

**Complaint Investigation Report
Parents v. RSU 61/MSAD 61
Complaint 18.088C (student NE)
Complaint Investigator: Jeannette Sedgwick
June 6, 2018**

COMPLAINT INVESTIGATION REPORT

The Department of Education received this complaint on April 13, 2018. A complaint investigation meeting was held with both parties on May 15, 2018. The complaint investigator reviewed all documents, information, and responses from the parties. On May 17, 2018, the investigator conducted interviews with the District's Director of Special Education and Special Education Coordinator. An interview was conducted with the complainants on May 18, 2018. On May 30, 2018, the Department interviewed the Student's speech/language service provider. Additionally, the Department requested and received additional information from the District on May 29, 2018.

Because there has been noncompliance with special education laws and regulations, the District must complete a corrective action plan which is due by **August 31, 2018 and December 31, 2018.**

FACTUAL FINDINGS

1. The Student, who is eight years old and in second grade, receives special education and related services based on the disability of a speech or language impairment.
2. The Student's most recent speech and language evaluations, the Clinical Evaluation of Language Fundamentals – Preschool 2nd Edition and Arizona Articulation Proficiency Scale showed that the Student's overall receptive and expressive language skills were areas of strength and that articulation and verb tenses were areas of need.
3. The Student's IEP (6/1/2017 – 5/31/2018) calls for speech/language services for 2x30 minutes, twice each week.
4. On November 30, 2017, the District learned that delivery of speech language services to students in the District would be impacted because of lack of staffing.
5. The District and complainant agree that because of staffing shortage, the Student did not receive all of his speech/language services from December 2017 to March 2018.
6. The District posted positions for speech/language pathologists when it learned of the staffing shortage. The District also contacted agencies and providers throughout December 2017 and January 2018.
7. On January 2, 2018, the District sent a letter to parents of children who receive speech/language services explaining the lack of speech/language services for children receiving them.

8. The District entered into a contract with a speech/language provider at the end of January 2018.
9. On February 14, 2018, the District contacted parents of children who receive speech/language services explaining that the District had contracted with an agency that would provide speech/language services.
10. The Student's new speech/language provider began providing services to the Student on February 16, 2018. The services were provided in accordance with the Student's IEP, although the days of speech/language service changed from Tuesday and Wednesday to Wednesday and Friday.
11. On March 16, 2018, the District communicated with the parents that "there are no automatic compensatory speech services" and that the District would offer an opportunity for make-up speech services during the summer months.
12. The speech/language therapist who started work in February 2018 did not provide services to the Student for one week in April. The service provider made up missed services to the Student and other students by providing them the week before the scheduled time off.
13. Since April 2018, the Student has received special education services in accordance with his IEP. The Student's annual IEP meeting occurred at the end of May 2018.
14. The Student's Parents requested compensatory services for missed services multiple times in April and May 2018, stating that they did not wish to have those sessions occur in the summer because of already-existing summer plans.
15. In April 2018, the District wrote to the Student's parents that the District would inform them later in the spring if the Student was to receive compensatory speech services in the summer.
16. The Parents filed this complaint when they did not hear about when the Student's services would be made up.
17. The Student has attended school regularly during this time period of this complaint.

DETERMINATIONS

The complainant alleges the following:

1. *The complainant alleged that the District did not provide speech and language therapy to the Student from approximately December 2017 to February 2018 and from late March until early April. MUSER IX(3)(B)(3). NONCOMPLIANCE FOUND.*

The Student missed approximately eight weeks of speech/language services during the timeframe of this complaint. The parents stated they are concerned with the amount of services not provided and are also concerned about the District's insistence that compensatory services, if warranted, must be taken in the summer. The parents also expressed concern that this issue, which should have been a simple one, became complicated because of communication issues between them and the District.

The Student's current speech/language provider stated that the Student, who is very "sweet," sometimes has difficulty with particular sounds but he often corrects himself, a trait which requires a

high level of critical thinking for a child his age. His speech needs are mostly in the area of articulation and the Student has made great progress in this area, particularly in the “th” sound. The provider evaluated the Student for the Student’s annual review in late May.

The District stated that compensatory services are not necessarily owed to this Student and that results from recent evaluations, which have already been completed for the Student’s annual IEP, will determine whether there has been regression, in which case compensatory services would be owed. The District stated that it is currently looking at each individual student who missed a significant amount of services. Additionally, the District stated that it will offer compensatory services to students who experienced a negative impact on their education that was caused by the missed services.

Compensatory services should appropriately aim to place students in the same position they would have been if the District had been able to implement IEPs.¹ While compensatory services are not automatically granted as a remedy in special education disputes, Districts that have not implemented services on students’ IEPs for approximately two months, as here, must provide additional services for non-implementation of those services in order to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.”² Appropriate relief when a District does not provide educational services can be determined on a case-by-case basis so that “a student is fully compensated for a school district’s past violations of his or her rights under the IDEA.”³

This Student’s IEP, and other students’ IEPs, have not been implemented during the time there was a gap in speech/language therapy services in the District. When the District learned there would be a gap in services, the District acted with due diligence to find a provider. The District put into place speech therapy services for this Student and other students immediately upon entering into a contract with a new provider. However, the period of time without a provider lasted approximately seven to eight weeks and the Student, as well as all students in the school who should have been receiving speech/language services, did not receive those services. Compensatory services to the Student are warranted because the amount of services missed, in conjunction with the age and individual needs of the Student, will put the Student in the situation he would have been had the District provided services.

Corrective action is detailed below.

2. *The complainant alleged that the District did not reconvene an IEP Team to identify alternative service options after the District learned it was unable to hire or contract with the professional staff necessary to implement the Student’s speech and language services. MUSER IX(3)(B)(3).*
NONCOMPLIANCE FOUND.

Regulations require a District to reconvene an IEP Team to identify alternative service options if a District is unable to hire or contract with the professional staff necessary to implement an IEP. The

¹ *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718 (3d Cir. 2010) (citing *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005); *Artichoker ex rel D.D. v. Todd County Sch. Distr.*, 69 IDELR 58 (D.S.D. 2016).

² See *Burlington Sch. Comm. v. Mass. Dept. of Ed.*, 471 U.S. 359, 370 (1984); 20 U.S.C. § 1400(d); 34 CFR 300.1(a).

³ *Sch. Dist. of Phila. v. John Post, et. al.*, 70 IDELR 96 (E.D. Pa. 2017) (citing *Ferren C. v. Sch. Dist. of Phila.*, 595 F. Supp. 2d 566, 577 (E.D. Pa. 2009).

District stated that it did not convene the Student's IEP Team after the District learned it was unable to provide services. The District stated that one reason it did not convene the Student's IEP team is that the District believed a contract was in place in early January 2018. After that contract fell through, the District began the search for a provider anew. This Student and other Students in the District were affected by the lack of services for several months during the school year and the District did not identify alternative options necessary to implement the speech and language services to those children whose IEPs mandate that service.

Corrective action is detailed below.

Corrective Action to be Completed by the District by **August 31, 2018 and December 31, 2018**

1. By December 31, 2018, the District shall provide 7 sessions of 30 minutes of speech/language therapy to the Student, in addition to the services listed on his IEP, to compensate for the approximately 14 services missed during the time of this complaint. The District must not make compensatory services contingent upon receiving those services during a time when students are not attending school, such as during summer or school vacation times, and must not make those services contingent upon further District testing to evaluate if missed services have caused a negative impact. The District must provide the Department with documentation of the dates and times these sessions occurred.
2. By August 31, 2018, the District must provide the Department the following for Departmental approval:
 - A written plan of the times and dates the District will compensate all students in the school who were to receive speech/language services from November 2017 until February 2018 but did not receive those services. The District must offer to each student at least half the time missed during the timeframe no speech/language services were available and may offer more if the District determines a student's needs warrant more than what is ordered.
 - The District's written plan must include each Student's initials, date of IEPs in effect from November 2017 until February 2018, amount of speech/language on each IEP, how many sessions missed, times and dates the make-up sessions occurred (if any), and the rationale for each individual Student explaining how the District calculated the amount to be made up.
 - The District must not make compensatory services contingent upon receiving those services during a time when students are not attending school, such as during summer or school vacation times, and must not make those services contingent upon further District testing to evaluate whether a negative impact resulted from missed services.
3. Once the plan outlined in #2 is approved, the District must implement compensatory services according the plan by **December 31, 2018**.