

Special Education Complaint Investigative Report
July 21, 2020

[REDACTED]
Complainant

Steve Flores
Superintendent
Round Rock ISD
1311 Round Rock Avenue
Round Rock, TX 78681

Marie Gonzales
Special Education Director
Round Rock ISD
1311 Round Rock Avenue
Round Rock, TX 78681

Local Educational Agency (LEA): Round Rock ISD Co-Dist: 246-909
FY: 2019-2020
Complaint: 202016325

To the Individuals Addressed:

This report is the written decision of the Texas Education Agency (TEA) regarding the third-party complaint filed on behalf of multiple students in the Round Rock Independent School District (ISD), herein referred to as the local educational agency (LEA). For the purposes of confidentiality, student gender pronouns are made neutral.

Allegations, Conclusions, and Reasons for TEA's Decision

TEA investigated the following alleged violations of federal and state special education laws and the implementing regulations pertaining to the Individuals with Disabilities Education Act (IDEA), Texas Education Code (TEC), and/or the Texas Administrative Code (TAC).

Allegation One: Did the LEA ensure that it made a free appropriate public education (FAPE) available to students between April 6, 2020, and the date of the complaint in accordance with 34 CFR §300.101?

Allegation Two: Did the LEA ensure that it developed, reviewed, and revised the student's individualized education program (IEP), specifically regarding the delivery method of speech therapy, occupational therapy, and social skills from April 6, 2020, through the date of the complaint in accordance with 34 CFR §300.324?

TEA determined the following noncompliance and required corrective actions of the LEA.

The LEA does not always ensure that it implements students' IEPs in accordance with 34 CFR §300.323.

If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may email, mail, or fax a signed, written request for reconsideration to TEA within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed

with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

This concludes TEA's investigation. Please direct questions regarding this investigative report to Stephanie Koch or to me at keith.swink@tea.texas.gov.

Respectfully,

Keith Swink

Keith Swink
Manager of Dispute Resolution
Division of Special Education

KS: SK

enclosure: satisfaction survey

The two specific allegations and TEA's findings of fact and conclusions, together with the reasons for TEA's final decision, are as follows.

Allegation One

Did the LEA ensure that it made FAPE available to students between April 6, 2020, and the date of the complaint in accordance with 34 CFR §300.101?

Statement of the Complaint for Allegation One

In the May 18, 2020 letter of complaint, the complainant alleges that students did not receive the special education services required by their IEPs between April 6, 2020, and the date of the complaint.

Findings of Fact for Allegation One

1. The LEA submitted a spreadsheet with information from approximately 62 students. The spreadsheet includes information about students' respective speech, occupational therapy, and social skills services.
2. Regarding speech therapy services, the spreadsheet shows that students were to receive the same frequency and duration of speech therapy services required by the IEPs that were in effect prior to the LEA closing due to COVID-19. The spreadsheet also shows that students received speech therapy services during the timeframe of the complaint, but the delivery of the services was asynchronous, meaning that instruction was not delivered to students at the same time, and was not in the frequency set out in their IEPs.
3. Regarding occupational therapy services, the spreadsheet shows that students were to receive the same frequency and duration of occupational therapy services required by the IEPs that were in effect prior to the LEA closing due to COVID-19. The spreadsheet does not provide any data showing the frequency of occupational services that were provided to students.
4. Regarding social skills services, the spreadsheet shows that students were to receive the same frequency and duration of social skills services required by the IEPs that were in effect prior to the LEA closing due to COVID-19. The spreadsheet does not provide data showing the frequency of social skills services that were provided to most students. The related data that are included on the spreadsheet show that social skills services were not provided in the frequency required by students' IEPs.
5. The LEA provided a copy of the plans and assignments sent to the complainant's family for assisting the student with social skills. The documentation shows the dates and amount of time that LEA staff attempted to or met with the student regarding social skills training.
6. The LEA provided a copy of the plans and assignments sent to the complainant's family for assisting the student with occupational therapy and with accessing his/her occupational therapy IEP goals.
7. The LEA provided documentation of plans and assignments sent to the complainant's family for assisting the student with speech therapy. The documentation shows that the student often did not complete the assignments.
8. The LEA's policies regarding IEP implementation are consistent with federal requirements.

Conclusions and Reasons for TEA's Final Decision for Allegation One

34 CFR §300.101 requires that a free appropriate public education be available to all students residing in the State between the ages of 3 and 21, inclusive, including students with disabilities who have been suspended or expelled from school.

34 CFR §300.323 requires that, as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

The record shows that special education services were being provided to students during the timeframe of the allegation. However, the services were not provided in the frequency required by students' IEPs. Therefore, Allegation One is substantiated under 34 CFR §300.323.

Allegation Two

Did the LEA ensure that it developed, reviewed, and revised the student's IEP, specifically regarding the delivery method of speech therapy, occupational therapy, and social skills from April 6, 2020, through the date of the complaint in accordance with 34 CFR §300.324?

Statement of the Complaint for Allegation Two

In the May 18, 2020 letter of complaint, the complainant contends that two IEP team meetings took place in April 2020 to address the complainant's concerns regarding the manner of instruction because the student was not being successful in the virtual setting and alleges that IEP teams did not revise the student's IEP to address his/her needs.

Findings of Fact for Allegation Two

1. The student's April 21, 2020 IEP team met based on the complainant's request to discuss her concerns with the student's progress and education in the virtual setting.
2. The complainant indicate that the student was struggling because instruction was not being provided in a "live format." The complainant was also concerned about the provision of asynchronous special education services. The complainant explained that the student was having a difficult time accessing services, such as speech, because s/he was not getting to engage with his/her teachers. The IEP team discussed the possibility of the teachers having phone conversations with the student to help him/her stay connected.
3. The April 21, 2020 IEP team meeting was recessed and was reconvened on May 5, 2020. The IEP team continued the discussion regarding the provision of asynchronous special education services. The team also discussed the possibility of the student receiving compensatory services at a later date to address any needs that arise from the provision of services in the virtual setting. Different educational providers discussed how they had been individualizing lessons to meet the student's needs and IEP goals.
4. The May 5, 2020 IEP team meeting ended in disagreement. The complainant indicated that she would email the LEA later if she decided it was necessary to reconvene the meeting.
5. The LEA provided the complainant with prior written notice on April 21, 2020, and on May 5, 2020. Both notices explain that safety concerns regarding COVID-19

were a factor in the LEA's decisions regarding the provision of asynchronous learning.

Conclusions and Reasons for TEA's Final Decision for Allegation Two

34 CFR §300.324 requires that, in developing each student's IEP, the IEP team consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student.

The record shows that the student's IEP teams, including the complainant, discussed the student's needs regarding virtual instruction. The IEPs note that the student's providers were individualizing instruction and services to meet his/her needs. While the complainant disagreed with the manner of delivery of special education services, the IEPs show that the LEA considered the student's strengths and needs and the complainant's concerns and discussed strategies to address those needs and concerns. Therefore, Allegation Two is not substantiated.

Identified Noncompliance

Based on the evidence and current state and federal requirements, TEA finds the following noncompliance.

The LEA does not always ensure that it implements students' IEPs in accordance with 34 CFR §300.323.

Required Corrective Actions

In accordance with 34 CFR §300.151, TEA must address: (1) how to remediate the denial of those services based on the needs of the student and (2) appropriate future provision of services for all students with disabilities when resolving a complaint in which appropriate services were not provided. TEA requires the following corrective actions of the LEA.

For the students subject to this complaint:

Following guidance issued by the Texas Education Agency¹, the LEA will convene IEP team meetings for students who were eligible for special education services during the timeframe of the complaint to determine if those students require compensatory services. The type, location, duration, and frequency of compensatory services must be in documented in a student's IEP.

For all students with disabilities in the LEA:

Provide staff development to the individuals who were involved in or contributed to the noncompliance and to the administrators of the campus(es) subject to the complaint to provide guidance to address the implementation and documentation of implementation of students' IEPs.

Required submission:

By **August 31, 2020**, the LEA must provide TEA with a proposed timeline for completing the corrective actions or must provide TEA with the following documentation demonstrating completion of the corrective actions.

¹ https://tea.texas.gov/sites/default/files/covid/covid19_special_ed_qa_updated_may_7.pdf

- A spreadsheet documenting the date of the IEP team meeting(s) convened for each student to determine if compensatory services are needed and documenting the type, location, duration, and frequency of said services.
- Documentation of the dates and times that compensatory services were provided to the students.
- A copy of the training agenda describing the information presented in the staff development and a listing of the individuals, indicating their positions, who participated in the staff development.

Further intervention by TEA may result if the LEA does not provide the requested information or respond within the required timeline. In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance “as soon as possible, and in no case later than one year after the State’s identification of the noncompliance.” Therefore, all required corrective actions must be completed no later than **July 21, 2021**. Failure to correct the cited noncompliance by this date will result in an additional finding of noncompliance under 34 CFR §300.600(e) and may result in additional sanctions against the LEA as outlined in 19 TAC §89.1076.

This concludes TEA’s investigation of the complaint.