



October 19, 2021

Kenji Matsudo, Superintendent
Madeira City Schools
7465 Loannes Dr
Cincinnati, OH 45243

RE: Complaint #CP 0083-2021, Findings Letter

Dear Superintendent Matsudo:

After reviewing the information regarding the complaint concerning [REDACTED], (the Student) the Office for Exceptional Children has determined the following:

- The Education Program Specialist (EPS) assigned to the complaint reviewed and considered all documentation and information submitted by both parties.
- The EPS interviewed the Parent on August 26, September 21, and October 12, 2021 via telephone.
- The EPS interviewed the Special Education Director (Director) and the District's attorney on August 26, 2021 via conference call.
- The EPS interviewed the Student's intervention specialist (IS) and two of his general education teachers via conference call on October 4, 2021.
- The EPS interviewed the District's attorney, Assistant Superintendent and the Information Technology (IT) Support Technician with District's third-party technology contractor via conference call on October 12, 2021.
- The Student is 18 years old and identified as a student with a disability in the category of Other Health Impairment (OHI). The Student turned 18 on [REDACTED] 2021, and educational rights transferred to him on his 18th birthday until the Parent obtained legal guardianship of the Student on [REDACTED] 2021.
- Pursuant to 34 C.F.R. 300.153(c) [Filing a complaint], information that occurred more than one year ago which was submitted is included for background purposes only and is not considered for these findings.

Issue 1:

The Parent alleges the Student did not receive specially designed instruction (SDI) as written in the Student's individualized education program (IEP) during the 2020-2021 school year because the Student "continuously" viewed online material of inappropriate images and videos while in school. The Parent alleges the teachers could not have provided SDI throughout the school day, and specifically during his 7:30-8:30 am class period with the intervention specialist (IS). Specifically, the teachers and IS did not redirect the Student to complete classwork and allowed him to use the computer to view content that was not school related. This is an alleged violation of 34 C.F.R. 300.323(a) [When IEPs must be in effect] and O.A.C. 3301-51-02(B) [Free Appropriate Public Education].

Facts:

After review of all documentation and information submitted, the OEC determined the following facts.

1. The Student had two IEPs in effect during the 2020-2021 school year.
2. IEP 1 was in effect from February 10, 2020, and contained the following pertinent information:
 - a. The Student was to receive a total of 120 minutes weekly of SDI from an IS, as follows:
 - i. Goal 1, in English Language Arts (ELA), reading comprehension stated the Student was to receive 30 minutes per week of small group instruction from an IS in the resource room.
 - ii. Goal 2, in ELA, written expression stated the Student was to receive 20 minutes per week of small group SDI from an IS in the resource room.
 - iii. Goal 3, in Math, problem solving stated the Student was to receive 40 minutes per week of small group instruction from an IS in the resource room.
 - iv. Goal 4, in Executive Functioning, self-monitoring, organization and time management stated the Student was to receive 30 minutes per week of small group instruction from an IS in the resource room
 - b. The *Accommodations* section states the Student's Chromebook was to be kept at school nightly and the Student was to be supervised when on the internet.
3. IEP 2 was in effect beginning on February 9, 2021. This IEP contained the following pertinent information:
 - a. The Student will receive 110 minutes weekly of SDI from an IS as follows:
 - i. Goal 1, in Reading comprehension states the Student will receive 45 minutes weekly of small group SDI from an IS in the resource room.
 - ii. Goal 2, in Math problem-solving states the Student will receive 30 minutes weekly of small group SDI from an IS in the resource room.
 - iii. Goal 3, in Written expression says the Student will receive 35 minutes weekly of small group SDI from an IS in the resource room.
 - b. The *Accommodations* section says the Student's Chromebook will be kept at school nightly and the Student will be supervised when on the internet.
4. An April 12, 2021, prior written notice (PR-01) contained the following pertinent information:
 - a. The IEP team convened on March 26, 2021 to discuss transportation, technology use, after school activities and the Student's return to school following a hospitalization.
 - b. On March 19, 2021, the IS contacted the Parent to let him know the Student took his Chromebook home.
 - c. On March 25, 2021, the counselor, Student and IS met to discuss appropriate ways to take a break when stressed at school and drafted a plan, which was discussed at the March 26, 2021, IEP team meeting.
 - d. The Parent contacted the school to inform the administration that the Student "had been in multiple chat rooms or on non-school websites throughout the school day."
 - e. The District attempted to investigate the claims, but the Parent did not return the Chromebook.

- f. "Even without the [computer] history, the District is aware the [Student] violated the Acceptable Use Policy (AUP) on at least one occasion."
 - g. The IEP team determined it was necessary to restrict the Student's use of technology, but it did not require an amendment to the IEP as the restrictions are a consequence of misuse of school technology.
5. IEP 2 was amended on April 28, 2021. The amendments included:
- a. Changes to the transition goals and services.
 - b. Changes to the location of SDI. All SDI provided by the IS was moved to the general education classroom setting.
 - c. The amendments to the IEP reflected that the Student would receive the same amount of SDI with the IS, but they would be provided in the general education classroom instead of the resource room.
6. An April 29, 2021, PR-01 stated the Parent and the Student¹ requested SDI be delivered in the general education classroom. "While the District continues to assert that the delivery of special education services is best done in a resource room free of distractions and where [the Student] can receive individualized supports for his goal areas, the District has agreed to this parent and student request for a change of placement in order to facilitate delivery of any specially designed instruction. Beginning 4/19/2021, [the Parent and the Student] were refusing to allow him to receive instruction in a resource room with the intervention specialist, as written on his IEP, and [the Student] agreed on 4/27/2021 to resume service delivery, so long as it was in an alternate location...The District is not in agreement with this change of placement..."
7. The District submitted a copy of a spreadsheet that contained SDI tracking by the IS. The document contained columns for the date, amount of service, provider, services provided, notes and the IEP goal area. A review of this document supported the following provision of service:
- a. September 2020: 385 minutes of the required 480 total minutes².
 - b. October 2020: 590 of the required 480 total minutes.
 - c. November 2020: 552 minutes. (505 minutes plus one date that indicated "4th period"³) of the required 480 total minutes.
 - d. December 2020: 120 minutes of the required 360 total minutes. This number of minutes does not include four days where the tracking sheet documented that the Student was with the IS from 10:20am to 2:15 pm some days and 10:25 am to 2:15 pm on other days to complete various assignments⁴.
 - e. January 2021: 515 minutes and two days marked with supported study halls (length of time not noted) of the required 480 total minutes.
 - f. February 2021: 305 minutes plus 5 days marked with supported study hall of the required 440 total minutes.
 - g. March 2021: 700 minutes of the required 495 total minutes.
 - h. April 2021: 420 minutes of the required 440 total minutes.

¹ At the time of this meeting, the Student had reached the age of majority and rights had transferred to the Student. The Parent did not yet have legal guardianship of the Student.

² The minutes in Fact 7 a-i represent the combined minutes for all services the IEP required the IS to provide.

³ This did not clarify how long 4th period is, but based on staff interviews, classes were 47 or 90 minutes long depending on if it was a blocked class or not, so 47 minutes was attributed to this time.

⁴ It was unclear from the documentation and subsequent communication how much of this time was considered SDI, which is why the days were not counted towards the specific amount of SDI.

- i. May 2021: 475 of the required 440 total minutes.
- 8. The District submitted the Student's progress reports for quarters 1 and 2, which reported progress for IEP 1. These reports provided data points for each goal and objective and verified the Student met all goals and objectives.
- 9. The District submitted the Student's quarter 3 and 4 progress reports, which reported progress for IEP 2. These reports provided data points for each goal and objective. The Student was on track to meet his goals and objectives and had mastered 2 objectives. A few of the objectives indicated "progress varies."
- 10. The District submitted work samples for the Student. There were 164 pages of work samples for Quarter 1, 220 pages for Quarter 2, 102 pages for Quarter 3 and 176 pages for Quarter 4.
- 11. The District submitted a copy of the Bell Schedule for the current school year which demonstrates school begins at 7:35 am and bus dismissal occurs at 2:35 pm. During staff and Parent interviews, it was determined the school's course schedule changed halfway through the year. During the first half of the year, the IS saw the Student for 90 minutes every other day. During the second half of the year, the Student attended class with the IS for the first 47 minutes of the day.
- 12. The Parent submitted copies of the following records:
 - a. 577 pages of Google Hangout⁵ (instant messages) from the Student's personal email account. The instant messages occurred between the Student and numerous individuals.
 - b. 325 pages of email messages from the Student's personal email account. The emails occurred between the Student and numerous individuals.
 - c. 418 pages of email messages from the Student's personal email account that were largely duplicative of items 11a and 11b, above.
 - d. 40 pages of documentation which contained the Student's usage on YouTube, which was accessed using the Student's school email account.
- 13. Based on the above Parent submitted documentation, the following was determined about the Student's online usage of email, instant messages, and YouTube during the school day that was not related to academics. The review takes the following items into consideration:
 - a. The school day, which started at 7:35am and ended at 2:35pm. Minutes were included within these times.
 - b. The Student's lunch period, which started at 11:27 and ended at 11:57am. No minutes were counted during lunch.
 - c. Frequency and duration of usage: Usage was calculated if messages or emails were less than 9 minutes apart and occurred for more than 20 minutes at a time. This accounted for multiple usages throughout the school day.

⁵ Google Hangouts is a web-based, cross-platform instant messaging service.

Chart of Student's Online Usage of Email, Instant Messages and YouTube

Date ⁶	Minutes	Am/Pm
2/1	34	Am
2/2	229	Both
2/3	178	Am
2/4	135	Both
2/5	188	Both
2/8	177	Both
2/10	159	Both
2/11	45	Pm
2/17	260	Both
2/19	113	Am
2/22	185	Both
2/23	63	Both
2/24	196	Both
2/25	228	Both
2/26	198	Both
3/1	199	Both
3/2	124	Both
3/3	199	Both
3/4	117	Both
3/8	144	Both
3/9	97	PM
3/10	126	Both
3/11	288	Both
3/12	194	Both
3/15	218	Both
3/16	90	Both
3/17	274	Both
3/18	137	Both
3/19	164	Both
4/12	49	PM

14. The EPS reviewed the SDI service log from the IS and compared it with the documentation of the instant messages, email and YouTube provided by the Parent. As an example of this review, please see the below specific date comparisons.

a. February 2, 2021:

- i. The SDI log stated the Student received 20 minutes of SDI in the area of "geometry help." The log does not indicate what time that assistance occurred.
- ii. Personal online usage: The personal email account indicates the Student spent a total of 4 hours and 49 minutes online. The specific time of usage was from 7:47am to 10:56am and 2:01pm to 2:34am.

⁶ All dates occurred in 2021.

- b. March 8, 2021:
 - i. The SDI log indicates the Student received 40 minutes of SDI covering geometry math test review packet and two missing film write ups. A second entry for this date mentions a geometry test, but the documentation was illegible.
 - ii. Personal online usage: The personal email account indicates the Student spent 2 hours and 24 minutes online. The specific times of usage are 10:20am- 10:50am, 12:00pm to 12:34pm and 1:02pm to 2:24pm. Additionally, YouTube videos and searches occurred between 10:34 am and 3:24pm. The searches and videos were a mix of music, sports and school related content.
 - c. April 12, 2021:
 - i. The SDI log indicates an email from the Parent stated the Student was in a “chat room”. The IS went to the media center⁷ and Student was in Music Media class. Another SDI log entry for this date stated the Student was found on a PLC computer and received 1.5 hours of service,
 - ii. Personal online usage: The personal email account indicated the Student spent 49 minutes online. The specific times of usage were 12:35pm to 1:24pm.
15. The Parent submitted approximately 500 pages of emails sent from the Parent to various District staff. In summary, the emails covered the following issues:
- a. Concerns about the Student’s personal online usage during school hours;
 - b. Concerns about the amount of YouTube videos and listening to music during school hours;
 - c. Concerns about inappropriate images viewed during school hours.
16. During the Parent interviews, the Parent provided the following relevant information:
- a. The Student was on the internet, instant messaging with people and watching videos “continuously.”
 - b. The Student has attention deficit hyperactivity disorder (ADHD) and is easily distracted. The Student was “addicted” to the computer, and he could not have been focused on school work while also chatting or watching videos.
 - c. The Student did not complete any schoolwork at home or after school.
 - d. The District sent progress reports, but the Parent did not feel like the Student made any progress. The Parent did not “see any improvement in organization or study skills.”
 - e. The Parent confiscated the Student’s laptop around March 19, 2021, when it was brought home. The Parent kept the laptop until the end of May 2021 at which time he gave it to the police.
 - f. The Parent had full access to the laptop. In addition to having the Student’s personal email log in information, the Parent was able to get into the school-issued Chromebook because there was “no security, no administrator password and no parental controls” set up on it.
 - g. The Parent expressed concerns that the Student’s internet usage was a distraction from class for more than two years.

⁷ The Perin Learning Commons (PLC) is the District’s media center, which contains computer terminals.

Finding:

The District is in violation 34 C.F.R. 300.323(a) [When IEPs must be in effect]. Under this section, a district must have an IEP in effect for each child with a disability within its jurisdiction. To be in effect, the IEP must be implemented as written. Here, the Student had two IEPs in effect which required 110 to 120 minutes of SDI per week from the IS. The documentation submitted demonstrated the Student did not receive all weekly SDI in the months of September, December, February or April. However, the Student was required to receive 4,160 total minutes of SDI during the relevant period, and received 4,062 minutes of SDI. In addition, the Student had 7 days of supported study hall and 4 days where approximately 3.75 hours each day was spent with the IS getting additional assistance. This demonstrates the Student did receive SDI, but not in the frequency and duration as written into the IEP, therefore the District is in violation.

The District is not in violation of O.A.C. 3301-51-02(B) [Free Appropriate Public Education (FAPE)]. Under this section, each school district shall make FAPE available to all children between the ages of three and twenty-one for whom the school district is the child's school district of residence. Here, the Student had an IEP in place during the relevant time. While the IEP was not implemented as written, and the Student did not receive the appropriate amount of services each week. The documentation demonstrated the Student received all but 98 minutes of SDI. In addition to the documented SDI, the Student had a supported study hall on 7 additional days and 4 days where the Student spent 10:25 am-2:15 pm with the IS prior to winter break. In addition, the IEP progress reports demonstrated the Student made progress towards his IEP goals. Based on this information, the Student received services sufficient to provide FAPE. Therefore, the District is not in violation of this section.

Corrective Action:

The District self-corrected the violation by providing the Student with SDI, although not in the frequency and duration as written in the IEP. The Student received additional assistance with the IS for 3.75 hours a day on 4 dates in December, which is in excess of that required by the IEP. Therefore, no further corrective action is required for this issue.

Issue 2:

The Parent alleges the District refused to categorize the Student under the appropriate disability category, even after review of an independent evaluation. Specifically, the Parent alleges the Student is identified under the disability category of other health impaired (OHI) but believes the Student should be identified as a student with an intellectual disability (ID). The Parent alleges he has asked for the category change in IEP meetings and throughout the 2020-2021 school year, but the District refused this request. This is an alleged violation of 34 C.F.R. 300.306(b)⁸ [Procedures for determining eligibility and educational need] and 34 C.F.R. 300.8(c)(6) [Child with a disability, intellectual disability].

Facts:

After review of all documentation and information submitted, the OEC determined the following facts:

⁸ The Letter of Allegations erroneously cited 34 C.F.R. 300.306(c). Subsection (b) is the correct citation.

1. The Student's current evaluation team report (ETR) was completed on October 25, 2019. This ETR contained the following relevant information:
 - a. The School Psychologist evaluated the Student in the areas of background information, classroom observations, general intelligence, adaptive behavior, classroom based evaluations and progress in the general curriculum.
 - b. A private psychologist diagnosed the Student with ADHD and a mild intellectual disability.
 - c. The ETR included a review of the Student's most recent five cognitive assessments. These assessments showed the Student demonstrated strength on the verbal comprehension index and weakness on the processing speed skills. The cognitive assessment history provided the following information:

Test and Date	WISC-V 2/2014	WISC-V 1/2017	WAIS-IV ⁹ 8/2019	KBIT-2 9/2019	WISC-V 9/2019
Full Scale IQ	79	72 ¹⁰	68	83	68
General Ability Index	90	76	73	n/a	74

- d. The Student's adaptive functioning was assessed using the Adaptive Behavior Assessment System-3rd edition (ABAS-3¹¹). The Parent and three teachers provided rating scales. The Parent rated the Student with a general adaptive composite (GAC) of 72 (low range) and the teachers rated the Student's GAC as 90 (average), 78 (low range) and 78.
- e. A review of prior adaptive behavior assessments completed by the Parent showed the following:

Test and Date	Vineland 10/2008	ABAS-3 2/2014	Vineland-3 8/2019	ABAS-3 9/2019
Adaptive Behavior Composite	73	84	62	72

- f. Observations of the Student showed the following:

Class	Number of Students	Student's % of time on task	Peer's % of time on task	Notes
Spanish	27	60	93	No aide
English	6	80	65	1 aide
Algebra	28	65	83	1 aide
Cafeteria	Sat with 6 other boys			Student and another boy took turns recording themselves on a voice recorder. Typical peer interaction

⁹ The Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV), is a measure of cognitive ability for people aged 16 years to 90 years, 11 months.

¹⁰ One subtest, processing speed index was listed as not valid because the Student was distracted and talking to the examiner.

¹¹ The Adaptive Behavior Assessment System (ABAS-3) assesses the functional skills necessary for daily living.

- g. The Student was in a general education English, Algebra, Biology and History class and his general education teachers “stated that his current placement in their classes is appropriate.”
 - h. The Student was assessed using the Social Skills Improvement System Rating Scales¹². The teacher and Parent both found the Student’s social skills scale to be in the “below average” range and his problem behaviors scale to be in the “above average” range.
 - i. The Student’s IS assessed the Student’s academic skills, data from interventions and vocational information. The IS stated the Student would benefit from direct support due to weaknesses in processing speed, working memory and executive functioning skills.
 - j. The Team Summary stated the Student’s cognitive assessments ranged from low to average, with consistently lower processing speed scores. This suggests it may take the Student longer than other students to take in information and respond appropriately. The ETR notes that processing speed can be impacted by distractibility.
 - k. The Team found the Student eligible for services in the category of OHI. The basis for eligibility determination stated the following:
 - i. The Student “has a medical diagnoses of ADHD, combined type, and sensory processing disorder, which impact his alertness and processing time in the classroom...The team considered [the Student’s] qualification under Intellectual Disability. [The Parent] provided a private clinical psychology evaluation that indicated a cognitive score of 68...The school psychologist urged caution in light of the processing speed concerns. In order to factor out the influence of processing speed, the KBIT-2 was administered and a score of 83 was indicated. The school psychologist reported this to be a more accurate measure in light of processing speed concerns and other sources of information that indicate intellectual functioning more in the average range... Additionally, the team reported not observing significant adaptive skill deficits in the school environment...”
 - l. The Parent did not sign as a participant to the November 4, 2019, ETR meeting.
2. A November 8, 2019, prior written notice stated the following:
- a. The Student continued to qualify for special education services under the category of OHI.
 - b. The Parent participated via telephone.
 - c. The Parent indicated the private psychologist “sees a lot of consistency in the testing results he found and those found on school assessments” and would not participate in the meeting.
 - d. The Parent indicated that his highest priority is the category of eligibility. “The Team explained that disability category does not define services-needs do.”

¹² The Social Skills Improvement System (SSIS) Rating Scales enable targeted assessment of individuals and small groups to help evaluate social skills, problem behaviors, and academic competence.

- e. The Student's processing speed "significantly impacted composite scores" on cognitive tests which is why the KBIT-2 was used to "isolate the impact" of processing speed since the test is untimed.
 - f. The Team had previously discussed with [the Parent] that a clinical diagnosis is one piece of information, but that for purposes of the ETR and IEP the actual impact of a child's unique needs on the receipt of FAPE is the focus."
 - g. "In light of [the Parent's] very clear position that he wants [the Student's] disability category changed, the School Psychologist led a discussion on changing disability category due to changes in student needs. She let the team know that changes in disability category are done when there is a change in student needs, and this does not mean that the original identification was wrong, just that there is updated information. The School Psychologist led the team in a discussion of eligibility... The team discussed the category for eligibility" including reading the definitions for the categories.
 - h. The Parent "disagreed that the definitions were guidelines within which the district must operate and felt that [the Student's] cognitive scores qualified him for the category of Intellectual Disability. [The Parent] described the regulations as 'major loopholes' and did not further engage in the discussion of the definitions."
 - i. The Team confirmed that OHI would be the category proposed. The Parent "stated his disagreement, that he would not sign, and indicated that he needed to get off the phone so he could go file for Due Process."
3. The Parties submitted a copy of a private psychological evaluation conducted on August 12, 2019. This evaluation stated the following:
 - a. The Student was assessed with the WAIS-IV. His Full-Scale IQ was 68, but the Student demonstrated variability on the subtests. The Student's verbal comprehension was 80, perceptual reasoning was 71, working memory was 83 and processing speed was 56.
 - b. The Student's full-scale IQ and adaptive behavior composite supported a diagnosis of mild intellectual disability.
 - c. The report further stated the Student's "better developed verbal reasoning along with his engaging personality makes his cognitive functioning appear to be higher than it really is."
 4. The parties submitted numerous communications between the Parent and the District on this matter. None of the documentation during the relevant time period shows that the parent requested a category change in a meeting or in writing. A review of these communications establishes that the Parent continued to express concerns that the Student had a "low IQ" or "intellectual disability" but there was no request to change the Student's category of eligibility during the 2020-2021¹³ school year. Additionally, the communications did not provide new information or express a change to the Student's needs that would warrant a change to the disability category.
 5. The Parent filed a request for due process hearing on March 19, 2020 stating the District identified the student under the wrong disability category.

¹³ An email from the Parent to the Special Education Director on February 7, 2020 indicated the Parent believes the Student was "miscategorized" and is "clearly disabled" meeting the definition of intellectual disability and OHI. However, this email did not request a change to the ETR eligibility category and is outside the one-year investigation time frame.

6. During the telephone interviews and in an October 12, 2021 email, the Parent stated he asked to change the Student's disability category "several times" during the last school year, and most recently on August 10, 2021. He stated he has "never" stopped asking for the category to be changed since the 2019 ETR.

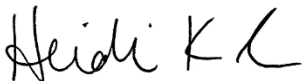
Finding:

The District is not in violation of 34 C.F.R. 300.306(c) [Procedures for determining eligibility and educational need] or 34 C.F.R. 300.8 (c)(6) [Child with a disability, intellectual disability].

Section 34 C.F.R. 300.306(c), states in interpreting evaluation data for the purpose of determining if a child is a child with a disability, and the educational needs of the child, a district must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that the information obtained from all of these sources is documented and carefully considered. Section 34. C.F.R. 300.8 (c)(6) states intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. Here, the evaluation team reviewed and considered data from a variety of sources, including multiple cognitive tests, adaptive behavior tests and the private evaluation in the 2019 ETR. The team reached a conclusion reasonably supported by the documentation and explained why they did not find the Student eligible under the category of intellectual disability. The Parent did not provide new information to warrant a change in category during the 2020-2021 school year, and the documentation submitted did not demonstrate an additional request to change the category. Instead, the emails showed the Parent's continued disagreement with the 2019 determination, therefore the District is not in violation.

We appreciate your cooperation in the resolution of the complaint investigation. There is no corrective action required, so we are closing the file on this case.

Sincerely,



Heidi Kleinman, Assistant Director, Dispute Resolution
Office for Exceptional Children

cc:

[REDACTED]
Jessica Hunter, Special Education Director
Jeremy Neff, Attorney for the District
Heather Clingerman, Education Program Specialist
Abbie Miller, Professional Conduct Intake Manager