

IOWA DEPARTMENT OF EDUCATION

<i>In re C.R., a child with a disability,</i>	)	
	)	
M.R.,	)	
Complainant,	)	State Complaint No. 20-05
	)	
and	)	DECISION
	)	
Linn-Mar Community School District &	)	
Grant Wood Area Education Agency,	)	CITE AS 30 D.o.E. App. Dec. 25
Respondents.	)	

On December 11, 2020, M.R. filed this complaint under the Individuals with Disabilities Education Act (“IDEA”) against the Respondents, alleging they denied his son C.R. a free appropriate public education (“FAPE”) under the IDEA. For the reasons set forth below, the complaint is NOT CONFIRMED.

*Scope of Investigation.* IDEA regulations require the Iowa Department of Education (“Department”) to investigate any complaint alleging a public agency violated a provision of the IDEA. 34 C.F.R. § 300.153(b); Iowa Admin. Code r. 281 – 41.153(2). The Department will only investigate alleged IDEA violations.

The Department is to make an independent assessment of the complaint. Iowa Admin. Code r. 281 – 41.152(1). The Department does not assign the burden of proof in this matter to either party. *Letter to Reilly*, 64 IDELR 219 (OSEP 2014). The Department makes its decision based on the preponderance of evidence when the record is considered as a whole. The actions of the Respondents are viewed through the lens of compliance, not perfection. *IDEA State Complaint Decision 14-01*, 26 D.o.E. App. Dec. 390, 400 (2013). The Department assesses the actions taken by the Respondents from the vantage point of when the Respondents acted. They are not judged with the benefit of hindsight. *K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011). If the

Department finds an IDEA violation, it will order corrective action. Iowa Admin. Code r. 281 – 41.152(1)“ d”.

*Timelines.* A decision filed on or before March 19, 2021, is timely. Iowa Admin. Code r. 281 – 41.152(2). This timeline extended twice: once by agreement of the parties to pursue mediation, and once by the Department because of the novel questions of law the complaint posed. As to the second extension, which is permitted by the law, the Complainant’s agreement is not required.

In conjunction with the first extension, the parties exchanged e-mail messages about the scope and timing of mediation. The parties ultimately could not agree to mediation. In the course of that e-mail exchange, the Respondents did not respond to a statement the Complainant made, such lack of response labelled as a concession on one of the issues he raised. This is the first novel issue in this complaint: the weight to give to that purported concession. Whether the failure to respond is a concession by the Respondents or a trick by the Complainant, the Department will not consider it at all, as it was part of an exchange made in the course of discussions about mediation. It is a “mediation communication”: “a statement, whether oral or in a record, verbal or nonverbal, that occurs during a mediation *or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator.*” Iowa Code § 679C.102(2) (emphasis added). Since it is mediation communication, it may not be considered in this complaint investigation. *Id.* § 679C.104. This is entirely consistent with the IDEA, which provides that discussions in

the “mediation process” shall remain confidential. Iowa Admin. Code r. 281 – 41.506(2)“h”.

*Requested Relief.* The Complainant requests the Department to take disciplinary action, or order disciplinary action taken, against Respondent personnel. The parties were asked to brief this question, as it is a novel one. This novel issue is the second circumstance justifying the extension of the decision timeline. After considering the arguments of the parties, the Department finds and concludes that it has no such authority.

Complainant correctly observes that the remedial authority under the IDEA state complaint process is very broad:

Include procedures for effective implementation of the state’s final decision, if needed, including:

- (1) Technical assistance activities;
- (2) Negotiations; and
- (3) Corrective actions to achieve compliance.

Iowa Admin. Code r. 281 – 41.152(2)“b”. The question is whether this is broad enough to include teacher discipline or termination. It is not. First, Iowa law provides a specific procedure for the discipline and termination of teachers. *See, e.g.,* Iowa Code §§ 279.15 *et seq.* (2021). Second, and more fundamentally, teachers, before they are terminated as a disciplinary sanction, are entitled to notice and an opportunity to be heard under the Due Process Clause of the United States Constitution and its Iowa counterpart. U.S. Const. amend. XIV, § 1; Iowa Const. art. I, § 9. The teachers are not parties to this investigation, nor could they be. Iowa Admin. Code r. 281 – 41.153. Complainants and public agencies are proper parties to IDEA complaints. Individual staff members are

not proper parties. For this reason, the Department would be unable to grant the relief requested. This aligns with the authority of administrative law judges, who lack authority in due process hearings to hire or fire district personnel. *See, e.g., Perry A. Zirkel, The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act: The Latest Update*, 37 J. Nat'l Ass'n Admin. L. Judiciary 505, 551 & n.218 (2017).

Although the Department cannot grant the relief requested, the Department must still consider whether Complainant alleged violations of the IDEA. He did not.

*Allegation 1: Suggestions to "Violate" C.R.'s Individualized Education Program ("IEP")*. At an IEP Team meeting on November 13, 2020, a special education leader from the Respondent school district proposed that C.R. receive his COVID Recovery services (services owed to C.R. due to the COVID-19-related closure of schools in the spring of 2020) during the school day. The suggestion was that C.R.'s COVID Recovery services be provided during days in which general education peers were engaged in asynchronous learning. The school leader twice "urged" the team to consider her suggestion.

As noted by Complainant, this was contrary to the current IEP. The issue is whether this school leader violated the IDEA by suggesting that the IEP Team take a different path. The reason offered by the leader - not waiting until summer to provide these needed services - is a rational suggestion based on C.R.'s needs, but was not adopted by the IEP Team. Adopting the school leader's suggestion would require an IEP amendment. Taking Complainant's argument to its logical conclusion, a suggestion

to amend an IEP would be, ipso facto, an IEP violation. This is stunningly inconsistent with the IDEA, and cannot stand. If it would, IEPs could never change, and anyone who proposes a change would be labelled an unethical lawbreaker. The IDEA provides an amendment process. Iowa Admin. Code r. 281 – 41.324(1)“f”. During an IEP Team meeting, any participant must have the ability to suggest an IEP amendment and allow the suggestion to stand or fall in IEP Team deliberations. This is what happened here. Rather, the meeting saw a robust, spirited discussion of COVID Recovery services for C.R., all of which was rational in light of C.R.’s needs.

There is no violation.

*Allegation 2: “Absent” Teacher.* During the week of November 16, 2020, C.R.’s special educator was unable to be in school due to COVID-19 circumstances. She worked remotely, with a paraeducator physically present. Complainant argues the IEP was violated because the special educator was not physically present. We disagree. C.R. received the specially designed instruction called for in his IEP. The teacher, although working remotely,<sup>1</sup> continued to fulfill the role of teacher under Iowa law:

“Teacher” means a licensed member of a school’s instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner which is consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and who uses the student evaluation or assessment information to promote additional student learning.

Iowa Code § 272.1(17). All evidence suggests C.R.’s special educator performed all of the functions listed in this definition, and ensured delivery of all IEP services.

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<sup>1</sup> This is in line with guidance given for all students by the Iowa Department of Education: <https://educateiowa.gov/sites/files/ed/documents/2020-09-29ReopeningandPublicHealthFAQ.pdf>.

There is no violation.

*Allegation 3: Transition to Virtual Learning.* Complainant alleges he did not receive timely notice of the school district's decision to move to primarily remote instruction on November 30, 2020. The application was made on November 23, 2020, and the Department granted it on November 24. This application was for the entire school district. Since it was for the entire school district, it was not a change in placement for which the Complainant would be entitled to prior written notice. *See, e.g., N.D. v. Hawaii Dep't of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010). There was ample notice to the general public.

In any event, C.R.'s IEP (Page I) makes specific references to services to be provided if the school district transitioned to virtual learning. Since the IEP already contemplated this, there is no need to provide a prior written notice to do what the team decided to do if circumstances change. The Department has long approved of IEPs that contain plans for contingencies, so that a team may respond to changed circumstances nimbly and without the need for additional meetings or amendments. *See, e.g., IDEA State Complaint Decision 14-01*, 26 D.o.E. App. Dec. at 424. That is the circumstance here, and there is no contention the required services were not provided.

There is no violation.

#### *Conclusion*

Because this complaint is not confirmed, the Department will not order corrective action. Iowa Admin. Code r. 281—41.151(2).

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. Any party may also file a due process complaint with the Iowa Department of Education under the IDEA, alleging that the Respondents violated a provision of the IDEA concerning identification, evaluation, placement, or provision of a free appropriate public education. That procedure is explained in the procedural safeguards manual.

Because of the novel questions posed, a copy of this decision will be placed in the Department’s appeal book.

Every attempt has been made to address this complaint in a neutral manner, and in compliance with state and federal law.

Done on March 19, 2021, in Des Moines, Iowa.

Sincerely,  
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Copies to parties and counsel for the public agencies (Miriam D. Van Heukelem)