

Alaska Department of Education & Early Development
Division of Teaching and Learning Support/Special Education Services

COMPLAINT INVESTIGATION REPORT

Complaint Number: CI # 20-02
Complaint Filed By: Guardian
Complaint Investigator: Roy Anderson

Summary of Administrative Complaint

Complaint Issues:

1. Whether the Alaska Gateway School District (AGSD) implemented the student's Individualized Education Program (IEP), specifically regarding provisions, if any, for:
 - a. Data collection;
 - b. Daily journal;
 - c. ABA (Applied Behavior Analysis) services;
 - d. Occupational therapy;
 - e. Speech therapy;
 - f. 1:1 services; and
 - g. Forty minutes of special education services provided by a special education teacher.
2. Whether the AGSD provided periodic reports on the student's progress toward annual goals as set forth in the student's IEP.
3. Whether the AGSD special education teacher providing services to the student has appropriate training and qualifications under state and federal law.
4. Whether the AGSD provided on-site supervision by the certificated special education teacher to each special education aide employed by the district to assist in providing special education to the student as set forth in the student's IEP.

Summary of the Investigation

Interviews/Written/Email Testimony:

<u>Name</u>	<u>Relationship</u>	<u>Date</u>
Guardian	Parent	10/22/2019 10/24/2019
Letitia Rhodes	Special Education Director	10/29/2019 10/31/2019 11/4/2019

Documents Received and Used in the Investigation From:

Department of Education & Early Development

1. Complaint Investigation Intake Form dated 10/15/2019 and Notice of Administrative Complaint signed by the complainant on 10/11/2019, and received by the Department on 10/16/19.
2. Copy of letter to Superintendent and Complainant notifying them that a complaint has been filed and the name of the investigator, dated 10/21/2019.

Alaska Gateway School District

1. Speech and Language contact log for the period 9/18/2019 through 10/31/2019.
2. Various emails between Director of Special Education and Investigator.

3. Speech Therapy Report showing that the student was seen on 9/5/2019 for a speech evaluation.
4. Occupational Therapy Report dated 9/13/2019.
5. IEP dated 5/14/2019 and IEP dated 10/16/2019.
6. Progress reports dated 11/14/2019 and 11/15/2019 for each of the student's goals.
7. Paraprofessional schedule for first semester 2019.

Complainant

1. Email dated 10/24/2019 to investigator from parent listing parent concern relative to this complaint.
2. IEP dated 10/16/2019.

Findings of Fact

1. The student referenced in this complaint resides in the AGSD, is enrolled in the AGSD, is eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), and has a Individualized Education Program (IEP) developed by the District.
2. The District completed two IEPs, dated 5/14/2019 and 10/16/2019, during the period of time covered by this complaint. The IEPs did not contain a requirement that the District provide Applied Behavioral Analysis (ABA) as a special education service to this student.
3. Nothing in the IEP dated 5/14/2019 or 10/16/2019 requires the District to provide a daily journal to parent. There is a reference to the student writing in a journal in both IEPs under Section 3 – Present Levels of Academic Achievement and Functional Performance: “[Student] can currently write in a journal.” The 10/16/2019 IEP also contains a statement in Section 3 that the parent would like to have a journal go back-and-forth between the school and parent. District provided a copy of a journal showing that they met the parent's request starting 10/17/2019.
4. The IEP dated 5/14/2019 called for speech pathology services to be delivered weekly and the 10/16/2019 IEP also called for speech pathology services to be delivered weekly by a speech therapist and weekly by a paraprofessional supervised quarterly by the speech therapist. The District provided copies of a speech and language therapy report showing an on-site visit for 9/5/2019 and services delivered on-line by a speech therapist on a weekly basis starting on 9/18/2019 through 10/31/2019. According to the District calendar, the first day of school was 8/19/2019. According to an email from the District's Special Education Director, there were new staff at the school and “the first week is scheduling then the services should start the second week.”
5. The District provided a copy of an occupational therapy report that showed that an on-site visit was made on 9/3/2019. Services were required by the IEP dated 5/14/2019 on a quarterly basis.
6. Section 7- Program Modifications and Accommodations, of the 5/14/2019 and 10/16/2019 IEPs for this student indicated that the student would need aide support at a ratio of 3:1, i.e. three students to one aide. The District provided the schedule of the paraprofessional that documented a 3:1 ratio.
7. The IEP dated 5/14/2019 required 30 minutes per day of services from a special education teacher and daily services from a paraprofessional supervised by a special education teacher. The IEP dated 10/16/2019 required 50 minutes daily from a special education teacher and daily services from a paraprofessional supervised by a special education teacher.
8. The IEP dated 5/14/2019 provided evaluation methods for each goal as follows:
 - a) Goal 1: Data and observation;

- b) Goal 2: Data and observation;
 - c) Goal 3: Data, work samples, and observation;
 - d) Goal 4: Work samples;
 - e) Goal 5: Data and work samples;
 - f) Goal 6: Data and observation;
 - g) Goal 7: Data and observation; and
 - h) Goal 8: Data and observation.
9. The IEP dated 5/14/2019 required progress reports to be completed on a quarterly basis using the data described in Finding of Fact 8. Progress reports were to be provided through text as opposed to data graphs. The District was able to provide copies of progress reports dated 11/14/2019 and 11/15/2019 showing progress on each goal in the student's IEP dated 5/14/2019.
 10. The Special Education Director indicated that the District was anticipating that their general education teacher would obtain a waiver to teach special education from the Alaska Department of Education and Early Development, but that waiver was not obtained.
 11. The teacher assigned to work with the student as a special education teacher and to supervise the paraprofessional from the beginning of the school year through 10/25/2019 held a Professional Teaching Certificate from the State of Alaska but did not hold an endorsement in Special Education.
 12. The teacher assigned to provide special education and related services to the student beginning on 11/4/2019 holds a Professional Teaching Certificate from the State of Alaska with an endorsement in special education – Learning Disabilities GR K-12.
 13. At the 10/16/2019 IEP, the District and parent agreed to compensatory time of 40 minutes daily for seven weeks. Services were to be delivered by the assigned special education teacher after school. The District reported that compensatory services had started as of 11/4/2019.

Conclusions and Reasons

- Issue 1: Whether the Alaska Gateway School District (AGSD) implemented the student's IEP, specifically regarding provisions, if any, for:*
- a. *Data collection;*
 - b. *Daily journal;*
 - c. *ABA services;*
 - d. *Occupational therapy;*
 - e. *Speech therapy;*
 - f. *1:1 services; and*
 - g. *Forty minutes of special education services provided by a special education teacher.*

Allegation: This issue involves an allegation that the AGSD failed to provide services required by the student's IEP between the periods August 19, 2019, through October 16, 2019, the date the Alaska Department of Education and Early Development received the complaint.

Applicable Federal Legal Standards:

Federal regulations at 34 CFR 300.320(a)(4) require that the student's IEP include "A statement of the special education and related services and supplementary aids and services ... to be provided to the child, or on behalf of the child."

Federal regulations at 34 CFR 300.323(c)(2) require that “as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.”

Applicable State Legal Standards:

Alaska state regulations at 4 AAC 52.140(f) adopt 34 CFR 300.320 – 300.328 by reference.

Discussion:

A school district’s responsibility is to ensure that special education and related services are provided consistent with an IEP developed by the school district under the applicable Federal and State regulations. The student referenced by this complaint is a resident within the AGSD, is enrolled in the AGSD, is identified as a student with a disability under the IDEA, and has an IEP developed by the District (Finding of Fact 1).

The District completed two IEPs during the timeline covered by this complaint: 5/14/2019 and 10/16/2019 (Finding of Fact 2). The IEPs did not require that ABA services be provided to the student (Findings of Fact 2). The IEPs did not require that a journal be sent home on a daily basis but the 10/16/2019 indicated that the parent would like a journal sent home and the district complied with that request (Finding of Fact 3). Speech therapy services were required on a weekly basis in both IEPs and services were provided both on-line and onsite beginning on 9/5/2019 (Finding of Fact 4). Occupational services were required for this student on a quarterly basis and the District provided evidence that this was provided (Findings of Fact 5). The IEPs required the services of an aide for this student on a ratio of 3:1, not 1:1 as alleged in the complaint, and the District provided a schedule that confirmed that the aide ratio was 3:1 (Finding of Fact 6).

The IEPs for this student dated 5/14/2019 and 10/16/2019 required that the special education teacher provide daily instruction (Finding of Fact 7). The IEP also called for daily instruction from a paraprofessional supervised by a special education teacher (Finding of Fact 7). The District did not provide the services of a teacher endorsed in special education and did not provide the supervision of a paraprofessional as required on the student’s IEP (Findings of Fact 10 and 11). The District assigned a teacher with an endorsement in special education on 11/4/2019 (Finding of Fact 12). The District and parent agreed to compensatory services provided by a special education teacher at their IEP meeting dated 10/16/2019 to remedy this implementation failure (Finding of Fact 13).

The IEP for this student dated 5/14/2019 required that progress would be evaluated by data collected through observation and work samples (Finding of Fact 8). The progress reports dated 11/14/2019 and 11/15/2019 reflect that these data were collected (Finding of Fact 9).

It appears from the information provided by the District that the 30 minutes weekly of speech services were not provided for the first two weeks of school as required in the student’s 5/4/2019 IEP (Finding of Fact 4).

The District met the IEP obligations with respect to data collection, occupational therapy services, and the District provided an aide ratio of 3:1. There was no IEP obligation to provide ABA services. The provisions of special education services provided by a special education teacher were not met. Speech therapy services were not provided during the first two weeks of school. A short delay in the implementation of IEP services is permitted under these circumstances when new staff were assigned to the school and there was a need to coordinate schedules and services (see, Comments and Discussion in 1999 IDEA Regulations, *64 Fed.*

Reg. 12406, 12579 (Mar. 12, 1999)). However, speech services should have been available during the second week of school, consistent with the District's procedures and expectations (Finding of Fact 4).

Therefore, violations of 34 CFR 323(c)(2) and 4 AAC 52.140(f) have occurred.

Issue 2: Whether the AGSD provided periodic reports on the student's progress toward annual goals as set forth in the student's IEP.

Allegation: The complainant alleges that the AGSD failed to provide periodic progress reports as required by the student's IEP dated 5/14/2019.

Applicable Federal Legal Standards:

Federal regulations require that an IEP include a statement of "(i) How the child's progress toward meeting the annual goals ... will be measured; and (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issue of reports cards) will be provided." 34 CFR 300.320(a)(3).

Federal regulations at 34 CFR 300.323(c)(2) require that "as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP."

Applicable State Legal Standards:

Alaska state regulations at 4 AAC 52.140(f) adopt 34 CFR 300.320 – 300.328 by reference.

Discussion:

The types of data required for reporting of progress varied by goal but generally required the district to report progress using observations or work samples, and these data were to be reported by text as opposed to data graphs (Findings of Fact 8 and 9). The IEP dated 5/14/2019 required that progress reports were to be provided quarterly (Finding of Fact 9). Progress reports for the 5/14/2019 IEP were provided on 11/14/2019 and 11/15/2019 (Finding of Fact 9). No other data collection requirements were noted in the 5/14/2019 IEP (Finding of Fact 9).

Therefore violations of 34 CF 300.323(c)(2) and 4 ACC 52.140(f) have not occurred.

Issue 3: Whether the AGSD special education teacher providing services to the student has appropriate training and qualifications under state and federal law.

Allegation: The complainant alleged that the teacher assigned by the AGSD to implement the student's IEP was not a teacher with an endorsement in special education from the State of Alaska.

Applicable Federal Legal Standards:

Federal regulations at 34 CFR 300.156(a) require that personnel providing services set forth in the IEP "are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities."

Applicable State Legal Standards:

Alaska regulations at 4 AAC 12.330(a) state that “A person employed by or on behalf of a school district to teach special education to a child with a disability must possess a teacher certificate issued under 4 AAC 12.305 and must obtain a special education endorsement under this section.”

Discussion:

The teacher assigned to provide special education services from the beginning of the school year until 10/25/2019 was not endorsed in special education by the State of Alaska (Finding of Fact 11).

Therefore violations of 34 CFR 300.156(a) and 4 ACC 12.330(a) have occurred.

Issue 4: Whether the AGSD provided on-site supervision by the certificated special education teacher to each special education aide employed by the district to assist in providing special education to the student as set forth in the student's IEP.

Allegation: The complaint alleges that the teacher assigned to provide special education supervision services to the paraprofessional assigned to work with this student was not a certified teacher with an endorsement in special education from the State of Alaska.

Applicable Federal Legal Standards:

Federal regulations at 34 CFR 300.320(a)(4) require that the student's IEP include “A statement of the ... supports for school personnel that will be provided.”

Federal regulations at 34 CFR 300.323(c)(2) require that “as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.”

Applicable State Legal Standards:

Alaska state regulations at 4 AAC 52.250(c) require that “Each special education aide employed by the district to assist in providing special education to a child must be supervised on-site by the certificated special education teacher responsible for the child's program. The child's IEP team shall make an individualized determination of the frequency of on-site supervision for each program.”

Alaska state regulations at 4 AAC 52.140(f) adopt 34 CFR 300.320 – 300.328 by reference.

Discussion:

Supervision of the paraprofessional by a special education teacher was required as a component of the student's IEP for both the 5/14/20019 and 10/16/2019 IEPs (Finding of Fact 7). The teacher assigned to supervise the paraprofessional did not have an endorsement in special education (See Issue 3 and Finding of Fact 11).

The teacher assigned to supervise the paraprofessional was not properly endorsed by the State of Alaska.

Therefore, violations of 34 CFR 300.323(c)(2), 4 AAC 52.250(c), and 4 AAC 52.140(f) have occurred.

Corrective Action Required

The Alaska Gateway School District is ordered to cease the violations of federal and state law that have been identified in this investigation.

The District has corrected violations identified in this complaint for Issues 1g, 3 and 4 by hiring a certified teacher endorsed in special education and agreed with the parent to provide 40 minutes daily for seven weeks of compensatory services for this student.

The following corrective actions are ordered to remediate these violations.

1. The District did not provide speech services at the beginning of the school year and is ordered to provide an additional 30 minutes of speech therapy for one week (15 minutes for language and 15 minutes for speech) by December 31, 2019.
2. By January 31, 2020, the District must provide documentation to the Alaska Department of Education and Early Development (Office of Special Education) of completion of the compensatory time agreed to between the parent and district and document that the district provided an additional 30 minutes of speech therapy services as required by the 5/14/2019 IEP.

Date Report Completed: 11/20/2019.