

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA¹)

State-Level Complaint 2014:505

Northwest Colorado BOCES

DECISION

INTRODUCTION

This is a pro-se, state-level complaint (Complaint), filed March 5, 2014. The Complainant is the Mother of a Student who is identified as a child with a disability under the IDEA.

Based on the written Complaint, dated February 28, 2014, the State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

MOTHER'S COMPLAINT ALLEGATIONS

Mother's Complaint raised four allegations, summarized as follows:

1. Since the beginning of the 2013-2014 school year, Northwest Colorado BOCES (BOCES) has denied Student a free appropriate public education (FAPE) by failing to implement and comply with Student's 2012-2013 Individualized Education Program (IEP). Specifically, the BOCES has failed to provide paraprofessional support, identify, develop or communicate curricula with Mother, monitor Student's progress toward IEP goals, collect baseline data, provide behavioral support, and provide IEP goals and strategies to Student's general education teachers, paraprofessionals, and other staff.
2. From November 26, 2013 until January 14, 2014, the BOCES violated Mother's procedural rights under the IDEA and ECEA by failing to provide her with a written IEP for the 2013-2014 school year.

¹ The IDEA is codified at 20 U.S.C. §1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

² Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

3. Since November 27, 2013, the BOCES has denied Student FAPE by failing to implement and comply with Student's 2013-2014 IEP. Specifically, the BOCES failed to identify, develop or communicate curricula with Mother, collect baseline data, monitor Student's progress toward IEP goals, provide writing instruction, provide behavioral support, and provide IEP goals and strategies to Student's general education teachers, paraprofessionals, and other staff.
4. Since the beginning of the 2013-2014 school year, the BOCES has denied Student FAPE by failing to provide Student with access to a highly qualified special education teacher.

Summary of Proposed Remedies: To resolve the Complaint, Mother proposed that the BOCES comply with the Student's IEP; transmit the IEP in a timely manner; communicate Student's progress and curricula to attain annual goals with Mother; provide Student's instruction in core academic subjects by a highly qualified special education teacher; and provide Student with compensatory services.

SUMMARY OF BOCES' RESPONSE

The BOCES supplied various documents requested by the SCO. They also submitted a written Response which consisted of a two-page letter signed by the BOCES Special Education Director. The letter did not specifically admit or deny the Complaint allegations, but rather, stated that the BOCES lacked evidence to dispute the first and third numbered allegations above. With regard to those allegations, the BOCES asserted that paraprofessional support is in place for the Student's entire day and that Student's case manager has communicated with the High School staff. The BOCES' response letter also stated that, with regard to the second allegation above, Mother did not receive the 2013-2014 IEP in a timely manner. In response to the fourth allegation above, the BOCES' response letter stated that the Student's Special Education Teacher is highly qualified based on the endorsements on the teacher's state license. Based on the BOCES' responses in their letter, the SCO deemed the first three allegations as admitted³ and conducted an investigation as to the fourth allegation, as well as for the purpose of determining appropriate remedies, i.e., whether the violations resulted in substantive harm to Student and whether the violations were systemic in nature.⁴

³ With the exception of paraprofessional support and communication with the High School staff.

⁴ The failure to admit or deny the specific allegations in a state complaint can be fairly and reasonably treated as admissions by the SCO. State-Level Complaint Procedures ¶ 3.

FINDINGS OF FACT (FF)

After a thorough and careful analysis of the entire record,⁵ the SCO makes the following FINDINGS OF FACT:

1. At all times relevant to the Complaint, Student has lived with Mother within the boundaries of the School District of the BOCES and has attended High School.
2. Student is eligible for special education and related services as a child identified with multiple disabilities.⁶
3. Student entered High School on September 3, 2013 with an IEP in effect, dated November 27, 2012.⁷ The IEP indicated that Student would be in the general education environment less than 40% of the school day.⁸ The “Recommended Placement” section of the IEP provided that Student’s core academic classes would be provided in a special education classroom.⁹ The “Student Needs and Impact of Disability” and “Accommodations and Modifications” sections of the IEP provided that Student “needs continued support and modified curriculum at [Student’s] instructional level in reading, writing, math, science and any other academic area. [Student’s] core classes not only need to be taught at [Student’s] learning level, but taught by a trained, certified teacher using evidence based curriculum that the teacher has been trained in. [Student] needs consistent and regular progress monitoring to assess instruction and curriculum.”¹⁰ Student’s academic needs are assessed at an elementary level and Student has been taking the Colorado Alternate test (COALT) since 2008.¹¹
4. A transition meeting was held in the spring of 2013 to discuss Student’s transition from Middle School to High School.¹² Curriculum was discussed and the Special Education Teacher/Case Manager assured the IEP Team that an evidence-based curriculum for reading, writing and math would be in place and that the Special Education Teacher

⁵ The appendix, attached and incorporated by reference, details the entire record.

⁶ Exhibit A, Page 1.

⁷ Exhibit A.

⁸ Exhibit A, Page 1.

⁹ Exhibit A, Page 14.

¹⁰ Exhibit A, Pages 2,11.

¹¹ Exhibit B, Page 8.

¹² Complaint and Interviews with Mother and Special Education Teacher/Case Manager.

would be trained in the curricula.¹³

5. In a letter dated March 14, 2014, the Special Education Teacher/Case Manager stated that High School “[t]eachers were first informed about [Student] and [Student’s] disabilities before school started on August 26, 2014 [sic] when an accommodations page was put in each teacher’s mailboxes [sic] as well as the boxes of all the Paraprofessionals.”¹⁴ The letter also stated that “[a]n all staff meeting was held on August 28, 2013 to specifically talk about incoming freshman. Using my notes from [Student’s] Transition Meeting in the spring of [Student’s] 8th grade year, I shared with staff members what I knew about [Student] and explicitly talked about the accommodation sheet that was in their boxes as well as what sort of things they may see in unstructured time and how to respond to some of [Student’s] behaviors.”¹⁵
6. Unfortunately, the plan put together at the spring transition meeting did not happen and Student’s first several weeks transitioning into High School were anything but smooth.¹⁶ When Student entered High School in September 2013, there was no evidence-based curriculum and the Special Education Teacher had completed no training in the core content areas in which she was to instruct Student.¹⁷ The Special Education Teacher did not monitor Student’s progress or perform baseline assessments of Student’s present levels of functioning for several months into the school year, nor did she have the capability to do so.¹⁸ Although the Special Education Teacher had confirmed with Mother before school started that Student would have appropriate paraprofessional support, that also proved to be problematic.¹⁹ Due to lack of planning, supervision, and follow through, Student missed the after school bus five out of the first ten days of school.²⁰
7. More than a month into the school year, there were still no class syllabi, homework or daily assignments in any of Student’s core academic classes, nor any reporting on

¹³ Complaint and Interviews with Mother and Special Education Teacher/Case Manager.

¹⁴ Documentation packet 7.

¹⁵ Ibid.

¹⁶ Complaint, Exhibit F.

¹⁷ Complaint and Interviews with Mother and Special Education Teacher.

¹⁸ Complaint, Interviews with Mother and Special Education Teacher, and Exhibit B. Special Education Teacher admitted to SCO that she had no experience or training in performing student assessments using DRA2 and DIBELS, having never even seen these assessment tools before.

¹⁹ Exhibit F.

²⁰ Complaint, Exhibit F, and Interview with Mother.

Student's progress toward IEP goals, or even baseline data being collected to determine Student's current academic level.²¹ In an October meeting, which included the Principal, Special Education Teacher, General Education Teacher, and Mother, Student's general education teacher stated that she was not aware of any of Student's IEP goals and had not been informed of Student's needs.²² In addition, the Special Education Teacher admitted at the meeting that she had done no baseline testing of Student to assess Student's current academic levels.²³ When asked what Student had done in the first 18 days of school in her Functional Reading class, Special Education Teacher stated that Student had taken one MAPS test and checked out a book.²⁴ When Mother asked Principal about not having an evidence based reading program in place, he stated that the previous special education teacher had been trained in reading, but the new special education teacher was not.²⁵ When Mother questioned why Principal would hire a special education teacher who was not highly qualified in teaching reading or writing, he told her that "We get what we can."²⁶

8. Special Education Teacher's Professional Teacher License with the State of Colorado shows that her endorsement is for Ages 0-21, Special Ed III-Profound Needs.²⁷ Special Education Teacher has been teaching special education for twenty years and has been teaching at High School for the past twelve years, however, she has no experience or training in, nor has she even seen, some commonly used tools in assessing student performance levels (i.e. DRA2 and DIBELS).²⁸ Special Education Teacher admits that she does not feel capable of preparing individual lessons plans for her students and requires comprehensive training in reading and math instruction.²⁹ Special Education Teacher is solely responsible for Student's instruction in the core academic subjects of reading and math.³⁰
9. As late as mid November 2013, more than two months into the school year, Mother was still provided with no baseline data, progress monitoring, or curricula being used for any

²¹ Complaint and Exhibit F.

²² Complaint and Exhibit G. SCO notes that as of Mid-February, the General Education Teacher reported again that she was not aware of Student's IEP goals and had not been informed of Student's needs.

²³ Complaint and Exhibit G.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Response letter and Document 2.

²⁸ Interviews with Mother, Special Education Teacher, and Exhibit F.

²⁹ Interview with Special Education Teacher.

³⁰ Complaint and Interviews with Mother and Special Education Teacher.

of the classes being taught in Student's special education classes.³¹ Moreover, supervision and paraprofessional support were still an issue. On November 18, 2013, Student missed the evening activity bus after participating in a basketball practice and was locked out of the High School building alone and in the dark.³² On November 14, 2013, Student was allowed to check out a preloaded iPod from the High School library with a playlist of songs with obscene or sexually explicit lyrics.³³ A Prior Notice of Special Education Action, dated November 26, 2013, provided that Student will be monitored before school, during early release and lunch.³⁴

10. The IEP Team met on November 26, 2014 to develop Student's 2013-2014 IEP.³⁵ At that meeting, the Special Education Teacher still had not completed diagnostic testing or collected work samples to assess and inform Student's IEP goals.³⁶ When Mother asked Special Education Teacher/Case Manager about what data she had collected to assess Student's math goal, she seemed initially uncertain to what Mother was referring and then stated that she had not given Student the test.³⁷ The test was finally administered on December 17, 2013, a full four months into the school year.³⁸ Mother continued to correspond and meet with the Special Education Teacher, Principal, Assistant Principal, and School District Superintendent regarding lack of curricula, lack of communication, and non-compliance with Student's IEP.³⁹

11. As for the IEP that was developed on November 26, 2013, Mother was not provided a written copy of the IEP until January 14, 2014.⁴⁰ Special Education Teacher/Case Manager attributed the delay in providing Mother with the IEP to holiday breaks and stated that the IEP was complete as of January 11, 2014, almost seven weeks after the IEP meeting was held.⁴¹ In their Response to the Complaint, BOCES stated that they lacked evidence to dispute that Mother did not receive the 2013-2014 IEP in a timely manner.⁴²

³¹ Complaint and Exhibit G.

³² Complaint, Interview with Mother.

³³ Complaint.

³⁴ Exhibit B, Page 3.

³⁵ Exhibit B, Page 4.

³⁶ Complaint and Exhibit B.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Complaint and Exhibits F and G.

⁴⁰ Complaint.

⁴¹ Documentation packet 7.

⁴² BOCES Response letter.

CONCLUSIONS OF LAW

Based on the Findings of Fact (FF) above, the SCO enters the following CONCLUSIONS OF LAW:

The BOCES violated Student's rights under the IDEA and denied Student FAPE.

1. Under the IDEA, local education agencies such as the BOCES are required to provide eligible students with disabilities with a "free appropriate public education" (FAPE), by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an IEP developed according to the Act's requirements. 34 C.F.R. § 300.17; ECEA Rule 2.19.
2. Mother alleges that the BOCES has denied Student FAPE by failing to implement both Student's 2012-2013 and 2013-2014 IEPs. SCO agrees. Student entered High School on September 3, 2013 with an IEP in effect. A transition meeting had been held the previous spring to ensure Student's smooth transition from Middle School to High School. Curriculum was discussed and the Special Education Teacher/Case Manager assured the IEP Team that evidence-based curricula for reading, writing and math would be in place and that Special Education Teacher(s) would be trained in the curricula. (FF 3, 4). Unfortunately, these things did not happen. When Student entered High School in September 2013, there was no evidence-based curriculum in place at all and there continued to be no curriculum in place. The Special Education Teacher was completely incapable of monitoring Student's progress or even performing baseline assessments of Student's present levels of functioning. (FF 6). Mother continued to communicate her frustration with their non-compliance of Student's IEP with the Special Education Teacher/Case Manager, Principal, Assistant Principal, and School District Superintendent, but nothing changed. Several months into the school year, Student still had not been appropriately assessed to determine his academic level of instruction and, even when it came time to assess Student's progress toward meeting IEP goals in preparation for an IEP meeting at the end of November, it still was not done. (FF 7, 9, 10).
3. Mother also alleged in her Complaint that Student was denied FAPE because the BOCES did not provide appropriate supports, as set forth in Student's IEP. While the BOCES did provide some support for their assertion that Student was provided with paraprofessional support, SCO finds that Student has not been appropriately supported

at times Student is outside of the classroom. Indeed, SCO notes that Student was lost or missed the bus five out of the first ten days of school and, on one occasion in mid-November 2013, Student missed the evening activity bus after participating in a basketball practice and was locked out of the High School building alone and in the dark. Moreover, an incident in which Student was allowed to check out a preloaded iPod from the High School library with a playlist of explicit songs, including a song entitled “Bounce on My Dick” indicates to SCO that supervision and support of this Student outside of the classroom has been, at the very least, careless. (FF 6, 9).

4. Mother further alleged that Student’s goals and strategies set forth in the IEP were not communicated with Student’s general education teachers, paraprofessionals, and other staff. SCO agrees. BOCES’ response letter makes a general statement that Special Education Teacher/Case Manager communicated with staff. Special Education Teacher/Case Manager also asserted in a letter provided in documentation to SCO that “teachers were informed about Student’s disabilities before school started on August 2, 2014 [sic] when an accommodations page was put in each teacher’s mailboxes [sic] as well as the boxes of all the Paraprofessionals” and that what she knew about Student’s behavior and strategies was shared with staff members. (FF 5). Other than these communications, however, the BOCES has failed to put forth any further evidence to show that the Special Education Teacher/Case Manager communicated the IEP goals and strategies set out in Student’s IEP to general education teachers, paraprofessionals, and other staff at High School. Given that the Special Education Teacher/Case Manager herself did not have a clear picture of Student’s present levels of functioning, nor progress monitoring or curricula in place necessary to appropriately educate and support the Student academically, SCO finds it impossible to conclude that she could have appropriately communicated the necessary parts of Student’s IEP to other staff at the High School. (FF 7, 8, 10).
5. Finally, Mother alleges that Student has been denied FAPE because Student’s Special Education Teacher is not highly qualified to teach core subjects. SCO agrees. The No Child Left Behind Act of 2001 (NCLB) requires that special education teachers who are sole deliverers of instruction in core content areas need to be highly qualified. The IDEA sets out the following requirements for special education teachers teaching two or more core academic subjects exclusively to children with disabilities:

- (1) Meet the applicable requirements of section 9101 of the ESEA and 34 C.F.R. § 200.56 (b) or (c);

*(2) In the case of a teacher **who is not new to the profession**, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 C.F.R. § 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects;*

34 C.F.R. § 300.18 (emphasis added).

6. The BOCES asserts that Student's Special Education Teacher is highly qualified based on the teacher's special education license endorsement for Ages 0-21, Special Ed III- Profound Needs. Special Education Teacher has been teaching special education for twenty years and has been teaching at High School for the past twelve years. Due to the nature and severity of Student's disabilities, Student's academic needs are assessed at an elementary level and Student is working toward alternative standards. Special Education Teacher is solely responsible for Student's instruction in reading and math. (FF 3, 7, 8). Any teacher who teaches Student in core academic subjects must meet the elementary qualifications to be highly qualified. Despite SCO's requests, the BOCES has not provided any documentation, other than the teacher's license, to support that the Special Education Teacher is highly qualified to teach at the elementary level. Special Education Teacher disclosed to SCO that she has no experience or training in performing student assessments using DRA2 and DIBELS and has never seen these commonly used assessment tools before. SCO notes that the Special Education Teacher also admitted that she does not even possess the capability of preparing individual lessons plans for her students. Special Education Teacher repeatedly stated that she needed training in reading and math. (FF 8). SCO finds this, quite frankly, shocking.
7. For all of the aforementioned reasons, SCO concludes that Student has been denied FAPE and is entitled to compensatory education. Compensatory education is an equitable remedy intended to place a student in the same position they would have been, but for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.D. Cir. 2005). Accordingly, Student is awarded compensatory education as specified in the remedies section of this decision.

The BOCES has failed to comply with the procedural safeguard requirements set forth in the IDEA and ECEA.

8. Mother alleges that that her procedural rights set forth in the IDEA were violated when the BOCES failed to provide her with a copy of the written IEP for the 2013-2014 school year from November 26, 2013 until January 14, 2014. SCO agrees.
9. The IDEA provides that in the development of an IEP, parents must be afforded the opportunity to attend and participate, and that the parents' participation must be meaningful, including giving consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1) and 300.324(a)(ii). This includes providing all members of the IEP team, including parents, with a copy of the IEP. 34 C.F.R. § 300.322(f). Here, the IEP Team met on November 26, 2013 to develop Student's 2013-2014 IEP. However, Special Education Teacher/Case Manager did not provide Mother with a copy of the IEP until January 14, 2014, seven weeks later. Special Education Teacher/Case Manager attributed the delay to holiday breaks and stated that the IEP was complete as of January 11, 2014, nearly seven weeks after the IEP meeting was held. (FF 11). This is inexcusable. Accordingly, SCO finds that the BOCES violated Mother's procedural rights under the IDEA.

REMEDIES

The SCO has concluded that the BOCES violated the following IDEA requirements:

- a) Free appropriate public education (FAPE) requirements of 34 C.F.R. § 300.17;
- b) Development, review, and revision of IEP at 34 C.F.R. § 300.324(b); and
- c) Highly qualified special education teacher requirements of 34 C.F.R. § 300.18.

To remedy these violations, the BOCES is ordered to take the following actions:

- 1) The parties have developed and agreed to some remedies to address violations "a" and "b" above, including compensatory services. The parties have drafted a proposed CAP with regard to those agreed upon remedies. The parties' letter and proposed CAP which memorialize the parties' agreement are incorporated into this Decision and are noted in the Appendix as "Document 4". As further clarification of these agreements, SCO notes that the parties will meet **no later than May 29, 2014** to determine how compensatory services will be provided to Student within the Extended School Year services to which Student is already entitled. SCO also notes that, with regard to Student's first week into the 2014-2015 school year at High School, Student's Middle School Case Manager will shadow Student for the first six (6) days of school to help facilitate a smooth transition.

- 2) Submit documentation to show that all special education teachers who will be responsible for instructing Student in core academic subjects are highly qualified special education teachers, **no later than August 1, 2014.**
- 3) **By June 13, 2014,** the BOCES must submit to the Department a supplemented proposed corrective action plan (CAP) that addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the BOCES is responsible. The CAP must, at a minimum, provide for the following:
 - a. Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violations, no later than **June 13, 2014.**
 - b. Effective training must be conducted for all Special Education Directors and intended designees concerning the policies and procedures, to be provided no later than **August 1, 2014.**
 - c. Effective training must also be conducted concerning these policies and procedures for all School District staff routinely involved in case management and instruction of students eligible for special education, including special education teachers and special education case managers. Training must be provided no later than **August 1, 2014.**
 - d. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than **August 15, 2014.**

The Department will approve or request revisions of the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the BOCES' timely correction of the areas of noncompliance. At the request of the BOCES, CDE is willing and able to provide the training specified above. Should the BOCES choose to request training from CDE, it must coordinate any such training with Joyce Thiessen-Barrett.

To remedy the failure to provide Student with FAPE, the BOCES is ordered to take the following actions:

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Joyce Thiessen-Barrett
1560 Broadway, Suite 1175
Denver, CO 80202-5149

NOTE: Failure by the BOCES to meet the timeline set forth above will adversely affect the BOCES' annual determination under the IDEA and subject the BOCES to enforcement action by the Department.

CONCLUSION

The Decision of the SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 15th day of May, 2014.

Lisa A. Weiss, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-7.

Exhibit A: Mother's copy of Student's November 27, 2012 IEP.

Exhibit B: Permission to Invite Agencies Related to Transition, Prior Notice and Consent for Evaluation, Prior Notice of Special Education Action, Notice of Meeting, and Mother's copy of Student's November 26, 2013 IEP.

Exhibit C: Mother's copy of Student's November 26, 2013 IEP with written suggestions for revision.

Exhibit D: Information sheet about Student's diagnosis.

Exhibit E: Information sheets provided to Mother about Student's Curricula.

Exhibit F: Email correspondence between Mother and High School staff.

Exhibit G: Meeting notes.

Response, pages 1-2.

Exhibit 1: BOCES file regarding Student for the 2012-2013 and 2013-2014 school years.

Exhibit 2: High School file regarding Student for 2012-2013 and 2013-2014 school years, including files received from the Middle School.

Exhibit 3: Correspondence between BOCES, High School staff members, and Mother.

Exhibit 4: Documentation concerning prior written notice and IEP development.

Exhibit 5: Contact information for BOCES, High School, and Middle School staff members.

Exhibit 6: Documentation regarding allegations 1 and 3.

Exhibit 7: Documentation regarding allegation 2.

Exhibit 8: Documentation regarding allegation 4.

BOCES additional documentation requested by SCO

Document 1: Email correspondence between BOCES Executive Director of Special Education and School District Human Resource Director.

Document 2: Teaching license for Special Education Teacher.

Document 3: Teaching license for Special Education Teacher #2.

Additional documentation regarding remedies

Document 4: May 6, 2014 letter of agreement and proposed Corrective Action Plan.

Interviews with:

Mother

Executive Director of Special Education

Principal

Special Education Director

Special Education Teacher/Case Manager