



# Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION  
SPECIAL PROGRAMS DIVISION  
SPECIAL EDUCATION COMPLAINT INVESTIGATION

**Complainant:**

**Respondent:**

Case #: C 0162-11

**COMPLAINT DECISION  
AND ORDER FOR  
CORRECTIVE ACTION**

**Date of Decision:** November 18, 2011

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On September 20, 2011 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by \_\_\_\_\_, (hereinafter "Complainants") alleging violations of special education law with respect to \_\_\_\_\_ (hereinafter "Student"), by Respondent \_\_\_\_\_ (hereinafter "District").

Pursuant to 34 C.F.R. §§300.151 through 300.153 of the Federal Regulations implementing the Individuals With Disabilities Education Act (IDEA), WDE conducted an investigation into the 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 addressing the first three issues in the complaint. The timeline for the fourth issue has been extended for exceptional circumstances pursuant to 34 C.F.R. §300.152(b)(1)(i), and the Findings of Fact, Conclusions, Decision, and Order for Corrective Action, if any, will be issued under separate cover.

### **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 in accordance with 34 C.F.R. §§300.320 through 300.324.
- b) Whether the District provided special education, related services, supplementary aids and services, accommodations and assistive technology to the Student in accordance with IEP pursuant to 34 C.F.R. §§300.5, 300.34, 300.39, 300.42, 300.105, and 34 C.F.R. §300.320 through 300.324.

#### **Issue #2**

Whether the District failed to properly convene the IEP team consistent with 34 C.F.R. §300.321 by failing to include the vision specialist.

#### **Issue #3**

Whether the District appropriately provided Prior Written Notice to the Complainants consistent with 34 C.F.R. §300.503.

### **Investigatory Process:**

- Review of records consisting of the following:
  - Original letter of complaint and supporting documents.
  - The Student's special education and cumulative files.
  - Electronic correspondence.
  - The Student's 504 plans from the District and another state.
- Follow up inquiries with the Complainants, including a questionnaire and an interview.
- Follow up inquiries with the District, including staff interviews.
- The District and Complainants were given the opportunity to submit additional information to WDE for consideration throughout the investigation of this complaint.

**Applicable Federal Regulations or State Rules:**

34 C.F.R. §300.17	Free Appropriate Public Education (FAPE)
34 C.F.R. §300.22	Individualized Education Program
34 C.F.R. §300.34	Related Services
34 C.F.R. §300.39	Special Education
34 C.F.R. §300.42	Supplementary Aids and Services
34 C.F.R. §300.101	Free Appropriate Public Education (FAPE)
34 C.F.R. §300.320	Definition of an IEP
34 C.F.R. §300.321	IEP Team
34 C.F.R. §300.322	Parent Participation
34 C.F.R. §300.503	Prior Written Notice
34 C.F.R. §300.324	Development, Review, and Revision of IEP

Wyoming Department of Education Rules, Chapter 7

**Relevant Time Period:**

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate allegations of violations that occurred not more than one year prior to the date the complaint was received. In light of this limitation, the investigation and any findings of noncompliance will be limited to the period commencing September 21, 2010 to September 20, 2011. However, in order to fully understand the needs of the Student, the concerns of the Complainants, and the position of the District, the Student's special education history was thoroughly reviewed.

**Findings of Fact:**

1. Prior to September 2009, the Student attended school in another state.
2. In the previous school district, the Student was identified as eligible under Section 504 of the Rehabilitation Act of 1973 for services and accommodations due to a visual impairment.
3. The Student's cumulative file contained records of state and district wide assessments prior to the transfer in to the current District. The results are summarized as follows:



Test Date	Test	Clusters	Scores
09/2008	Iowa Tests of Basic Skills	<ul style="list-style-type: none"> <li>• Reading</li> <li>• Language</li> <li>• Mathematics</li> <li>• CORE TOTAL</li> <li>• Social Studies</li> <li>• Science</li> <li>• TOTAL COMPOSITE</li> </ul>	<ul style="list-style-type: none"> <li>• 92%ile (High)</li> <li>• 87%ile (High)</li> <li>• 32%ile (Average)</li> <li>• 77%ile (High)</li> <li>• 83%ile (High)</li> <li>• 77%ile (High)</li> <li>• 79%ile (High)</li> </ul>
Spring 2008	Core Curriculum Referenced Tests	<ul style="list-style-type: none"> <li>• Language Arts <ul style="list-style-type: none"> <li>○ Comprehend informational and literary text</li> <li>○ Write informational and literary text</li> <li>○ Seek and give information using the process of inquiry</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Proficiency Level 4 (on grade level)</li> <li>○ 90% correct</li> <li>○ 73% correct</li> <li>○ 75% correct</li> </ul>
Spring 2008	Core Curriculum Referenced Tests	<ul style="list-style-type: none"> <li>• Pre-Algebra <ul style="list-style-type: none"> <li>○ Expand number sense to understand, perform operations and solve problems</li> <li>○ Use proportion and similarity to solve problems</li> <li>○ Develop fluency with language and operations of algebra</li> <li>○ Use algebraic, special and logical reasoning</li> <li>○ Understand probability and statistics</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Proficiency Level 3 (on grade level)</li> <li>○ 55% Correct</li> <li>○ 83% Correct</li> <li>○ 57% Correct</li> <li>○ 70% Correct</li> <li>○ 83% correct</li> </ul>
Spring 2008	Core Curriculum Referenced Tests	<ul style="list-style-type: none"> <li>• Science <ul style="list-style-type: none"> <li>○ Understand the structure of matter</li> <li>○ Relationship between properties of matter</li> <li>○ Organs in an organism</li> <li>○ Offspring inherit traits that affect survival</li> <li>○ Understand that structure is used for classification</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Proficiency Level 3 (on grade level)</li> <li>○ 53% Correct</li> <li>○ 90% Correct</li> <li>○ 70% Correct</li> <li>○ 50% Correct</li> <li>○ 93% Correct</li> </ul>

- The Student enrolled in the District in August 2009. At all times relevant to this complaint, the Student was a resident of the District.
- Complainant Mother and Complainant Father were both employed by the District.



6. The Student initially received accommodations and services in the district through a Section 504 Plan. On September 15, 2009, the District convened a Section 504 team meeting facilitated by the 504 Building Facilitator. The document indicated that the Section 504 Plan would be reviewed again when the team met "for an IEP."
7. On Sunday, December 13, 2009, a District staff member documented in an email to the Principal that she perceived the Complainant Mother may have "crossed" her role between parent and a Special Services Case Manager within the District. The previous Friday, the staff person was instructed by the Complainant Mother to sign a form as the building AMP [Achievement Monitoring Process] team chair even though she was not present during the discussion regarding the Student. The District staff member indicated that Complainant Mother "wanted me to copy the words she had written out on the AMP form onto a new blank form in my own handwriting. She wanted it dated December 10<sup>th</sup>. She told me, 'You will sign this form and then you will give it to me.' She said that she was going to go get [Complainant Father's] signature on the form as the referring parent." When the District staff member declined to sign and back date the form, the Complainant Mother refused to share a copy of the document. The District staff member indicated that the AMP team form created by the Complainant Mother contained an "admission of negligence" by the District.
8. A Notice of Team Meeting documents that a meeting was convened on December 14, 2009 for the purpose of an initial referral for special education.
9. A Referral for Special Education Evaluation dated December 14, 2009, signed by the Principal, indicated that the Complainants "requested an evaluation for an IDEA disability due to concerns regarding [Student's] academic progress, need for mobility training and possible additional accommodations."
10. Prior Written Notice and Consent for Evaluation documented that the team proposed to conduct an initial evaluation for special education eligibility, and that additional assessment data was necessary. Assessments were proposed in the areas of academics, vision and mobility. Complainant Father offered his consent for the evaluation on December 14, 2009.
11. A Notice of Team Meeting documented that the team was convened on January 21, 2010 for the purpose of reviewing assessment results, developing an IEP, and determining placement.
12. The January 21, 2010 Evaluation Report summarized the Student's results as follows:
  - The Diagnostic Online Reading Assessment (DORA) was administered. The Student's reading comprehension scores were measured at the mid 12<sup>th</sup> grade level. Spelling was the weakest area at the mid 7<sup>th</sup> grade level.

- The Diagnostic Online Math Assessment (DOMA) was used to specifically measure algebra skills. The DOMA results indicate mastery on two constructs, partial mastery on one, and non-mastery on 9 other constructs measured.
- An Orientation and Mobility Specialist completed an orientation and mobility assessment. The Student could do the following:
  - i. Read street signs from 50 feet.
  - ii. Read address numbers on houses from 30 feet.
  - iii. Define one-way streets.
  - iv. See traffic lights from 50 feet.
  - v. See walk/don't walk lights from 50 feet.
  - vi. Read store signs in the mall.
  - vii. Read ceiling aisle signs in a grocery store from 10 feet.
  - viii. Read room numbers at the college.

The Student did not know the following:

- i. That drivers could turn right on a red light.
- ii. How left-turn signals at an intersection influence traffic movement.
- iii. How use of walk buttons affect traffic lights.
- iv. Various instances when the use of a white cane would benefit her.

The Orientation and Mobility Specialist recommended that the Student receive a limited amount of mobility instruction to correct lack of knowledge in the above listed areas and to prepare for the future in the event visual acuity decreases.

- A February 2009 ophthalmology report documents that the Student's "best corrected manifest refraction yielded acuity of 20/60 in the right eye and 20/100 in the left eye."
13. Based on the evaluation results, the team determined that the Student met the criteria for a learner with a visual impairment and in need of special education. The January 21, 2010 Prior Written Notice documented that the team proposed the Student was eligible for special education as visually impaired, but proposed additional assessments to gather comprehensive information regarding her math abilities. The Complainant Mother offered her consent for the additional assessment on January 21, 2010.
  14. The Woodcock Johnson III, Tests of Cognitive Abilities was utilized with the Student. The following scores were obtained and summarized in a February 1, 2010 Evaluation Report:



	<b>Standard Score and Description</b>
General Intellectual Ability	112 (High Average)
Verbal Ability	110 (Average)
Thinking Ability	118 (High Average)
Cognitive Efficiency	109 (Average)
Brief Intellectual Ability	116 (High Average)
Visual Spatial Learning	108 (Average)
Spatial Relations	111 (High Average)
Sound Blending	117 (High Average)
Concept Formation	118 (High Average)
Visual Matching	106 (Average)
Numbers Reversed	97 (Average)
Broad Math	94 (Average)
Brief Math	97 (Average)
Math Calculation Skills	98 (Average)
Calculation	107 (Average)
Math Fluency	82 (Low Average)
Applied Problems	92 (Average)

15. A Notice of Team Meeting convened the team to develop an initial IEP on February 10, 2010.
16. The Student's IEP as planned by the IEP team on February 10, 2010 contained one Measurable Annual Goal as follows:
  - Baseline: When performing subtractive tasks, [Student] counts down to arrive at the answer. does not demonstrate an understanding of part whole relationships of numbers. uses fingers to count.
  - Target: [Student] will be able to do simple addition and subtraction problems by making friendly numbers (example  $9 + 5$ , will verbally state that you take one from five to make ten and then add four).
  - Method of measurement: Measure by weekly covered addition and subtraction tasks.



17. The February 10, 2010 IEP contained the following services:

<b>SPECIALIZED INSTRUCTION</b>	<b>FREQUENCY</b>	<b>AMOUNT</b>	<b>START DATE</b>
Math	Weekly	150 Minutes	02/16/2010
Study Strategies	Weekly	215 Minutes	02/16/2010
<b>SUPPLEMENTARY AIDS &amp; SERVICES</b>	<b>FREQUENCY</b>	<b>AMOUNT</b>	<b>START DATE</b>
Large print; audio books, magnification; optical devices	Daily	Throughout school day	02/16/2010
Preferential Seating (close up, let student indicate where best seat is)	Daily	Throughout school day	02/16/2010
Allow breaks from visual demands/alternate between audio and visual tasks	Daily	Throughout school day	02/16/2010
Vision specialist to check on progress and accommodations	1X/Month	15 minute session	02/16/2010
Reduce assignments to key concepts	Daily	Throughout school day	02/16/2010
Extra time, up to one day for written assignments over 3 paragraphs	Daily	Up to 1 day	02/16/2010

18. The District issued Prior Written Notice and the Complainants offered their consent on February 10, 2010 for the initial provision of services.
19. The Student's IEP was amended on March 8, 2010 to discontinue her math goal and special education service, as Complainants chose to utilize a private tutor for the Student's math needs. A new studies strategies goal was added in place of the math goal. The new goal stated:
- [Student] does not use assistive technology in classes to accommodate for low vision on academic tasks to maintain a passing grade of C or higher in classes. [Student] will use assistive technology in strategies class when working on academic tasks to maintain a passing grade of C or higher as measured on a weekly basis through power school.

20. There was no Prior Written Notice in the Student's file regarding this amendment.
21. Progress was reported on the new goal on April 1, 2010. The Student was passing all of classes, with grades as follows: Art – B; Health – A; Language Arts – C; PE – A; Reading Enrichment – A; Study Skills – A; and US History – B.
22. Progress was also reported on May 28, 2010. The Student was passing all of classes with grades as follows: Art – 94%; PE 94%; Health – 76%; Strategies – 91%; Language Arts – 80%; Us History 70%, and Reading Enrichment – 90%.
23. The District issued a Prior Written Notice on September 16, 2010 indicating that the IEP team was convened to discuss whether the Student would remain in Algebra I class or move to Pre Algebra. The team agreed the best math placement would be to remain in Algebra I. The notice also indicated that white boards were in all classrooms except math and art. The boards had been ordered. An additional plain board would be ordered for math. The art instructor did not use the board for instruction. In addition, audio books had been ordered for the Student.
24. There was no Notice of Team Meeting in the Student's file regarding the September 16, 2010 meeting. It appears as though the Prior Written Notice was also used as the meeting notice.
25. The Complainants expressed concerns in a September 18, 2010 email that the meeting that the September 16, 2010 meeting took place without the Vision Specialist. The Vision Specialist responded by indicating that the purpose of the meeting was to discuss the Student's math class, not concerning the Student's vision, therefore she did not need to be present.
26. The Complainants expressed concern in an October 4, 2010 email that white boards were still not installed in all classrooms.
27. An October 15, 2010 email to the Vision Specialist from the School Counselor indicated that the Student's current grades were 4 A's and 2 B's. The Algebra 1 grade was 92.9%.
28. Progress was reported on the amended Measurable Annual Goal on November 5, 2010 and January 12, 2011. Both reports indicated that the Student had a B or above in all classes.
29. The IEP team was convened on January 12, 2011 for the annual IEP review. Actual participants in the IEP team meeting included the Complainants, the Student, the Special Education Teacher, a Regular Education Teacher, the Case Manager, the Principal, and the School Counselor.
30. The January 2011 IEP Present Levels of Academic Achievement and Functional Performance stated, in relevant part:



- Currently [Student] is performing at the following levels in classes: Biology 1 A – 91%; Algebra 1 B – 82.37%; Strategies for Success – 100%; Art 2 B – 94%; World Geography-History – 82%; Reading Enrichment – 94%. These scores are all according to teacher report.
- [Student] currently has accommodations for a moderate to severe visual disability. [Student] is doing very well in all of general education classes, and is receiving support and monitoring from the resource room instructor. The recent addition of white boards in all of classrooms, and new reading glasses has helped [Student] to be successful this school year.
- Vision: [Student] has not had any significant changes in vision since r last IEP. Thus, continues to present with progressive high myopia, and significant astigmatism, which negatively effects functional vision both in and out of school.

31. The IEP included the measurable postsecondary goal for the Student to attend a four year college majoring in history. A course of study was outlined for the Student.

32. The IEP Measurable Annual Goal was amended as follows:

- Baseline: [Student] is currently passing all of classes with a 75% or above, according to teacher report.
- Target: [Student] will maintain, and improve, class grades to 90% or above.
- Method of Measurement: The resource room teacher will monitor [Student's] grades weekly, and provide strategies to increase grades if [Student's] grades fall below 90%.

33. The January 12, 2011 IEP contained the following services:

<b>SPECIALIZED INSTRUCTION</b>	<b>FREQUENCY</b>	<b>AMOUNT</b>	<b>START DATE</b>
Study Strategies	Weekly	215 Minutes	01/18/2011
<b>SUPPLEMENTARY AIDS &amp; SERVICES</b>	<b>FREQUENCY</b>	<b>AMOUNT</b>	<b>START DATE</b>
Large print; audio books, magnification; optical devices	Throughout school day	Daily	01/18/2011
Preferential Seating (student choice)	Throughout school day	Daily	01/18/2011
Allow breaks from visual demands/alternate between audio and visual	Throughout school day	Daily as needed	01/18/2011
Support from Teacher of Visually Impaired	Upon teacher/student/parent request	1 year	01/18/2011



Reduce assignments to key concepts; Extra time, up to one day for written assignments over 3 paragraphs	Daily written work	1 year	01/18/2011
High contrast for board/overhead/ promethean (black on white)	Daily	1 year	01/18/2011
All standardized assessments to have the following accommodations: Individual breaks as needed, large print test, alternate location, extended time, use of magnification devices, color overlays to reduce glare, test question read or re-read verbatim, student takes test at the time of day to demonstrate peak performance, allow student to complete test over multiple days.	All standardized testing requirements	1 year	01/18/2011

34. The IEP further indicated that the Student was able to participate in the PAWS State General Assessment and district wide assessments with accommodations.
35. A February 4, 2011 email from the Complainant Mother to the Vision Specialist stated:  
 "[Student] says likes magnifier. I have the other machine in my classroom – I think was using it in the SPED room last year but it sets apart more than the magnifier. finance teacher told she might have to borrow the magnifier sometime and it made laugh – so now it is not so bad to use. Good for that teacher! Thanks for your help."
36. A series of emails during the first week of June 2011 indicate that Complainants expressed concern regarding the finance teacher's unwillingness to reduce the class content for the Student to key expectations. The Complainants expressed frustration that the finance teacher indicated that all the material was important and that Complainants could decide what is not important.
37. A June 6, 2011 letter from the Complainants to the District revoked permission for verbal communications between the District and the Student's treating vision care providers.
38. A Notice of Team Meeting was issued on June 9, 2011 convening the team on June 15, 2011. The notice indicated that participants would include a Case Manager, the Special Education Teacher via phone, a General Education Teacher, the Principal if available, the Counselor if available, the Vision Specialist via phone, and the Special Education Director.

39. However, a June 9, 2011 email from the Special Education Director to the Student's team documents that the Complainant Mother called and cancelled the meeting because their advocate was not available. The meeting was to be rescheduled for the following Thursday or Monday.
40. A subsequent Notice of Team Meeting was issued on June 14, 2011 convening the team on June 16, 2011. The notice indicated that participants would include the Case Manager, the Special Education Teacher via phone, a General Education Teacher, the Principal if available, the Counselor if available, the Vision Specialist if available, and the Special Education Director.
41. The Student's IEP and current needs were reviewed at the June 16, 2011 meeting. The actual participants included the Complainants, the Student, the Special Education Teacher via phone, the Case Manager, a Regular Education Teacher, the Principal, the School Counselor, the Director of Special Services, and the Vision Specialist. Prior Written Notice was issued proposing the following change to the Student's services:

<b>SUPPLEMENTARY AIDS &amp; SERVICES</b>	<b>FREQUENCY</b>	<b>AMOUNT</b>	<b>START DATE</b>
Accommodations will continue as written from the 1/12/11 annual review.			
[Student] will be issued a laptop to help with large print fonts.	Daily	1 year	06/17/2011
[Student] will not be required to complete crossword puzzles or word searches.	as needed	1 year	06/17/2011
An outline of [Student's] needs will be provided to all substitute teachers.	Any time substitutes are in classroom	1 year	06/17/2011
Cue card for [Student] to signal needs an extra visual break.	as needed	1 year	06/17/2011
Teachers will initial [Student's] graph will use when cue card is used throughout the day.	as needed	1 year	06/17/2011



All standardized assessments to have the following accommodations: Individual breaks as needed, large print test, alternate location, extended time, use of magnification devices, color overlays to reduce glare, test question read or re-read verbatim, student takes test at the time of day to demonstrate peak performance, allow student to complete test over multiple days.	All standardized testing requirements	1 year	01/18/2011
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42. Although not documented in the Services section of the IEP, the IEP team meeting minutes for June 16, 2011 were incorporated into the Prior Written Notice by reference, and included the following:

Large print text books will be provided in all classes. A laptop will also be provided to [Student]. This will help access large print for various reading materials. If a textbook is not available in large print and the laptop can not increase the font size of the reading material, the individual teachers will be responsible for creating large print worksheets and reading material. The laptop will be checked out once at the beginning of the year and then checked back in at the end of the year. The scanner within the [School] can also be an option for reading materials and worksheets to enlarge the font.

43. The incorporation of this language into the IEP was reinforced by the Vision Specialist in a September 15, 2011 email reminding the Student's team of the contents of IEP.
44. At the June 16, 2011 meeting, the next IEP team meeting was scheduled for August 25, 2011, with an alternate date of August 26, 2011.
45. An email from the Special Education Director to the Student's team on August 23, 2011 indicated that the Complainant Mother needed to have the meeting rescheduled, as the parent advocate was unavailable. Complainant Mother suggested two alternate dates of August 30<sup>th</sup> or September 1<sup>st</sup>.
46. A series of emails document that the Case Manager called and left the Complainant Mother three messages during the last week of August 2011 in an effort to reschedule the IEP meeting for the Student.
47. On August 31, 2011 the Complainant Father emailed the case manager expressing surprise that there was no meeting on September 1<sup>st</sup>. He stated: "If you were unable to get in



contact with [Complainant Mother], you know I have school email, and I have not received any messages from you. I have a couple of questions –

- 1 – when was the meeting cancelled?
- 2 – why was the meeting cancelled?
- 3 – when is the new meeting scheduled for?”

48. The Case Manager emailed the Complainant Father and asked for a response with possible days and times for a meeting. A read receipt confirms that the message was read on August 31, 2011.
49. The Case Manager sent another email to the Complainant Father on September 1, 2011 requesting potential dates and times for a meeting. Several emails were exchanged attempting to reach a mutually agreeable time for the meeting.
50. On September 1, 2011, the Case Manager indicated that she telephoned the Complainant Mother on her cell phone. Documentation provided by the Case Manager stated: “I was immediately verbally attacked for calling [Complainant Mother] on her cell phone. She stated that in our paperwork from 6/16/11 the team decided I would make contact with the family through [Complainant Father’s] school email. There is no documentation in the paperwork that it was agreed upon by the team I would only contact the family through school email. Nor do I recall the conversation taking place. I tried to inform [Complainant Mother] I did in fact send [Complainant Father] a school email on 8/31/11 requesting additional dates and times for a meeting. He read the email on 8/31/11, but did not respond to my email. However, [Complainant Mother] would not let me talk. She continued to very aggressively inform me that she was working and would not be interrupted at work. She then hung up on me.”
51. On September 2, 2011 the Vision Specialist conducted training for all school staff on the Student’s vision and safety needs.
52. On September 7, 2011 the Case Manager wrote the Complainant Father: “I have not heard back from you about possible times that your parent advocate would be able to meet so I thought I would write you.” September 8<sup>th</sup> and 9<sup>th</sup> were suggested as potential dates.
53. The Student’s IEP was amended on September 7, 2011, reducing the study skills service duration from 215 minutes per week to 200 minutes per week. The change was necessary because the school changed from a five day to a four day school week. Prior Written Notice was issued describing the change on September 7, 2011. The notice indicated that the Complainants agreed with the proposal, which was scheduled to begin on September 8, 2011.

54. Email correspondence from the Case Manager to the Student's IEP team members, including: Complainants, all General Education Teachers, the School Counselor, the Special Education Director, the Principal, District Staff, and the Special Education Teacher confirm the Student's IEP meeting was scheduled for September 14, 2011 at 4:00 p.m. The email notice indicated that the District Staff, the Special Education Director, and the Case Manager would attend the meeting telephonically.
55. The Complainants requested a meeting to review the Student's services and schedule. A Prior Written Notice indicates the meeting was convened on September 14, 2011. However, because the Vision Specialist was unable to attend, the Complainants refused to permit the meeting to continue. No Notice of Team Meeting was present in the Student's file regarding this meeting.
56. The Complainants filed this complaint on September 15, 2011. However, the complaint did not meet the regulatory requirements until it was supplemented with the necessary information on September 20, 2011.
57. During the course of this investigation, interviews with several District staff were conducted. All of the Student's teachers expressed familiarity with the Student's IEP and accommodations, indicated that they were implementing the accommodations in the IEP, and confirmed that large print material was routinely offered to the Student, sometimes in the form of photocopies instead of a large print text book. All teachers verified that grades earned by the Student represented mastery of material without modification of content expectations.
58. Two teachers expressed concern that the content of their classes was process oriented, and that all concepts were key, minimizing the opportunity to reduce assignments. Both teachers expressed willingness to provide extra assistance to the Student to ensure success.
59. The Special Education Teacher affirmed that he provides no direct instruction to the Student. time in special education is provided to help if asks for assistance. The Special Education Teacher described the time as "study skills for relaxation or independent work."
60. The Complainants responded to a Questionnaire clarifying their concerns regarding the Student's special education. Complainants reiterated their concerns as follows, in relevant part:
  - Lack of a certified/qualified special education teacher.
  - District's failure to get large print books in all classes.



- Agreeing to do things at meetings and then not following up.
  - Hard time arranging meetings. Unable to have a meeting before school started.
  - Not getting a copy of PWN at the end of the meeting or within 24 hours. They could have changed or omitted things discussed at the meeting. This is due to case manager not doing her job.
  - We caught them adding to the paperwork after the meeting was stopped.
  - Time in special education was just a study hall.
61. The Complainants were interviewed as part of this investigation, where similar concerns were expressed.

### **Conclusions:**

1. The Student is identified as a learner with a Visual Impairment under the Individuals with Disabilities Education Act (IDEA).
2. Once identified as eligible for service under the IDEA, the Student is entitled to receive FAPE. The District is obligated to ensure that the Student receives FAPE by providing special education and related services reasonably calculated to provide the Student educational benefit. *See 34 C.F.R. §§300.17 and 300.101.*

### Issue #1

3. *Special education* means specially designed instruction to meet the unique needs of a student with a disability. *Specially designed instruction* is further defined as adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the disability, and to ensure access of the child to the general curriculum. *See 34 C.F.R. §300.39.*
4. The IEP must contain, in relevant part, a statement of the special education and related services to be provided to the Student. *See 34 C.F.R. §300.320(a).*
5. The Student's IEP did not provide any special education, or specially designed instruction to the Student.        was provided with study skills only, which would not meet the definition of specially designed instruction.
6. The interviews with teachers and the Complainants confirm that the Student received no specially designed instruction. The purpose of the study skills class with the Special Education Teacher was to facilitate relaxation and independent work.



7. Because the IEP lacked specially designed instruction, a critical component necessary in order to meet the minimum threshold requirements, it cannot be reasonably calculated to result in meaningful educational benefit.
8. The remainder of the Student's IEP contained supplementary aids and services, accommodations and modifications necessary to meet the Student's educational needs resulting from visual impairment.
9. One of these needs included large print text books, as determined by the IEP team on June 16, 2011. It was incumbent upon the District to provide accommodations consistent with the Student's IEP.
10. The District and its staff acknowledge that not all of the large print texts were obtained in a timely manner for the Student. The delays and gaps in providing large print text books were contrary to the Student's IEP, but were of a minor technical nature as the Student was provided with other opportunities, like digital copies of texts that could be enlarged on computer or photocopy enlargements of texts or handouts.
11. This type of minor failure to implement the IEP does not offend the District's duty to provide services consistent with the IEP. See *Van Duyn v. Baker Sch. Dist.*, 47 IDELR 182 (9<sup>th</sup> Cir. 2007). (Minor failures to implement the IEP exactly as written did not constitute a denial of FAPE because implementation failures were not material.)
12. The fact that the Student has earned average and above average grades in regular education according to the same standards as nondisabled peers serves as evidence of meaningful educational benefit from the Student's regular education classes, an interpretation supported by the 3<sup>rd</sup> Circuit Court of Appeals through its interpretation of the United States Supreme Court decision in *Rowley*: "Our reading of *Rowley* leads us to believe that when ... high grades are achieved in classes with only special education students set apart from the regular classes of a public school system, the grades are of less significance than grades obtained in regular classrooms." The 3<sup>rd</sup> Circuit decision turned in part on the U.S. Supreme Court's decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982). In *Rowley*, the Supreme Court held that a student's ability to earn passing marks and advance from grade to grade is a strong indicator that he received a meaningful educational benefit. However, the 3<sup>rd</sup> Circuit pointed out that *Rowley* addressed a student's performance in the general education classroom.
13. Although the District failed to implement the IEP exactly as written, this technical failure does not rise to the level of a denial of FAPE.

Issue #2

14. The IDEA and Federal Regulations guarantee parents certain procedural safeguards. One of the most important of these safeguards is a parent's right to participate in the IEP team process, including IEP meetings, during any review or revision of the Student's IEP, and participation in all placement decisions. See 34 C.F.R. §§300.321, 300.322 and 300.327.
15. It is the responsibility of the District to ensure that the parent of a child with a disability is present at each IEP team meeting or is afforded the opportunity to participate, including:
  - a. Notifying the parent of the meeting early enough to ensure that the parent will have an opportunity to attend; and
  - b. Scheduling the meeting at a mutually agreed on time and place.

See 34 C.F.R. §300.322.

16. It is also the responsibility of the District to appropriately convene an IEP team with the required minimum membership participating. In addition to the Complainants, the required IEP team members as it pertains to this Student include: Not less than one regular education teacher of the Student; Not less than one special education teacher of the Student; a representative of the public agency; and an individual who can interpret the instructional implications of evaluation results. It is possible for team members to serve more than one role. See 34 C.F.R. §300.321(a).
17. The Complainants or the District are free to invite other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate. See 34 C.F.R. §300.321(a)(6). However, the United States Department of Education, in promulgating the Federal Regulations, offered this interpretive comment: It is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP team meeting. A parent does not have a legal right to require other members of the IEP team to attend an IEP team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the [public agency] to be on the IEP team, they are not required to attend. 71 *Federal Register* 46674.
18. The Vision Specialist is not a required IEP team member for the purpose of convening an IEP team meeting. Therefore, convening a meeting without the Vision Specialist in attendance on September 14, 2011 was within the discretion of the District, and does not violate the IDEA.



19. This interpretation is supported by recent court interpretation. The 9<sup>th</sup> Circuit Court of Appeals held that a district did not violate the IDEA by failing to include a specialist on the IEP team. *See B.D. v. Puyallup Sch. Dist.*, 57 IDELR 211 (9<sup>th</sup> Cir. 2011).
20. The Student's IEP team convened at least three times during the time period relevant to this complaint, with the Complainants participating in the meetings. Several meetings were rescheduled at the Complainants' request. The District met and exceeded its obligation to convene IEP team meetings at a mutually agreed upon time as evidenced by the fact that a District representative made multiple attempts to schedule each meeting in a timely manner.
21. The Complainants were afforded a reasonable opportunity to participate in the IEP team process with appropriately convened IEP teams, despite the fact that some of the District representatives participated in the meeting by phone or by use of ICHAT. The IEP meetings were convened with the mandatory IEP team members.

### Issue #3

22. Prior to proposing or refusing to initiate or change the identification, evaluation, educational placement, or the provision of FAPE for the Student, the District is required to provide the Complainants with Prior Written Notice. It must be provided a reasonable time prior to the action proposed. 34 C.F.R. §300.503.
23. During the period of time relevant to this complaint, the District provided the Complainants with Prior Written Notice with respect to three proposals to implement changes to the IEP. Although use of WDE's model form is not mandatory, the District provided Prior Written Notice to the Complainants on the WDE model form.
24. The Complainants appear somewhat confused with the purpose of Prior Written Notice. It is required to give parents notice prior to implementing a proposal or refusal regarding the identification, evaluation, educational placement, or the provision of FAPE. It is not intended to represent a binding agreement or a verbatim accounting of the discussions taking place during a meeting. It is to memorialize a district's proposal regarding a student's special education program.
25. The District also appears somewhat confused in its use of Prior Written Notice, possibly adding to the confusion of the Complainants. Prior Written Notice should not be used to propose a team meeting. The act of convening a meeting does not trigger the Prior Written Notice requirement. It triggers a separate and distinct meeting notice requirement pursuant to 34 C.F.R. §300.322.

26. With respect to the contents of a District proposal memorialized in a Prior Written Notice, the Districts should consider the parents' suggestions and, to the extent appropriate, incorporate them into the IEP. However, it is ultimately the District's responsibility, with input from the Complainants, to propose an IEP that provides FAPE. It is not considered a violation of the Complainant's procedural safeguards if the proposal of the District does not satisfy every parental demand. See *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3<sup>rd</sup> Cir. 1993). (Although the district did not agree to provide the programming and placement advocated by the parents, the parents had an opportunity to participate in the IEP formulation process in a meaningful way, where the IEP team considered parent suggestions and incorporated some of them, resulting in changes to the draft IEP.) See also *J.D. v. Kanawha County Bd. of Educ.*, 48 IDELR 159 (S.D. W.Va. 2007), *aff'd*, 52 IDELR 182 (4<sup>th</sup> Cir. 2009) (Draft IEPs developed in preparation for IEP meetings are not necessarily evidence of predetermination. The district's inclusion of several goals and objectives requested by the child's parents undermined the parents' claim that the district did not consider the child's individual needs.)
27. Further, the only timing requirement with respect to Prior Written Notice is that it be provided a reasonable amount of time before the District proposes or refuses to initiate or change the Student's special education program. There is no requirement that it be issued within 24 hours of a meeting as requested by the Complainants.
28. As evidenced by the three times the District issued Prior Written Notice during the time period relevant to this complaint, the District met its obligation under the IDEA.

**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 in accordance with 34 C.F.R. §§300.320 through 300.324.

**WDE determines that the Student's IEP was not reasonably calculated to meet her unique educational needs because the Student received no specialized instruction from March 8, 2010 to present, although the finding in this case is limited to the one year period from September 21, 2010 through September 20, 2011. Without**



specialized instruction in the IEP, the IEP was substantively deficient, and the Student was categorically denied FAPE.

- b) Whether the District provided special education, related services, supplementary aids and services, accommodations and assistive technology to the Student in accordance with IEP pursuant to 34 C.F.R. §§300.5, 300.34, 300.39, 300.42, 300.105, and 34 C.F.R. §300.320 through 300.324.

**WDE determines that services were not provided consistent with the Student's IEP. The Student was not consistently provided large print text books, which was clearly identified as a need for this Student. Although alternative methods of providing large print materials were utilized, these alternatives were not consistently implemented, permitting gaps in time when large print materials were unavailable. However, WDE further finds that this violation is a minor technical violation, and it does not rise to the level of a denial of FAPE because it resulted in no demonstrable harm to the Student. continued to pass all classes receiving average and above average grades in regular education.**

#### Issue #2

Whether the District failed to properly convene the IEP team consistent with 34 C.F.R. §300.321 by failing to include the vision specialist.

**WDE finds no evidence to support a conclusion that the District failed to properly convene the IEP team. WDE finds no violation.**

#### Issue #3

Whether the District appropriately provided Prior Written Notice to the Complainants consistent with 34 C.F.R. §300.503.

**WDE finds that the District met the minimum legal standard for providing Prior Written Notice to the Complainants. WDE finds no violation. However, it is noted that the District's use of Prior Written Notice as a quasi team meeting notice is confusing, and does not clearly describe the District's proposal or refusal to initiate or change the identification, evaluation, educational placement or the provision of FAPE.**

**Corrective Action Plan:**

1. The District shall provide at least four (4) hours of inservice training to all special education staff regarding the implementation of IEP accommodations and modifications, and the use of Prior Written Notice. The inservice training must be completed by January 18, 2012.
2. The District shall provide WDE with the following documentation:
  - a. The date, time, location, agenda and name of presenter(s) within fifteen (15) days of the date of this decision; and
  - b. Copies of any materials or handouts used, in addition to sign-in sheets documenting the attendance of special education staff within ten (10) days of completion of the mandatory inservice training.
3. The District shall fund an independent comprehensive evaluation of the Student for future planning services to determine if the Student needs special education and related services, and if so, the special education, related service, supplementary aids and service, and accommodation needs of the Student. This requirement includes:
  - a. The District shall submit a list of three (3) independent and appropriate evaluation sources to the Complainants with a copy to WDE within fifteen (15) days of the date of this decision;
  - b. The Complainants shall choose the evaluation source from the list provided by the District within ten (10) days of receipt from the District;
  - c. The District shall notify WDE within five (5) days of receiving notice of the Complainants' choice the specific details and dates for the independent evaluation;
  - d. If the District and Complainants are unable to reach consensus within ten (10) days as directed in paragraph b. above, WDE shall request that Complainants submit the names of three (3) independent and appropriate evaluation sources. WDE shall then select the evaluator from the list of sources provided by both the Complainants and the District within five (5) days of the impasse;
  - e. The evaluation shall be conducted and the IEP team reconvened to address the results of the evaluation within ninety (90) days of the date of this decision; and
  - f. Confirmation of the evaluation results and the IEP team's determination shall be submitted to WDE within ten (10) days of the conclusion of the IEP team meeting as directed in paragraph e. above.
4. All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainants.



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

Sincerely,



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

cc:

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