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Idaho Special Education News is provided by the Idaho Department of Education for informational purposes only. It is intended to inform the reader about current events in Idaho pertaining to special education. It is not intended to provide legal advice.

Happy New Year!

In this issue we review state administrative complaints investigated by the Idaho State Department of Education from August through October 2018.

Complaint Investigation Findings

Implementation of IEP and Provision of FAPE

General Requirement: A school district has an obligation to provide all of the special education and related services, accommodations, modifications and supports, and supplementary aids and services identified on a student's Individualized Education Program (IEP). How a district provides the required services and achieves its mandate to provide a Free Appropriate Public Education (FAPE) is at the discretion of the district. A district may elect to provide all the identified services on a student's IEP with its own staff and resources, or it may elect to contract with a qualified provider to provide some or all of a student's IEP services. In all cases, the district remains responsible for ensuring that the IEP services are provided in a manner that appropriately meets a student's needs as specified in the IEP. 64 Fed. Reg. 12,478 (1999).

C-18-09-13a

Summary of Facts: A kindergarten Student with Autism was evaluated and received an IEP in April 2018. The Student's IEP provided that the Student would receive Behavioral Intervention (BI) services for 900 minutes per week. The individual who filed the complaint was employed as a BI worker by a private, nonprofit organization that was under contract with the District to provide BI services to the Student during the school day. The Student's advocate was the president of the organization. The District's contract with the nonprofit organization was for 750 minutes of BI services per week for the Student. The advocate and Complainant contended that the Student was not receiving 900 minutes of BI services per week as required by the Student's IEP.



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Complaint Investigator Findings: The contention that the Student was not receiving 900 minutes of BI services per week was based on an assumption that BI services to the Student were only provided under the contract with the nonprofit organization. However, staff substantiated that the District was providing more than 150 minutes per week of BI services with qualified District staff, in addition to the 750 minutes of services provided by the BI worker employed by the nonprofit organization. The complaint investigator determined the allegation was unfounded and the District was in compliance. No corrective action was required by the District on this issue.

C-18-10-01a

Summary of Facts: The Student enrolled in the District on August 27, 2018 from another Idaho school district. The Student had a current IEP and was eligible for special education and related services under the category of Autism. The IEP identified specialized instruction and related services, including social skills training, math and reading instruction, intensive behavior intervention (BI), language therapy, occupational therapy consultation, and personal care services. The IEP further provided that the student required BI services throughout the school day, to be delivered by a behavioral professional or a behavior paraprofessional supervised by a professional.

District personnel and a representative from the agency with whom the District contracted for behavioral support met with the Parent and Student



on September 4, 2018 to discuss the Student's needs and conduct a sufficiency review of the Student's IEP. The District determined the Student's IEP from the previous district would be adopted and the contents of the IEP were transferred

to an IEP form on District letterhead. The Student's IEP from the previous Idaho school district provided that the Student required one-on-one adult support. The agency representative indicated that the agency did not have a person available at that time to provide the behavioral support needed by the Student, and that there were no current applications on file. The agency representative suggested that the Student begin attending school half-days by sharing the services of a current behavior assistant at the school. The Parent did not want the Student to attend half time and stated the Student needed to be in school full time. The District informed the Parent that staff would contact the Parent when the agency was able to hire a behavior specialist.

In response to the Parent contacting staff to complain about the meeting on September 4, the building administrator talked with the Parent by phone on September 12. The Parent was informed during this conversation that a full-time assistant was not yet available for the Student, and it was unknown when one would be available. The Parent was informed that although the one-on-one adult support was not in place, "we will go ahead and start him if [Parent] wishes to do so." The Parent expressed frustration with the September 4 meeting and ended the call. The Parent subsequently enrolled the Student in a school in another State.

Complaint Investigator Findings: Following the meeting on September 4, District staff began preparing for the Student's attendance by creating picture schedules with photographs, preparing note icons, obtaining the needed classroom furniture, placing the Student on the speech language pathologist's schedule and preparing materials. The delay in implementing the Student's IEP was the lack of having the one-on-one behavior professional or paraprofessional in place. However, an Idaho school district is required to implement a

student's IEP within 5 days of enrollment. Although it was a challenge to find qualified staff, the District was obligated to follow the 5-day timeline and implement the student's IEP. The District was found out of compliance and corrective action was required.

Note: For further discussion on the implementation requirements of an IEP for in-state and out-of-state transfer students, please review Volume 1 Issue 2 of the Idaho Special Education News.

Requirement to Provide Periodic Progress Reports

General Requirement: Each student's IEP is required to include a statement describing 1) how the student's progress toward IEP goals will be measured and the progress monitoring scheduled; and 2) how and when the parent will be informed of the student's progress toward annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period. At a minimum, Parents must be provided with periodic written progress statements related to progress toward annual goals concurrent with the issuance of report cards. Idaho Special Education Manual (2017), p. 86.

C-18-09-07a

Summary of Facts: The Complainant reported that the transitional activities requiring participation from the Student and Complainant had been completed, but no additional information had been received from the District regarding progress on the Student's academic or transitional goals. While the Student's file contained progress reports, the Complainant indicated they had not been provided. The Complainant stated that had the progress reports been received, they would have made a big difference in the Complainant's ability to assist the Student.



Complaint Investigator Findings: While the District indicated progress reports are delivered to parents by mail or hand-delivery at the end of each quarter, the District had no documentation verifying delivery of the Student's progress reports to the Complainant. The District was also unable to confirm if any other student on an IEP received progress reports during the 2017-18 school year. The District was found out of compliance and corrective action was required.

Measurable Goals

General Requirement: An annual goal is a written measurable statement, developed from baseline data that describes what a student is reasonably expected to accomplish within the time period covered by the IEP. Goals are required to reflect the needs of a student described in the present levels of academic and functional performance statements. Idaho Special Education Manual (2017), p. 85. Annual goals must be developed on an individualized basis and must be reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. *Andrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (2017).

C-18-08-06a

Summary of Facts: A high school Student in a motorized wheelchair was eligible for special education services under the category of Orthopedic Impairment due to Cerebral Palsy. The Student's eligibility report indicated an adverse effect on educational performance due to the Student's significant limitations in the area of self-care needs. The Student's IEP contained an Orientation and Mobility Goal which stated in part,

"[The Student] will inspect the classroom for obstacles that would keep [the Student] from accessing the teacher's desk or may be hazardous to [the Student] in the placement of [the Student's] wheelchair in 4 out of 5 situations as measured by talking with [the Student] about potential obstacles."

The Student also had a Personal/Social Goal which provided the Student would shout for assistance when unable to maneuver the Student's wheelchair towards staff or was unable to raise a hand. The goal intended to reduce the number of times the Student shouted for assistance and increase the number of times the Student responded appropriately when help was provided. The goal further stated that the Student should ask for help by going to a teacher. However, the Student was not able to maneuver the wheelchair towards staff.

Complaint Investigator Findings: The Orientation and Mobility Goal was found to be neither reasonable nor measurable, as it was only measured by talking with the Student on a weekly basis. Further, the IEP did not provide any orientation or mobility accommodations, such as preferential seating or defined wheelchair access to support the goal.

The Personal/Social Goal was also found to be unmeasurable and unreasonable as it required the Student to do something that was shown to be impossible – maneuver the wheelchair towards staff. The District was found out of compliance and corrective action was required.



CLASSROOM SYSTEMS

- Moscow April 16
- Coeur d'Alene April 17
- Nampa April 23
- Boise April 25
- Idaho Falls April 30
- Twin Falls May 2

MAXIMIZING INSTRUCTION

- Moscow Feb. 20
- Coeur d'Alene Feb. 21
- Boise Feb. 26
- Nampa Feb. 28
- Idaho Falls Mar. 6
- Twin Falls Mar. 12



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