

COMPLAINT INVESTIGATION REPORT

Complaint Number: CI # 20-03
Complaint Filed By: Anne Clark
Complaint Investigator: Eudora Fraczek

Summary of Administrative Complaint

Complaint Issue:

Whether the Yukon Flats School District implemented students' IEPs at Fort Yukon School, specifically regarding provisions, if any, requiring the presence of a special education teacher in general education classrooms.

Summary of the Investigation

Interviews/Written Testimony:

<u>Name</u>	<u>Relationship</u>	<u>Dates</u>
Complainant	Teacher	11/26/2019
Dr. Lance Bowie	Superintendent	11/26/2019
Steven Porter	Principal	11/26/2019
John Hunt	Teacher	12/3/2019
Tim Johnson	Teacher	12/3/2019
Gale Pratt	Special Education Director	12/4/2019

Documents Received by Investigator From:

Department of Education & Early Development

1. Initial Complaint dated October 18, 2019
2. Complaint Intake Form dated October 18, 2019
3. Additional information from Complainant sent November 12, 2019

Yukon Flats School District

1. Relevant special education records of students at Fort Yukon School
2. Schedule for complainant teacher dated November 1, 2019

Complainant

1. Email correspondence between Teacher and District personnel, dated September 8, 2019, through November 8, 2019
2. Written summaries of concern dated November 12, 2019

Findings of Fact Relevant to Student-Specific Allegations

1. The first day of school in Yukon Flats School District (District) for the 2019-2020 school year was August 20, 2019. Special Education Director Pratt confirmed that special education services were not provided for the period from the first day of school until September 19, 2019. There are discrepancies in the information provided by teachers as to when Ms. Clark began providing special education services.
2. A total of nine student records were reviewed for this investigation.

- Five students had IEPs within which the placement page specifically stated that the students were to be in a co-teaching model and that pull-out model was rejected by the IEP team. *See, Students 1, 2, 3, 4, and 5.*
- Two students had IEPs with vague and conflicting language. Two IEPs were missing the placement page and the District did not provide the missing page upon request. However, these three students have “services pages” that were drafted in a manner identical to the Students 1, 2, 3, 4, and 5. On each of the service pages, goals were to be implemented in a location identified as “regular/special education” and to be provided by the team of regular educator and special educator and therefore these IEPs were considered by District teachers to represent a co-teaching model. *See, Students 6 and 7.*
- One of the nine students was considered by Ms. Clark to require co-teaching services, but the placement page required a pull-out model. However, the services page does not align with the placement page, because the services are to be delivered in the special education/regular education classroom, although not necessarily in a co-teaching model. *See, Student 8.*
- One of the nine students was considered by Ms. Clark to require co-teaching services, however this student’s IEP indicates that special education services were to be provided within the regular education classroom with 1:1 paraprofessional support. *See, Student 9.*

All nine students described below in Findings of Fact 4 through 9 are eligible for special education services under the Individuals with Disabilities Education Act (IDEA), reside in the District, and attend Fort Yukon School.

3. Director Pratt affirmed that the District use of the term “co-teaching” is a “push-in” method of providing special education services to eligible students within the regular education setting through the required cooperation by a regular education teacher and the certificated special education teacher. Director Pratt specifically indicated that co-teaching requires the presence of the special education teacher in the student’s general education setting to provide services within this model.
4. The following four students had IEPs that were in effect at the beginning of the 2019-2020 school year specifically requiring the provision of co-teaching as a specific placement:
 - **Student One.** Mr. Hunt who teaches English/Language Arts and Ms. Clark affirmed that Student One did not receive either a co-teaching or pull-out model of special education services. Mr. Johnson teaches Math and Science and has Student One for Science and described accommodations provided for Student One’s access to general curriculum. Student One’s May 2019 IEP required the provision of special education services as follows:
 - i. 250 minutes/week in the area of Reading
 - ii. 250 minutes/week in the area of Writing
 - iii. 250 minutes/week in the area of Math
 - iv. 100 minutes/week in the area of Social Skill Development
 - v. 20 minutes/week in the area of Transition
 - **Student Two.** Mr. Johnson who teaches Math and Ms. Clark both indicated that Student Two did not receive special education services via a co-teaching or pull-out model. Student Two’s May 2019 IEP required the provision of special education services as follows:
 - i. 250 minutes/week in the area of Math
 - **Student Three.** All three teachers (Mr. Hunt, Mr. Johnson, and Ms. Clark) agreed that Student Three was not provided services via a co-teaching or pull-out model. Student Three’s March 2019 IEP required the provision of special education services as follows:
 - i. 250 minutes/week in the area of Reading
 - ii. 250 minutes/week in the area of Math
 - iii. 10 minutes/week in the area of Transition
 - **Student Four.** All three teachers confirmed that Student Four did not receive the services described by the IEP, although there were a few occasions in which Student Four was pulled out of the general education setting for services. Student Four’s March 2019 IEP required the provision of special education services as follows:

- i. 250 minutes/week in the area of Reading
 - ii. 250 minutes/week in the area of English Language
 - iii. 250 minutes/week in the area of Math
- 5. **Student Five.** Ms. Clark indicated that Student Five received services in a resource room setting, inconsistent with the student's IEP provisions. Student Five's March 2019 IEP required the provision of special education services by the special education teacher within the regular education setting and required "collaboration on a regular basis between regular education teacher and special education teacher...to address [learner's] needs." Student Five's March 2019 required the provision of special education services as follows:
 - i. 45 minutes/week in the area of Language taught by special education teacher in the regular education setting
 - ii. 450 minutes/week in the area of Reading co-taught by regular educator and special educator
 - iii. 150 minutes/week in the area of Math co-taught by regular educator and special educator
- 6. **Student Six.** At the beginning of the 2019-2020 school year, Student Six's October 2018 IEP was to be implemented until such time as the IEP was revised on November 28, 2019. All three teachers concur that Student Six did not receive special education services in accordance with the October 2018 IEP. Student Six is anticipated to graduate at the end of this semester and was reported by the student's regular education teachers to have all credits required for a regular education diploma. However, this representation about the student's anticipated graduation in December is somewhat contradicted by the student's November 28, 2019, IEP which indicates services will be provided for one more year.
 - **October 10, 2018 IEP.** The placement page of Student Six's October 2018 IEP indicates that Student Six was to receive all special education services in a pull-out or resource room model. This determination is inconsistent with the services page of the October 2018 IEP which required the provision of special education services by the regular education and special education teacher within the regular education setting, described as follows:
 - i. 200 minutes/week in the area of Reading co-taught by regular educator and special educator
 - ii. 250 minutes/week in the area of Writing co-taught by regular educator and special educator
 - iii. 50 minutes/week in the area of Transition
 - **November 28, 2019 IEP.** There is no indication in the November IEP that the Student is on track to graduate in December 2019. In fact, the services page anticipates services to be provided through next semester and into the next school year. There is inconsistency noted in the November 2019 IEP regarding the location of Student Six's services: The services page of the November 2019 IEP indicates the provision of the following services:
 - i. 60 minutes/week of reading in the regular classroom by a regular/special education teacher with supervision from a special education teacher
 - ii. 60 minutes/week of writing in the regular classroom by a regular/special education teacher with supervision from a special education teacher
- 7. **Student Seven.** At the beginning of the 2019-2020 school year, Student Seven's October 2, 2018, IEP was to be implemented until such time as the IEP was revised on November 29, 2019. All three teachers concur that Student Seven did not receive special education services in accordance with the student's IEP.
 - **October 10, 2018 IEP.** The placement page of Student Seven's October 2018 IEP was missing from the IEP provided by the District and when requested, it was not provided. The services page of the October 2018 IEP, which required the provision of special education services by the regular education and special education teacher within the regular education/special education setting, was consistent with other students' placement identified as a co-teaching model. While both regular education teachers indicated that Ms. Clark came to their classrooms a few times to provide services to Student Seven, co-teaching services were not provided. The October 2018 IEP required the following special education services:
 - i. 250 minutes/week in the area of Reading by regular educator and special educator
 - ii. 250 minutes/week in the area of Mathematics by regular educator and special educator
 - iii. 250 minutes/week in the area of Language Arts by regular educator and special educator

- November 29, 2019 IEP. The services page of the November 2019 IEP indicates the provision of the following services:
 - i. 60 minutes/week of reading in the special education classroom by a regular/special education teacher with supervision from a special education teacher
 - ii. 60 minutes/week of mathematics in the regular education/special education classroom by a regular/special education teacher with supervision from a special education teacher
 - iii. 60 minutes/week of writing in the regular/special education classroom by a regular/special education teacher with supervision from a special education teacher
8. **Student Eight**. Ms. Clark indicated that she understood Student Eight was to receive services through a co-teaching model. Student Eight's April 2019 IEP requires the placement in a pull-out model. However, the services page of the April 2019 IEP notes a discrepancy with the placement page, stating the services are to be delivered in the special education/regular education classroom, specifically 150 minutes/week in the area of social and behavioral skills taught by special education teacher. Ms. Clark indicated that these services were not provided.
 9. **Student Nine**. Ms. Clark indicated that Student Nine was to receive services through a co-teaching model but the IEP suggests otherwise. Student Nine's November 2018 IEP required the provision of special education services by the regular education teacher within the regular education setting with up to 90 minutes weekly supervision from a special education teacher. The IEP placement page required a 1:1 paraprofessional in the regular education setting. All three teachers agree that neither pull-out nor "co-teaching" services were provided to Student Nine, nor was the student provided a 1:1 paraprofessional for support. Student Nine's IEP required provision of special education services as follows:
 - i. 150 minutes/week in the area of Language taught by regular education teacher in the regular education setting
 - ii. 150 minutes/week in the area of Reading taught by regular educator in the regular education setting
 - iii. 150 minutes/week in the area of Mathematics taught by regular educator in the regular education setting
 10. Three Fort Yukon School teachers confirmed that seven of the above-referenced students whose IEPs were designed for and understood to require co-teaching (Students 1, 2, 3, 4, 5, 6, and 7) were not provided a consistent schedule of "co-teaching" from the first day of school (August 20, 2019) through November 27, 2019, the last day of Ms. Clark's service as a special education teacher. The eighth student's IEP was also not implemented in that the student was not provided services in a pull-out model as required by the placement page of the student's IEP, nor were services provided in the regular education classroom by the special education teacher as set forth in the services description (Student 8). The ninth student's IEP was also not implemented in that no 1:1 paraprofessional was provided to the student (Student 9). Director Pratt indicated that a new special education teacher is anticipated to begin service provision the week of December 9, 2019.

Conclusions and Reasons

Issue 1: Whether the Yukon Flats School District implemented students' IEPs at Fort Yukon School, specifically regarding provisions, if any, requiring the presence of a special education teacher in general education classrooms.

Allegation: This issue involves an allegation that the District failed to implement eligible student services and placement during the 2019-2020 school year in accordance with the provisions of the students' IEPs.

Applicable Federal Legal Standards:

Federal regulations at 34 CFR 300.320(a)(4) require that IEPs include a statement of the special education and related services and supplementary aids and services to be provided to or on behalf of a student with a disability.

Federal regulations at 34 CFR 300.320(a)(7) require that IEPs include the anticipated frequency and location of the services to be provided to or on behalf of a student with a disability.

Federal regulations at 34 CFR 300.323(c)(2) require that the district provide a student with a disability the services identified in his or her IEP.

Applicable State Legal Standards:

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

Discussion:

The IDEA and state law require that the school district must implement the IEP as written. During the time relevant to this investigation, the students referenced in this report were eligible for and received services under the IDEA in the Yukon Flats School District (Findings of Fact 2, 4, 5, 6, 7, 8 and 9).

The District defines “co-teaching” as a “push-in” method of providing special education services to eligible students within the regular education setting through the required cooperation by a regular education teacher and the certificated special education teacher (Finding of Fact 3). The District further clarified “co-teaching” requires the presence of the special education teacher in the student’s general education setting to provide services within this model (Finding of Fact 3).

Discrepancies within multiple students’ IEPs indicate a lack of clarity regarding the model of special education services, provider and location of services to be implemented (Findings of Fact 5, 6, 7, 8 and 9). It is unclear when any services for the eligible students began (Finding of Fact 1), however, testimony of the three Fort Yukon School teachers confirmed that services were not provided in accordance with the IEPs for the nine students reviewed in this investigation (Findings of Fact 4, 5, 6, 7, 8, 9 and 10) from the first day of school (August 20, 2019) through November 27, 2019, the last day of Ms. Clark’s service as a special education teacher (Findings of Fact 1 and 10). The District anticipates that a new special education teacher will begin service provision the week of December 9, 2019 (Finding of Fact 10).

Therefore, violations of 34 CFR 300.323(c)(2) and 4 AAC 52.140(f) have occurred regarding implementation of nine students’ IEPs.

Corrective Action Required

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

The Ninth Circuit has held that “compensatory education is not a contractual remedy, but an equitable remedy, part of the court’s resources in crafting appropriate relief.” *Parents of Student W. v. Puyallup School Dist., No. 3*, 31 F.3d 1489, 1497 (9th Cir. 1994) (internal quotations omitted). According to the Ninth Circuit: “There is no obligation to provide a day-for-day compensation for time missed.” *Id.*

A short delay in the implementation of IEP services for up to two weeks is permitted under these circumstances when the district was required to hire a new special education teacher at the beginning of the school year (see, Comments and Discussion in 1999 IDEA Regulations, 64 Fed. Reg. 12406, 12579 (Mar. 12, 1999)).

The following corrective actions are ordered to remediate the violations found in this investigation.

1. Yukon Flats School District must provide or pay for compensatory services such as academic tutoring to remedy the failure to implement the students’ IEPs between August 20, 2019, and December 9, 2019, a period of 16 weeks of school. The 16-week period of time has been reduced by the 2-week timeframe of “delay” envisioned in the Comments and Discussion in the 1999 IDEA regulations, resulting in compensatory services for a 14-week timeframe. See Findings of Fact 4, 5, 6, 7, 8 and 9 for the calculation of individual special education services that

were to be provided in this 14-week timeframe. The District shall contact the DOEED for information regarding the identity of Students One, Two, Three, Four, Five, Six, Seven, Eight and Nine.

The following order for compensatory services takes into account the fact that the students did receive regular education instruction at all times relevant to the complaint. The order also takes into account the fact that compensatory services such as tutoring are more intensive than services provided in a class. Further, services to address goals in academic areas of Language, Reading and Writing, as well as goals in adaptive areas of social/behavioral and transition skills, can be accomplished during the same individualized instructional sessions. Taking all of these factors into account, compensatory services are ordered at a rate of 25% percent of the hours provided in the students' IEPs but not implemented, as calculated below. Note that for Students 6 and 7 who had IEP revisions at the end of November, the compensatory services have been calculated based upon the services required in the October 2018 IEP (13 weeks) and November 2019 IEP (1 week).

<p>Student One is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 500 min/wk x 14 weeks of Reading/Writing services reduced by 75% = 1750 minutes or 29 hours of Reading and Writing services - 250 min/wk x 14 weeks of Math reduced by 75% = 875 minutes or 15 hours of Math services - 120 min/wk x 14 weeks of Social/Transition skills reduced by 75% = 420 minutes or 7 hours of Social/Transition services.
<p>Student Two is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 250 min/wk x 14 weeks of Math reduced by 75% = 875 minutes or 15 hours of Math services
<p>Student Three is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 250 min/wk x 14 weeks of Reading services reduced by 75% = 875 minutes or 15 hours of Reading services - 250 min/wk x 14 weeks of Math reduced by 75% = 875 minutes or 15 hours of Math services - 10 min/wk x 14 weeks of Transition skills reduced by 75% = 35 minutes or 0.5 hours of Transition services.
<p>Student Four is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 500 min/wk x 14 weeks of Reading/English Language services reduced by 75% = 1750 minutes or 29 hours of Reading and English Language services - 250 min/wk x 14 weeks of Math reduced by 75% = 875 minutes or 15 hours of Math services
<p>Student Five is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 495 min/wk x 14 weeks of Reading/Language services reduced by 75% = 1732.5 minutes or 29 hours of Reading and Language services - 150 min/wk x 14 weeks of Math reduced by 75% = 525 minutes or 9 hours of Math services
<p>Student Six may graduate at the end of this Semester in December 2019. In the event that Student Six graduates with a regular diploma within this timeframe, Student Six is to be provided 7.5 hours of services to support transition to post-secondary career or educational choices.</p> <p>In the event that Student Six does not graduate as anticipated, Student Six is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 450 min/wk x 13 weeks (through November 28, 2019) and 120 min/wk x 1 week (through December 6, 2019) of Reading/Writing services reduced by 75% = 1492.5 minutes or 25 hours of Reading and Writing services - 50 min/wk x 13 weeks (through November 28, 2019) of Transition services reduced by 75% = 162.5 minutes or 3 hours of Transition services
<p>Student Seven is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 500 min/wk x 13 weeks (through November 29, 2019) and 120 min/wk x 1 week (through

<p>December 6, 2019) of Reading/Writing services reduced by 75% = 1655 minutes or 28 hours of Reading and Writing services</p> <ul style="list-style-type: none"> - 50min/wk x 13 weeks (through November 29, 2019) of Transition services reduced by 75% = 162.5 minutes or 3 hours of Transition services
<p>Student Eight is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 150 min/wk x 14 weeks of Social/Transition skills reduced by 75% = 525 minutes or 9 hours of Social/Transition services.
<p>Student Nine is to be provided the following compensatory education:</p> <ul style="list-style-type: none"> - 300 min/wk x 14 weeks of Reading and Language services reduced by 75% = 1050 minutes or 18 hours of Reading and Language services - 150 min/wk x 14 weeks of Math reduced by 75% = 525 minutes or 9 hours of Math services

2. The plan for providing or paying for compensatory services must be submitted to the DOEED for approval no later than January 31, 2020. The plan must set forth a schedule for completing the compensatory services by August 31, 2021.
3. By September 15, 2021, the District must provide a report to the DOEED documenting the type, amount, and cost of compensatory services, and how the services were paid for.
4. The District must review and revise its procedures to ensure that IEPs in effect for students are implemented at the beginning of the school year, specifically regarding special education services (frequency, location, implementation responsibilities) and placement provisions. All certificated and administrative staff at Fort Yukon School must be trained regarding IEP implementation responsibilities. Documentation of the District's review and revision, if necessary, of IEP implementation procedures and training provided to Fort Yukon School must be provided to DOEED on or before March 31, 2020.
5. IEPs for Students Five, Seven, Eight and Nine are to be revised to resolve discrepancies regarding the frequency, location, implementation responsibilities and placement provisions noted within their current IEPs. In the event that Student Six does not graduate in December of 2019, Student Six's IEP must also be revised. Amendments of these IEPs are to be completed by February 28, 2020, and copies of the revised IEPs are to be provided to DOEED on or before March 31, 2020.

Date Report Completed: December 8, 2019