

Complaint Decision 19-005C

October 1, 2018

Dr. Dave Webb, Superintendent
South St. Paul ISD 0006-01
104 5th Avenue
South St. Paul, MN 55075-2332

[REDACTED]
[REDACTED]
[REDACTED]

Re.: Complaint Decision File 19-005C on behalf of [REDACTED] from South St. Paul ISD 0006-01

Dear Superintendent Webb and [REDACTED]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [REDACTED] [REDACTED] (Complainant) brought on behalf of [REDACTED] (Student), a student attending South St. Paul ISD 0006-01 (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after August 8, 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 August 14, 2018. The District provided a written response to the complaint on August 28, 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 services in conformity with the Student's individualized education program (IEP). Specifically, the Complainant alleges that IEP accommodations and the Student's behavior intervention plan were not implemented during Summer Learning Academy (SLA).

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 a District [REDACTED] school [REDACTED] during the time period covered by this complaint.
2. The IEP in place at the beginning of summer 2018 was developed in an IEP team meeting on April 11, 2018.
3. District staff reported that eligibility for extended school year (ESY) services was discussed during the meeting, but the IEP team determined that the Student did not qualify. Both the Complainant and District staff reported that SLA was mentioned as an elective option.
4. District staff reported the Complainant did not indicate that she would register the Student for SLA during the April 2018 IEP team meeting.
5. The Student's IEP states that she is not eligible for ESY services. The Complainant reported that she did not know it was necessary to inform the IEP team that the Student would attend SLA.
6. The District stated in its written response that SLA is a four-week general education, targeted assistance program [REDACTED], open to all students residing in the District. District staff reported confusion as to whether SLA is academic or nonacademic or curricular or extracurricular.
7. The SLA welcome letter to parents indicates that the program begins on July 9 and ends on August 2. The program runs four hours a day for four days a week. A typical day in SLA is described as including breakfast, learning experiences, exercise, and lunch. [REDACTED]
8. The SLA enrollment form is signed by the Complainant and dated May 8, 2018.
9. No additional IEP team meetings were held following the Student's enrollment in the District's SLA program to determine what accommodations she might require in order to participate, and no revisions were made to the Student's IEP.
10. The District stated in its written response that the assistant principal met with the SLA teacher in June 2018 and reviewed the Student's IEP and behavior intervention plan (BIP).
11. The Student's IEP contains three goals: one in the area of social skills, one in the area of behavior, and one in the area of work completion.
12. The service grid in the Student's IEP requires specialized instruction in behavior regulation three times daily for 15 minutes each session, in social skills for 30 minutes daily, and in academic skills for 30 minutes daily.
13. The least restrictive environment statement in the Student's IEP states:

[Student] requires specialized instruction [REDACTED].

While receiving special education services, [Student] will not participate in the following general education classes/activities: [Student] will miss the beginning of her classroom math instruction, non-core instruction, and “Centers” instruction. She will miss special education minutes due to school wide celebrations, field trips, and classroom events.

14. The accommodations and modifications section in the Student’s IEP provides, in relevant part:

School staff will positively reinforce [Student] for on-task behavior.

School staff will implement the attached individualized Behavioral Intervention Plan (BIP).

[Student] will be allowed to return to the special education classroom [REDACTED].

[Student] will be offered choices [REDACTED].

[Student] will be provided preferential seating within the classroom so that teachers can reinforce her positive behavior, immediately correct negative behavior, and decrease visual distractions (heavy traffic areas, away from the door, windows and aisle).

[Student] will be provided visual supports (daily schedule, visual reminders of rules, visual prompts, etc.) to promote an understanding of school expectations, increase the ability to self monitor behaviors and assist in anticipating upcoming activities.

15. The Student’s BIP identifies the following target behaviors: [REDACTED].

16. The BIP provides for the following strategies to address target behaviors: ignore [REDACTED] redirection, modeling deep breathing and other calming strategies. [REDACTED].

17. The BIP also includes a [REDACTED] plan.

18. The Student’s IEP does not identify what, if any, supplementary aids and services are necessary for the Student to participate in nonacademic and extracurricular activities.

19. [REDACTED] District staff reported that the Student responded well to positive reinforcement and being given choices as a behavior intervention.

20. The SLA teacher reported that she received a copy of the Student’s IEP prior to the start of the program.

21. The Student successfully attended the first two days of SLA without incident.
22. On July 11, 2018, the Student exhibited target behaviors [REDACTED]. Both the assistant principal and the SLA teacher reported offering choices to the Student in response to target behaviors.
23. On July 12, 2018, the Student exhibited a target behavior. After consulting with the Student's father by phone, the assistant principal offered the Student choices. The Student, however, refused the choices offered. The Student's father arrived at school and offered the Student two additional choices. The Student refused both choices and the Student's father took her home.
24. The Student did not attend SLA on July 16, 2018.
25. On July 17, 2018, the Student exhibited a target behavior. After discussion, the Complainant and the SLA teacher agreed the Student would attend SLA [REDACTED].
26. The Student successfully attended SLA without incident on July 18, 2018.
27. On July 19, 2018, the Student exhibited target behaviors [REDACTED].
28. Other than offering choices, District staff did not report or provide any evidence of implementing the other accommodations in the Student's IEP or BIP while the Student was engaged in target behaviors.
29. The IEP team met on July 23, 2018, and after reviewing the Student's IEP, ESY criteria, and the Student's experience in SLA, determined that the Student showed regression on the social skills goal and behavior goal and qualified for ESY. A prior written notice proposing placement in the District's ESY program is dated July 23, 2018, and notes that the IEP team will reconvene at the beginning of the 2018-19 school year to review the Student's progress and present levels. The Complainant signed in agreement on the same day.
30. The Student's IEP was amended to include two weeks of ESY services, which the Student attended. [REDACTED]
31. Although the District maintains that it complied with its obligations under the individuals with disabilities education act (IDEA), it proposed the following corrective action: "To provide training to special education teachers related to the District's obligations to consider whether special education students need any supplementary aids or services in order to have an equal opportunity to participate in extracurricular and non-academic activities."

Conclusions

1. Federal regulations at 34 C.F.R. § 300.320(a) provide in relevant part:

As used in this part, the term individualized education program or 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:

[...]

(4) 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.

2. The IEP team met on April 11, 2018, to develop the Student's annual IEP. The IEP team determined the Student did not qualify for ESY services. The IEP team was not aware that the Complainant would choose to enroll the Student in SLA on the date of the IEP team meeting, however, the District received the Student's registration form two months prior to the start of SLA.
3. Although the assistant principal and the SLA teacher reviewed the Student's IEP prior to the beginning of the SLA program, the IEP team did not make a determination regarding what accommodations the Student required to participate. The record, including the District's written response, the Student's IEP, interviews, and emails, supports a conclusion that the District failed to determine what additional modifications and supports were necessary for the Student to participate in the District's SLA program, in violation of 34 C.F.R. § 300.320(a).

Decision

The District violated 34 C.F.R. § 300.320(a) when it failed to determine what additional modifications or supports were needed for the Student to participate in SLA.

Corrective Action

The District's proposed corrective action is accepted. Documentation of this training must be submitted to MDE's corrective action specialist, [REDACTED] on or before November 5, 2018.

In addition, the District will convene an IEP team meeting prior to the 2019 summer break and determine what, if any, additional modifications and supports are necessary for the Student to participate in ESY, if eligible, or SLA, if chosen as an option by the parents. Documentation of this meeting, including notice, sign-in sheet, agenda, IEP team meeting notes, prior written notice, and amended IEP must be submitted to MDE's corrective action specialist, [REDACTED] on or before June 1, 2019.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions regarding the corrective action should be addressed to the corrective action specialist [REDACTED].

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: Kelly Tetrick, Special Education Director