



November 27, 2020

Romules Durant, Superintendent
Toledo Public School
1609 N Summit St
Toledo, OH 43604

RE: Complaint #CP 0076-2020, Findings Letter

Dear Superintendent Durant:

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 one of the Complainants via conference call on October 5, 2020.
- The Complainants submitted information and additional documentation on October 6, 2020 and October 8, 2020.
- The EPS interviewed the Special Education Compliance Director (Director) on October 29, 2020 via conference call.
- The District submitted information and documentation on November 2, 2020.
- The EPS scheduled a November 5, 2020 conference call with the Parent, but the Parent did not call in for the interview. The EPS sent a follow up email and left a voicemail for the Parent on the same date to reschedule the call. As of the date of this letter, the Parent has not responded.
- The EPS interviewed the Intervention Specialist (IS) via conference call on November 18, 2020.
- For the 2020-2021 school year, the Student is enrolled as a first-grade student in the District and is eligible for special education and related services in the category of Autism.
- Due to COVID-19 pandemic, the District started the current school year in a virtual setting. However, the Student attends a daycare center in person, which is operated by the Complainants.

Issue 1:

The Complainants allege the District has not implemented the Student's individualized education program (IEP) during the current 2020-2021 school year. Specifically, the Complainants allege the following:

1. The school year started on September 8, 2020 and is operating virtually, due to the COVID-19 pandemic.
2. IEP services are not being provided virtually.
3. Academic content is provided online. The Student is nonverbal and cannot access online instruction.
4. The Student was supposed to get an iPad to log into school but has not received it.
5. Scheduled online meetings do not occur. Approximately "half of the time," the Complainant helps the Student log into a virtual session and the teacher is not there.
6. The Complainants have offered to take the Student to school for services in person, but the District has declined.

7. The Student has not received any speech language services during the current 2020-2021 school year.

This is an alleged violation of 34 C.F.R. 300.323(a) [When IEPs must be in effect].

Facts:

The information and documentation submitted provided the following information:

1. The District submitted a 2020-2021 school year calendar which demonstrated the first day of school for 1st grade students was September 8, 2020.
2. The District submitted a 2020-2021 Hybrid "A/B Student Attendance Calendar." This calendar demonstrated Students attended school virtually until the week of October 12, 2020. Starting October 12th, students were placed in two groups; Group A attended in-person on Mondays and Thursdays while Group B students attended in-person on Tuesdays and Fridays.
3. The Student had two IEPs in effect during the relevant time period. IEP 1, effective September 25, 2019, was in effect at the beginning of the school year. IEP 1 provided the following information:
 - a. IEP 1 had 5 goals in the areas of adaptive behavior, math, reading, receptive language and language expression.
 - b. IEP 1 contained the following specially designed instruction (SDI) and related services:
 - i. 60 minutes per week of SDI from an IS to address the adaptive behavior goal.
 - ii. 60 minutes per week of SDI from an IS to address the math goal.
 - iii. 60 minutes of SDI a week from an IS week to address the reading goal.
 - iv. 20 minutes per session, four times per month of speech and language (SL) services to address the receptive language and language expression goals.
 - c. IEP 1 contained the following accommodations:
 - i. Visual supports; and
 - ii. Sensory items such as mats, spin chair and a squishy ball.
 - d. IEP 1 indicated the Student received the Ohio extended core curriculum.
 - e. Under Support for School Personnel, in IEP 1 the Student was to receive Occupational Therapy consultative services to provide sensory interventions as needed and monitor fine/perceptual motor skill development.
 - f. IEP 1's least restrictive environment (LRE) states the Student attends the school she would attend if not disabled but does not receive her education with nondisabled peers.
4. IEP 2 was in effect from September 22, 2020 through September 21, 2021. IEP 2 provided the following information:
 - a. IEP 2 has 6 goals in the areas of math, reading, adaptive behavior, fine motor, receptive language and language expression.
 - b. IEP 2 contains the following SDI and related services:
 - i. 20 minutes weekly of SDI from an IS to address the reading goal;
 - ii. 20 minutes weekly of SDI from an IS to address the math goal;
 - iii. 20 minutes weekly of SDI from an IS to address the adaptive behavior goal;
 - iv. 20 minutes per session, four times a month of OT to address the fine motor goal; and
 - v. 20 minutes per session of SL services to address the receptive language and language expression goals.
 - c. IEP 2 contains the following accommodations:
 - i. Wait time;
 - ii. Modeling;

- iii. Repeated guided practice;
 - iv. Scaffolding;
 - v. Reteaching;
 - vi. Hands on materials;
 - vii. Learning videos;
 - viii. Visual and verbal prompts;
 - ix. Directions read aloud and clarified;
 - x. Flash cards;
 - xi. Frequent breaks;
 - xii. Immediate feedback; and
 - xiii. Small group and on-on-one settings.
- d. IEP 2 indicates the Student's curriculum was modified to her ability level and she is participating in a curriculum aligned with the Ohio Extended Standards in all core content areas.
- e. IEP 2's LRE states the Student does not receive all instruction with nondisabled peers and is placed in a self-contained multiple disabilities classroom because she requires individualized instruction.
5. The Complainants and the District submitted a copy of the Student's Virtual Learning Schedule. This schedule stated that any time not designated for Google Meets¹ "should be used to work on Morning Work binder, flash cards, number recognition, counting, google classroom assignments, ABC Mouse [an online learning program], etc." This schedule provided the following information:
- a. The Student was scheduled for a Google Meet morning meeting with the IS and the whole class each day from 9-9:30 am.
 - b. The Student was scheduled for speech services using Google Meet from 9 am to 9:30am on Mondays. This overlapped with the morning meeting for that day.
 - c. The Student was scheduled for a one-on-one Google Meet with the IS from 10:35 to 10:55 am on Mondays, Tuesdays, Thursdays and Fridays.
 - d. The Student was scheduled for a closing meeting via Google Meet with the IS from 2:45-3:00 pm every Monday, Tuesday, Thursday and Friday.
 - e. The Student was scheduled for a closing meeting via Google Meet with the IS from 2:45-3:00 pm every Monday, Tuesday, Thursday and Friday.
6. The District submitted the following information regarding the Student's speech language services:
- a. On September 7, 2020 the SLP sent the Parent a link to the Student's speech therapy session and instructions on how to log in.
 - b. An SLP attendance report for the Student demonstrated the following for sessions scheduled from 9:00 am to 9:20 am:
 - i. September 14, 2020, Student absent;
 - ii. September 21, 2020, Student absent; and
 - iii. September 28, 2020, Student absent.
 - c. Typed SLP notes demonstrated the following:
 - i. For the week of August 31, 2020, the SLP sent a text message to the Parent. The Parent preferred text messages over email. The SLP indicated she would send a

¹ Google Meet is a web-based video conferencing service.

text via Google voice with the day and time of the speech services. The SLP met with the Parent in the classroom to discuss speech time, how to join Google Classroom and cards were sent home which included the speech day of the week and time.

- ii. For the Week of September 8, 2020, a message was sent to the Parent via Google Voice with information on the Student's speech time and how to log in. The SLP spoke with the Parent on September 10, 2020 about speech time and confirmed the Parent's phone number.
 - iii. For the Week of September 14, 2020, the SLP spoke with the IS about the Student missing speech sessions. The IS was in direct contact with the Parent and daycare and daycare had a session schedule.
 - iv. For the Week of September 21, 2020, the SLP spoke with the IS stating the Student had not attended speech. The IS stated the Student also had not attended classroom meetings consistently. The SLP spoke with the Parent and got to play with and observe the Student while at the school for an appointment for the Student's sibling. The Student had increased eye contact and interest in activities. The Student would not sign "more" without hand over hand on September 26, 2020.
7. The District submitted information regarding the Student's intervention services which demonstrated between September 8, 2020 and September 30, 2020 the Student attended:
- a. Morning meeting: 3 out of 16 opportunities.
 - b. One-on-one session: 2 out of 12 opportunities
 - c. Closing session: 0 out of 12 opportunities.
 - d. The IS was absent on September 14, 2020, but assignments were available on Google Classroom and Seesaw.
8. The District submitted a student documentation log which provided the following information:
- a. On September 7, 2020 the Google Classroom and a Class Dojo link were provided to the Parent.
 - b. On September 8 through 18, 2020, the Student did not attend daily sessions "due to no device."
 - c. A Remind app message and text were sent to the Parent and an email was sent to the daycare on September 8, 2020, September 11, 2020 and September 15, 2020.
 - d. On September 18, 2020, the IS drove to the Parent's work in a neighboring city to deliver a Chromebook and internet hot spot. The IS emailed daycare.
 - e. The Student did not attend on September 21 through 23, 2020 and attended only the first session on September 24, 2020.
 - f. The Student did not attend on September 25, 2020 due to an IEP meeting.
 - g. The IS sent a variety of text messages, emails and Remind messages to the Parent and the daycare on each day.
 - h. The Student attended online services on September 28, 2020.
 - i. The Student did not attend on September 29 or 30, 2020.
9. The District submitted a copy of email communications which contained the following information:
- a. On August 31, 2020, the IS emailed the Complainant and stated the IS was meeting with the Parent on September 1, 2020 and would go everything with the Parent. The IS stated she was waiting on an iPad for the Student, which would have everything the Student needed. The Student "is a very hands on child as you are aware. I have made

- each student an interactive book where they will be matching different items. She will have flashcards, counters, [and] pom poms to sort by color.”
- b. On September 3, 2020 the IS emailed the Complainant and stated the September 1, 2020 meeting with the Parent went well and another meeting was set up for September 22, 2020. This email further stated the binder was sent home with the Parent and the plan was to “meet with all students using Google Meet at 9-9:30 and then do individual lessons throughout the day. [The Student] has speech on Mondays at 9-9:30. I plan to meet with [the Student] daily [from] 10:35-10:55. I am not sure what exactly this will look like for [redacted] yet.”
 - c. On September 7, 2020, the Complainant emailed the IS stating, “I noticed everyone else had the charts with them in this morning’s meeting. I was wondering if you could email me the pages you used?” Handwritten on this email was the comment “Chart was w[ith] mom.”
 - d. On September 8, 2020, the IS emailed the Complainant and stated the calendar mat could not be sent due to copyright issues. In another email on the same date, the IS asked the Complainant, “Instead of me meeting with [the Student] one on one today I will get her materials ready and get them to you if that is okay?”
 - e. On September 8, 2020, the Complaint responded, “That sounds good.”
 - f. In a final September 8, 2020 email, the IS sent the Complainant attachments of the alphabet, shape, number and color flashcards used for the Student.
 - g. On September 11, 2020, the IS emailed the Complainant and stated they were still waiting on the Student’s iPad, but the Student could “use the same one” as another Student attending the daycare who was also in class with the Student.
 - h. On September 23, 2020 the IS emailed the Complainant stating the Student had not been attending school “at all this week.”
 - i. On September 24, 2020 the IS emailed the Complainant stating the Student attended that morning, and there were no live sessions on September 23, 2020.
 - j. On October 23, 2020, the SLP emailed the Director and other District staff stating on September 1, 2020, the IS had a face to face meeting with the IS, parent and paraprofessionals. The IS provided a folder with learning materials, school forms and speech language therapy log in information.
10. The District submitted screenshots of text messages between the Parent and the IS. This documentation showed the following:
- a. On September 7, 2020:
 - i. The IS said, “since I still do not have the iPads yet, do you want me to send you the link so [the Student] can attend via a different device maybe your phone? Or would you rather just wait [un]till [the]iPad comes in?”
 - ii. The Parent responded, “I’ll wait for the iPad because I can’t really do anything until I’m off work with her to do anything on my phone.”
 - iii. The IS responded, “Okay I will send the link to [Complainant] at the day care and if she wants to watch she can.”
 - b. On September 9, 2020, the IS stated the network was down so the morning meeting would not take place that day. “I will be calling to touch base shortly.”
 - c. On September 18, 2020 the IS stated a Chromebook was available for the Student, and the IS offered to bring it to the Parent’s work. At 2:28pm that day, the IS texted the Parent she was on her way with the Chromebook.

- d. On September 21, 2020, the IS texted the Parent stating she missed seeing the Student that day. The Parent responded the daycare was supposed to have the Student online and that the Student went to daycare with the Chromebook.
11. The District's letter of response (Response), dated October 30, 2020 stated the following:
- a. The District delayed the start of the school year until September 8, 2020.
 - b. When school started, the District was in a COVID-19 "red" phase² which means that [the District was] operating with only the remote [virtual] learning option."
 - c. On September 7, 2020 the IS provided Google Classroom links to the Parent via text and the daycare center via email.
 - d. On September 8, 2020 the District's "systems were cyber-hacked and all [District] systems were down from this day until September 22, 2020." Due to the issues with the system, iPads and Chromebooks could not be updated with applications and software or distributed to students waiting to receive devices.
 - e. While waiting for students to receive devices, the IS provided each student with letter, number, shape and color flashcards, a calendar mat, and erasers and pom poms for sorting.
 - f. The IS was absent on September 14, 2020, but loaded assignments onto Google Classroom and SeeSaw³.
 - g. The Student was absent from all online sessions on September 15, 17, 18, 21, 22, 25 and 29, 2020.
 - h. The daycare indicated a problem logging into the class on September 18, 2020, but other students were in class at that time. The link was resent by the IS.
 - i. On September 24, 2020 the Student attended the first session but was absent for the other two sessions.
 - j. On September 25, 2020 the Student was not in class because she attended the IEP meeting.
 - k. On September 28, 2020 the Student was present for sessions one (after difficulty logging in) and two and was absent for session three.
 - l. On September 29, 2020, the Student was absent for the first two sessions and excused for the third session after the daycare indicated they did not log in.

Finding:

The District is not in violation of 34 C.F.R. 300.323(a) [When IEPs must be in effect]. Under this section, at the start of each school year, a district must have an IEP in effect for all students with disabilities within the district's jurisdiction. To be in effect, the IEP must be implemented as written. Here, the District started school on September 8, 2020. The District operated virtually until October 12, 2020. The District submitted documentation demonstrating the Student's virtual schedule through September 30, 2020, the date the complaint was filed. The Student was to attend four meeting

² During the COVID-19 pandemic of 2020, the State of Ohio operated a Public Health Advisory Alert System which was a color-coded system designed to supplement existing statewide orders through a data-driven framework to assess the degree of the virus' spread and to engage and empower individuals, businesses, communities, local governments, and others in their response and actions. The system included four Colors. Red was a Level 3 Public Emergency and stated Ohioans should "limit activities as much as possible."

³ Seesaw is a classroom application used for classwork, distance learning, or hybrid learning environments.

sessions on Mondays, since speech and morning meeting overlapped, five meeting sessions on Tuesdays, one meeting session on Wednesdays and four meeting sessions on Thursdays and Fridays. When not scheduled for live sessions, or when the IS was absent, the Student was to work on a morning work binder, flash cards, number recognition, counting, Google Classroom assignments and ABC Mouse. The District provided documentation demonstrating the Student only attended five out of 40 available sessions with the IS. Speech services were available to all students, including the Student, the second week of school, but the Student did not attend any of the three sessions held during the relevant time period. Based on the above information, the documentation submitted demonstrated the District was in routine communication with the daycare and the Parent, offered online sessions, video lessons and hands-on course work, which constituted a good faith effort to provide services to the Student to the best of their abilities while the District was unable to provide in-person instruction. The Student's IEP did not require an iPad or a Chromebook, but the District provided a Chromebook while waiting for an iPad to be provided for the Student as part of the District's COVID-19 response. The District also encouraged the Parent to allow the Student to use the Parent's phone to participate in lessons and the daycare to allow the Student to participate with another classmate's iPad since both students attended the daycare and received instruction from the same IS. Therefore, the District is not in violation of this section.

While not in violation of implementing the IEP due to good faith attempts to provide service, it is recommended the District consider this Student a candidate for Recovery Services due to the Student's significant needs and difficulty accessing online lessons. To address Recovery Services, it is recommended that the District review the Student's IEP and progress or regression during the time of virtual only learning and work with the IEP team to determine what additional services can be provided to help the Student recover from lost in-class time.

Issue 2:

The Complainants allege the Student's IEP does not meet the Student's needs. The Complainants allege the Student's IEP does not contain all services required to meet the Student's individual needs and the services that are in the IEP do not have an appropriate frequency and duration. Specifically, the Complainants allege the Student requires:

1. Increased adult physical, verbal and visual prompting, peer modeling and extra time;
2. Increased occupational therapy services;
3. Increased speech and language services;
4. A one-on-one aide;
5. A goal associated with toilet training;
6. A goal associated with social interactions that specifically works with a behavior therapist and a physical therapist; and
7. A goal associated with social interactions specific to sign language usage for basic needs.

These are alleged violations of 34 C.F.R. 300.320(a)(2) and (4) [Definition of IEP] and 34 C.F.R. 300.324(b) [Review and revision of IEP].

Facts:

1. The Student's most recent evaluation team report (ETR) was conducted on March 11, 2020 and contained the following information:

- a. The IS assessed the Student in the areas of academics, communication, social/emotional skills and motor skills. The IS indicated the Student was below average in all academic areas. The Student is non-verbal and requires frequent repetition and clarification of directions. The Student does not interact with peers. The Student requires a modified, functional curriculum.
 - b. The SLP assessed the Student's communicative status using observations, interviews, record review and the Early Functional Communication Profile⁴. The SLP's assessment contained the following information:
 - i. The Student "presents with significant deficits in joint attention with emergent skills in the 7-13 month range."
 - ii. The Student has "profound deficits in social interactions with emergent skills in the 6-9 month range."
 - iii. The Student has "significant deficits in the area of communicative intent with emergent skills [in the] 12-15 month range."
 - c. The School Psychologist assessed the Student in general intelligence, academic skills, vision, hearing, physical exam/general health, observations, behavior, background and information provided by the parent. The School Psychologist assessed the Student using observations, interviews, record review and norm-referenced assessments. This assessment contained the following information:
 - i. The Student was assessed with the Autism Spectrum Disorder Evaluation Scale and demonstrated behaviors common to the diagnosis of Autism Spectrum Disorder.
 - ii. "Standard forms of intelligence testing was (were) unable to be completed due to [the Student's] limited communication skills and short attention span."
 - iii. The Student is performing below grade level in core academic areas and requires a modified/functional curriculum that focusses on daily living skills and "basic academics."
 - d. The Team Summary stated the Student presents with "significant symptoms associated with [Autism] which impact her ability to communicate, socialize and perform academic and daily living skills."
 - e. The Student was identified as a child with a disability in the category of Autism.
2. In addition to the information in Issue 1, Fact 3, IEP 1 contained the following information:
- a. In the *Profile* Section, IEP 1 stated: The Student was unable "to stay seated in her seat for longer than 30 seconds." The Student "used to sign 'more' however will no longer make an attempt to use the sign."
 - b. The adaptive behavior goal stated the Student "will increase her ability to function appropriately within the school environment when given visual and verbal prompts, she will participate in adult led tasks and/or activities for 5 minutes or to completion in 4 out 5 trials."
 - c. The math goal stated "when given a math activity [the Student] will participate 80% of the time with no more than 1 verbal cue until the end of the IEP."

⁴ The Early Functional Communication Profile assesses the foundational skills essential for the development of functional communication. This profile assess joint attention, social interaction and communicative intent in each skill area.

- d. The reading goal present levels of performance stated the Student is not able to recognize her name or letters, but is interested in playing with letter magnets. The goal stated "When given a reading activity [the Student] will participate 80% of the time with 1 verbal cue by the end of the IEP."
 - e. The receptive language goal stated "when given the command 'show me' or 'give me,' [the Student] will follow the direction with 60% accuracy..."
 - f. The language expression goal stated, "when asked, 'what do you want' or 'what would you like,' [the Student] will initiate a response on 3/5 attempts..." Benchmark 5.1 for this goal stated the Student "will sign 'more' in response to 'do you want more' on 3/5 attempts."
 - m. IEP 1 contained the following SDI and related service:
 - i. For the adaptive behavior, math and reading goals: The IS would provide visual, verbal and physical prompting, hand over hand assistance, adult and peer modeling for 60 minutes per week.
 - ii. For the receptive language and language expression goals: The SLP would provide speech and language services including sign language, scaffolding, hand over hand assistance, guided practice, independent practice, visual cues and verbal cues in 20 minute sessions, four times per month..
3. In addition to the information in Issue 1, Fact 4, IEP 2 contains the following information:
- a. In the *Profile* section, the IEP states the Student requires hand over hand and verbal prompting to put her belongings away. The Student's "pre-academic skills are between 0-6 months with scattered skills up to 12 months of age." The Student is unable to identify numbers or letters and "is not able to stay in her seat for longer than 2 minutes without an adult being right by her side."
 - b. The Student's math goal is the same as the math goal in IEP 1, except it uses the words "verbal prompt" in place of "verbal cue."
 - c. The Student's reading goal states, "When given a reading activity of matching the letters of her name and concepts of print [the Student] will participate with 80% accuracy..."
 - d. The Student's adaptive behavior goal is the same as in IEP 1.
 - e. The Student's fine motor goal states the Student "will sit for 5-minute intervals with less than 3 prompts for redirection during an adult directed fine motor or visual motor/perception activity, in 4 out of 5 trials."
 - i. Benchmarks for this goal include positioning scissor to cut along straight and curved lines, progressing from tracing to copying basic shapes, maintaining a functional grasp to trace letters of her name and coordinate both hands together to complete bilateral tasks.
 - f. The receptive language goal is the same as in IEP 1.
 - g. The language expression goal is the same as in IEP 1 except the word "attempts" is replaced with "opportunities" and the second benchmark for this goal states the Student "will sign more in response to 'Do you want more' in 3/5 attempts."
 - h. IEP 2 contained the following SDI and related services:
 - i. For the adaptive behavior, math and reading goals: The IS would provide "...modeling, repeated guided practice, scaffolding, reteaching, hands on materials, learning videos, visual and verbal prompts..." for 60 minutes per week.
 - ii. For the fine motor goal: An OT would provide occupational therapy to address the fine motor goal. This included "modeling, step-by-step instruction, sensory

- motor play, visual cues, verbal prompts and repetition” in 20-minute sessions, four times per month.
- iii. For the receptive language and language expression goals: The SLP would provide speech language services to address the receptive language and language expression goals. This included “sign language, Lamp Words for Life⁵, modeling, guided practice, sentence strips, visual cues, verbal cues” In 20-minute sessions, four times per month.
4. An undated prior written notice attached to IEP 2 stated the type of action taken was “Reevaluation”, but a description of the action proposed stated “Annual IEP review.” This document further stated the explanation was “Annual IEP review takes place annual[ly] to reevaluate student’s needs.” No other options were considered, and the team reviewed observations and assessments from the prior year in order to develop the new IEP. The prior written notice did not indicate why the Student’s SDI minutes were reduced from 60 minutes weekly to 20 minutes weekly for the reading, math and adaptive behavior goals.
 5. The Complainants sent a letter to the Superintendent of the District dated September 11, 2020 which contained the following information:
 - a. The Complainants requested an administrative review “to try and get [the Student] services.”
 - b. This letter did not specifically allege that the IEP for the Student was inappropriate but did indicate the Student had difficulty accessing the curriculum and receiving IEP services while the District was virtual.
 6. The District’s written response to the complaint contained the following information regarding this issue:
 - a. The Parent did not request an IEP team meeting nor express concerns about the IEP.
 - b. “The Parent attended an IEP meeting on September 22, 2020 and agreed to the IEP.”
 - c. The Student was not in the classroom from March 2020 until October 12, 2020 due to the Governor’s mandated school closure⁶. The District “need[s] to get to know her again and collect information for anything to change on the IEP.”
 - d. As of October 12, 2020, the Student had the opportunity to attend school in person 4 days a week, while most students in the District were permitted to attend only 2 days in person. The additional two days were to help the Student “catch up.”
 7. During the October 29, 2020 conference call, the Director stated the following:
 - a. The Student has “substantial” needs, so the IEP must prioritize needs.
 - b. When the Student attends in-person, it is in a cross categorical classroom of 8 students. Increased verbal and visual prompting are a standard part of teaching in that classroom since all of the students have significant needs.
 - c. The District’s policy is staff, including occupational therapists, are not permitted to go into student homes. Most parents and teachers decided to “make up” the minutes when the students are back in school.
 8. During the November 18, 2020 call, the IS stated the following:
 - a. The Student requires a lot of hands-on assistance.
 - b. There are no hard timelines for assignments in this class so extended time is always granted.

⁵ Lamp Words for Life is a full English vocabulary augmentative and alternative communication language app.

⁶ On March 16, 2020, the Governor of Ohio ordered statewide school building closures in response to the COVID-19 pandemic

- c. The Student is making progress on IEP goals.
- d. As an example of progress, the IS stated last year, the Student would “stim”⁷ a lot and could not sit for any period of time. Now the Student can sit, do hand-over-hand tracing and uses more communication, such as the word, “no.”
- e. The IS does not believe toilet training is an appropriate goal for the Student. This is a concern at the Student’s daycare , but the Student is not aware of when she is wet and is not developmentally ready to start toilet training. The Student is taken to the bathroom on a schedule, but during the 2 years in class, the Student has never used the bathroom.
- f. The IS does not believe the Student requires a functional behavior assessment nor a behavior therapist at this time. Right now, the main issue is if the Student wants something, and is told no, she gets upset. The IS and aides in the classroom are able to redirect the Student and it does not disrupt the class.

Finding:

The District is in violation of 34 C.F.R. 300.320(a)(2) and (4) [Definition of IEP]. Under 300.320(a)(2) an IEP means a written statement for each child with a disability that is developed, reviewed and revised in a meeting and must include a statement of measurable annual goals, including academic and functional goals designed to meet the student’s needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child’s other educational needs that result from the child’s disability. Under 34 C.F.R. 300.320(a)(4) the IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, and a statement of the program modifications or supports that will be provided to enable the child to advance appropriately toward attaining annual goals, to be involved in and make progress in the general education curriculum and to be educated and participate with other children. Here, the Student’s ETR demonstrated the Student, a first grader, is significantly below average in all areas. IEP 2 indicated the Student’s overall skills to be in the 0-6-month range with scattered skills up to 12 months. The Student is nonverbal and does not have a mode of communication such as a communication device or sign language. IEPs 1 and 2 do not contain a toilet training goal, a one-on-one aide or services from a behavior therapist, but the documentation submitted did not demonstrate those services are appropriate for the Student at this time. Both IEPs contained adult physical, verbal and visual prompting, peer modeling and extra time, as well as OT and speech services, including sign language, but did not contain enough of these services to be reasonably calculated to allow the Student to progress in the general education curriculum or on her IEP goals. The goals for IEP 1 and IEP 2 were nearly identical, which demonstrates sufficient progress was not made. Despite the Student’s significant needs, no documentation was provided to support the Student made exceptional progress on her IEP goals and objectives, but the SDI for IEP 2 was reduced from 60 minutes per week to 20 minutes per week for three of the five goals. Therefore, the District is in violation of this section.

The District is not in violation of 34 C.F.R. 300.324(b) [Review and revision of IEP]. Under 34 C.F.R. 300.324(b) each school district must ensure that the IEP team reviews the child’s IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals and the general curriculum, the results of any reevaluation, information about the child provided to or by

⁷ "Stimming" is short for self-stimulatory behavior and is sometimes also called "stereotypic" behavior.

the parents, the child's anticipated needs or other matters. Here, the documentation submitted demonstrated IEP 1 was developed on September 25, 2019 and IEP 2 was developed on September 22, 2020. The Parent attended the September 22, 2020 IEP team meeting, which was held within one year of the prior IEP meeting, as required. The Parent did not express concerns about the Student's progress and the Complainants did not express concerns that the IEPs did not meet the Student's needs as written until the filing of this complaint. Based on this information, the District is not in violation.

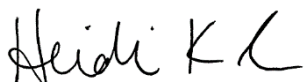
Corrective Action for all Issues:

1. **January 15, 2021:** The District must reconvene the Student's IEP team on or before this date to address the frequency and duration of all specially designed services, including intervention support, speech language services and occupational therapy services. The team must work together to determine the amount of each service that will allow the Student to progress on her IEP goals and in the general curriculum, as applicable. The team is encouraged to document in the IEP how services and supports will be provided for both in person and virtual education services if it is anticipated the District may move between online and in-person delivery models due to the pandemic.
2. **January 29, 2021:** The District must submit a copy of the parent invitation (PR-02), amended IEP, prior written notice (PR-01) and any other attempts to contact the Parent (OP-9) regarding the required IEP team meeting that occurs on or before January 15, 2020.

The District's final corrective action is due by **January 29, 2021**. Please submit all corrective action by the above due dates to the Office for Exceptional Children, attention Heather Clingerman. Please reference the complaint number on all correspondence.

We appreciate your cooperation in the resolution of the complaint investigation.

Sincerely,



Heidi Kleinman, Assistant Director
Office for Exceptional Children

cc: [REDACTED], Complainants (redacted copy)
Beth Barrow, Special Education Director
Heather Clingerman, Education Program Specialist