



STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF EDUCATION
JASON E. GLASS, DIRECTOR

May 16, 2012

R [redacted] & C [redacted] T [redacted]
[redacted], IA 5 [redacted]

CITE AS IDEA State Complaint, 26
D.o.E. App. Dec. 211 (2012)

D [redacted]
[redacted] Community School District
[redacted], IA 5 [redacted]

[redacted] AEA
J [redacted]
[redacted], IA 5 [redacted]

Iowa Department of Education Decision
IDEA State Complaint Concerning C.T.

Dear parties to this state complaint:

The parents of C.T. filed a state complaint with the Iowa Department of Education (“Department”), alleging that the [redacted] Community School District (“district”) and [redacted] AEA violated the Individuals with Disabilities Education Act and state and federal rules and regulations implementing the Act.

Charlie Taylor and Thomas Mayes were appointed to investigate this complaint. Their report is attached. The Department adopts this report and recommendations and incorporates them herein by this reference. For the reasons stated therein, the Department finds and concludes that the district violated the IDEA and the *Rules*. The complaint is CONFIRMED.

For the reasons stated in the report and recommendation, the deadline in this matter is extended until today’s date.

Because the Department confirms a violation of the IDEA, the Department orders the following corrective actions.

I. Compensatory Education. C.T. is entitled to compensatory education, as required by the plan below. Compensatory education shall be supplemental to all present or future educational services required for C.T. to receive a FAPE (including ESY services), and shall not supplant or displace those required services. A plan for compensatory

education shall be developed by C.T.'s IEP team, under the following terms and conditions:

- The relevant period is from August █ 2011 (ten calendar days from the start of the 2011 fall semester) to January 19, 2012 (the date the Department received this state complaint).
- The measure of the compensatory education will be the difference in expected performance if C.T. had received compliant IEP services during the relevant period and the child's actual performance during the relevant period.
- The compensatory services shall be designed to close that "gap" between expected and actual performance.
- A day-for-day approach is one way of calculating the compensatory services, but that approach is not required.
- The services are to be provided in a manner and location determined by the IEP team. The parents are not entitled to require services in a particular location or manner, or to request monetary compensation.
- The Department is available to provide technical assistance to the team.
- If the parties are unable to establish a plan for compensatory education services within forty-five days of the date of the Department's order, the Department will establish such a plan for the parties.

Compensatory education shall be completed as soon as possible, but no later than one year from the date of this decision.

II. Staff Training. Staff training shall meet the following terms and conditions.

- The public agencies shall review the knowledge of the IDEA's assistive technology and NIMAS/accessible texts provisions for special education instructional or supervisory personnel (1) employed by the District or (2) employed by the AEA to serve the District.
- The public agencies shall review the knowledge of the IDEA's assistive technology and NIMAS/accessible texts provisions for instructional technology personnel (1) employed by the District or (2) employed by the AEA to serve the District.
- During that review of knowledge, the public agencies are to pay particular attention to the needs of students who transition to █ High School.
- Based on that review, to be completed within thirty (30) days of the date of the Department's decision, the public agencies shall determine whether any training is necessary to those groups on the IDEA's assistive technology or NIMAS/accessible texts provisions.
- The public agencies develop a plan to provide any required training, to be submitted to the Department within ninety (90) days of its decision.
- All required training shall be completed by November 1, 2012.

I direct a copy of this decision to be provided to the Department's school improvement consultant assigned to [REDACTED] AEA, for such additional support to the District as she may offer.

Because this state complaint addresses, for the first time in Iowa, violations of NIMAS and because this question is of major significance in the state, I direct that a redacted version of this letter and attached report and recommendation be distributed to the state's AEA directors of special education. To accord this decision the status of precedent, I also direct that a redacted version of it be placed in the Department's appeal book and on the Department's appeal decisions web page.

There are no fees or costs to be awarded in this matter. Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in which the party lives or has its primary office. If you have specific questions about this complaint, please contact Thomas A. Mayes, the legal consultant for the Department's Bureau of Student and Family Support Services, at 515-242-5614 or Thomas.Mayes@iowa.gov.

I offer my assurance that every attempt has been made to address this complaint in a neutral manner, and in compliance with state and federal special education law. I sincerely wish the best for all involved.

Sincerely,

Martin J. Ikeda
Chief, Student and Family Support Services
Iowa Department of Education
515-281-4030

CC: DEPARTMENT OF EDUCATION PERSONNEL

TO: Martin Ikeda
Chief, Bureau of Student and Family Support Services
FR: Charlie Taylor
Thomas Mayes
DA: May 15, 2012
RE: State Complaint Concerning C.T.
[REDACTED] Community School District & [REDACTED] AEA
Recommended Decision

On January 19, 2012, the parents of C.T. (born in [REDACTED] 1996) filed a state complaint concerning their son's alleged lack of access to assistive technology and accessible instructional materials, in violation of the Individuals with Disabilities Education Act ("IDEA"), the IDEA's implementing regulations, and state administrative rules. The [REDACTED] Community School District ("District") and [REDACTED] Area Education Agency ("AEA") filed responses and additional documents.

We have reviewed the allegations, responses, and additional documents, in light of the governing law. We have also taken official notice of the contents of the District's web page. After our review of the record, we recommend that this complaint be CONFIRMED.

I. Recommended Findings and Conclusions Regarding Jurisdiction and Timeliness

The Department has jurisdiction of the parties and the subject matter. Iowa Admin. Code r. 281—41.153(2). C.T.'s parents filed this complaint in a timely manner. *Id.* r. 281—41.153(3).

In evaluating this state complaint, the Department is to consider the "appropriate provision of services for all children with disabilities" served by the District and the AEA, as well as all children with disabilities in the state. *Id.* r. 281—41.151(2). Because the legal questions presented in the state complaint are novel and are of broad public importance (especially given the emergence of district-wide 1:1 laptop programs and distance education), there are "exceptional circumstances" with respect to this complaint that justify past and current extensions of time, notwithstanding parental disagreements with extensions of time. *Id.* r. 281—41.152(2).

II. Recommended Findings of Fact

C.T. is an eligible individual. He is a freshman at [REDACTED] High School. His individualized education program ("IEP") reflects that C.T. is fond of "dinosaurs, prehistoric mammals, history and science." C.T. aspires to be a teacher, scientist, museum professional, or worker in food service. C.T. attained passing grades in the fall 2011 semester.

The District calendar for the 2011-2012 school year provides that classes started on August █, 2011, and the first semester ended on January █, 2012.

C.T.'s April 2011 IEP contains goals addressing reading, mathematics problem solving, socially appropriate behavior, and reading comprehension. C.T.'s IEP reflects that his reading achievement is several grades below grade level. C.T.'s IEP also provides that he is NIMAS-eligible because of a print disability and requires assistive technology.

“Page F” of C.T.'s IEP contains the following description of required assistive technology, to be provided “as appropriate” by the special educator beginning on April 21, 2011:

[C.T.] will have access to the following assistive technology devices to make him more successful in the classroom and decrease frustration for him: Computer, Calculator, IPod, Classmate Reader, Dragon Speak. He will have access to any of the technology equipment that is suggested by the special education teacher in order to make [C.T.] successful within the classroom.

The IEP also provided the following with the same start date, under the heading of “specially designed instruction *English”:

[C.T.] will attend English class in the co-taught setting where he has access to a general and special education teacher to work on his writing mechanics. [C.T.] will also have access to the program Dragon Speak and a computer in order to complete any longer writing assignments. Accommodations will be made as necessary to assist him in completing the assigned tasks.

Under the heading of “accommodations,” C.T.'s IEP provides that he would have “all text/tests read aloud to him.” Finally, C.T.'s IEP provided that, since he was NIMAS-eligible, he would be eligible for texts in accessible formats from Bookshare.

The documents provided to the Department indicate that the assistive technology and accessible texts called for C.T.'s IEP were not made available to him.

Accessible Texts. Concerning accessible texts, C.T. did not have texts in accessible formats at the beginning of the school year. In October 2011, C.T.'s parents were informed by the District that two textbooks (industrial technology and biology) were not available to C.T. in an accessible format because they were too old. The district attempted to resolve this by having texts read aloud to him and or by recording mp3 files for C.T. The record supports a finding that this was done on a chapter-by-chapter basis, without supplementary materials (such as tables of contents or indexes) and without the ability to search within audio files using those supplementary materials. C.T. did not

have these materials at the same time as children without disabilities who were enrolled in the same subjects.

Although the service was described in his April 2011 IEP, the record reflects that the District and AEA were first seeking access to Bookshare materials for C.T. in November and December 2011.

The record reflects timely and diligent efforts by the District to have C.T.'s world geography text in an accessible format that was compatible with his 1:1 laptop's operating system for the second semester.

Assistive Technology Devices: Speech-to-Text. The District has a 1:1 laptop program, and C.T. participated in that program. He received his laptop on August 10, 2011. C.T. received instruction on using the assistive technology available to him. In a September 11, 2011, internal electronic mail message, the District identified C.T. as needing additional technology not already available on standard, district-issued laptops. This need was identified almost one month after the start of classes. The speech-to-text software, which was ordered in June 2011, was not installed and prepared for use until October 2011. In response to parental complaints about text-to-speech software, a District official wrote the following: "The program is on his machine now; she was just not happy with it taking seven weeks."

In February 2012, C.T.'s parents were informed via a communication notebook that C.T.'s 1:1 laptop had a different speech-to-text program, with similar capabilities to the one listed in the IEP.

While C.T. had access to the speech-to-text program via a classroom-based computer, he did not have access to it until October on his 1:1 laptop.

Assistive Technology: Text-to-Speech. In the September 2011 electronic mail message referenced above, the District identified a need to load text-to-speech software on C.T.'s computer. In October 2011 documents, the District indicated that two of C.T.'s textbooks were too old to be compatible with C.T.'s e-reader. A more compatible product was ordered in January 2012. The core of the problem was the unavailability of the accessible texts for text-to-speech use.

Accommodations. The IEP reflects that "all texts/tests" would be "read aloud to" C.T. In October 2011, the District indicated that it was not reading worksheets aloud to C.T. The District indicated that the IEP could be interpreted to require reading worksheets aloud, and indicated it would consider amending the IEP to so require.

C.T.'s Achievement. The District correctly notes that C.T. passed his first semester classes. Passing grades, however, are only a part of the story for children with disabilities: one must also look at progress toward attainment of IEP goals.

The record reflects that C.T.'s performance on goals 1, 4, and 5 – the goals directly related to the accessible instructional materials and to assistive technology – were substantially and persistently below the aim line established for each goal, at least during the first semester. Furthermore, since C.T.'s achievement in reading was so far below grade level, there is very little room for error by the District and AEA in providing each service chosen to address that achievement gap. Given the assistive technology and accessible instructional materials went to the heart of C.T.'s need areas – reading and writing – and the magnitude of the District's breaches of these IEP terms, a reasonably prudent person would be justified in concluding that C.T.'s underperformance in reading and writing was a result of the District's violations. The record justifies a finding that the District's violations caused educational harm to C.T.

III. Recommended Conclusions of Law

C.T.'s parents have the burden of proving noncompliance by the District and AEA. *See, e.g., Shaffer v. Weast*, 546 U.S. 49, 62-63 (2005) (Stevens, J., concurring) (“We should presume that public school officials are properly performing their difficult responsibilities under this important statute.”).

The Department's findings will be based “upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” *Cf. Iowa Code § 17A.14(1)* (2011).

The Department resolves any ambiguity in C.T.'s IEP against the District and the AEA, the parties responsible for selecting any ambiguous language. *See, e.g., Village Supply Co. v. Iowa Fund, Inc. v. Retail Inv. Corp.*, 266 N.W.2d 22 (Iowa 1981).

The definition of a free appropriate public education includes provision of services “in conformity to” an IEP. *Iowa Admin. Code r. 281—41.17*.

Passing grades are important under the IDEA, but they are not the sole factor in determining whether a child is eligible for special education or what special education the child needs. *Iowa Admin. Code r. 281—41.101(3)*; *Board of Educ. v. Rowley*, 458 U. S. 176 (1982). The fact that C.T. passed his fall 2011 classes does not foreclose this investigation.

An IEP must be implemented immediately after an IEP team meeting. *Iowa Admin. Code r. 281—41.323(8)*. While the law allows for short delays, such as to obtain transportation arrangements, the law does not allow an “undue” delay in making those necessary arrangements. *Id.*

C.T.'s IEP team determined that C.T. was “NIMAS-eligible.” Thus, C.T. was eligible for accessible print instructional materials. *Iowa Admin. Code r. 281—41.210*. Those materials were to be delivered to him in a timely manner. *Id.* Iowa law defines “timely manner” as delivery of “accessible instructional materials at the same time as other

children receive instructional materials.” *Id.* r. 281—41.172(1). Since C.T. did not receive his texts at the same time as all children received their texts, these provisions of law were violated. Furthermore, the District did not provide services in conformity to C.T.’s IEP. *Id.* r. 281—41.17. While the District’s efforts to read texts into an mp3 format are commendable, these efforts do not comply with the law; rather, these efforts on a chapter-by-chapter basis reduce, but do not eliminate, the corrective action that will be required of the District.

C.T.’s IEP also called for assistive technology devices and services. By the District’s own admission, it did not load all of the required assistive technology onto C.T.’s 1:1 laptop for “seven weeks” after the school year. This delay is, as a matter of law, a violation of the IDEA and state and federal regulations. Iowa Admin. Code r. 281—41.323(8).

The District considers itself in compliance with the IEP because C.T. had access to assistive technology in a classroom-based computer, even C.T. did not have that technology on his 1:1 laptop for home use. This argument must be rejected. First, the speech-to-text program was specifically designed for completing “longer writing assignments,” the kind of assignments that high school students would be expected to complete at home. Second, the District’s interpretation would deny C.T. an equal opportunity for participation in the 1:1 laptop initiative. By not having IEP-required assistive technology on his 1:1 laptop, C.T. was denied equal access to the “full variety of educational program and services available to nondisabled peers.” Iowa Admin. Code r. 281—41.110. The Department will not accept an interpretation of C.T.’s IEP that renders the District’s 1:1 laptop initiative inaccessible to C.T. The fact that C.T.’s laptop was inaccessible for seven weeks is an unmistakable violation of the IDEA and state and federal rules.

Additionally, by not reading worksheets aloud to C.T., the District violated C.T.’s IEP. Worksheets are within the plain meaning of the word “text.”

In essence, the District attempts to argue that reading textbooks aloud to C.T. or recording them in mp3 format substitutes for providing accessible texts in a timely manner, as required by the IEP team’s conclusion that C.T. was NIMAS-eligible. To the extent that the IEP could be read in this manner, the IEP must be construed in C.T.’s favor. *Village Supply Co.*, 266 N.W.2d 22. The IEP requires accessible texts and those texts must be delivered to C.T. at the same time as other children receive their texts. If the District were allowed to read texts to C.T. on a chapter-by-chapter basis, the IEP’s requirement for accessible textbooks would have no meaning. The only legal and sensible construction of the IEP is that it requires accessible textbooks and requires that other texts would be read aloud. When so construed, the record compels a conclusion that the District violated the C.T.’s IEP.

The public agencies violated the IDEA and state and federal rules by failing to provide C.T. with accessible instructional materials required by his IEP, failing to timely provide

C.T.'s IEP-required assistive technology, denying C.T. equal participation in the District's 1:1 laptop program, and failing to provide other IEP-required accommodations. Those failures caused a deprivation of educational benefit, as noted in recommended findings of fact. That deprivation requires a remedy, which shall be in the form of compensatory education. The Department has the express regulatory authority to order compensatory educational services in its state complaint procedures. 34 C.F.R. § 300.151(b)(1). In formulating the plan for compensatory education, there will be some latitude made for the short delays permitted by rule 41.323(3).

The findings of fact also compel a conclusion that staff training is required. Again, this remedy is specifically authorized by law. Iowa Admin. Code r. 281—41.152(2).

C.T.'s parents request a special education audit of the District. Such an audit is unnecessary, and the remedies recommended below, if implemented as ordered, would appear to be sufficient to protect the rights of all children with disabilities served by the public agencies.

IV. Recommended Remedies

Compensatory Education. C.T. is entitled to compensatory education. The following is a recommended plan for compensatory education. Compensatory education shall be supplemental to all present or future educational services required for C.T. to receive a FAPE (including ESY services), and shall not supplant or displace those required services.

A plan for compensatory education shall be developed by C.T.'s IEP team, under the following terms and conditions:

- The relevant period is from August 2, 2011 (ten calendar days from the start of the 2011 fall semester) to January 19, 2012 (the date the Department received this state complaint).
- The measure of the compensatory education will be the difference in expected performance if C.T. had received compliant IEP services during the relevant period and the child's actual performance during the relevant period.
- The compensatory services shall be designed to close that "gap" between expected and actual performance.
- A day-for-day approach is one way of calculating the compensatory services, but that approach is not required.
- The services are to be provided in a manner and location determined by the IEP team. The parents are not entitled to require services in a particular location or manner, or to request monetary compensation.
- The Department is available to provide technical assistance to the team.
- If the parties are unable to establish a plan for compensatory education services within forty-five days of the date of the Department's order, the Department will establish such a plan for the parties.

Compensatory education shall be completed as soon as possible, but no later than one year from the date of this decision.

Staff Training. The violations noted above require staff training. Staff training is an appropriate remedy for a confirmed state complaint. Iowa Admin. Code r. 281—41.152(2). For the required staff training, we make the following recommendations.

- The public agencies shall review the knowledge of the IDEA’s assistive technology and NIMAS/accessible texts provisions for special education instructional or supervisory personnel (1) employed by the District or (2) employed by the AEA to serve the District.
- The public agencies shall review the knowledge of the IDEA’s assistive technology and NIMAS/accessible texts provisions for instructional technology personnel (1) employed by the District or (2) employed by the AEA to serve the District.
- During that review of knowledge, the public agencies are to pay particular attention to the needs of students who transition to ██████████ High School.
- Based on that review, to be completed within thirty (30) days of the date of the Department’s decision, the public agencies shall determine whether any training is necessary to those groups on the IDEA’s assistive technology or NIMAS/accessible texts provisions.
- The public agencies develop a plan to provide any required training, to be submitted to the Department within ninety (90) days of its decision.
- All required training shall be completed by November 1, 2012.

V. Recommended Decision

We recommend confirming the state complaint concerning C.T. and ordering the above-described compensatory action.

We deem any particular allegation or portion of an allegation that we do not specifically address to be covered by recommendations specifically made or are not violations of the IDEA (even if proven).

There are no costs to award. The parties are to be advised of their appeal rights under Iowa’s Administrative Procedure Act.