

August 21, 2015

Dr. Romules Durant  
Toledo City Schools  
420 E Manhattan Blvd.  
Toledo, OH 43608

**RE: Complaint # CP 0075-2015, Findings Letter**

Dear Dr. Durant:

After reviewing the information regarding the complaint concerning [REDACTED] (Student) the Office for Exceptional Children has made the following findings.

- The Consultant assigned to this complaint interviewed the Parent along with the Parent's two advocates via telephone on August 5, 2015.
- The Consultant assigned to this complaint interviewed the District Special Education Director via telephone on August 11, 2015.
- The Consultant assigned to this complaint interviewed the Student's Principal, Assistant Principal and one of his teachers together via telephone on August 12, 2015.
- The Student is not currently enrolled at the District.
- Both parties submitted information and documentation for this investigation. All information and documentation was considered.

**Issue 1:**

The Parent alleges the District failed to implement assistive technology and accommodations as specified in the Student's Individualized Education Program (IEP). Specifically, the Parent alleges:

- The District did not provide the Student with an iPad for two months after it agreed, in March 2015, that the iPad was necessary.
- The District has not allowed the Student to have access to a calculator on a regular basis. In addition, the Student was not provided with a calculator during spring 2015 standardized testing. Instead, the Student was given access to the "on-screen calculator for certain problems" that was provided for all Students. The Parent states it is unclear if the Student understood how to access the on-screen calculator.
- The District has banned the Student from field trips as discipline for behaviors that manifest from his disability and has not clearly explained the reasoning to the Parent or the Student.

This is an alleged violation of 34 C.F.R. 300.323 (a) [When IEPs must be in effect] and 34 C.F.R. 300.105(a) [Assistive Technology].

**Facts:**

Based on information and documentation submitted by the parties, the following facts were determined:

1. The Student's May 19, 2014 IEP, with a January 2015 amendment, states the following:
  - a. The IEP states Section 12 was amended to change accommodations for the State Assessment. It states "parent via email" under "Participant & Role."
  - b. Section 7, Description of Specially Designed Services, states the Student is allowed use a calculator as part of his Specially Designed Instruction and Accommodations.

- c. In Section 12, Statewide and District Wide Testing:
    - i. In the area of "Math" the Student will receive "Directions, questions and answers read and clarified, extended time, frequent breaks, small group, test area that limits distractions, use of a calculator, scribe."
    - ii. In the area identified as "Other" for "PARCC/AIR" the Student is to receive for "math/science-text to speech, small group, extended time, frequent breaks."
  - d. The Parent signed the IEP on January 26, 2015 and checked the "I agree with the implementation of this IEP" box.
  - e. This IEP does not reference an iPad.
  - f. This IEP does not specify participation in field trips but states the Student "may participate in any and all activities at school and in the community with non-disabled peers as permitted by the parent."
2. The District submitted a copy of a prior written notice dated January 13, 2015. This states:
    - a. The District proposes to amend the IEP for the statewide assessment because "the new statewide assessment (PARCC/AIR) is a more inclusive assessment. Allowable accommodations differ from the previous statewide test (OAA)."
  3. The Student's April 28, 2015 IEP states the following:
    - a. Under Section 3, Profile, under the "Parent Input" heading, the IEP states that next year the Parent would like the Student to have an iPad and use of a calculator. Under the "Assessment Results" heading, the IEP states the Student was given a calculator during the previously taken assessments.
    - b. Under Section 6, Measurable Annual Goals, in the area of Math, the IEP states the Student was given a calculator during his previously taken assessments.
    - c. Under Section 7, Description of Specially Designed Services the IEP states the following:
      - i. The Student gets to use a calculator for goal #4, Math.
      - ii. One of the Student's accommodations is the use of a calculator in the resource room and general education classroom.
      - iii. Under "Assistive Technology" the Student will have an iPad "for access to daily schedules, charts, formulas, word banks, lessons, photograph board work/notes on board." This is in the general education classroom and the resource room.
    - d. Under Section 9, Nonacademic and Extracurricular Activities, the IEP states the Student will participate with general education peers in art, music, physical education, lunch, recess and field trips. The Student will have the same opportunity as his peers to participate in extracurricular activities at school and in the community.
    - e. In Section 12, Statewide and District Wide Testing, the IEP states the Student will have a calculator for his math assessment.
    - f. The Parent and her advocate signed as participants to this IEP meeting. The Parent did not sign in Section 14, Signatures.
  4. The District submitted a document titled "New iPad Pickup Computer Services." This document lists the Student as the iPad user and indicates the iPad was delivered to the Special Education Director at Student Services on April 27, 2015. This document also lists the model, service tag number, District tag number and purchase order for the iPad. This document is signed by a District staff member.
  5. The District submitted a January 13, 2015 e-mail from a Special Education Supervisor to the Parent stating the District is "being asked to amend all IEPs because of the new PARCC assessment" which will "require some changes to the accommodations." The e-mail states the accommodations

- should read "PARCC/AIR...Math/science-text to speech, small group, extended time, frequent breaks."
6. In a March 4, 2015 e-mail to the Student's Assistant Principal, the Parent states the Student was told "no calculator" during the PARRC testing. The Parent also states the Student was "denied a calculator" during the previous week's math test in class.
  7. The District did not submit any documentation regarding the provision of a calculator during class time or during testing.
  8. The District did not submit any documentation regarding the software on the provided iPad.
  9. The District did not submit any documentation indicating the date the Student was given the iPad or any dates the iPad was unavailable for use.
  10. The District did not submit any documentation regarding the Student's behavior, disciplinary actions or field trips.
  11. In an interview, the Parent and her advocates stated the following:
    - a. The IEP team agreed that an iPad was necessary for the Student in March 2015. They stated the Student did not receive the iPad until about "4 weeks" before the end of the school year. Soon after receiving it, the iPad was sent back to be fixed. The iPad did not become available for the Student again until a "few days" before the end of the school year.
    - b. When the Student received the iPad, it did not have any software loaded onto it to allow the Student to use it for daily schedules, charts, formulas, word banks, lessons or to photograph the board work and notes which were the reasons for providing the iPad.
    - c. At the start of the school year, the Parent asked about calculator use and was told the Student could not use a calculator and that he "didn't need it."
    - d. The Student was not allowed to use a calculator on homework or tests unless the teacher "deemed it appropriate."
    - e. Prior to the PARCC assessment, the Parent was presented with an IEP and told to "please sign this" so the Parent did sign it. She did not know that the IEP was removing the Student's calculator accommodation for the PARCC assessment.
    - f. The Student had two different substitute teachers while his teacher was on maternity leave. Neither substitute teacher reported any behavior concerns to the Parent. When the Student's regular teacher returned, she "punished him for what he did while she was gone." The punishment was that the Student could not attend an anticipated field trip to a recreation center. The Parent was never notified of why the Student could not go or why he was being punished.
  12. In an interview, the Special Education Director stated the following:
    - a. The Student's IEP was amended on January 13, 2015 to reflect that the Student could not use a calculator during the PARCC assessment. She believes the amendment was conducted via e-mail.
    - b. The District ordered an iPad for the Student. After meeting with one of the Student's advocates, she became aware that the Student had not yet received the iPad. The following day, the iPad was picked up by the Special Education Coordinator to give to the Student. The Special Education Director did not recall the exact date.
    - c. Any special software required would have been loaded on at the building level.
  13. In an interview, the Student's teacher and Principal stated the following:
    - a. The IEP team determined the Student would get an iPad at the April 28, 2015 IEP meeting. The iPad came in a couple of days later, but did not have the correct case, so it was sent

- back. It took about two weeks to get it back. The Student received the iPad on the Monday before the end of school.
- b. The Student's IEP did not require any special software or applications on the iPad.
  - c. Calculators are available in the classroom. They are always available for tests and are available for lessons depending on what is being taught. For instance, when teaching decimals, the calculator will automatically do the calculation, so the students are taught without calculators first.
  - d. There is no written record regarding calculator use.
  - e. All field trips require permission slips from the parents and current emergency medical forms. Permission slips are discarded after the field trip.
  - f. The recreation center field trip was an incentive based field trip which was provided to the students who participated in, followed all rules and gave a good effort during the PARCC assessments. The Parent opted the Student out of part of the PARCC assessments, and therefore was ineligible to attend.
14. In an interview, the Assistant Principal stated the Student did have some disciplinary referrals but did not have any suspensions. To his knowledge the Student was not prevented from attending any field trips as a part of any disciplinary action, but that would be a teacher decision.

#### **Finding:**

The District is in violation of 34 C.F.R. 300.105(a) [Assistive Technology]. Under this section, a district must ensure that assistive technology devices and services are made available to a student with a disability if it is required as a part of the student's special education, related services or supplementary aids and services. Here, the Student's April 28, 2015 IEP stated the Student will have access to an iPad in the "Assistive Technology" section of the IEP. The IEP states the Student can use the iPad for daily schedules, notes, lessons, word banks and similar services. The IEP does not specify any software that must be loaded onto the iPad. The District submitted documentation that the iPad was received by the Special Education Director the day before the relevant IEP went into effect. No documentation was submitted to support when the Student was given access to the iPad, but the Student's teacher stated the Student was given the iPad on the last Monday of school, which would be around June 5, 2015. This correlates with the Parent's allegations. Therefore, the District did not provide the Student with the assistive technology as required in his IEP.

Under 34 C.F.R. 300.323(a), a district must have in effect for each child with a disability within its jurisdiction, an IEP as defined in 34 C.F.R. 300.320. In order for an IEP to be considered in effect, the District must be implementing the requirements of the IEP. Here, the Student was to have the use of a calculator during math. The District did not provide evidence that the Student was provided the use of a calculator consistently throughout the 2014-2015 school year. The Student's IEP did not address the issue of field trips, however the District stated that the field trip in question was a reward for PARCC assessment participants, which the Student did not participate in. The District did not provide documentation regarding the Student's discipline or participation in field trips. The District states the Student was ineligible for the trip since he did not complete the PARCC assessments, but no documentation was provided regarding this trip. Since the District did not document the use of a calculator or use of the iPad, the District is in violation of this section.

**Corrective Action:**

All corrective action will be discussed at the end of Issue 2.

**Issue 2:**

The Parent alleges she has requested IEP meetings since the fall of 2014 and the District has refused to have a meeting telling an advocate “they have all met with us to discuss [the Student] more than enough.” The Parent states when the Parent requested a meeting in December 2014, the District did not respond until March 2015 and when they did respond, they offered one “possible date.” The Parent alleges she tried to reschedule but the IEP meeting was held without the Parent. This is an alleged violation of 34 C.F.R. 300.501(b) [Parent participation in meetings], 34 C.F.R. 300.322(a) [Parent participation] and 34 C.F.R. 300.503 (a) [Prior notice by the public agency].

**Facts:**

1. The District submitted a January 13, 2015 e-mail the Parent sent to the Student’s Assistant Principal stating she had not heard back regarding an IEP meeting for the Student and detailing concerns. The e-mail also provided dates the Student’s psychologist was available and dates of the Student’s upcoming medical appointments.
2. The above e-mail was forwarded on the same date to the Student’s teachers and principal with a message to respond to the Parent’s request for a meeting.
3. The District submitted a January 13, 2015 e-mail from a Special Education Supervisor to the Parent which discusses modifications to the Student’s accommodations for the PARCC assessment and further states, “I understand that you have requested a meeting. I cannot address that in this email but will be contacting you to set this meeting up.”
4. On March 4, 2015, the Parent sent an e-mail to the Student’s Assistant Principal stating she had asked to meet as an IEP team. The Parent had suggested teachers speak with the Student’s advocates and psychologist. The Parent had concerns that the IEP is not being followed and there is no plan in place for when the Student’s teacher leaves for a long-term medical leave. The Parent stated she had not received a response for these issues.
5. The District submitted a January 13, 2015 PR-01 dealing with changes to the Student’s accommodations for the PARCC/AIR assessments.
6. On March 6, 2015, the Parent sent an e-mail to one of the Student’s teachers stating she could not meet on Wednesday (March 11, 2015), but stating one of the advocates could call in on her behalf. She stated she and one of the advocates could meet on March 14 [13], 2015 after school. This e-mail further states, “I am more than comfortable having [advocate] call in if you are not able to meet Friday or please supply dates so [the Student’s] advocates [including a doctor] can arrange time to meet.”
7. On March 6, 2015 one of the Student’s teachers sent an e-mail to the Parent stating “we are unable to meet Friday [March 13, 2015] so I will arrange to meet on Wednesday [March 11, 2015] with the team.”
8. On March 9, 2015, the Parent sent an e-mail stating “I cannot meet as I stated last week, however [advocate] will call in on my behalf.” On the same date, one of the Student’s teachers sent an e-mail to the Parent stating the meeting will be “in the conference room at 3:30 pm” and indicating other advocates would be welcome to attend as well.

9. On March 17, 2015, one of the Student's teachers sent an e-mail to the Parent stating the Student's IEP "is due in May." This e-mail requested to set up a meeting towards the end of April and provided dates and times of availability.
10. On March 24, 2015 the Parent sent an e-mail to the school requesting a 2:30 pm meeting time on April 28, 2015. One of the Student's teachers responded that she would "let everyone know" but that "some may not be able to make it until 3:30 pm, as they will be teaching."
11. On March 25, 2015 the District sent the Parent a "Parent Input Form" to complete in preparation for the Student's IEP meeting.
12. The District submitted a Parent Invitation (PR-02) dated March 30, 2015 which states a meeting was scheduled for April 28, 2015 at 2:30 pm to develop, review and revise the Student's IEP.
13. The District did not submit any additional parent invitations for the 2014-2015 school year.
14. The District submitted a PR-01 dated April 28, 2015. This notice states an annual IEP review was conducted and the Student's placement was changed from "Resource Room to In Class support."
15. The District did not submit any other PR-01s indicating the outcome of any meetings during the 2014-2015 school year.
16. In an interview, the Parent stated the following:
  - a. The Parent requested a meeting both verbally and in writing in the fall of 2014.
  - b. While speaking with the Principal, in person, the Parent requested a meeting.
  - c. The Parent estimates she requested a meeting "about six" times before a meeting was scheduled.
  - d. The District met with the Parent a few times, but never with the full IEP team.
  - e. On the April date, the Parent was told there was only one hour allotted to "finalize the IEP." The Parent states this happens "every year" because it is the end of the school year and everyone is busy. The Parent could not attend on this date.
17. In an interview, the Special Education Director stated the following:
  - a. The Parent made frequent requests for meetings, but she does not know the date of the first request.
  - b. The District sent an invitation on March 30, 2015 for an April 28, 2015 meeting.
18. In an interview, the Student's teacher stated the following:
  - a. District staff met with the Parent in June 2014 so the Parent could meet the Student's teachers for the following year.
  - b. In August 2014, the Parent attended the Open House where she was able to speak with the Student's teachers.
  - c. In October 2014, the Parent requested a meeting and the full IEP team met along with the Student's advocates.
  - d. In November 2014, the Parent and the Student's advocates met with the IEP team during parent-teacher conferences.
  - e. In March 2015 another full IEP team was held.
  - f. The above meetings were in addition to the April 28, 2015 IEP meeting where the IEP team met for the annual review.
  - g. An advocate attended in place of the Parent at one of the IEP meetings.

**Finding:**

The District is in violation of 34 C.F.R. 300.322(a) [Parent participation]. Under 34 C.F.R. 300.322(a), each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—(1) Notifying

parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. Here, documentation indicates the Parent requested an IEP team meeting prior to January 13, 2015, and was following up about a meeting. A meeting was not scheduled until April 28, 2015. The District provided a copy of a parent invitation for the April 28, 2015 meeting but did not provide any other parent invitations for the 2014-2015 school year. E-mail correspondence indicates the District and Parent communicated with regards to scheduling a meeting. However, the District chose to hold the meeting on a date the Parent stated she could not attend, and allowed an advocate to attend in her place. This is a violation of the requirements of parent participation since the District is obligated to notify the parents early enough to ensure an opportunity to attend and schedule the meeting at a mutually agreed on time and place in.

The District is in violation of 34 C.F.R. 300.501(b) [Parent participation in meetings]. Under this section, parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of FAPE to the student. Here, there is documentation to support the Parent requested a meeting to address concerns as early as January, 2015. The District did not provide documentation of any meetings prior to April 28, 2015. Submitted e-mails indicate a meeting was held without the Parent sometime in March, but there is no other documentation of the meeting. Additionally, as above, the District did not attempt to schedule the meeting at a time the Parent could attend. Therefore, the District is in violation.

The District is in violation of 34 C.F.R. 300.503 (a) [Prior notice by the public agency]. Under this section, the District must provide written notice to the parents of a child with a disability a reasonable time before the public agency proposes (or refuses) to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. Here, the District provided a copy of a prior written notice after the April 28, 2015 meeting. The Student's teacher stated during the 2014-2015 school year, the District met with the Parent on several other occasions (see Fact #18), some of which were full IEP meetings. However, the District did not provide prior written notices documenting that any other meetings were held, or refused after parent request, during the 2014-2015 school year. Therefore, the District is in violation.

#### **Corrective Action:**

Ordinarily, the District would be required to work with State Support Team Region 1 (SST1) to coordinate professional development to address 34 C.F.R. 300.501(b) [Parent participation in meetings], 34 C.F.R. 300.322(a) [Parent participation], 34 C.F.R. 300.503 (a) [Prior notice by the public agency], 34 C.F.R. 300.323 (a) [When IEPs must be in effect] and 34 C.F.R. 300.105(a) [Assistive Technology]. However, the Consultant assigned to this case contacted SST 1 to discuss professional development for the District and learned the District participated in a six hour course on special education on August 11, 2015 which included IEPs, prior written notice, special education compliance and discussion of policies and barriers to successful implementation of services for students with disabilities. The District is also scheduled for a three hour course on September 15, 2015 to discuss IEPs and the processes and forms that go with it, especially with regards to Sections 6, 7, and 11 of the IEP. This training will include prior written notice, parent invitations and assistive technology. Therefore, no additional professional development will be required. The District must submit a copy of the training materials for the August 11, 2015 and September 15, 2015 training along with a copy of the sign in sheet showing the name, title and signature of each attendee. This information must be submitted by **September 25, 2015 at noon.**

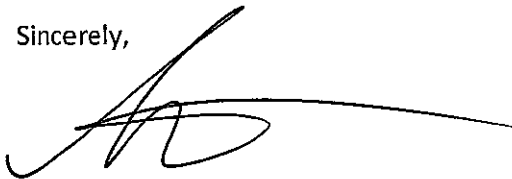
The Special Education Director must also draft a memorandum which must state when prior written notice is required, the process for attempting to obtain parent participation in meetings and the process for ensuring assistive technology is made available to a student pursuant to the IEP. This memorandum must also include a summary of the August 11, 2015 and September 15, 2015 training highlighting the information relevant to 34 C.F.R. 300.501(b) [Parent participation in meetings], 34 C.F.R. 300.322(a) [Parent participation], 34 C.F.R. 300.503 (a) [Prior notice by the public agency], 34 C.F.R. 300.323 (a) [When IEPs must be in effect] and 34 C.F.R. 300.105(a) [Assistive Technology]. This memorandum must be reviewed by all special education supervisors who must sign off on it. A copy of this memorandum and the signature page must be submitted to the OEC by **September 25, 2015 at noon**.

**Due Date:**

All of your corrective action is to be in our office by **September 25, 2015 at noon**.

We appreciate your cooperation in the resolution of the complaint investigation. Please refer to the above referenced complaint number when corresponding with this office and address all correspondence to the attention of Toni Harris.

Sincerely,



Monica Drvota, Assistant Director  
Office for Exceptional Children

cc: [REDACTED] Parent  
Beth Barrow, Special Education Director  
Dr. Amy Allen, Transformational Leader of Early Childhood and Special Education  
Jim Gault, Transformational Leader of Curriculum  
Heather Clingerman, Attorney Complaint Consultant