

4 ECLPR 630

105 LRP 23008

**Anchorage School District
Alaska State Educational Agency**

05-17

March 29, 2005

Related Index Numbers

265.015 Implementation of IEP

265.005 Contents of IEP

Judge / Administrative Officer

Sheila Gallagher, Hearing Officer

Case Summary

The district denied FAPE to a 6-year-old kindergarten student with autism and PDD who was struggling in his transition from preschool to kindergarten. The district's IEP called for 20 hours of special education services and 5.5 hours of regular education teacher time. But a typographical error in the IEP stated 2 instead of 20 hours. When the student began experiencing problems soon after beginning kindergarten, his parents requested a meeting to correct the typographical error on the IEP and to clarify the intent of the 20 hours special education time. An amended IEP stated that the 20 hours would be fulfilled by the regular education teacher, the special education teacher and an aide. A summary of the special education time showed less than 8.5 hours was allocated to the student by the special education teacher or aide.

The IHO determined that the student had not received the 20 hours of special education time under his IEP, rejecting the district's position that it met its special education obligation by providing a regular education teacher who was instructed by or supervised by the special education teacher. She also found that the district failed to provide notice to the parents how time was broken down between the special education teacher, aide and regular education teacher. The IHO also ruled the district erred when it amended the student's IEP to include regular classroom time within the requirement to provide

special education.

Full Text

Appearances:

APPEARANCES:

For the Student Sonja Kerr, Disability Law Center, 3330 Arctic Blvd., Suite 100, Anchorage, Alaska 99503

For the Anchorage School District: Bradley Owen Esq., Jermain, Dunnagan & Owens, 3000 A. Street, Suite 300, Anchorage, Alaska 99503

Decision

Introduction

On November 2, 2004, a due process hearing was requested by the parents of the student in a letter to Dana Dugdale, elementary Special Education and Early Childhood Supervisor of the Anchorage School District (ASD). *See* parents Exhibit 6. It was referred to the State Department of Education. While not specifically referenced in the parents letter of 11/2/04. The request was made pursuant to U.S.C. Section 1415 of the Individuals With Disabilities Education Act, 20 U.S.C. et seq. and hereinafter referred to as IDEA and C.F.R. 34.300-301, 342(b)(i)(ii), b(3)(ii), 34.350 (a)2, 300.514(a) and C.F.R. 34.300, 308(a).

The basis of the request was that 1) the ASD was not following the Individualized Education Plan (IEP) of April, 2004 which provided for twenty hours of special education time to the student and 2) the ASD improperly amended the April IEP to state that the twenty hours of time could be provided by a regular education teacher, special education teacher and/or special education aide without proper prior written notice to and concurrence of the parent.

The parents requested that:

1) they receive a schedule which provides for twenty hours of special education teacher/aide time per week for the student's academic work

2) They receive a written apology for the improper amendment of the student's IEP and that

3) they receive a letter from ADS, specifically

Dana Dugdale, outlining what steps the ASD was taking to see that there were no more illegal amendments.

On November 9, 2004, the Disability Law Center entered its appearance on behalf of the parents. I was appointed the hearing officer.

On December 3, 2004, a pre-hearing conference was held between the mother of the student, Sonja Kerr of the DLC, Matt Teaford of Jermain Dunnagan & Owens, on behalf of the ASD and myself. At that time the issues to be part of the hearing were further refined and identified. The hearing was set to begin on January 31, 2005. Other dates were set for the exchange of witness lists and exhibits. A pre-hearing order was entered on December 8, 2004 and the parties were given until December 15, 2004 to correct, supplement or object.

On January 19, 2005, there was a telephone conference between Brad Owens of JDO and Sonja Kerr of the DLC as to whether the ASD should receive a continuance in this matter. Because of the reasons set forth in my order of continuance of January 20, 2005, the hearing was rescheduled for February 10, 11, and 14th.

The hearing began on February 10, 2005 and concluded on February 14, 2005. Post hearing briefs were requested by the parties and filed on February 22, 2005 with reply briefs filed on February 28, 2005.

Statutes, Regulations and Handbooks Considered

U.S.C. Section 1415

20 U.S.C. Section 1400 et. seq.

C.F.R. 34.300-301, C.F.R. 34.342 (b)(1)(II), (b)(3)(ii)

34 C.F.R. 350(a)(2), 300.514(a)

C.F.R. 300.308.(a), 300.503, 300.342(a)

34C.F.R. 300.136(f)

4 AAC 12.024, 52.140. 52.550(a)

Alaska Special Education Handbook Part IV

Factual Background

The student is a six year old (10/15/98) kindergarten student at Denali Montessori School with a disability described as high functioning autism and pervasive developmental delay and sensory integration dysfunction (PDD. Tr. Vol. 3, p. 70.) (Mother's testimony) There is no disagreement between the parties that student is entitled to special education services.

Prior to Denali, the student attended the King Career Preschool, early childhood education center, a regular setting preschool and received the services of an itinerant special education teacher. (Tr. Vol. 3, pgs. 71, 72) (Mother's testimony). In April of 2004, in anticipation of the student entering kindergarten, there was an IEP meeting with the parents, the preschool team and Abbott Loop Elementary representatives as that is student's neighborhood school. (Tr. Vol. 3, p. 72) At that time it was decided that the student would receive special education services, OT and speech therapy in his regular kindergarten classroom with pullouts as necessary. The entire team concurred, including student's special education teach for the previous two years. (Tr. Vol. 3, Pgs. 74, 75)

The plan was for the student to have help with the transition to kindergarten and it was believed that the transition could be accomplished in six-eight weeks. (Tr. Vol. 3, p. 75) (mother's testimony. In the April IEP, parent's exhibit 1, student was to receive, although there was a typographical error 2 instead of 20, twenty hours of special education services at the beginning of kindergarten, OT and speech (no hours listed on the IEP), and 5.5 hours of regular education teacher time. Mother testified that although the parents would have been thrilled with 20 hours of special education teacher time, the parents, intent was for student to receive twenty hours of aide and special education teacher time, not all special education teacher time because of budget and personnel constraints of ASD. (Tr. Vol. 3, pgs. 77, 78, 85)

In late spring of 2004, the parents decided to enroll their son in Denali if they were successful in the lottery. Pursuant to that, mother contacted the then principal of Denali who put her in contact with Donna

Lee Jardin, student's special education teacher for 2004-05. Ms. Jardin came to parents' home, received a copy of student's IEP and attended some of his speech therapy session in the summer of 2004. (Tr. Vol. 3, pgs. 81-82)

The parents were successful in the lottery and student was enrolled in Denali with the parents' expectation that he would be receiving twenty hours a week of special education teacher/aide time. Problems arose in student's first week of school and continued throughout September, (Tr. Vol. 3, p. 86 and Tr. Vol. 2, pgs. 13, 15 (Harrison-Drake testimony)). Parents asked for a meeting September 22, 2004 to discuss the correction of the IEP to reflect the teams intent and possible training of staff so that they could work with student's consultants.

Disagreements between the ASD and the parents arose over the number of special education aide hours student was to receive and the parents contention that student's April 2004 IEP was improperly amended with no prior written notice to them and without their specific input

After many e-mails, (Parents exhibit 2), letters, (Parents exhibit 3), conferences and telephone calls to ASD representatives, which parents believe were never appropriately answered, parents requested the hearing.

Issues Presented for Resolution

Whether the District has failed to provide a free appropriate public education in reference to

- 1) changing the student's IEP without meeting with and the concurrence of the parents
- 2) decreasing the amount of special education aide time and including in the provision of the special education services personnel not appropriately trained
- 3) failing to give the required prior written notice to parents and impacting parents' ability to timely request a due process hearing
- 4) whether the amended IEP is appropriate
- 5) amending page of student's April 2004 IEP prior to the IEP meeting of September 22, 2004 (this

correlates to issue 3) and

6) the appropriate remedy for these violations, if any.

Persons Testifying

1. Students' parents
2. Sally Kessler -- Denali student parent
3. Mallory Hamilton -- parent of former Denali student
4. Glen Neilson -- Denali principal
5. Donna Lee Jardin -- student's special education teacher
6. Lynn Jordan -- Special Education Supervisor
7. Jerry Sjolander -- Director of Special Education
8. Dana Dugdale -- Supervisor Early Education and Elementary Special Education Department
9. Becky Harrison-Drake -- student's regular education kindergarten teacher

Exhibits Admitted

Parents exhibits 1, 2, 3, 4, 6, 7, 8, 9, 10 (a), 10(b), 10(c)

ASD exhibits D, A, B, C, F, H.

The additional information submitted by DLC with its brief, which was objected to by Mr. Owens, was not considered.

Discussion and Findings of Fact

Issues One and Two: Whether the ASD changed the student's IEP without meeting with and without the concurrence of the parents and by the change reduced the amount of services which were required by the student's IEP?

Both the April 19, 2004 IEP and April 29, 2004 amendment reflected that the student would be in a regular kindergarten classroom with special education support, including pull outs. (P. Ex. 1, pg. 1), Testimony of mother, (Tr. Vol. 3, pgs. 75, 85) Other than non-specific comments by Donna Lee Jardin In the summer of 2004 about aides and assignment of aides, no change was made to student's IEP prior to

the beginning of the school year.

Finding of Fact 1. -- Student has a disability described as high functioning autism and pervasive developmental delay and sensory integration dysfunction. Tr. Vol. 3, p. 70 There is no disagreement between the parties that student is entitled to special education services.

Finding of Fact 2. -- Student's IEP when he began school in September of 2004 required 20 hours of special education time.

Student began kindergarten at Denali in mid-September 2004. (Parents testimony Tr. Vol. 3, p. 84, Harrison-Drake's testimony, Vol. 2, p. 6) Shortly after entering kindergarten, student began having difficulties (Tr. Vol. 3, pgs. 86, 87 mother), (Harrison-Drake Tr. Vol. 2, pgs. 13, 15.)

Finding of Fact 3. -- Student began having difficulties almost immediately with his transition to kindergarten.

Mother spoke to the principal Neilson about the aide services set out in student IEP. (Tr. Vol. 3, pgs. 86, 87, 88) The principal referred her to Ms. Jardin. Mother spoke to the regular kindergarten teacher about the aide and Harrison-Drake had no knowledge of what arrangements had been made. Ms. Drake did speak to the principal. (Tr. Vol. 2, pgs. 15, 16)

Finding of Fact 4 -- ASD at the school level (Denali) were informed of student's difficulties and parents' understanding of the requirement for an aide by September of 2004.

Parents requested an IEP meeting which was held September 22, 2004 to discuss changing the clerical mistakes of student's April 2004 IEP re 20 hours of special education teacher to 20 hours of special education teacher and aide time and to request that Denali staff receive training from their private therapists on how to work with their son. (Tr. Vol. 3, p. 88) Another purpose was to give staff more information about their son. (Tr. Vol. 3, p. 90)

Finding of Fact 5 -- An IEP meeting was held on September 22, 2004.

At that meeting, all present were in agreement with the request for training with Neilson's caveat of perhaps no funds. (H-D, Neilson, mother) Neilson did request the training and the request was denied for lack of funding. (Tr. Vol. 2, p. 165)

Finding of Fact 6 -- No training was provided for staff with student's consultants. (the only thing that parents asked for; they did not inquire of the training of the special education teacher, regular education teacher or special education aides) Very little was made at the hearing of this issue although it was covered in the briefs. Although the special education teacher's provisional certificate was referenced in the briefs, it is a legal certificate from the State of Alaska. No testimony was introduced as to the competency of the specific aides and therefore the presumption is that they were in full compliance with state requirements and had received appropriate training.

A brief discussion was held on the issue of changing the 20 hours of special education teacher time to 20 hours of special ed teacher and aide time. (Re. Vol. 3, p. 93 ,Tr. Vol. 2, p. 170 (Neilson)) Ms. Harrison-Drake did not participate in that discussion as she had to begin her class. (Tr. Vol. 2, p. 17) Ms. Jardin was to work on the revised IEP to reflect this.(P. Ex. 2, page 4) However Ms. Jardin testified that she could not change the IEP as requested because when the student was in a regular classroom, the general education teacher's time is included with the special education teacher and aid time. (Tr. Vol. 2, p. 17) Lynn Jordan and Ms. Jardin testified that the ASD policy was that when a student was in a regular classroom that all three elements, i.e. regular education teacher, special education and special education aide, were included in his time as the special education teacher worked with the regular teacher. Mr. Neilson testified that he hadn't understood a Community based program and hadn't known student was to be in a regular classroom. (Tr. Vol. 2, pgs. 173-74) The parents had not been made aware of this policy. Ms. Harrison-Drake testified that she had at least one other student with an IEP (Tr. Vol. 2, p. 11) and that for at least the last two years

she understood that she was included with the special education time because she received instruction from Ms. Jardin. She worked with the special education aides but she was not responsible for supervising them. (Tr. Vol. 2, p. 18) On September 29, 2004, Ms Jardin sent to Mr. Neilson a summary of the special education time spent (P. Ex. 1, pg. 4) The time allocated to student by the special education teacher or aide was less than 8.5 hours.

The ASD's position is that the district must have flexibility in allocating resources and that utilizing the regular education teacher who is receiving instruction from the special education teacher fulfills its responsibility in providing special education services such as the 20 hours in this student's IEP as long as the special education teacher is providing supervision. (Tr. Vol. 1, p. 72) The ASD acknowledges that the forms utilized do not break out this time nor the supervision time. (Tr. Sjolander Vol. 1, p. 53)

Finding of Fact 7 -- Student was not receiving 20 hours of special education assistance time in September of 2004 as required by his IEP. In fact a series of schedules was provided to the parents setting forth the amount of special education teacher and teacher aide time and none of the schedules with the exception of the one for January 24, 2005, immediately prior to the hearing, provided the twenty hours therefore student was not receiving the 20 hours from September 2004 through January 24, 2005. It was impossible for the parents to determine from the format of the proposed ASD amendment to the April IEP how time was broken down between the special education teacher, aide, and regular education teacher time. In addition, the amount of and nature of Ms. Jardin's supervision of the regular education teacher and the aides was not described in a way that parents could be informed. In addition, the principal could not accurately breakdown the time. (Tr. Vol. 2, pgs. 193-4.) nor could Jordan (Tr. Vol. 1, p. 97, 98, 127, 128) The parents were pleased with the services provided by student's regular education teacher and the aides although mother in her testimony would have preferred her son to work with the same aide all

of the time.

More students with IEPs enrolled in Denali than ASD had expected impacting the ability of the ASD to provide aides. It also takes several weeks for enrollment to stabilize so that staffing can be amended.

Finding of Fact 8 -- More IEP students than expected were at Denali impacting the ability of ASD to provide services. There is a series of cases which allows districts some time to identify and provide for students with difficulties. These cases are distinguishable from this however as Denali knew prior to the beginning of school that this student would have an IEP and this student had problems from the beginning of his school year. Therefore the ASD and particularly the principal and special education staff at Denali had knowledge of this situation and should have provided the support that student needed to transition into kindergarten. This student did not have the support needed at the beginning of his school year through at least January of the school year to allow him to transition into kindergarten without difficulty. Districts are expected to have substitutes available if full time personnel (aides etc.) are not available unless all good faith efforts have been made to obtain such.

Ms. Harrison-Drake testified, Tr. Vol. 2, pa. 69 that student was doing great and was making progress and would advance to first grade. This testimony does not take away from the fact that the ASD did not provide the services required under student's IEP. No data was submitted to support this claim in the way of report cards, progress reports to parents etc. although Ms. H-Drake testified that she sent weekly reports home. No opinions were presented as to whether or not student would have been doing better if he had had the transitional support contemplated by his April 2004 IEPs. In fact Ms. Harrison-Drake and Mr. Neilson (Tr. Vol. 2, p. 210) testified that the student's support has increased as the school year has progressed. No specific data was presented as to whether or not student was meeting the goals and objectives of his IEP. She did not collect data because

she was unaware of any obligation to do so. (Tr. Vol. 2, p. 78) There was also some inconsistency in Ms. Harrison-Drake's testimony as to how well the student was meeting the goals and objectives of his IEP.

Finding of Fact 9 -- There was Insufficient data presented to determine whether the goals and objectives of student's IEP were being met. Ms. Harrison-Drake was not informed in writing or otherwise of her specific responsibility to implement student's IEP. This is not a consideration of whether student's potential is being "maximized".

Issues one and five: -- Failure to give the proper Prior Written Notice to Parents 1) thereby impacting their ability to participate in decisions regarding their child and 2) to timely request a due process hearing and 3) amending page 9 of student's April 2004 IEP prior to the IEP meeting of September 22, 2004.

Parents requested an IEP meeting on September 22, 2004 for two purposes: the first to correct what they considered to be an unintentional error in the April 2004 IEPs and second to ask that the Denali Special education staff involved with their son receive training from the private consultants who had been working with him. At the meeting there was agreement that the twenty hours was not to be all special education teacher time. There was no decision as to the staff receiving the training from the consultants pending a determination as to whether or not funding was available, although all parties present thought that it was a good idea. Ms. Jardin was to work up a new IEP that reflected the parties' understanding. There was a brief mention of a change in the composition of the 20 hours at the actual meeting and in fact the Prior Written Notice dated September 10, 2004 but not received by the parents until the meeting on Sept. 22, P. Ex 1, pg. 37 stated that student's location would be the general education classroom and that the providers would be the special education teacher, the regular education teacher and the special education aide. Ms. Jardin also testified at (Tr. Vol. 2, pg. 106) that the Prior Written Notice was not given to parents until the meeting. As the discussion of this was so brief and not during the time

that student's regular education teacher was in attendance, there was no understanding on the part of the parents that there was going to be such a change until after the meeting, when the parents received on September 29, 2004, the amended IEP, with an effective date of October 2, 2004 that stated that the twenty hours were to be provided by the regular education teacher, the special education teacher and a special education aide. There was no notice given to the parent prior to the meeting that there was any intent to change the providers of the 20 hours therefore the parent had neither an opportunity to consider the option nor time to prepare for discussion. At the meeting, there was no only brief mention of a change with no reasons given for such change. The parents notes of the meeting (P. Ex. 1, pg. 56 and P. Ex. 2, pgs. 1-4 (Celia Foley's notes) substantiate that the purpose of the new IEP was to reflect the actual intent of the April 2004 IEP team. Subsequently parents learned that the change was occasioned by the lack of aides and the system that ASD used to assign aides. (Donna Lee Jardin and principal Neilson)

Parents received the "amended IEP" on September 29, 2004. There was no breakdown of how much time each teacher or aide would be providing. The parents were also not given the 10 days notice that is required when an IEP is going to change. (Jordan Tr. Vol. 1, pgs. 91, 92, 121, Neilson Tr. Vol. 2, pgs. 191, 192, Sjolander Tr. Vol. 1, p. 27) On Sept. 30, 2004 student's mother e-mailed the principal, (Neilson) Christine Zelinsky, Dana Dugdale, Jardin and Becky Harrison-Drake. (P. ex. 2, p. 21) stating that her son was not receiving the hours of service required in his IEP and that if the ASD intended to change his IEP, the ASD should call another IEP meeting for that purpose. Instead of calling another IEP meeting, the ASD scheduled a Kid Clinic to discuss student. (Tr. Vol. 1, p. 117, 118) Unfortunately the parent was not consulted about an appropriate time and she was able to attend only briefly. After this Kid Clinic the parents sent a second letter to Dana Dugdale, (P. ex. 3, p. 9) stating again what the April IEP had decided and suggesting that

ASD hold another IEP meeting if its intent was to continue on with the "amended IEP" of Jardin.

Finding of Fact Ten -- No prior written notice was given to the parents of the District's intent to change the April 2004 IEP of student.

Finding of Fact Eleven -- Three days notice of an intent to change an IEP is insufficient.

Lynn Jordan conducted an investigation of the parents' concerns about their child's IEP. This was the first such investigation that she had conducted. (Tr. Vol. 1, p. 132). Ms. Jordan did not talk to the parents or to the student's regular education teacher. (Tr. Vol. 1, p. 86). Her sources of information for her investigation were Mr. Nielson, Celia Foley and Donna Lee Jardin. (Tr. Vol. 1, pgs. 83, 85) Based upon information she received from Ms. Jardin that student's twenty hours were being provided by Jardin and the teacher's aides, Ms. Jordan determined that the student's program was in compliance with his IEP. (Tr. Vol. pgs. 100, P. ex. 3, p. 12).

Finding of Fact Twelve -- I find that Ms. Jordan's investigation on the face of it was incomplete and inaccurate as she did not talk to the parents and his classroom teacher and the schedules she received, if any, did not jibe with the information that she received from Ms. Jordan. This could be attributable to her inexperience with such an investigation.

One issue that was not directly brought up by the parties but must be addressed in this decision is the communication between the ASD and the parents. The record is replete with the parents letters, e-mails, notes of conferences etc. with various ASD personnel in an effort to explain the problem, from their perspective, and to work out a solution. Much of this correspondence Tr. Vol. 2, pgs. 196, 97, 98 never received a response, the theory evidently being "If I'm only cc it's not my job". (Tr. Vol. 2, pgs. 196, 97, 98) A notable exception was Dana Dugdale responding and assigning Lynn Jordan to research the issue, but not until November. There were many opportunities for District staff at the school level, the principal for example, to hold a meeting, to explain the problem of

assigning aides, as best he knew it, and to attempt to work out the problem. Obviously the parents and the staff at the school level knew that there were problems. Ms. Harrison-Drake asked to be taken out of the loop as it was too stressful for her. The ASD did not set a new IEP meeting until November 23, 2004 ate in the process. By then the parents had already requested a due process hearing and when presented with the IEP meeting date suggested mediation, although a group mediation which the ASD was within its rights to reject.

There is testimony in the record that Denali received many more students with IEPs than expected. The total number of students is 440, the number with IEPs is 60. The change, if any, from last year, was unknown by the principal (Tr. Vol. 2, p. 153) as well as what procedures were in place to estimate how many there will be etc. and what to do if overwhelmed. There was also testimony from Denali level staff as to ignorance as to how aides were assigned, the formula at central office, (Tr. Vol. 22, pgs. 200, 203) of which Ms. Jardin and the principal in particular, pled ignorance, and ignorance of the fact that a complaint had been filed against Denali in 2003-2004 over the issue of aides. The beginning of the year can be chaotic and it is not always physically possible for staff to answer all letters, calls, and now e-mails which by their nature seem to demand an immediate response. Crisis Management is often what is happening. Staff has a responsibility for all the students and each parent is interested in the welfare of his child. Nothing in Ms. Jardin's testimony would indicate that she was not trying at all times to do the best she could for each of the students for which she was responsible and for this student in particular. She didn't know the formula, she was not responsible for hiring additional aides but she was responsible for juggling the aides and her time as best she could to meet the needs of all of the students. (Tr. Vol. 2, pgs. 92, 97) (Tr. Vol. 2, p. 207, 208, 209) It wasn't possible at least with the resources she had available at the beginning of the school year.

Finding of Fact thirteen -- ASD personnel did

not in a timely manner respond to parent's request for assistance and did not in a timely manner call for a new IEP meeting. Mr. Neilson testified at (Tr. Vol. 2, p. 230) that he did not understand that he could have called an IEP meeting. The hearing officer is aware of the problems associated with the beginning of a school year and the difficulties placed upon school personnel in attempting to implement the law.

Finding of Fact Fourteen -- School level staff do not have sufficient information to inform parents of how additional staffing is obtained and how rapidly that could be accomplished although school level staff are the first resource for a parent, (Tr. Vol. 1, pgs. Sjolander)

Conclusions of Law

1. M.P., student in this matter, is a child with disabilities who is eligible for special education and related services.

2. Student has been eligible for special education services since his attendance at preschool at the King Center.

3. The November 2, 2004 initiation of this request for a due process hearing by the parents was timely.

4. The ASD has an obligation under the IDEA to make special education services available to student. The ASD must administer a program of special education to him which provides an appropriate education program. C.F.R. 300.13 defines FAPE as special education and related services that are provided at public expense, that meet the standards of the State and are provided in conformity with an individualized education program, (emphasis omitted)

5. Did ASD have in place at the beginning of student's 2004-2005 school year (kindergarten) the personnel necessary to comply with student's IEP? No. The school district had an insufficient number of special education aides which made it impossible for it to provide the twenty hours of special education teacher/aide time to student. The twenty hours of time was not provided prior to January, 2005. Therefore ASD is in violation of 34 C.F.R. 300.13 which

provides that the district must provide special education in conformity with an individualized education program. This is not a case where the parents are demanding that the district provide the best, maximum education (*see* mother's testimony at FF no). The IEP had been established and it was not followed. The hearing officer is cognizant of *Hendrick Hudson School District v. Rowley*, 458 176, 102 S. Ct. 3034 (U.S. 1982) and that case is not applicable to this. Parents were aware of fiscal restraints and were willing to have special education aides not just all hours by a special education teacher.

6. Did ASD properly implement student's IEP? Student's IEP called for twenty hours of special education services. The parents agreed that it would not be necessary for all of these hours to be provided by a special education teacher but that part of these hours could be provided by special education aides. Listening to the testimony at the hearing and reviewing the transcript it is clear that no could tell with any specificity just exactly how many hours of special education service student was getting prior to January 24, 2005 and who was providing it. Different schedules were implemented but it was clear that much of the twenty hours was provided by the regular education teacher and that even though the regular ed, special ed teacher and special ed aides were a team to provide services to the student, at least the regular education teacher did not know how many of these special ed hours she was responsible for. The proposed IEP amendment by the ASD, as proposed by Ms. Jardin was too vague and unspecific to provide sufficient information to the parents as to their child's services. Therefore ASD is in violation of 34 C.F.R. 300.342(a)(b).

7. The ASD's "amendment" to the student's April 2004 IEP was improper as it was developed without the requisite Prior Written Notice to parents and implemented without the 10 day notice. 4 AAC 52.210, 34 C.F.R. 300.501(b) and (c)

8. So little was made at the hearing of the District's failure to provide for training of their staff with the student's consultants that there will be no

decision on this matter.

Burden of Proof

4 AAC 52.550(a) provides that the school district bear the burden of proof in a due process hearing. The ASD has failed to meet that burden as to Issues (recite).

Order

Based upon the foregoing Findings of Fact and Conclusions of Law, I hereby order

1. ASD failed to provide student with a Free Appropriate Public Education as set forth in conclusions of Law 4, 5, 6, and 7. At the pre-hearing conference the issue of compensatory education was raised. No evidence was received on this issue at the hearing. As the threshold for ordering compensatory education has been reached by determining that there were procedural and substantive irregularities in the provision of services and implementation of student's IEP, compensatory education may be appropriate. I am hereby ordering that an IEP team be convened within fifteen days of this decision to determine what, if any, compensatory education needs to be provided to student with a copy of the report to be submitted to me within 10 days of its completion.

2. This decision shall be considered a final decision subject to appeal.

3. Appeals Rights

Under the regulations which took effect on August 22, 2001, 4 AAC 52.570, there is no longer a two tiered right of appeal. If either party wishes to appeal this decision, it no longer goes to the department but shall be appealed to either the superior court or the federal court in accordance with the applicable court rules and procedures. Hearing Office

Amended Decision

A review of my decision revealed that some notations were inadvertently omitted therefore the decision is amended as follows:

Burden of Proof

4 AAC 52.550(a) provides that the school district

bear the burden of proof in a due process hearing. The ASD has failed to meet that burden as to issues 1, 3, 4, and 5.

Order

There is an additional paragraph to be added to the order which becomes paragraph no. 2. The existing no. 2 becomes no. 3.

Paragraph no. 2 states: In addition to the consideration of what, if any, compensatory education needs to be provided to student, the IEP team, in preparing an amendment to student's April 2004 IEP, shall provide for a breakdown of services provided to student i.e. how many of his twenty hours of special education will be provided by the special education teacher, how many by a special education aide and how many by his regular education teacher. This same approach shall be followed in preparing student's IEP for the 2005-2006 school year if it is determined that student will continue to need special education services. The IEP team shall have ten days from the date of this amended order to convene to provide the breakdown of services if such breakdown was not accomplished at the time the issue of compensatory education was considered, as outlined in paragraph 1. A copy of the IEP providing for such breakdown shall be submitted to me within fifteen days of the date of this amended order.

Paragraph no. 3: This decision shall be considered a final decision subject to appeal.

All other provisions of this decision and order are unchanged.

Regulations Cited

34 CFR 300.501(b)-(c)

34 CFR 300.342(a)-(b)

Cases Cited

102 S.Ct. 3034