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### Complaint Investigation Findings

In this issue we review state administrative complaints investigated by the Idaho State Department of Education from November 2018 through April 2019.

#### Public Virtual Schools and the Provision of Special Education and Related Services

**General Requirement:** A public virtual school in Idaho can be a charter school consisting of its own school district (also referred to as a Local Education Agency or LEA); it can be chartered by an existing school district; or it can be part of the educational program provided by an Idaho school district. Regardless of how a public virtual school comes into existence, it is required to meet all obligations set forth in the Individuals with Disabilities Education Act (IDEA). If a virtual school is out of compliance with IDEA mandates and it has been chartered by a school district, or it is part of a school district’s educational program, the school district is required to oversee IDEA compliance, and the district is responsible in the event the virtual school is out of compliance with the IDEA. Two recent investigations are discussed below that address the special education requirements in public virtual schools.

#### DR-19-02-08b

**Summary of Facts:** The Idaho State Department of Education (SDE) informed an Idaho school district that it was initiating an investigation into the district’s virtual K-8 program under its general supervision, monitoring, technical assistance and enforcement authority. The school district designated a separate building for its virtual program, which it identified as a home learning program, and none of the students physically attend classes in the district. For the 2018-19 school year, the district enrolled 1,580 students in its virtual school, of which 62 students were on an IEP. Only 16 students attending the virtual school resided within the geographical boundaries of the district. The district contracts with three private corporations (partners) to assist with student recruitment and registration,



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the provision of core and elective curriculum, the assessment and testing of students, program customization, and progress reporting.

The home learning program is set up in a manner where the parent serves as the student's teacher. The partners offer a number of online programs as curriculum choices. The parent chooses one of the partners to work with and the curriculum to be used. The parent is not limited to the curriculum offered by the partner, and may select any other online curriculum, except a religious-based curriculum. The curriculum chosen by a parent is not the general education curriculum provided by the district to the students attending its brick and mortar classrooms. Each parent is required to submit weekly attendance logs and the parent chooses the order of the content standard areas to be completed by their child. An Idaho certified teacher is assigned to each student, but no virtual classrooms are provided. No completed student work is required to be submitted to demonstrate mastery of an Idaho content standard and all grades assigned are pass-fail.

A parent is credited with \$1700 by a partner for the purchase of curriculum and other teaching equipment or tools. The parent is reimbursed for the educational expenses, but if the student withdraws from the program the parent may be required to reimburse the partner for the costs expended on the student's behalf.

The district and its partners are jointly responsible for the provision of special education. Three special education teachers provide "tutoring"

services virtually in reading or math, based on each student's IEP service grid. Related services are provided virtually by licensed OT or SLP providers. No behavioral services are provided.



**Complaint Investigator Findings:** The SDE investigated ten (10) compliance areas and found the school district out of compliance in each area investigated. Some of the SDE's IDEA compliance concerns include:

- While a student's parent may consult with the general education teacher assigned to the student, the parent bears the ultimate responsibility for the curriculum delivery to the student and reporting student progress. However, a parent is not certified as a teacher and no information was available as to whether an individual parent was appropriately trained and supervised to teach or provide related service assistance. Further, there were no assurances that the parent was competent or certified to deliver the education curriculum, determine appropriate positive behavioral interventions and supports or supplementary aids and services, program modifications, and support for school personnel.
- The tutoring provided by the special education teachers is considered to be the specially designed instruction. However, the program does not require the parent to access the tutoring service which allows the student to receive the specially designed instruction.
- The special education administrator generally conducted the intellectual/cognitive functioning, as well as academic performance and emotional/social/behavioral assessments. However, the administrator was not qualified to administer intellectual/cognitive functioning assessments.
- Certain IEPs reviewed by the SDE indicated that a student's behavior affected learning. However, the district did not consider positive behavioral interventions and supports and other strategies to address the behavior that affects a student's learning, nor did it provide behavioral intervention services. The program does not provide behavioral intervention services to a parent in the home, nor does it

provide behavioral services virtually. The reevaluation process does not consider the effect of a student's behavior on learning. Some students who transferred to the program with a behavior intervention plan were exited from services without explanation.

- The district failed to provide the transfer student a free appropriate public education (FAPE) as required by Idaho law.
- In the event a parent does not timely provide weekly logs, or the logs are incomplete, the parent may be informed by a partner that the program is inappropriate for the student. Additionally, a parent is notified that a student may be removed from the program without any of the disciplinary protections, and that the parent may be required to reimburse a partner.
- The program determines a student's placement without an IEP meeting and without the parent in attendance.
- The program's IEP form provides that each "student is in the general education classroom 80% or more of the school day. In a six-hour school day, the student is inside the regular class for at least four hours and 8 minutes." Because each student is in the home setting for the school day, there is no means by which to verify that a student participated in a six-hour school day. It is unlikely that each student attends school for 6 hours daily, as the district's partners' representation is that content mastery could be accomplished in "ten to fifteen minutes."
- Because each student's curriculum is chosen by the parent, students are not able to be involved in and make progress in the district's general education curriculum, as required by the IDEA, nor is the home setting the "regular class" as contemplated by the IDEA.
- Students' IEPs were not developed in conformity



with the least restrictive environment (LRE) requirements. Students with disabilities are not educated in the "regular educational environment" contemplated by the IDEA.

A Corrective Action Plan (CAP) was put in place by the SDE in order for the district to become compliant with all IDEA requirements.

### C-19-02-21a

**Summary of Facts:** In January 2018, a student on an IEP with a disability category of autism enrolled in a virtual charter school which is its own school district, also known as a LEA. The virtual school provides online delivery of instruction and uses the "learning coach" model that requires a significant commitment by parents or guardians to directly participate in the instruction of their child, including the provision of special education and related services. Each learning coach is responsible to act as a resource, communicate with teachers, advocate for the student, explain and facilitate lessons, and deliver direct instruction. The school district provides scripted lessons to prepare parents and guardians to be learning coaches and to provide specially designed instruction. PowerPoint lessons and modeling of instruction delivery are provided to the learning coach by the special education teacher. Each special education student meets online (virtually) one-on-one with a special education teacher for an hour a week.

The virtual school provided the student with the special education services on the student's IEP from the student's previous school, with modifications made to comply with the virtual school's special education model. In December 2018, the school determined that a new evaluation was necessary, and the evaluation was completed on January 18, 2019. A new IEP was developed for the student based on the evaluation.

The student's weekly sessions with the special

education teacher were recorded, and the parent requested copies of those recordings. The school informed the parent that the recorded sessions were the special education teacher's personal recordings and notes, and were sole possession records. As such, the school district indicated that it was at the discretion of the special education teacher whether to release the recordings to the parent, which the teacher declined to release.

**Complaint Investigator Findings:** The SDE accepted five (5) allegations for investigation, and found the district out of compliance in four (4) of the allegations. Some of the SDE's IDEA compliance concerns include:

- Each LEA is responsible to ensure that all personnel providing services have content knowledge and the necessary skills to provide services; the responsibility is not that of a parent or guardian. The parent expressed concerns that the student's family was inadequately prepared and trained to be learning coaches. The school district failed to take steps to ensure the parents were adequately prepared and trained with the necessary content knowledge and skills. The district also did not provide alternate means of instructional delivery and support for the student.
- The student's IEP was designed and implemented primarily to conform with the school district's model for instruction rather than to ensure that the student's unique needs were met in a manner that would enable the student to be involved in and make progress in the general education curriculum.
- Sole possession records are defined in the Family Educational Rights and Privacy Act (FERPA) as those records "kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the

record." In 2006, the U.S. Department of Education addressed certain exceptions to the "sole possession" exclusion and held that "detailed or comprehensive notes that record specific clinical, educational or other services provided to a student, or that record direct observations or evaluation of student behavior..." are not sole possession records. As such, the school district was found to be out of compliance when it denied the parent the opportunity to inspect and review the student's educational records.

A Corrective Action Plan (CAP) was put in place by the SDE in order for the district to become compliant with all IDEA requirements.

### **Discipline - Manifestation Determination**

**General Requirements:** A "manifestation determination" is a team review of relevant information and a determination of whether or not a student's misconduct is a "manifestation" of the student's disability. The team consists of a district representative, the parent, and other relevant members of the student's IEP team "as determined by the parent and the district."

A manifestation determination must be conducted within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct. In conducting a manifestation determination, the team must review all relevant information relating to the student's file. Relevant information includes (a) the student's IEP, (b) any teacher observations, and (c) any relevant information provided by the parent.

After considering the relevant information, the team must answer the following two questions:

1. Was the conduct in question caused by, or had a direct and substantial relationship to, the

student's disability?

2. Was the conduct in question the direct result of the district's failure to implement the student's IEP?

If either question is answered "yes," the team must determine that the conduct was a manifestation of the student's disability, in which case, school personnel are limited to disciplinary actions that do not constitute a change in placement.

If both questions are answered "no," the team may determine that the misconduct was not a manifestation of the student's disability and the district may discipline the student in the same manner and for the same duration as a nondisabled student. However, educational services must continue to be provided.

**Note:** Disciplining students with disabilities can be complicated and confusing for both school staff and parents. A helpful resource entitled [The Educator's Guide to Student Discipline and Supports](#) explains the requirements for disciplining students with disabilities in a question and answer format.

#### C-19-02-04a

**Summary of Facts:** An elementary school student was eligible for special education services under the category of Other Health Impairment. Within the first month of the 2018-19 school year, the student began exhibiting behaviors that resulted in disciplinary actions, including suspensions and contact with law enforcement. In January 2019, the student brought a toy cap gun to school, made shooting gestures toward another student and a staff member, and verbally threatened to shoot a student. The student was suspended for 3.5 days because of the incident. The student had previously been suspended during the 2018-19 school year, and the 3.5 days of suspension in January resulted in the student being suspended for more than 10 days in the school year.

**Complaint Investigator Findings:** Although the district was not proposing to change the student's placement due to the student's misconduct with the toy cap gun, the student had been suspended for more than 10 days during the 2018-19 school year, which constituted a change in placement. The district was required to conduct a manifestation determination meeting to determine whether the behaviors resulting in the student's suspension in January 2019 were a manifestation of the student's disability, but failed to do so.

A Corrective Action Plan (CAP) was put in place by the SDE in order for the district to become compliant with all IDEA requirements.

#### C-19-02-21a

**Summary of Facts:** A high school student was eligible for special education services under the category of Emotional Disturbance. In November 2018, school staff attended a meeting regarding the student with other public agencies, including law enforcement. The student and the parent were also in attendance. At this meeting, law enforcement informed the participants that the student would be removed from school due to a behavior that occurred in the community. Based on this information, school personnel informed the parent that the student could not attend school and needed to be disenrolled. The parent elected not to disenroll the student and did not complete the paperwork to do so. However, the district's attendance records indicated that the student was "withdrawn" from school.

During the time the student did not attend school (approximately 8.5 days) the district did not provide educational services to the student, nor did the district inform the parent or student that the student was allowed to re-enroll.



**Complaint Investigator Findings:** Although the student may have been removed from the current placement for less than 10 school days, the district, by informing the parent that the student could no longer attend school, effectively expelled the student without due process. Since the district did not inform the parent of the length of the student's removal from the district, its actions resulted in a change in placement, yet no manifestation determination was conducted within 10 school days of that decision.

The district presented a Corrective Action Plan to the SDE prior to the completion of the investigation, which ensured that appropriate district staff are adequately trained in IDEA requirements pertaining to manifestation determinations.

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