



Wyoming Department of Education

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WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
SPECIAL EDUCATION COMPLAINT INVESTIGATION

Complainant:

Respondent:

Date of Decision: November 21, 2012

Case #: C-0170-12

**COMPLAINT DECISION
AND ORDER FOR
CORRECTIVE ACTION**

On September 24, 2012 the Wyoming Department of Education (WDE) received a complaint and supporting documentation filed by _____ (hereinafter "Complainant") alleging violations of special education law with respect to _____ (hereinafter "Student"), attending _____ (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 Chapter 7 Rules, WDE issues the following Findings of Fact, Conclusions, Decision and Order for Corrective Action.

Complaint Issues:

Issue #1

Whether the District provided the student with a Free Appropriate Public Education (FAPE) by providing special education and related services reasonably calculated to meet the Student's social, emotional, and behavioral needs and provide the Student with educational benefit,

consistent with 34 C.F.R. §§300.17 and 300.101. Specifically, the investigation will determine whether:

- a. The Student's IEP was reasonably calculated to meet his unique educational needs consistent with 34 C.F.R. §§300.320 through 300.324;
- b. Accommodations and modifications were provided to the Student to meet his unique educational needs;
- c. The Student's Behavior Intervention Plan was appropriate and implemented; and
- d. The Student's IEP was appropriately amended to address progress, or lack thereof consistent with 34 C.F.R. §300.324(b).

Issue #2

Whether the District provided the Student with a Free Appropriate Public Education (FAPE) by providing special education and related services reasonably calculated to provide the Student with educational benefit, consistent with 34 C.F.R. §§300.17 and 300.101. Specifically, the investigation will determine whether Assistive technology (AT) services were provided to meet the Student's unique educational needs.

Issue #3

Whether the District provided the Student with FAPE in the Least Restrictive Environment (LRE) consistent with 34 C.F.R. §§300.114 through 300.117. Specifically, the investigation will determine whether:

- a. The Student was denied the opportunity to participate in nonacademic settings and services; and
- b. The student was provided with supplementary aids and services appropriate to meet his unique needs.

Issue #4

Whether the District afforded the parents and Student FAPE by meeting the procedural requirements set forth in the IDEA. Specifically, the investigation will determine whether:

- a. The parents were afforded a meaningful opportunity to participate in the IEP process pursuant to 34 C.F.R. §§300.321, 300.322, and 300.327;
- b. The parents were provided with Prior Written Notice consistent with consistent with 34 C.F.R. §300.503;
- c. The IEP team was properly convened pursuant to 34 C.F.R. §300.321;

- d. Special education and related services were implemented consistent with the IEP;
and
- e. The District unilaterally changed the services in the IEP.

Issue #5

Whether the District denied the parents the opportunity to request a reevaluation consistent with 34 C.F.R. §300.303(a).

Issue #6

Whether the District complied with the confidentiality of information provisions of the IDEA by affording the parents with the opportunity to access Student records consistent with 34 C.F.R. §300.613.

Investigatory Process:

- Review of records consisting of the following:
 - Original letter of complaint and supporting documents;
 - The District's response to the allegations;
 - Correspondence regarding the Student;
 - The Student's cumulative education records, including behavioral reports, attendance, and standardized assessments, and
 - The Student's special education records.
- Follow up inquiries with the District.
- Follow up inquiries with the Complainant.
- WDE gave the District and Complainant the opportunity to submit additional information for consideration throughout the investigation of this complaint.

Applicable Federal Regulations, State Statutes or Rules:

34 C.F.R. §300.17 Free Appropriate Public Education
34 C.F.R. §300.101 Free Appropriate Public Education
34 C.F.R. §300.105 Assistive Technology
34 C.F.R. §§300.114 through 300.117 Least Restrictive Environment
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
34 C.F.R. §300.613 Confidentiality

Relevant Time Period:

Pursuant to 34 C.F.R. §300.153(c), WDE has the authority to investigate alleged violations of law 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 25, 2011 to September 24, 2012. However, the Student's earlier educational records were reviewed as part of this investigation and are referenced when deemed relevant to provide additional context.

Findings of Fact:

1. The Student enrolled in the District on October 12, 2010 as a sixth grader. His mother (Complainant) is a teacher, and his father is also a District employee, both working in the same school the Student attends.
2. The Student had previously been identified as a learner with a disability, specifically an emotional disturbance, in his previous school district in another state. The Student received special education and related services through an IEP developed in his previous state and school district.
3. The Student's historical records indicate that he received above average grades in academic content areas.
4. Relying on information from assessments conducted in the prior state, the District determined the Student eligible for special education services as a learner with an emotional disability in Wyoming on December 13, 2010. An initial IEP was drafted, and consent for initial services was obtained the same day.
5. The December 2010 IEP contained one goal to address the Student's inappropriate behavior.
6. The IEP team was convened on August 31, 2011 to develop an annual IEP. The IEP team was comprised of at least one regular education teacher, a special education teacher, an administrator or designee, and the parents.
7. A new IEP was drafted, containing two behavioral goals summarized in relevant part:
 - [Student] will demonstrate self-discipline in classroom behavior by having 3 or less calming down situations per week as measured for 7 out of 9 weeks. [Student] currently needs to be removed from class 1 - 2 times per day.

- [Student] will increase appropriate emotional control to 80% of classes according to reports. [Student] earns 50% of his total points for the first week of school. He has a difficult time staying in classes and disrupts 3 - 4 classes per day with inappropriate behavior.
8. The IEP included counseling services 1 time per week from the school counselor.
 9. A Behavior Intervention Plan was appended to the August 31, 2011 IEP to address the target behaviors of:
 - Raise hand and wait for a teacher response;
 - Be respectful of all students, staff, and materials or supplies; and
 - Handle frustrations and questions in a positive manner.
 10. Prior Written Notice was issued to the Complainant before implementing the proposed IEP on September 14, 2011.
 11. The Student's IEP was amended without a meeting on September 22, 2011. Salient points of the amendment include:

[Student's] IEP Measurable goal states that he will be trying to earn 80% of his behavior points in 4 out of 5 weeks as measured by a log and the teachers will send electronic communications on a bi-weekly basis. The district proposes to change this to [Student] is not earning points on a log, but the teachers will enter an electronic message on the Power Teacher communication system when [Student] has disrupted the class with inappropriate classroom behavior. The counselor, parents, and staff can download the log entries and the IEP team will discuss and determine a more effective behavior plan in an IEP meeting.

The IEP will also be amended, on the behavior plan where it said that the Discovery plan will be put in place with [Student], giving him three redirects, a chance to re-evaluate his choices, and decide if he wants to act appropriately in class or be referred to the Vice Principal. The plan is to have [Student] remove himself from the classroom, either by his own choice when he is stressed, or by a teacher or principal requesting him to do so, and going to a Time-out Room. The Time-out rooms are the Special Education room, or the small room by the In School Suspension Room. When he is calmed down he may return to the classroom where he is expected to act appropriately, not distracting the teacher or students. This change is taking place because of the way the redirects from the Discovery Plan upset [Student] more than when he was redirected.

12. The District issued Prior Written Notice before implementing the Amendment on September 23, 2011.
13. An October 26, 2011 Notice convened the IEP team on November 8, 2011 to review and revise the Student's IEP. The IEP team was comprised of at least one regular education teacher, a special education teacher, an administrator or designee, and the parents.
14. A November 8, 2011 IEP Amendment indicates that the team decided the student's IEP should be changed in the areas of Special Education Services, the Behavior Intervention Plan, Supplementary Aids and Services, the Measurable Goals, and the Present Levels of Academic Achievement and Functional Performance. The IEP Amendment further indicates that the changes are being made to deal with increased frequency and intensity of Student's episodes of disruptive behavior, to meet the Student's current needs, and provide him with FAPE. The IEP Amendment summarizes the changes as follows:
 - Special Education Services: In the 08/31/2011 IEP [Student] was provided with Inclusion Services in the Reading class and no Social Skills class. With this amendment, [Student] will receive Inclusion Services along with 1 Social Skills class.
 - The Behavior Intervention Plan will incorporate strategies to aid [Student] in being successful in classroom situations. (A new Behavior Intervention Plan was appended to the IEP Amendment.)
 - Supplementary Aids and Services will include the following accommodations: MAP and PAWS accommodations #s 11, 20-24, training and use of cue cards used to signal appropriate behaviors, and allowing [Student] to make comments in class, recognizing and thanking him for his participation when his comments are appropriate and on topic.
 - The Measurable Goal was: [Student] will increase appropriate emotion to 80% of classes. The new Measurable Goal will be as follows: [Student] will demonstrate self-discipline in classroom behavior by having 3 or less calming down situations per week as measured by Inclusion Specialist for 7 out of 9 weeks.
15. The IEP as amended also contained 11 Supplementary Aids and Services in addition to special education and related services.
16. Prior Written Notice regarding the proposed Amendments was issued on November 8, 2011, with the changes to take effect November 14, 2011.
17. The District proposed to reevaluate the Student on November 11, 2011 in order to determine if the Student met the eligibility criteria in the Autism eligibility category. A

handwritten note on the form indicates that a copy was provided to the Complainant on November 11, 2011 and again on January 20, 2012.

18. On December 12, 2011, the District's Principal, the Band Teacher, the paraprofessional, and the Special Education Teacher met with the Student's parents to discuss band class and the Student's inappropriate behavior. Notes from the meeting document additional interventions for band class.
19. The Complainant signed consent for the reevaluation on February 12, 2012.
20. The Student's IEP was amended without a meeting on February 3, 2012. The IEP Amendment proposed the following changes, in relevant part below:
 - A counseling goal will be used, separate from the behavioral goal already in use.
 - 4 accommodations will be added as follows:
 - i. Provide a change of subject or redirect [Student] when his anger is escalating;
 - ii. Tell [Student] he is not in trouble, but he needs to leave classroom to take a break, deescalate his anger;
 - iii. Use of cue cards will be discontinued as a signal for [Student] to change his behavior;
 - iv. Provide an end-of-day check in for [Student] and review or reflect on [Student's] behavior. Self-evaluative checklist provided to [Student] from Para. If there has been an escalated come-apart on a day, postpone evaluation for next day to allow [Student] to process the inappropriateness of behavior, but not cause another come-apart.
21. Prior Written Notice of the IEP Amendment was provided on February 13, 2012, to be effective February 20, 2012.
22. On March 7, 2012, the Student's behavior escalated in band class, resulting in an altercation where the Student threw his instrument and tipped over music stands, unable to calm down. The Student exited the classroom, punched and kicked lockers in the hall, and ripped artwork off the walls. According to District staff, "His mother tried to calm him down and he pushed her twice." Police were called.
23. A March 18, 2012 consultation report from The _____ in _____ documents that the Student was seen in the Neurology Clinic on March 16, 2012. The Diagnoses listed on the consultation report included Tourette's Disorder and Autistic Spectrum Disorder.
24. The IEP team was convened on March 19, 2012 to review and revise the Student's IEP, including determining placement. The IEP team was comprised of at least one regular

education teacher, a special education teacher, an administrator or designee, and the parents.

25. The IEP team decided to amend Student's IEP. The IEP Amendment documents the following salient points of change:
 - During Enrichment (8th hour) [Student] will not be enrolled in Band class. He will attend a class for a combination of interventions and enrichment. His interventions will be Written Language, Penmanship, and Math Intervention/Enrichment.
 - Band can also be considered an option for [Student] during his 8th grade if the Middle school gets a full time band teacher vs. a part time band teacher we now have. Having a full-time band teacher will make it possible for classes to be smaller and the teacher can give [Student] more immediate attention than a teacher is capable of providing in a large 50-member class. Parents agreed that having him in a big band class was not appropriate for [Student] and they are willing to have [family member] teach [Student] lessons in clarinet playing.
 - A change will also be made to the Special Education Services page which will clarify the time spent in two different CATS team classes. It should be 2 45-minute classes five days per week.
 - A change will also be made to the accommodation page. [Student] will be taken to Special Education Classroom when assignments or tests are corrected in class. Any evaluation of [Student] is a big stressor to [Student] and to avoid come-aparts the teachers will have the one on one Para take [Student] to another room to avoid stressing him.
26. Prior Written Notice was issued before implementing the changes, effective March 24, 2012.
27. An IEP team meeting was convened on the morning of April 3, 2012 to determine eligibility and develop an annual IEP. The IEP team was comprised of at least one regular education teacher, a special education teacher, an administrator or designee, and the parents. During this meeting, the Student's eligibility category was amended to reflect the results of the most recent reevaluation, concluding that the Student was most accurately identified as a learner with Autism Spectrum Disorder. The team was not able to complete the Student's new annual IEP on that date due to time limitations.
28. On April 3, 2012 the Student was involved in an altercation at an after-school track practice. When the track coach attempted to redirect the Student's inappropriate behavior, he became angry and confrontational, threatening to kill the track coach. The Student

reentered the school, destroying property by punching or knocking things off the wall, including the glass in a picture frame . Once there, the Student “tore his mother’s room apart, throwing chairs, tipping tables, and breaking things.” The restrained the Student by putting his arms around him and forcing him to sit in a chair until calm. Several different staff members documented their involvement in deescalating the Student.

29. Staff notes in Power School from April 3, 2012 indicate that the frequency of the “come-aparts” had decreased, but the intensity was increasing.
30. An April 5, 2012 email from the Complainant to District staff that states, in relevant part: “Pursuant to our discussion and consensus at the IEP meeting Tuesday morning, we put together a “De-escalation” card, and [District staff] is consolidating our new Behavior Plan to better address [Student’s] needs. It is our hope that if we follow the four steps on the De-escalation card, we can be more successful in educating [Student] and have far fewer escalations.”
31. A series of emails between District staff and the Student’s parents document that District staff was questioning whether the Student’s current placement was his LRE in light of the increasing intensity of his outbursts as evidenced by the April 3, 2012 incident.
32. The Complainant expressed her belief in an April 10, 2012 email that the school cannot make unilateral decisions about the Student, and also that “It appears this move to a more restrictive environment is a result of fear and lack of understanding of Autism Spectrum Disorder (including Asperger’s), and it is resulting in decisions that are not in compliance with the IEP process.”
33. The Student’s IEP team reconvened on April 18, 2012 to develop the Student’s annual IEP and determine his placement. The IEP team was comprised of at least one regular education teacher, a special education teacher, an administrator or designee, and the parents.
34. The Complainant requested that the meeting date and time be changed to accommodate the special education advocate’s schedule. The District complied with the request. The Complainant subsequently changed the meeting back to the original date and time on April 18, 2012.
35. The April 18, 2012 annual IEP meeting resulted in a 20 page IEP for the Student. Salient portions of the IEP include:
 - The Present Levels of Academic Achievement and Functional Performance describe the Student, in relevant part, as follows:

[Student] does well in his academics, with most concepts and skills being easy for him to master. He completes most assignments and tests on time, and has good attendance. He does need better organization skills and his parents and one-to-one Paraprofessional give him support in this. His behavior issues have a negative impact on classroom participation, completion and grading of tests, and interactions with teachers and peers. Math, Science, and Band are high stress classes. His schedule was recently changed because of behavior problems with band and the IEP team determined that a large class of Band students was too big of a challenge for [Student]. His enrollment in Band was taken for the rest of this year because of a major come-apart when he threw his instrument and music stand. Students are cautious around him and have stated that they are afraid of what he will do. [Student's] behavior plan for 7th grade has been amended several times in order to fit his accommodations, classes, and needs. His goals have been partially met and the new goals, services, accommodations, etc. will reflect [student's] current needs. A Functional Behavior Assessment was completed on the Student and the school counselor will advise teachers as to effective ways to help the Student gain control of his emotions and act appropriately in all classroom situations.

[Student's] previous Behavior Plan was not always effective, because he still demonstrated an inability to function well in class, but it did help to decrease the frequency of occurrences as we understood what the antecedents were that caused his stress. Since he was diagnosed by a neurologist and received medicine for the disorder, the frequency of [Student's] disruptions have decreased. His inappropriate behavior decreased in frequency, but he has had more intense come-aparts within classes, hallways, and Special Education Room. Classroom teachers, parents, administrators, and Special Education personnel have collaborated often to try to understand and meet [Student's] behavioral/social needs.

[Student] currently has a one-on-one aide who assists him in dealing with demands of the day, cluing him on appropriate behavior. [Student] still blurts out answers and comments, raises his hand, but does not wait for the teacher to call on him. He has had meltdowns this year with throwing things, not

showing respect to teachers and administrator, and has had to use time outs to get his emotions in control.

[Student's] disability affects him across the curriculum. He struggles with anger and behaving appropriately in various classes, differing from day to day. Teachers follow the accommodations given to them from his IEP, but anger intensifies and occurs in major meltdowns 1-2 times per week, and minor meltdowns 1-2 times per day. At this point, [Student] states that whatever behavior system we try will not work for him for very long. The 7th grade teachers have noticed that a behavior plan, or portion of the plan, put into effect may work for some time, but just as suddenly will not work the next time it is implemented.

- The Consideration of Special Factors section noted that the Student's behavior impedes his earning or the learning of others and that the Student requires assistive technology devices or services.
- Extended School Year in the form of counseling service was determined necessary in order for the Student to receive FAPE.

36. The April 2012 IEP included the following measurable annual goals:

- Behavior: [Student] will increase his self-monitoring skills to 70% accuracy for 4 out of 5 days as demonstrated by pictures he draws or essays in a feeling journal for 6 consecutive weeks. He will draw or write how he feels at the end of end of day or feelings from earlier in the day.
- Behavior: [Student] will enter classroom/office 0-1 times per day for a period of 3 consecutive weeks.
- Behavior: [Student] will self-monitor his appropriate/inappropriate behavior, including antecedent, time escalated, time coming out of escalation, etc. in classes on a chart with 70% accuracy.
- Behavior: [Student] will demonstrate self-discipline in classroom behavior by having 1 or less calming down situations which need removal from the classroom per week as measured by Inclusion Specialist for 7 out of 9 weeks.
- Counseling: [Student] will demonstrate 75% accuracy in effective coping and relaxation techniques in role plays with a counselor in 4 out of 5 sessions.
- Counseling: After learning the "cool down" techniques, [Student] will use the techniques after escalation with 70% accuracy.

37. Special education and related services in the April 2012 IEP include:

Special Education	Frequency	Duration (Amount)	Location	Projected Start Date
Reading Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Math Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Lang. Arts Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Social Studies Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Science Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
P.E. Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Creative Arts Class Inclusion	5 times/week	45 minutes	General Educ. Classroom	05/02/2012
Social Skills Class	5 times/week	45 minutes	Special Educ. Classroom	05/02/2012
ESY Counseling	1 time/week for 8 weeks	45 minutes	Counselor's Office	06/04/2012
Related Service	Frequency	Duration (Amount)	Location	Projected Start Date
Counseling Services	2 times/week	45 minutes	Counselor's Office	05/02/2012

38. The April 2012 IEP included the following Supplementary Aids and Services:

- Student will take classroom tests in Resource Room and will be in Resource Room during correction of tests and/or assignments.
- Assistive Technology: iPad provided to Student's Para for Student to refer to.
- All tests, assignments, and other evaluations will be given to parent to avoid stress to [Student].
- Provide place in Special Education classroom for [Student] to be when tests or assignments are being corrected in class. May return to class after corrections are completed.
- Give [Student] opportunities to make comments in class, recognizing the value of the comment with praise and thanking him for his participation.
- MAP and PAWS Accommodation #s: 11, 20, 21, 22, 23, and 24.
- Provide a change of subject or redirect [Student] when his anger is escalating. Private or quiet reminder to use "Cool Down" techniques.

- Tell [Student] he is not in trouble, but he needs to leave classroom to take a break, deescalate his anger.
 - Teachers will provide back-up for Paraprofessional to reinforce instructions given by Paraprofessional. Call to Principal or Counsel can be made.
 - Transitioning services to 8th grade will be provided to Student prior to end of year. [Student] helps plan schedule.
 - iPad will be provided as Assistive Technology for schedules, behavior monitoring, writing assignments. Para will assist.
 - Applications will be provided and implemented on iPad pertinent to school work and IEP goals. Monitored by Para.
 - Quizzes can be given to [Student] in classroom as [Student] is able to demonstrate appropriate behavior.
 - Para and classroom teachers can give acceptable alternatives when [Student] is finished with tests/quizzes. Brain teasers/Sudoku, etc.
 - [Student] will be requested to write a Social Skills book for younger children, complete with drawings.
 - Provide transitioning time to [Student] to meet Summer Counselor and get to know her/him.
 - Communication between parent and Para will be done frequently (almost daily basis). iPad, paper journal, or electronic system.
 - Provide a 1-on-1 Aide for Student during extra-curricular activities (sports, clubs).
39. On April 24, 2012, the District issued Prior Written Notice to the Complainant, proposing to implement the annual IEP drafted during the April 3rd and April 18th meetings. The Notice indicates the IEP would be implemented on May 2, 2012.
40. An April 19, 2012 email between District staff evidences the continued concerns regarding the level of involvement between the Student and his parents through the school day. The email states: Wasn't it decided yesterday at the meeting that [Student's] mother and father would not check on him as he is in classes? He sometimes sees her and then wants to talk to her, re-enters the room and makes comments. It causes a disruption. Plus, the big thing is that it reinforces his need for him checking with them and disrupting [Student], their duties, etc. and doesn't prepare him to be less dependent on them. [Complainant] is checking on [Student] multiple times during the day now and it has been disruptive. I explained to her that was one of the things we need to decrease and eventually not have.

41. In an April 30, 2012 email, the Complainant expressed her belief that the Student should not be prevented from coming to her classroom or his father's office.
42. The Power School notes throughout the school year also evidence the staff had concerns with the Student proceeding to his mother's classroom or his father's office during times of stress, disrupting the learning of many other students.
43. A May 7, 2012 email between District staff regarding the iPad and applications states, in relevant part: "I talked to [Complainant] and she said [Student] already has an iTunes account. Actually, they should set up an account of their own, so [Student] doesn't know the password, etc. and download whatever he wants to. [Complainant] was fine about using it and they would pay for it. She says that she is fine with paying for it."
44. On the same day, the District replied, in relevant part: "Hopefully, [District staff] can get together with [Complainant and father] to set up the account, until then we cannot load anything on the iPad. Our focus is on free apps at this point. (Honestly I'm not sure how we would work apps for purchase, I would guess the district would reimburse the [Student's] family for any apps purchased if approved by the team.)"
45. A Power School entry on May 25, 2012 stated: "Today he logged on to his mom's account using her password, so I sent a request to PCHelpDesk asking them about blocking that. This is the second offense. The first time he used his dad's password and I informed his dad directly."
46. District staff documented approximately 111 Student behavioral incidents/outbursts in the Power School online database during the 2011-2012 school year. The descriptions of the behavioral outbursts document verbal and physical aggressions, property destruction, death wishes, both for the Student and others, and occasional death threats.
47. Complainant had access to the Power School database throughout the time period relevant to this complaint as an employee of the District.
48. Throughout the period of time relevant to this complaint, the Student continued to receive above average grades in core academic content classes, advanced scores on the PAWS statewide assessments, and above average scores on MAP tests.

Conclusions:

1. The Student was previously identified as a learner with a disability under the IDEA in another state.

2. In light of the fact that the Student had never been previously identified as a learner with a disability in Wyoming, an initial evaluation was required to determine eligibility in this state. *See 34 C.F.R. §300.323(f), and 71 Federal Register 46682.*
3. After enrollment within the District, the Student was evaluated based on a review of existing data and identified as a learner with an Emotional Disability.
4. In April 2012 after reevaluation, the Student's eligibility category was changed from Emotional Disability to Autism Spectrum Disorder.
5. The Student was academically successful, but presented significant and frequent behavioral challenges across school environments.

Issue #1

6. The Student's annual IEP was drafted on August 31, 2011 and amended in September 2011, November 2011, February 2012, and March 2012. The annual IEP was redrafted in April 2012, with a projected start date in May 2012.
7. It is reasonable to expect that many different options are discussed at an IEP team meeting to develop an IEP reasonably calculated to result in educational benefit for a student. Ultimately, it is the District's obligation to propose an IEP reasonably calculated to provide FAPE. The actual proposal that results is ideally an amalgamation of meeting discussions and suggestions. A parent is entitled to Prior Written Notice comporting the requirements of 34 C.F.R. §300.503 prior to implementation of any proposal.
8. In this case, each time an amended IEP was proposed, the District appropriately provided Prior Written Notice to the Complainant consistent with 34 C.F.R. §300.503.
9. Until the filing of this complaint, the Complainant did not object to the implementation of any IEP proposals.
10. Although the Student met with limited progress in some respects, he made progress in others. The frequency of Student outbursts decreased, but the intensity of the outbursts increased.
11. The District was responsive to the Student's continued behavioral struggles, amending the Behavior Intervention Plan and conducting a Functional Behavioral Assessment in order to meet the Student's behavioral needs.
12. Complainant posits that based on the Student's continued behavioral challenges, it can be inferred that the IEPs must have been inadequate. However, such retrospective reasoning is contrary to the IDEA and established case law.

13. In the landmark United States Supreme Court decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982), the seminal test for the adequacy of an IEP was pronounced: Has the state complied with the procedural requirements of the IDEA; and is the IEP developed through the IDEA's procedures *reasonably calculated* to enable the child to receive educational benefits? In reaching its decision, the Court reasoned "in many instances the process of providing special education to handicapped children is not guaranteed to produce any particular outcome."
14. This "reasonableness" standard governs the provision of special education to all eligible students with disabilities. The IDEA does not require states to develop IEPs that "maximize the potential of handicapped children," and districts "need not provide the optimal level of services, or even a level that would confirm additional benefits, since the IEP required by IDEA represents only a "basic floor of opportunity." See *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (1982), see also *Z.W. v. Smith*, 47 IDELR 4 (4th Cir. 2006), holding that districts have no obligation to ensure that students with disabilities receive the best education available.
15. Federal courts have consistently interpreted the *Rowley* standard to provide a "basic floor of opportunity" rather than a guarantee of success. "The IDEA does not entitle a disabled child to a program that maximizes the child's potential. Instead, IDEA guarantees a basic floor of opportunity." *Richardson Indep. Sch. Dist. v. Michael Z.*, 52 IDELR 277 (5th Cir. 2009).
16. The provision of FAPE does not necessarily require the achievement of particular educational outcomes. The focus instead is on whether there is an IEP in place that was reasonably calculated to provide the student with appropriate opportunities. Whether an IEP is reasonably calculated to provide educational benefit does not hinge on the showing of an actual positive outcome. *S.H. v. Plano Indep. Sch. Dist.* 59 IDELR 183 (5th Cir. 2012).
17. An IEP must be judged as to its appropriateness at the time that it is written, and not with respect to subsequently obtained information about the student. *Roland M. v. Concord Sch. Committee*, 16 IDELR 1129 (1st Cir. 1990), *cert. denied*, 110 LRP 66026, 499 U.S. 912 (1991) ("an IEP is a snapshot, not a retrospective," and "must take into account what was objectively reasonable at the time the IEP was drafted").
18. As applied to the Student, the totality of all information reviewed warrants a conclusion that the Student's IEP was reasonably calculated to meet his unique learning and behavioral needs, the accommodations and modifications were also reasonably calculated to meet the Student's needs, the Behavioral Intervention Plans were appropriate, and that the Student's IEP was amended to address his continued behavioral difficulties.

Issue #2

19. Districts are required to provide assistive technology (AT) devices or services to a student with a disability if the participants on the student's IEP team determine that the student needs such a device or service in order to receive FAPE. *34 C.F.R. §300.105. Letter to Anonymous*, 24 IDELR 854 (OSEP 1996); *Letter to Fisher*, 23 IDELR 565 (OSEP 1995); *Letter to Naon*, 22 IDELR 888 (OSEP 1995); *Letter to Seiler*, 20 IDELR 1216 (OSEP 1993); and *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991).
20. The responsibility for the acquisition and maintenance of an assistive technology device belongs to the school district, not the parents. As a component of FAPE, an assistive technology device must be provided at no cost to the parents. See *Letter to Cohen*, 19 IDELR 278 (OSERS 1992).
21. Once an AT device or service was included in the Student's IEP as a component of FAPE, it was necessary for the District to provide that service at no cost to the Complainant.
22. It is clear that the April 2012 annual IEP identified the Student's need for an AT device, and specified that the District would provide an iPad to meet his AT needs. However, it is also equally clear based on subsequent emails that the District did not have a plan for implementation of this service, and was not prepared to provide the iPad as a functional AT device at no cost to the Complainant.
23. A retrospective analysis of whether the Student actually needed the AT device in order to receive FAPE is beyond the scope of this complaint. The District included it in the Student's IEP. Therefore, the AT device and the applications needed to make it a functional tool for the Student must be provided at no cost. The District did not meet its obligation.
24. It is unclear what, if any, actual harm to the Student resulted from this procedural violation.
25. As a general rule, procedural violations will not rise to the level of a denial of FAPE unless the violation impedes the child's right to receive FAPE, significantly impedes the parents' opportunity to participate in the development of FAPE for their child, or caused deprivation of educational benefit. No justification exists to conclude that one of these three thresholds has been met. Therefore, no individual corrective action is warranted.

Issue #3

26. The LRE mandate demands that students be educated in regular classroom settings to the maximum extent appropriate. *34 C.F.R. §300.114(a); and OSEP Memorandum 95-9*, 21 IDELR 1152 (OSEP 1994).

27. The IDEA requires school district to ensure that: (*34 C.F.R. §§300.114 through 300.117*)
- a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - b. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
28. The LRE mandate does not trump the FAPE requirement. If a child's placement does not confer a "meaningful benefit" to the student and a more restrictive program is likely to provide such benefit, the child is entitled to be placed in that more restrictive program. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2nd Cir. 2008). *See also Hartmann v. Loudoun County Bd. of Educ.*, 26 IDELR 167 (4th Cir. 1997), cert. denied, 111 LRP 18076, 522 U.S. 1046 (01/12/98).
29. At the beginning of the 2011-2012 school year, the Student was placed primarily with regular education peers, receiving pull out services on a limited basis. The District provided several supplementary aids and services to aid the Student's success in the LRE.
30. However, when a student is no longer receiving *meaningful benefit* from a portion of the Student's placement, a school district is obligated to address the lack of progress and propose changes, up to and including a change of placement if warranted.
31. The Student met with limited success and presented additional behavioral challenges, thereby warranting amendments to his IEP.
32. One such amendment removed the Student from band class. This amendment occurred in March 2012 and the Complainant did not object to the change. The team's decision to remove the Student from band class and provide alternative learning opportunities is reasonable in light of the circumstances as a whole.
33. The Complainant characterized the Student's removal from track after a significant behavioral incident resulting in verbal and physical aggression, property destruction, and death threats as a "unilateral" change in the Student's placement. This characterization is not accurate in light of the fact that participation in track was not part of the Student's IEP, and was not, as a result, subject to the IEP team's determination.
34. One other amendment involved changing the Student's schedule to address his need for social skills instruction. When the Student's behavioral needs warranted small group or one to one instruction in social skills, this equated to removal of the Student from the regular

classroom environment. In light of the fact that the change was accomplished through the IDEA's IEP procedures, no violation results.

35. When a student is not able to be successful in the general classroom environment with the use of supplementary aids and services, the IDEA holds the District accountable for amending that student's placement to provide needed services. See *34 C.F.R. §300.114*.
36. No other evidence in the record supports a conclusion that the Student was denied opportunities to participate in nonacademic or extracurricular activities, or that he wasn't provided with supplementary aids and services consistent with IDEA. To the contrary, the most recent IEP effective in May 2012 provides the Student the assistance of a one-to-one paraprofessional during nonacademic and extracurricular activities.

Issue #4

37. The Complainant and the Student's father, collectively the Student's parents, were active and involved participants in the Student's educational program. The record evidences that the parents were actively involved in the IEP process, serving as meaningful collaborators. At least six team meetings were convened throughout the year to review the Student's progress and address the Student's needs.
38. The IDEA provides parents a right to attend IEP meetings and participate as equal collaborators, but not a right to dictate terms of the IEP. See *J.C. v. New Fairfield Bd. of Educ.*, 56 IDELR 207 (D. Conn. 2011).
39. The fact that the parents' ultimate requests were not incorporated into the IEP does not equate to a lack of meaningful parental participation. See *H.D. v. Central Buck Sch. Dist.*, 59 IDELR 275 (E.D. Penn. 2012).
40. Each time the IEP team was convened, the requisite notice was provided to parents. Evidence in the file confirms that the District was willing to change a meeting time and date at the request of the parents, only to change the meeting back to its original date, also at the request of the parents.
41. The IDEA requires that a student's IEP team be comprised of:
 - a. The parents of the child;
 - b. Not less than one regular teacher of the child;
 - c. Not less than one special education teacher of the child;
 - d. A representative of the public agency (typically an administrator or designee); and
 - e. An individual who can interpret the instructional implications of evaluation results; and
 - f. The child, whenever appropriate.

34 C.F.R. §300.321(a).

42. The mandatory school district members of IEP team include the regular and special education teacher, a representative of the agency, and an individual who can interpret evaluation results. Also, one individual may serve in more than one capacity in meeting the IEP team membership requirements. *34 C.F.R. §300.321.*
43. The decision as to which particular teacher(s) are members of the IEP team are left to the IEP team and state and local officials. *71 Federal Register 46670.*
44. The IEP team was properly convened each time. The record supports a conclusion that the mandatory IEP team members were present for each IEP team meeting.
45. Each time the District proposed a change in the Student's IEP, it provided Prior Written Notice meeting the requirements of 34 C.F.R. §300.503.
46. Further, the Complainant took issue with the District's suggestion in emails and conversations that the Student may need a more restrictive placement outside of his neighborhood school environment.
47. However, school districts are not prohibited from engaging in preparatory activities to develop a proposal that will be discussed later. The IDEA and the federal regulations expressly permit those types of preparatory activities. *See 34 C.F.R. §300.501(b)(3).*
48. The record supports a conclusion that the parents were afforded the opportunity for meaningful participation in the IEP process, and the IDEA's procedural requirements were met (with the exception of Issue #2 as noted above).

Issue #5

49. The IDEA requires the District to reevaluate the Student if the educational or related services needs of the Student warrant, or if the parent or teacher requests a reevaluation. *See 34 C.F.R. §300.303(b).*
50. The Student was initially evaluated upon enrollment in the District in October 2010.
51. The District proposed a reevaluation in November 2011, but did not receive the Complainant's consent until February 2012.
52. The District appropriately considered the information received from the Complainant's private evaluators during the course of its evaluation.
53. The District concluded its reevaluation of the Student in April 2012.
54. The Student's record, taken in its entirety, does not support a conclusion that the Complainant was denied the opportunity to request a reevaluation of the Student.

Issue #6

55. The District must permit parents to inspect and review any education records pertaining to the Student that are collected, maintained, or used by the District. The District must comply with a request without unnecessary delay, and in no case more than 45 days after the request has been made. See 34 C.F.R. § 300.613(a).
56. The Complainant and the Student's father are employees of the District.
57. All behavioral incidents were documented in Power School. In addition, the District maintained the Student's special education records.
58. As employees of the District, both parents had access to the electronic records regarding the Student and physical access to the paper records contained in the Student's file.
59. It is reasonable to conclude that the Complainant was not denied access to the Student's special education records.

Decision:

Issue #1

Whether the District provided the student with a Free Appropriate Public Education (FAPE) by providing special education and related services reasonably calculated to meet the Student's social, emotional, and behavioral needs and provide the Student with educational benefit, consistent with 34 C.F.R. §§300.17 and 300.101. Specifically, the investigation will determine whether:

- a. The Student's IEP was reasonably calculated to meet his unique educational needs consistent with 34 C.F.R. §§300.320 through 300.324;
- b. Accommodations and modifications were provided to the Student to meet his unique educational needs;
- c. The Student's Behavior Intervention Plan was appropriate and implemented; and
- d. The Student's IEP was appropriately amended to address progress, or lack thereof consistent with 34 C.F.R. §300.324(b).

WDE finds that the Student's IEP was reasonably calculated to meet his unique needs. The District met its obligation to provide the Student FAPE. No violation.

Issue #2

Whether the District provided the Student with a Free Appropriate Public Education (FAPE) by providing special education and related services reasonably calculated to provide the Student

with educational benefit, consistent with 34 C.F.R. §§300.17 and 300.101. Specifically, the investigation will determine whether Assistive technology (AT) services were provided to meet the Student's unique educational needs.

WDE finds that the AT device identified in the Student's IEP was not provided consistent with the IDEA. However, this procedural violation does not rise to the level of a substantive denial of FAPE. No student specific corrective action is warranted.

Issue #3

Whether the District provided the Student with FAPE in the Least Restrictive Environment (LRE) consistent with 34 C.F.R. §§300.114 through 300.117. Specifically, the investigation will determine whether:

- a. The Student was denied the opportunity to participate in nonacademic settings and services; and
- b. The student was provided with supplementary aids and services appropriate to meet his unique needs.

WDE finds that the District provided the Student FAPE in the LRE. No violation.

Issue #4

Whether the District afforded the parents and Student FAPE by meeting the procedural requirements set forth in the IDEA. Specifically, the investigation will determine whether:

- a. The parents were afforded a meaningful opportunity to participate in the IEP process pursuant to 34 C.F.R. §§300.321, 300.322, and 300.327;
- b. The parents were provided with Prior Written Notice consistent with consistent with 34 C.F.R. §300.503;
- c. The IEP team was properly convened pursuant to 34 C.F.R. §300.321;
- d. Special education and related services were implemented consistent with the IEP; and
- e. The District unilaterally changed the services in the IEP.

WDE finds that the District met the procedural requirements set forth in the IDEA (except Issue #2 as noted above). No violation.

Issue #5

Whether the District denied the parents the opportunity to request a reevaluation consistent with 34 C.F.R. §300.303(a).

WDE finds that the District afforded the parents the opportunity to request a reevaluation consistent with IDEA. No violation.

Issue #6

Whether the District complied with the confidentiality of information provisions of the IDEA by affording the parents with the opportunity to access Student records consistent with 34 C.F.R. §300.613.

WDE finds the District provided the parents with access to Student records consistent with the IDEA. No violation.

Corrective Action Plan:

1. The District shall provide at least two (2) hours of inservice training to all special education staff regarding the IEP process for inclusion of assistive technology in IEPs. The requirements include:
 - a. The inservice training must be completed by February 1, 2013.
 - b. The District shall provide WDE with the following documentation:
 - i. The date, time, location, agenda and presenters ten (10) days prior to the training; and
 - ii. 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.

All required submissions must be sent to WDE to the attention of Diana Currah, with a copy to the Complainant. 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,



Tiffany Dobler
State Director
Special Programs Division

cc: District Superintendent
District Board Chair
Cindy Hill, Superintendent of Public Instruction
Samuel Shumway, WDE Legal Counsel