

OFFICE OF SPECIAL EDUCATION

FINAL DECISION for State Complaint 13-00298 against the Wyandotte Public Schools
August 20, 2013

ALLEGATION AND CONCLUSION

Conclusion	Allegation	
Noncompliant	Allegation 1	Whether the parents revoked written consent for provision of special education
Noncompliant	Allegation 2	Whether the district provided written notice of a free appropriate public education (FAPE)
Noncompliant	Allegation 3	Whether the district constructed an IEP for the 2012-2013 school year
Noncompliant	Allegation 4	Whether the district had the required participants at the IEP team meeting
Noncompliant	Allegation 5	Whether the IEP met the requirements as to content
Noncompliant	Allegation 6	Whether the district considered extended school year
Compliant	Allegation 7	Whether the district offered an interpreter because of the language barrier

INVESTIGATION

Allegation 1 Whether the parents revoked written consent for provision of special education

Legal Requirement for Allegation 1:

Consistent with 34 CFR § 300.300(b)(4) of the Individuals with Disabilities Education Act (IDEA) a parent can, at any time subsequent to providing written consent for the initial provision of special education programs and services, revoke that consent in writing. The district cannot continue to provide special education to the student.

Findings of Fact for Allegation 1:

The complainants and advocate indicated that a meeting was convened on September 10, 2012 with district staff to address the complainants' concerns about how staff was responding to the student's physical behaviors. The complainants and advocate indicated they informed staff that the district had to find another program; there was no discussion of revocation of consent for the provision of

special education programs and services and they did not intend to revoke that consent.

District staff indicated the complainants had withdrawn the student for several months during the 2012-2013 school year. At the meeting on September 10, 2012 the complainants indicated they were upset about physical restraints and they would not return the student to the district. Staff informed the complainants that the student could return at any time. Staff explained that the district has a form to address situations when a parent want to revoke consent but staff incorrectly used an IEP form to document the revocation. Staff indicated that no IEP team meeting actually occurred on September 13, 2012.

Under Special Factors, the IEP form dated September 13, 2012 indicated the complainants met with district staff on September 10, 2012 and that the purpose of the IEP form was to "dismiss the special education services" the student was receiving. Most of the IEP form was left blank.

Conclusion for Allegation 1:

At the meeting on September 10, 2012 the complainants indicated they were dissatisfied with the district program. A request to revoke consent must be in writing and the complainants never submitted such a request. No IEP team meeting was convened on September 13, 2012; rather the district incorrectly used the IEP form to document what the district understood to be a revocation of consent. The district is noncompliant with 34 CFR § 300.300(b)(4).

Allegation 2	Whether the district provided written notice of a FAPE
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Legal Requirement for Allegation 2:

Consistent with 34 CFR § 300.300(b)(4)(1) the district, when acknowledging a revocation of consent, must provide the parent with written notice of the FAPE the district would have provided.

Consistent with 34 CFR § 76.731 of the federal Education Department General Administrative Regulations (EDGAR), the district is required to maintain records in sufficient detail to demonstrate compliance with the IDEA and the Michigan Administrative Rules for Special Education (MARSE).

Findings of Fact for Allegation 2:

The complainants indicated they did not receive any written notice as a follow up to the IEP dated September 13, 2012.

As noted in Allegation 1 the district document dated September 13, 2012 was intended to be a revocation of consent, not an IEP.

The district Notice for the Provision of Programs and Services dated September 13, 2012 does not describe a FAPE.

District staff indicated the district mailed a copy of the Notice for the Provision of Programs and Services dated September 13, 2012, but the district has no documentation of that mailing.

The Commentary to 34 CFR § 300.300(b)(4)(i) at p. 73008 (December 1, 2008) indicates that when a parent revokes consent for the provision of special education programs and services, the district's prior written notice must inform the parents of the special education programs and services they are declining, in order to establish that the parents have been appropriately informed.

Conclusion for Allegation 2:

The district is noncompliant with 34 CFR § 300.300(b)(4)(i) because the district's written notice did not describe the FAPE the district was offering. The district is also noncompliant with 34 CFR § 76.731 because the district could not document that it mailed the notice to the complainants.

Allegation 3 Whether the district constructed an IEP for the 2012-2013 school year

Legal Requirement for Allegation 3:

Consistent with 34 CFR § 300.323(a) the district must have an IEP in effect at the beginning of each school year.

Findings of Fact for Allegation 3:

The complainants and the advocate indicated that, other than the first few days of school, the student did not have an active IEP in place for the 2012-2013 school year.

As noted in Allegation 1 the district document dated September 13, 2012 was intended to be a revocation of consent, not an IEP. As noted in Allegation 2 the district notice dated September 13, 2012 did not offer a FAPE for the 2012-2013 school year and the district could not document that the district sent the written notice to the complainants.

Conclusion for Allegation 3:

The district is noncompliant with 34 CFR § 300.323(a) because the district did not have an IEP in place for the student.

Allegation 4 Whether the district had the required participants at the IEP team meeting

Legal Requirement for Allegation 4:

Consistent with 34 CFR § 300.322(a) the IEP team for a student must include the parents, a general education teacher, a special education provider, a representative of the public agency, a person who can interpret evaluation information.

Findings of Fact for Allegation 4:

The complainants and the advocate indicated that the district did not have the required participants at the IEP team meeting convened on September 13, 2012.

The IEP dated September 13, 2012 indicates that only a representative of the public agency attended.

Conclusion for Allegation 4:

In not having the required participants the district is noncompliant with 34 CFR § 300.322(a).

Allegation 5 Whether the IEP met the requirements as to content

Legal Requirement for Allegation 5:

Consistent with 34 CFR § 300.320(a)(b) the IEP must address eight sets of items.

Findings of Fact for Allegation 5:

The complainants and the advocate indicated that the IEP dated September 13, 2012 did not document minimum content.

The IEP dated September 13, 2012 did not contain any of the required eight sets of items.

Conclusion for Allegation 5:

In not developing an IEP that addressed the eight sets of items the district is noncompliant with 34 CFR § 300.320(a)(b).

Allegation 6 Whether the district considered extended school year

Legal Requirement for Allegation 6:

Consistent with R 340.1721e(2) the IEP must address the need for extended school year services.

Findings of Fact for Allegation 6:

The complainants and the advocate indicated that the IEP dated September 13, 2012 did not address extended school year services.

The IEP dated September 13, 2012 does not address consideration of extended school year services.

Conclusion for Allegation 6:

In not developing an IEP that addressed extended school year services the district is noncompliant with R 340.1721e(2).

Allegation 7 Whether the district offered an interpreter because of the language barrier

Legal Requirement for Allegation 7:

Consistent with 34 CFR § 300.322(e) the district must take whatever action is necessary to ensure that parents understand the IEP team meeting, including arranging for an interpreter for parents whose native language is not English.

Findings of Fact for Allegation 7:

The complainants and the advocate indicated that a language difference necessitated an interpreter.

District staff indicated there have been no communication problems with the complainants in previous meetings or IEP team meetings.

The IEPs dated October 4, 2010 and September 26, 2011 and the Review of Existing Evaluation Data dated September 16, 2011 indicate that the complainants attended, interpreter services were considered and none were needed.

Conclusion for Allegation 7:

The district is complaint with 34 CFR § 300.322(e).