



September 29, 2022

Via Certified Mail

State Complaints Officer
Exceptional Student Services Unit
Colorado Department of Education
1560 Broadway, Suite 1175
Denver, CO 80202

CONFIDENTIAL

I. COMPLAINANT

This Complaint is filed systemically by Disability Law Colorado on behalf of all youth under age 21 who are eligible for special education services under the Individuals with Disabilities Education Act (IDEA) and have been incarcerated in county jails in the state of Colorado. This complaint is filed against the Colorado Department of Education (CDE). In 2010, Senate Bill 10-054 was signed into law (C.R.S. 22-32-141) and ensured that youth in adult jails received education services. Under this law, it is the responsibility of the jails to request services, the school district's responsibility to provide the services, CDE's responsibility to reimburse school districts for these services, and the Department of Criminal Justice's (DCJ) to collect data about these services. In 2012, House Bill 12-1139 was passed and changed the way that Colorado courts processed juveniles to adult court, significantly reducing the amount of youth under 18 who entered adult jails to almost none. While both bills focus on youth who are charged before they turn 18, neither ever accounted for youth who enter after they turn 18 but who may still be IDEA-eligible until they are 21. Further, CDE has not monitored any of these facilities or school districts to ensure that youth in adult jails are receiving IDEA services. Consequently, these individuals have been deprived of their right to a free and appropriate public education.

II. LEGAL STANDARDS

CDE is an IDEA Part B program participant. CDE has violated requirements of Part B of the IDEA and its implementing regulations at 34 C.F.R. Part 300, as well as the corresponding rules for the Exceptional Children's Educational Act (ECEA). Specifically, CDE has violated 20 U.S.C. § 1416, 34 CFR § 300.101, 34 C.F.R. § 300.111(a), 34 C.F.R. § 300.149, and 34 CFR §300.600(b). CDE's violation of these regulations occurred for many years and has continued through the fall of 2022. While additional violations with similar fact patterns occurred more than one (1) year prior to the filing of this Complaint, the violations set forth in this Complaint occurred not more than one (1) year prior to September 29, 2022, the date that the Complaint is being filed with the Colorado Department of Education.

Regulation 34 CFR § 300.101 of the IDEA addresses a student's right to a free appropriate public education and states in relevant part: "A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21."¹

¹ For purposes of data collection under C.R.S. 22-32-141, a juvenile is defined by saying: (b) "JUVENILE" MEANS A PERSON: (I) AGAINST WHOM CRIMINAL CHARGES ARE DIRECTLY FILED IN DISTRICT COURT PURSUANT TO

The ECEA further states:

Free Appropriate Public Education or FAPE means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) Meet the standards of the Department, including the requirements of these Rules; (3) Include an appropriate preschool, elementary school, or secondary school education in the State; and (4) Are provided in conformity with an individualized education program (IEP) that meets the IEP content, development, review and revision requirements of Section 4.03 of these Rules and 34 CFR §300.320 through 300.324.”

1 CCR 301-8 2220-R-2.19.

Regulation 34 C.F.R. § 300.111 addresses a District’s Child Find obligations and states:

(a) General. (1) The State must have in effect policies and procedures to ensure that—
(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

34 C.F.R. § 300.111(a).

Part B of the IDEA addresses a State Education Agency’s monitoring requirement. It states:

(1) In general. The Secretary shall... (C) require States to (i) monitor implementation of this part by local educational agencies; and (ii) enforce this part in accordance with paragraph (3) and subsection (e).

20 U.S.C. § 1416.

Regulation 34 C.F.R. § 300.149 elaborates to say:

(a) The SEA is responsible for ensuring - (1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior) - (i) Is under the general supervision of the

SECTION 19-2-517, C.R.S., OR FOR WHOM CRIMINAL CHARGES ARE TRANSFERRED TO DISTRICT COURT PURSUANT TO SECTION 19-2-518, C.R.S.; (II) WHO IS UNDER EIGHTEEN YEARS OF AGE AT THE TIME THE OFFENSE IS COMMITTED; AND (III) WHO IS LESS THAN TWENTY-ONE YEARS OF AGE. Thus, a “juvenile” would have to be under 18 at the time of the crime but then can be under 21 thereafter. However, eligibility for special education services extends to all individuals under 21 who meet eligibility criteria regardless of the timeliness of any offenses. 34 CFR § 300.101; 1 CCR 301-8 2220-R-2.08.

persons responsible for educational programs for children with disabilities in the SEA; and
(ii) Meets the educational standards of the SEA (including the requirements of this part).

34 C.F.R. § 300.149(a).

The focus of monitoring is further defined by Regulation 34 CFR §300.600(b) of the IDEA stating:

The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on -- (A) improving educational results and functional outcomes for all children with disabilities; and (B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

34 CFR §300.600(b).

Regarding education and monitoring in correctional facilities², the Office of Special Education and Rehabilitative Services (OSERS) has explicitly stated:

Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of FAPE, even if other agencies share that responsibility. ... SEAs must exercise general supervision over all educational programs for students with disabilities in correctional facilities (unless covered by an exception) to ensure that their educational programs meet State education standards and IDEA, Part B requirements. This responsibility includes monitoring public agencies that are responsible for providing FAPE to students with disabilities in correctional facilities.

U.S. Dept. of Edu., Office of Special Education and Rehabilitative Services, Dear Colleague (December 5, 2014).³

This letter goes on to say:

The SEA must also exercise general supervision over all educational programs for students with disabilities in correctional facilities (34 CFR §300.149) to ensure that such programs meet the education standards of the SEA and IDEA requirements. As part of this responsibility, the SEA must monitor public agencies that are responsible for providing FAPE in correctional facilities (34 CFR §300.149)).

Id.

² The definition of a correctional facility varies from State to State. For the purposes of this letter, “correctional institution” or “correctional facility” refers to juvenile justice facilities, detention facilities, jails, and prisons where students with disabilities are, or may be, confined. U.S. Dept. of Edu., Office of Special Education and Rehabilitative Services, Dear Colleague (December 5, 2014).

³ Regulation 34 CFR § 300.324(d) provides exceptions related to children with disabilities in adult prisons. However, these exceptions apply to children with disabilities who have been convicted as adults, and individuals residing in county jails have typically not yet been convicted.

Regarding child find, this letter states:

States and their public agencies must have child find policies and procedures in place to identify, locate, and evaluate students who are in correctional facilities who may have a disability under the IDEA and are in need of special education and related services, regardless of the severity of their disability and consistent with the State’s child find and eligibility standards. This responsibility includes students who have never been identified as a student with a disability prior to their entry into the facility.

Id.

Here, CDE has neglected its monitoring requirements and child find responsibilities under the IDEA related to IDEA-eligible individuals under the age of 21 who have been, and are currently, incarcerated in adult jails throughout the state. As a result, these students have gone without access to special education services and have been denied their right to a free appropriate public education under the IDEA and ECEA.

III. STATEMENT OF ALLEGED VIOLATIONS

In 2010, Senate Bill 10-054 was signed into law as C.R.S. 22-32-141 and ensured that youth in adult jails received education services. Exhibits 1 & 2. These services are specific to youth who are not in the Department of Youth Services (DYS) or the Department of Corrections (DOC). Colorado has about 70 jails that fall under various school districts around the state. Exhibit 3. Under this law, if a youth enters the jail and needs special education services, it is the jail’s responsibility to request the services from the school district. Then, it is the school district’s responsibility to provide the services and submit the time provided to CDE for reimbursement. There is a form provided by CDE that is supposed to be filled out when requesting these services and compensation. Exhibit 4. If jails do not have any eligible youth at their facility, they are supposed to email CDE to let them know. However, absent a few exceptions, this has not occurred. Lastly, under this law, the Department of Criminal Justice is tasked with collecting this data.

In 2012, House Bill 12-1139 was passed and changed the way that Colorado courts processed juveniles to adult court, significantly reducing the number of youth under 18 who entered adult jails to almost none. In the past several years, only one youth, as defined by statute, has been accounted for in collected data as present in Jefferson County Jail. Exhibit 5. However, as this law only accounts for youth who were younger than 18 at the time of the alleged crime, there is no data on individuals who are between 18 and 21 when entering a county jail and potentially still eligible for special education services under the IDEA. There have been discussions in the last few years about starting services for other youth who were also at Jefferson County Jail. Exhibit 6 & 7. However, neither CDE nor DCJ have any additional formal data on youth who may be otherwise IDEA-eligible. Exhibits 8-13.

Further, CDE has not monitored any county jails or their adjoining school districts to ensure that all IDEA-eligible youth are receiving appropriate services, that youth with disabilities are appropriately identified, or that the relevant entities are meeting the requirements necessary under

the IDEA. Exhibits 12 & 14.⁴ Thus, CDE has failed to meet its requirements under the IDEA to monitor local school districts and adult jails, as well as its requirements to facilitate child find and the provision of free appropriate public education to these students.

IV. RESOLUTION

CDE must provide appropriate training to school districts and county jails about their obligation to provide special education services to IDEA-eligible youth who are under 21 during the period of their incarceration. CDE must also ensure any relevant policies or procedures, both those of the jails and those of the school districts, are compliant with state and federal law. CDE must implement a monitoring and/or auditing protocol to ensure that these students are accounted for, and any compensatory services provided for past lost, as well as to ensure no future denial of FAPE occurs. CDE should also order any additional remedies it deems appropriate.

Sincerely,



Sara Pielsticker, Esq., #55162
Staff Attorney, Disability Law Colorado

Exhibits

cc (via email): Paul Foster, Executive Director, Office of Special Education
Candace Hawkins, Director of General Supervision and Monitoring, Office of Special Education

⁴ CDE did ultimately produce some documents related to the provision of educational services in county jails but none of the documents pertained to monitoring.

CERTIFICATE OF SERVICE

I certify that a complete copy of this state complaint and all attachments was also emailed and sent via certified mail to the Office of Special Education on this 29th day of September 2022, directed to:

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