

# Complaint Decision 18-049C

March 19, 2018

Dr. Rae Villebrun, Superintendent  
Floodwood ISD 0698-01  
115 4<sup>th</sup> Avenue  
Floodwood, MN 55736-4523

[COMPLAINANT]

Dear Superintendent Villebrun and [REDACTED]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [REDACTED] (Complainant) brought on behalf of [REDACTED] (Student), a student attending school in Floodwood Independent School District 0698-01 (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after January 18, 2017, one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District Staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated January 19, 2018. The District provided a written response to the complaint on February 5, 2018. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

## Issue

The Complainant alleges the District failed to provide the Student with a free appropriate public education (FAPE). Specifically, the Complainant alleges the District failed to provide special education and related services in conformity with the Student's individualized education program (IEP) when the Student was not permitted to

go to the special education classroom to complete a quiz on or about December 21, 2017, resulting in a lower grade and the Student's inability to participate in extracurricular activities.

## Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.
2. The Student's IEP team met on October 17, 2017, to develop the most recent IEP (October 2017 IEP) for the Student.
3. The Student's October 2017 IEP listed the following program modifications, supports, and adaptations in general and special education:

[Student] will be provided additional time to complete classroom and homework assignments of [one] day without penalty. [Student] must ask for this accommodation before the due date.

Following instruction by the mainstream teacher, [Student] will be permitted to go to the special education classroom to complete assigned work or test/quizzes per his or teacher's request.

[Student] will be allowed additional time to complete tests and they will be taken in the resource room. [REDACTED]

[REDACTED] [Student] is allowed to use notes on test[s] [REDACTED]. [Student] will only be allowed a word bank when taking a vocab test/quiz so he has something to reference, but not copy from.

[Student] will get notes from the teacher/para prior to class, so he can follow along in the class discussions. He may also take a picture of the notes using his school issued Chromebook.

[Student] will be allowed to use a word bank when taking a vocab test or quiz rather than use his notes.

General educator will breakdown long projects/assignments into smaller more manageable tasks in order for [Student] to complete these tasks.

1. The Complainant reports "on [December 21, 2017], [Student] had a quiz and was denied going to the special education classroom." The Complainant reports this caused the Student to have a low score on this quiz, resulting in a lower grade. Additionally, the Complainant further reports that, as a result of the low grade, the Student was then found academically ineligible to play [REDACTED] for nine games, pursuant to District policy, [REDACTED].
2. In its response, the District reports, "[A staff member] (Staff Member) stated the Student never asked to go to the resource room, [and] therefore, she did not deny him using the accommodation and

modification listed in the IEP.” Staff Member reported the terms “resource room” and “special education classroom” are used interchangeably to refer to the same space.

3. Staff Member credibly reported during interviews that she did not ask the Student to go to the special education classroom and the Student did not ask to go to the special education classroom to take the December 2017 quiz. Staff Member recalled asking the Student to go to the special education classroom on two other occasions during the semester to work on in-class projects. Staff Member also emphasized she understands and feels strongly about the importance of allowing students with IEPs to use their accommodations. Staff Member also credibly reported the Student never asked to use the special education classroom during the first semester.
4. The complaint investigator tried to contact the Student multiple times, but was unable to speak to him regarding the complaint.
5. The Student’s score on the December 2017 quiz was 71.42 percent. The Student also took quizzes in this class in October and November 2017, and January 2018, and scored 76 percent, 45.45 percent, and 100 percent, respectively, showing the Student did not have consistent quiz scores for this class. Staff Member reported the Student did not take any of these quizzes in the resource room.
6. The Complainant contacted Staff Member via email on January 2, 2018, to ask if there was “anything [Student] could do to bring his grade up.” Staff Member responded that the Student “did alright on the quiz they took before break” and “it did bring his grade up to a D.”
7. The District reports in its response that Staff Member spoke to the Student prior to December 21, 2017, about “the importance of attendance for grades in her class.”
8. Staff Member reported the Student’s low grade in this class in December 2017 was a direct result of his attendance and not a result of the December quiz score. Staff Member also reported the Student was absent approximately seven times during the first semester and “that made his grade drop significantly.”
9. The Student’s attendance record indicates he had four unexcused absences in this class in early and mid-November 2017 and was out of school another four days, from November 27 through 30, 2017, due to illness, for a total of eight absences.
10. The Student’s educational records indicate he received 20 percent, 66.66 percent, 75 percent, zero percent, and 20 percent of his daily participation points in this class during each week of the month of November 2017.
11. Daily participation points account for approximately 50 percent of the Student’s quarterly and semester grades in this class.
12. The Student’s educational records show the Student received a B and an F as a mid-term progress grades in the first and second quarters, respectively, and received Cs as his first and second quarter grades in this class. The Student’s unexcused absences occurred during the quarter in which he received an F as the mid-term progress grade.
13. According to the Student’s attendance record, he missed multiple other class periods during the fall semester of the 2017-18 school year, including nine unexcused absences in a different class. Seven of these unexcused absences occurred during November 2017.
14. Staff consistently reported that the Student’s absences from school have been an issue for at least the last two or three years, and seem to occur most often during the Student’s pull-out special education math class.

15. A review of the Student's attendance record from 2016-17 shows the Student missed approximately 37 out of approximately 170 class periods, or approximately 22 percent, and was tardy another 11 times during the school year in his special education math class. The number of absences, both excused and unexcused, and tardies in the other six class periods that year ranged from 18 to 21 and two to 13, respectively.
16. The Student's latest Evaluation Report, dated March 20, 2017, lists "no concerns" in the area of "Social/Emotional/Behavioral," but does note "[Student] has a difficult time getting where he needs to be on time and is often absent" under the "Secondary Transition" portion of the report. A functional behavioral assessment (FBA) was not conducted to determine the function of this behavior.
17. The October 2017 IEP also includes the following "Related Service" under the "Transition Services" section: "[Student] needs to continue improving on his attendance." The October 2017 IEP lists "[Student], Parents" as the "Agency Providing [this] Service on the IEP."
18. The Complainant reported the Student's attendance has been discussed at IEP team meetings, but has not been addressed in the Student's IEP.
19. Staff also indicated that the Student's attendance has been discussed at previous IEP team meetings and confirmed that the Student's attendance was not addressed in his IEP. Staff reported that given the number of times the Student had unexcused absences or tardies, "[Student] would not have come up in a report where we were concerned with the number of times he had...unexcused absences in a class."
20. The Student's October 2017 IEP provides the following supplementary aids and services in nonacademic and extracurricular activities and services statement, "The IEP team has determined that no modifications nor supports are necessary for [Student] to participate in nonacademic and extracurricular activities."
21. The District's "Eligibility, Athletic Scholastic" policy provides the following requirements regarding students' ability to participate in extracurricular activities:
  - 1 Unexcused Absence (1 Period or More): The student will be ineligible to participate in the next practice or event scheduled that day.
  - 3 Tardies in one week: The student will be ineligible to participate in the next practice or event when he/she reaches three (3) tardies and this will be the case for each succeeding tardy.
  - Grade of D in One or More Classes: Students will be ineligible to compete in events, games, or performances for the remainder of the week. A list of unsatisfactory grades (D) will be generated each Monday for all classes (current semester and quarter), and this period of ineligibility will begin on Tuesday and run through Sunday. If the student completes the "Eligibility Reinstatement Form," which is signed by teachers verifying the grade(s) is up to passing, the student will immediately regain eligibility.
  - One time per season: Students may petition the principal to substitute completing a one (1) hour community service project to regain eligibility for a practice, event, or game. This petition must be preapproved by the Superintendent/Principal.
  - Administration has the right to create individual contracts with students as long as the contracts meet [Minnesota State High School League] guidelines.

1. The Complainant reports that the IEP team has discussed and acknowledged that Student's participation in [REDACTED] is a great motivator for him to attend school, but that the District's Eligibility, Athletic Scholastic policy has not been discussed at IEP team meetings.
2. Staff confirmed that the Student's ability to participate in extracurricular activities pursuant to the District's Eligibility, Athletic Scholastic policy was not considered at previous IEP team meetings.
3. The District reported the Student was able to enter into a "Student Athletic Contract," consistent with the District's policy, with the Athletic Director on January 19, 2018, in which he committed to "turn in his assignments on time, attend and participate in class consistently, and arrive to all classes on time." The Student Athletic Contract also provided that the Student agreed "to attend tutoring once a week for each class that is below a C-."
4. The District reports the Student has been participating on the District's [REDACTED] team since signing the Student Athletic Contract.
5. The District proposed providing the following corrective action:

Training will be provided on writing Accommodations and Modifications.

Training will also be provided to general education staff about how to ensure Accommodations and Modifications are being followed and steps to follow if there are questions about the effectiveness of any Accommodations and Modifications listed in a student's IEP.

## Conclusions

1. School districts must make available to each eligible student a FAPE, consisting of special education and related services that are provided in conformity with the student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. Federal regulations at 34 C.F.R. § 300.323(d)(2) provide:

Each public agency must ensure that each teacher and provider described in paragraph (d)(1) of this section is informed of-

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

3. The Comments to the Federal Register, 71 Fed. Reg. 46681 provide, in pertinent part:

Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed.

4. The Student's IEP has two conflicting accommodations; namely, that the Student would be permitted to take tests/quizzes in the special education classroom after instruction per his or the teacher's request, and the Student will take tests in the resource room. This led Staff to believe that the Student would take a quiz or test in the special education classroom if either Staff or the Student requested, yet the subsequent modification states the Student "will" take tests in the resource room, resulting in confusion regarding Staff's specific responsibilities under the IEP and the inability to ensure that teachers understood their specific responsibilities for implementing the Student's IEP, in violation of 34 C.F.R. § 300.323(d)(2).

5. Federal regulations at 34 C.F.R. § 300.320(a)(4) provide:

As used in this part, the term individualized education program of IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include – A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

6. The Student's IEP indicates the IEP team determined that no modifications or supports were necessary for the Student to participate in extracurricular activities and the District adhered to its policy by entering into an individual contract with the Student. However, the District failed to address the Student's ongoing attendance issues in the development of the Student's IEP which caused the Student to be unable to participate in extracurricular and other nonacademic activities, in violation of 34 § 300.320(a)(4).

## Decision

The District violated 34 C.F.R. § 300.323(d)(2) when it failed to ensure Staff was informed of the specific responsibilities related to implementing the testing accommodations, modifications, and supports that must be provided for the Student.

The District violated 34 C.F.R. § 300.320(a)(4) when it failed to address the Student's ongoing attendance issues in the development of the Student's IEP in order to enable the Student to participate in extracurricular and other nonacademic activities.

## **Corrective Action**

1. The District's proposed corrective action to provide training on writing and following accommodations in an IEP is accepted. Further, the District must also, within 10 school days of the date of this complaint decision, hold an IEP team meeting to revise the accommodations in the Student's IEP relating to test-taking and to address the Student's attendance to enable the Student to participate in extracurricular and other nonacademic activities.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Marikay Canaga Litzau, J.D.

Director of Compliance and Assistance

MCL/kr

c: Jacqueline Skelly, Special Education Director