the following criterion based objectives:	<ol style="list-style-type: none"> 1. [Student] will correctly articulate vocalic /r/ at the word level with 90% accuracy across 3 sessions. 2. [Student] will correctly articulate /r/ blends at the word level with 90% accuracy across 3 sessions. 3. [Student] will correctly articulate /r/, vocalic /r/ and /r/ blends in all word positions while reading with 90% accuracy across 3 sessions. 4. [Student] will correctly articulate /r/, vocalic /r/, and /r/ blends in all word positions in a 10-minute conversation inside and outside the therapy room with fewer than 5 errors across 3 sessions.
<p>Baseline: [Student] is currently writing one sentence in print with 83% accuracy. is able to complete simple 1 letter or number reversal sheets with 95% accuracy. challenges include visual perceptual skills such as multiple digit number reversals as well as letter reversals. also demonstrates difficulty with handwriting in the area of letter size. Goal: [Student] will increase visual motor and visual perceptual skills through the completion and master of the following objectives:</p>	<ol style="list-style-type: none"> 1. [Student] will complete cursive handwriting workbook in the Handwriting Without Tears program by the end of the academic year with good legibility for 75% of the letters presented within the program. 2. [Student] will be able to complete more complex reversal worksheets that contain more than 1 letter or number in a sequence (i.e. bd, bdb, pqpq, 21, 12, etc.) with 80% accuracy in 3 of 4 trials.
<p>Baseline: With the help of a scribe, [Student] is able to verbalize a paragraph in response to a writing prompt in 2 out of 2 trials. Goal: [Student] will apply writing skills to plan, draft, revise and publish writing according to the following objectives:</p>	<ol style="list-style-type: none"> 1. [Student] will distinguish between topic sentence and supporting details when brainstorming for a given writing topic in 3 out of 4 trials as measured by analysis of brainstorms for writing assignments. 2. [Student] will recognize that topic sentences often begin paragraphs and often they are the main idea of the paragraph in 3 out of 4 trials as measured by teacher made assessments. 3. [Student] will write complete sentences and identify incomplete sentences in 3 out of 4 trials as measured by teacher made assessments.

Measurable annual goal	Benchmarks or short-term objectives
	4. [Student] will spell the 1 st 200 Fry words to 80% accuracy as measured by teacher made assessments.

28. The following services were noted in the Student's May 2011 IEP:

Service	Frequency	Duration	Location	Start Date
Reading	5 times per week	120 minutes per day 60 min pull-out 60 min inclusion	Regular Classroom or Resource Room	5-21-2011
Math	5 times per week	90 minutes per day 30 min pull-out 60 min inclusion	Regular Classroom or Resource Room	5-21-2011
Writing	4 times per week	60 minutes per day 30 min pull-out 30 min inclusion	Regular Classroom or Resource Room	5-21-2011
ESY services	4 days per week	30 minutes per day	special ed. regular classroom	June 15 – August 15, 2011
Occupational Therapy	3 x week	20 minutes per session	OT room	5-20-2011
Speech-Language Pathology	2 x week	20 minutes per session	Speech room	5-20-2011
Assistive Technology – Timeline, Calculator	All math instruction and assignments	Daily	All environments	5-21-2011
Assistive Technology – Visual Aide for Organizational tool	Assignments, Instr., when approp.	Daily	All environments	5-21-2011
Seizure Plan, Picture Word Schedule, In-Task Schedule, Communication Necklace	daily	1 IEP Year	All Environments	5-21-2011

Service	Frequency	Duration	Location	Start Date
Calculator and Number line	All math instruction and assignments	Daily	All Environments	5-21-2011
Provide extended time for responses, check for understand and shorten and simplify assignments	For all instr. and assignments in all subjects	Daily	All Environments	5-21-2011
Read all textbook passages, assignments and tests aloud to [Student]	For all assignments and instruction	Daily	All Environments	5-21-2011
Provide separate, small group setting for testing	For all tests	Daily	All Environments	5-21-2011
Daily notebook communication with parent	Daily	Daily	Regular Classroom and/or Resource Room	5-21-2011
Brushing Protocol	1 time	Daily	OT Room	5-21-2011
Reduced workload when tasks are at or above instructional level	Daily	Daily	All Environments	5-21-2011
Student is involved in the same unit in math and reading but provided some different tasks and expectations	Math/Read Cur.	Daily	All Environments	5-21-2011
All classroom assignments above ability level will be modified to allow completion/success	All assign.	Daily	All Environments	5-21-2011

29. The Student began attending a new elementary school within the District after the holiday break when the school opened. The May 2011 IEP indicates that the Student was attending the school would attend if nondisabled. The justification section of the LRE section on the IEP was left blank.

30. The Northwest Evaluation Association's (NWEA) Measure of Academic Progress (MAP) scores for the Student administered in second and third grades are summarized below:

	Mathematics			Reading			Language Usage			General Science			Concepts & Processes		
	Score	Student/ Typical Growth	%ile	Score	Student/ Typical Growth	%ile	Score	Student/ Typical Growth	%ile	Score	Student/ Typical Growth	%ile	Score	Student/ Typical Growth	%ile
Spring 2011	167	5 14	1	156	17 17	1	166	2 16	1	177	3 13	1	170	-5 10	1
Winter 2011	163		1	168		2	162		1						
Fall 2010	162		1	139		1	164		1	174		2	175		8
Spring 2010	155	8 19	1	154	12 21	1									
Fall 2009	147		1	142		1	171		25	176		16	169		6

31. According to NWEA Explanatory Notes, the Typical Growth measure represents the average growth of students in the most recent NWEA RIT Scale Norms study who were in the same grade and began the growth comparison period at a similar achievement level. The Student's growth can be compared to the typical student's growth in achievement level, or the same percentile level.
32. The Dynamic Indicators of Basic Early Learning Skills (DIBELS) were designed for use in identifying children experiencing difficulty in acquisition of basic early literacy skills in order to provide support early and prevent the occurrence of later reading difficulties. The Student's scores from kindergarten through third grade consistently demonstrate that skills are deficit and in need of intensive intervention across most areas.
33. A summary of the Student's report card for the 2010-2011 school year indicates the Student received the following grades:

		Quarter 1	Quarter 2	Quarter 3	Quarter 4
Language Arts	Reading	A	B	B	C
	Spelling	B	B	D	A
	Language	C	B	C	C
Math		B	C	B	B
Social Studies		A	B	A	A
Science		(none)	B	A	A
Health		S	S	S	S
Career/Vocational		S	S	S	S
Foreign Language		Proficient	Proficient	Proficient	Proficient
Fine Arts	Art	S	S	S	S

		Quarter 1	Quarter 2	Quarter 3	Quarter 4
	Music	Advanced	Advanced	Advanced	Proficient
Physical Education		Advanced	Proficient	Proficient	Advanced

34. The Student was evaluated at _____ in June 2011. The Complainants obtained the comprehensive evaluation, which included assessments of the Student's cognitive ability. The Differential Ability Scales-Second Edition (DAS-II) and the Abbreviated Battery of the Stanford-Binet Intelligence Scales, Fifth Edition (SB5) were administered to measure the Students cognitive functioning.
35. On the DAS-II, the Student received a Verbal Ability Cluster Score of 46, below 0.1 percentile; a Nonverbal Reasoning Cluster Score of 65, in the 1.0 percentile; and a Spatial Cluster Score of 59, in the 0.3 percentile.
36. On the SB5, the Student received an Abbreviated Battery IQ (ABIQ) Score of 50, below the 0.1 percentile.
37. Based on the scores obtained on the DAS-II and the SB5, the Student was diagnosed as meeting the criteria for moderate to mild intellectual disability.
38. The District acknowledged in its response that Student missed ESY services during June 2011 due to a miscommunication. The District conceded that ESY services were to begin June 15, 2011, but did not actually commence until July. The District has offered 3.5 hours of compensatory ESY service to the Student.
39. In its response to the complaint, the District proposed to conduct a full reevaluation of the Student.
40. As part of this investigation, the Complainants answered a series of questions regarding the Student and _____ educational program. The Complainants articulated their concern that the Student's IEP does not reflect _____ needs or skills. The goals are written for grade level despite the fact that the Student's skills are measured to be significantly lower than _____ grade level.

Conclusions:

1. The Student is identified as a learner with Autism and eligible to receive special education and related services under the IDEA.
2. Once eligible, the Student is entitled to receive FAPE through implementation of an IEP developed in compliance with the IDEA's procedural safeguards that is reasonably

calculated to enable the Student to receive meaningful educational benefit. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656 (1982).

Issue #1

3. An IEP must contain measurable annual goals, including academic and functional goals, designed to –
 - a. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - b. Meet each of the child's other educational needs that result from the child's disability.

34 C.F.R. §300.320(a)(2).
4. The Federal Regulations are clear that special education services must be designed and provided based on the Student's needs, not disability category. "Special education and related services are based on the identified needs of the child and not on the disability category in which the child is classified." *71 Federal Register 46549.*
5. A key IDEA provision is the requirement that a child be comprehensively evaluated to determine if the child is a child with a disability and to determine the educational needs of the child. *34 C.F.R. §300.301(a).* Equally important are the reevaluation requirements in the IDEA. A child must be reevaluated if the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, if the child's parent or teacher requests a reevaluation, and at least every three years unless the parent and the school agree otherwise.*34 C.F.R. §300.303.*
6. The District in this case never conducted a reevaluation of the Student at any time during enrollment in the District. Several expert evaluations were conducted prior to the Student's transfer from the preschool program into the District. All of these evaluations described the Student as presenting a complex constellation of symptoms and educational needs, not fitting a typical diagnostic profile for any disability category. The Student's reciprocal communication and lack of appropriate socialization were consistently, and over time, described as significant areas of need for the Student. However, the Student's IEP has never addressed these needs.
7. It is the obligation of the District to review the Student's IEP periodically to determine whether annual goals are being achieved, and to revise the IEP to address any lack of expected progress. *34 C.F.R. §300.324(b).*

8. Progress toward IEP goals and objectives is one indicator of meaningful educational benefit. If a student fails to make progress within a reasonable period of time, the school district must address the student's lack of progress. "A school district's continuation of inadequate services will almost certainly be regarded as a denial of FAPE." *District of Columbia Pub. Schs.*, 49 IDELR 267 (D.D.C. 2008).
9. In this case, the Student's progress toward reading and math goals in May 2010 IEP was minimal. Rather than recalibrating or restrategizing the service or instruction provided, the District continued the service and amended the IEP by simply lowering the skill expectation. Expecting a lower skill level rather than modifying the instruction or service delivery does not meet the District's obligation to provide an IEP reasonably calculated to meet the Student's unique educational needs.
10. The Student's MAP test scores confirm that has made only minimal, or even no gains across all academic areas. scores represent skills in the first percentile, indicating that 99% of students would likely score higher than the Student. Even as compared to other students with similar achievement, the Student's growth remains significantly below expectations.
11. The Student's report card presents a different picture with respect to progress. However, it is critical to note that the curriculum and expectations for the Student were modified, meaning that grades were assigned based on individualized skill level. For example, the Student obtained good grades in spelling, but was working on a different, or modified spelling list as compared to third grade peers.
12. Although grades in regular education classes may be one indicator of meaningful educational benefit according to *Rowley*, grades obtained in special education classes or through modified expectations based on a student's IEP do not carry the same weight. When this "disconnect" occurs, a critical review of all indicators of progress must be undertaken. *D.S. v. Bayonne Bd. of Educ.*, 54 IDELR 141 (3rd Cir. 2010).
13. As applied to the Student, the lack of any meaningful progress on IEP goals in the academic areas in conjunction with MAP scores demonstrating very little educational progress, it is clear that the Student's IEP was not reasonably calculated to result in meaningful educational benefit. The May 2010 IEP did not provide the Student FAPE.
14. Once an IEP has been developed according to the IDEA's procedural requirements, it is the obligation of the District to provide services in conformity with the IEP. 34 C.F.R. §300.17(d).

15. The District concedes that ESY services were not provided in conformity with the May 2011 IEP. ESY services were scheduled to commence June 15, 2011, but did not start until July. The District attributes this lack of conformity to a miscommunication. Regardless of the reason, services were not delivered in conformity with the IEP, and the Complainants did not agree to this amendment. Therefore, the Student's IEP was unilaterally, even if inadvertently changed, by altering the amount or frequency of ESY services available to the child during the summer of 2011.

Issues #2 and 3

16. Under the IDEA, parents have the right to request an initial evaluation of their child. 34 C.F.R. §300.301(b). After a student has been identified as eligible for special education, the parent has the right to request a reevaluation. 34 C.F.R. §303(a).
17. If a school district disagrees with the parents' request for an evaluation or reevaluation, the school district must issue Prior Written Notice explaining the reasons for its refusal to conduct the evaluation. 71 Federal Register 46636 and 46640.
18. There is no requirement in the IDEA that a school district must complete an evaluation or reevaluation based solely on parent request. However, it is clear that a school district must respond to a parent request by issuing Prior Written Notice.
19. In this case, the Complainants initially requested a reevaluation on October 26, 2010. Subsequent conversations between Complainants and the District evidence that the Complainants wanted an evaluator from outside the District.
20. It was the obligation of the District, in response to this request, to issue a Prior Written Notice explaining the reasons it was refusing the Complainants' request, or issue a Prior Written Notice proposing an evaluation.
21. The obligation to issue Prior Written Notice cannot be waived, and does not depend on whether the Complainants would have ultimately accepted the District's proposal. The District did not issue a Prior Written Notice as required by the IDEA.
22. It is the responsibility of a school district to conduct an evaluation. 34 C.F.R. §300.301(a). A school district cannot abdicate its responsibilities under the IDEA, and may need to retain experts in order to be able to conduct a comprehensive evaluation in all suspected areas of disability or need. *N.B. v. Hellgate Elem. Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008).
23. Because it is the District's responsibility to conduct a reevaluation of the Student when needed, the Complainants are not free to choose the evaluator. The Complainants' right to

seek an independent educational evaluation (IEE) from an outside evaluator is triggered only by their disagreement with a District evaluation. 34 C.F.R. §300.502. Since the District did not conduct an evaluation of the Student, the right to an IEE was not triggered, meaning that the Complainants could not choose the evaluator.

24. When faced with a parent request for a particular outside evaluator, the District would be required to issue Prior Written Notice consistent with No. 23 above. The District failed to issue appropriate Prior Written Notice in response to the Complainants' requests in this case.

Decision:

Issue #1

Whether the Student was denied a Free Appropriate Public Education (FAPE) pursuant to 34 C.F.R. §§300.17 and 300.101 as follows:

- a. Whether the Student's IEP was reasonably calculated to meet unique educational needs pursuant to 34 C.F.R. §§300.320 through 300.324.

Based on the lack of meaningful educational progress in the areas of reading, writing, and math, WDE finds the May 2010 IEP was not reasonably calculated to meet the Student's unique educational needs. WDE finds the District to be in violation.

- b. Whether the District failed to provide special education and related services to the Student in accordance with the IEP by making unilateral changes to the Student's ESY services in violation of 34 C.F.R. §§300.22 and 300.320.

Based on the District's failure to provide ESY services in conformity with the IEP, WDE finds the District in violation.

- c. Whether the Student's IEP was reviewed to address lack of progress consistent with 34 C.F.R. §300.324(b).

The District failed to address the Student's lack of progress on the May 2010 IEP. WDE finds the District in violation.

Issue #2

Whether the Complainants were denied the opportunity to request a reevaluation consistent with 34 C.F.R. §300.303(b).

The District failed to appropriately respond to the Complainants' request for reevaluation. WDE finds the District in violation.

Issue #3

Whether the District provided the Complainants with prior written notice in response to the Complainants' request for a reevaluation of the student in accordance with 34 C.F.R. §300.503.

Based on the District's failure to issue Prior Written Notice in response to the Complainants' request for reevaluation, WDE finds the District in violation.

Corrective Action Plan:

1. The District shall convene the IEP team within fifteen (15) days of the date of this decision for the purpose of:
 - a. Developing a proposal for the district to retain an expert in the field of Autism Spectrum Disorders to consult with the IEP team for the purpose of developing services to address the Student's socialization and behavioral needs as described in the June 2011 report. It is recommended that the IEP Team consider the experts identified in the report.
 - b. Determining appropriate IEP services for the Student with the participation of the Complainants, specifically addressing the social, emotional, or behavioral needs of the Student. (In the event that the Student's IEP services are modified based on the expert's consultation, the IEP team should be reconvened to address the new recommendations for the Student.)
 - c. The District shall propose, in writing, an IEP reasonably calculated to provide the Student FAPE, addressing all areas of educational need within five (5) days of the IEP meeting.

- d. The District shall submit the Notice of Team Meeting, copies of any meeting notes, a plan for the expert consultation, a proposed IEP, and all applicable Prior Written Notice documents within five (5) days of the conclusion of the IEP team meeting.
2. The District shall provide at least four (4) hours of inservice training to all special education staff regarding the development and revision of IEPs and the appropriate use of Prior Written Notice. The inservice training shall be completed within 60 days of the date of this decision. The District shall provide WDE with the following documentation:
 - a. The date, time, location, agenda and presenters for the training by October 1, 2011; and
 - b. Copies of any materials or handouts used, in addition to sign-in sheets documenting the attendance of all special education staff within ten (10) days of completion of the mandatory inservice training.
3. The District shall provide 180 hours of compensatory special education services to the Student in reading, writing and math. The amount of compensatory service was calculated based on the approximate amount of special education resource room service the Student receives in the May 2011 IEP as compared to the amount of special education service in the May 2010 IEP. The lack of documented progress and similar level of need warrants utilizing the May 2011 IEP to calculate the remedy. The District shall offer to provide the 180 hours as follows:
 - a. The Complainants and the District must mutually agree upon the location of the service. The location may include the Student's home.
 - b. The schedule of service is to be mutually agreed upon by the Complainants and the District, taking into account the Student's interest levels and stamina.
 - c. A schedule signed by all parties detailing the dates and locations for the compensatory service shall be submitted to Diana Currah, Education Consultant at WDE no later than October 1, 2011.
 - d. If the Complainants do not choose to utilize the compensatory services at the scheduled time and location, that day's service shall be considered waived. The only exception to this waiver provision is a bona fide physical illness of the Student or Teacher. Compensatory services missed due to Teacher illness must be rescheduled.
 - e. District special education service providers must maintain accurate service logs to be submitted to WDE at the conclusion of the service.

- f. Any compensatory education service not utilized by December 31, 2012 is deemed waived by the Complainants.

Please direct questions regarding this complaint investigation to the Wyoming Department of Education, Special Programs Division at 307-857-9250 or 800-228-6194.

Sincerely,



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

cc:

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