

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

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**State-Level Complaint 2023:580  
Northwest Colorado BOCES**

**DECISION**

**INTRODUCTION**

On September 26, 2023, the parents of four unrelated students (collectively, “Students”) each identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against a member district (“District”) of the Northwest Colorado BOCES (“BOCES”). 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 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

Due to the breadth of the allegations and the number of named students, the SCO extended the 60-day investigation twice due to exceptional services, consistent with 34 C.F.R. § 300.152(b)(1). The SCO issued separate 14-day extensions on both November 9, 2023 and December 8, 2023. Together, the extensions made the final decision due on December 23, 2023.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from September 26, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

Whether the BOCES denied Students a Free Appropriate Public Education (“FAPE”) because the BOCES:

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

1. Failed to develop Individualized Education Programs (“IEPs”) that were tailored to Students’ individualized needs, from September 26, 2022 to present, specifically by:
  - a. Failing to include measurable annual goals designed to enable Students to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2);
  - b. Failing to consider Parents’ concerns, in violation of 34 C.F.R. § 300.324(a); and
  - c. Failing to review and revise Students’ IEPs at least annually, in violation of 34 C.F.R. § 300.324(b)(1).
2. Failed to properly implement Students’ IEPs from September 26, 2022 to present, specifically by:
  - a. Failing to make Students’ IEPs accessible to teachers or service providers responsible for implementation of the IEPs, in violation of 34 C.F.R. § 300.323(d); and
  - b. Failing to provide Parents with periodic reports on Students’ progress from September 2022 to present, in violation of 34 C.F.R. § 300.320(a)(3)(ii).
3. Failed to provide Parents with a copy of Students’ IEPs, in violation of 34 C.F.R. § 300.322(f).
4. Failed to establish and maintain qualifications to ensure that paraprofessionals were appropriately and adequately trained from September 26, 2022 to present, in violation of 34 C.F.R. § 300.156(a)-(b) and ECEA Rule 3.04(1)(e).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. The parents (collectively, “Parents”) of four unrelated students filed a complaint on behalf of their individual children (collectively, “Students”) who attend a District high school (“School”). *Complaint*, p. 1. The violations alleged by Parents occurred between September 2022 and present. *Id.* at pp. 1-6. During that time, the District was a member of the BOCES. *Interview with BOCES Special Education Director*. As a result, the BOCES was responsible for providing FAPE to all IDEA-eligible children with disabilities attending school in its member districts. ECEA Rule 2.02.

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

2. All four Students—referred to individually as Student A, Student B, Student C, and Student D—are eligible for special education and related services under the Multiple Disabilities disability category. *Response*, p. 1.
3. During the 2022-2023 school year, Student A was in ninth grade at School. *Interview with Student A's Parent*. Parent described Student A as a very aware and engaged young man who loves social activities. *Id.* He uses a wheelchair due to a severe form of cerebral palsy that limits his mobility and muscle control. *Id.* Though Student A is nonverbal, he communicates with expressions, eye contact, and vocalizations. *Exhibit A*, p. 11. Student A requires assistance with feeding and diaper changes at School. *Id.* Due to his physical needs and for his safety, Student A requires the support of a 1:1 paraprofessional at all times. *Id.*
4. At the same time, Student B was in tenth grade. *Interview with Student B's Parents*. Parents described Student B as a kind, social young lady who enjoys going on walks and listening to music. *Id.* She does well in calm settings but gets overwhelmed in noisy, crowded places. *Id.* She is nonverbal and communicates through pictures. *Exhibit J*, p. 5. Student B needs a 1:1 paraprofessional for her health and safety at School. *Id.* at p. 6.
5. During the 2022-2023 school year, Student C was in ninth grade at School. *Exhibit S*, p. 1. Parent described Student C as a smart, social young man. *Interview with Student C's Parent*. He is non-verbal and utilizes an augmentative and alternative communication (“AAC”) device to communicate. *Id.*; *Exhibit S*, p. 5. Student C has some challenges with walking, though he is mobile. *Interview with Student C's Parent*. Due to his needs and for his safety, Student C requires a 1:1 paraprofessional at School. *Exhibit S*, p. 6.
6. That same year, Student D was in ninth grade at School. *Exhibit BB*, p. 1. Student D is a friendly, young woman who enjoys affection and being outdoors. *Interview with Student D's Parent*. She uses a wheelchair for mobility and needs assistance with feeding and diapering at School. *Id.* Student D is not verbal but communicates using vocalizations and facial expressions. *Id.* Due to her needs and for her safety, Student D requires a 1:1 paraprofessional at School. *Id.* at p. 16.

#### **B. Significant Support Needs Classroom**

7. During the 2022-2023 and the current school year, Students were in School's significant support needs classroom (“SSN classroom”). *Interviews with District's Current Director of Exceptional Student Services (“Current Director”) and Parents*. The SSN classroom serves “students who require more intensive supports and additional resources during the school day.” *Response*, p. 2. Only four or five students, including Students named in the Complaint,

were in the SSN classroom during the 2022-2023 school year. *Interviews with Paraprofessional 1 and Paraprofessional 2.*

8. Students in the SSN classroom also had access to an adjacent sensory room. *Interviews with Paraprofessional 3 and Student B's Parents.* That room provided students space to take a break or stretch out from their wheelchairs. *Interview with Paraprofessional 3.*
9. Shortly before the 2022-2023 school year began, the District hired SSN Teacher, who was new to the District, to work in a moderate needs special education classroom. *Interviews with SSN Teacher, Student B's Parents, and Student C's Parent.* However, the District was unable to fill the vacancy for the SSN classroom teacher. *Id.* A few days before school started, District administration informed SSN Teacher that he would be teaching in the SSN classroom instead. *Id.* District administration made this placement over SSN Teacher's objection and even though he expressed concern about whether he had the experience or skills needed to lead the SSN classroom. *Interview with SSN Teacher.* Though SSN Teacher was a veteran teacher, he had never worked with students with significant needs. *Id.*
10. Four paraprofessionals also staffed the SSN classroom. *Interview with Paraprofessional 2.* All four Students' IEPs required 1:1 paraprofessional support. *Response*, pp. 2-7. School experienced a paraprofessional shortage throughout the 2022-2023 school year. *Interviews with SSN Teacher, Paraprofessional 2, and Paraprofessional 3.* At times, paraprofessionals were pulled from the SSN classroom to support students in the moderate needs classroom. *Interviews with Student B's Parents and SSN Teacher.* Due to staffing issues, paraprofessionals were unable to take lunch or bathroom breaks on some days. *Interview with Paraprofessional 1.*
11. On occasion, SSN Teacher had to step in as a paraprofessional. *Interview with Paraprofessional 2.* The constant shortage of paraprofessionals impacted SSN Teacher's ability to work with Students on their goals, monitor their progress, and develop programming. *Interview with SSN Teacher.*
12. In its *Response*, the District asserted that paraprofessionals had access to snapshots of Students' IEPs in binders located in the SSN classroom. *Response*, pp. 10-11. However, the paraprofessionals were either unaware that the binders contained the IEP snapshots or did not use the binders for that purpose. *Interviews with Paraprofessional 1, Paraprofessional 2, Paraprofessional 3, and District Special Education Interventionist ("Interventionist").* One of the paraprofessionals indicated staff always said she only received an IEP upon request: "They say they'll try to get it to you, but they don't usually have time." *Interviews with Paraprofessional 1, Paraprofessional 2, and Paraprofessional 3.* Another paraprofessional said she did not feel the need to look at Students' IEPs if she had worked with them previously and was familiar with the student. *Id.* After SSN Teacher resigned, Interventionist noticed that paraprofessionals seemed "unaware of the programming they needed to complete with the kids." *Interview with Interventionist.*

### C. Programming in the SSN Classroom

13. The District has three alternative curriculum options: ACE, Unique Learning, and Everyday Speech. *Interview with Current Director*. Current Director was not aware which curricula was used in the SSN classroom last year, though she indicated pieces of each program were being used during the 2023-2024 school year. *Id.*
14. When SSN Teacher started in August 2022, no curriculum was in place for the SSN classroom. *Interview with SSN Teacher*. Once SSN Teacher found out he would be working in the SSN classroom, he expressed concern to Interventionist about not being able to have Students' schedules or programming prepared by the first day of school. *Id.* Interventionist told SSN Teacher that was not the expectation and that he would be "fine." *Id.*
15. SSN Teacher lacked experience with students with significant needs and struggled to create programming for them. *Id.* SSN Teacher reached out to District administration—including Superintendent, Former Director, and Former Principal—to share that he felt he did not have the skills, staff, or support needed. *Id.* SSN Teacher indicated he received no support in response. *Id.*
16. All three paraprofessionals interviewed expressed concern about the lack of programming in place in the SSN classroom during the 2022-2023 school year. *Interviews with Paraprofessional 1, Paraprofessional 2, Paraprofessional 3, and SSN Teacher*. Student A's paraprofessional said she would work with Student A on using a switch to select books on his computer. *Interview with Paraprofessional 2*. She indicated "that was it in the SSN room." *Id.* While paraprofessionals tried to identify appropriate tasks for Students, they sometimes resorted to going on walks, visiting the sensory room, or using screen time. *Interviews with Paraprofessional 1, Paraprofessional 2, and Paraprofessional 3*.
17. Parents also recalled asking SSN Teacher about the programming in the classroom during Fall 2022, specifically at parent-teacher conferences in October. *Interviews with Student B's Parents, Student C's Parent, and Student D's Parent*. Even though school had been in session for a couple of months, SSN Teacher indicated he was still working on programming and putting together Students' schedules. *Id.* Student C's Parent concerns about the lack of curriculum arose from a conversation with a paraprofessional working in the SSN classroom:

Other than [Student C] going to neurotypical classrooms, it appeared there was NO other curriculum. The classroom was set up to facilitate life skills (kitchen, washer/dryer/etc.) but I never saw any skills being practiced. [A para] whispered to me one of these visits that "it's bad, you've got to do something."

*Exhibit 12*, pp. 1-2. Parents also expressed concern about Students' safety but indicated the District was not responsive to those concerns. *Interviews with Student A's Parent, Student B's Parents, Student C's Parent, and Student D's Parent*.

18. Following SSN Teacher’s resignation in March 2023, School staff were unclear what Students’ schedules were. *Interviews with Student B’s Parents and Student C’s Parent*. For example, Student B’s Parents wanted to discuss Student B’s schedule and who would be supporting her before they allowed her to return to School following SSN Teacher’s departure. *Interview with Student B’s Parents; Exhibit 19*, pp. 1-8. In response, Assistant Principal emailed a copy of Student B’s schedule. *Exhibit 19*, p. 8. That schedule was as follows:

RED DAYS

8:20-10:00	Jazz Band
10:00-11:30	P.E.
11:30-12:30	Lunch
12:30-2:00	String Instruments
2:00-[3:35]	Health

WHITE DAYS

8:20-10:00	Gross Motor Skills
10:00-11:30	Guitar
11:30-12:30	Lunch
12:30-2:00	Concert Band
2:00-[3:35]	Center-Based Learning

*Id.* at p. 7.

19. Student B’s Parents inquired, “where is the learning component?” *Id.* Assistant Principal then shared a more “comprehensive” schedule for Student B. *Id.* at pp. 2-3. Under that schedule, Student B’s days looked as follows:

WHITE DAYS

8:20-8:30	Arrive at school, unpack, bathroom
8:30-9:00	Calendar, CNN10, CORE word or math videos
9:00-9:20	Walk or break
9:20-9:30	Bathroom
9:30-9:45	Task boxes or puzzles
9:45-10:00	Break
10:00-11:30	Unified P.E.
11:30-11:35	Bathroom
11:35-12:10	Lunch
12:15-12:40	Acting
12:40-1:00	Sensory break
1:00-1:10	Bathroom
1:10-1:40	Task boxes or puzzles
1:40-2:10	Stationary Bike
2:10-2:20	Bathroom

2:20-2:40	Break
2:40-3:10	Communication Skills
3:10-3:20	Bathroom
3:20	Pack up to go home

*Id.* at p. 2. Student B’s schedule for red days was similar. *Id.* at p. 3.

20. The two schedules cannot be harmonized and conflict with the schedule that was accessible to Parents in Infinite Campus. *Id.* at pp. 1, 7. Also, neither schedule matched the schedule listed on Student B’s daily tracking form from that time period. *See, e.g., Exhibit M*, p. 104. That schedule included no communication skills work (amongst other significant differences). *Id.* Regardless, none of the schedules contained much academic time. *Id.; Exhibit 19*, pp. 2, 7.
21. Interventionist noticed that paraprofessionals working in the SSN classroom noticed there was a “struggle” with programming in the SSN classroom or a lack of awareness “of the programming they needed to complete.” *Interview with Interventionist*.
22. In September 2023, the District hired an instructor from a national autism education organization to provide training on the ACE curriculum to 50 staff members. *Interview with Current Director*.

#### **D. Student A’s Annual Review and IEP**

23. At the beginning of the school year, Student A’s IEP dated February 1, 2022 (“February 2022 IEP”) was in effect. *Exhibit A*, pp. 1, 7-13, 23-26. Student A’s next annual review was due on or before February 1, 2023. *Id.* at p. 1.
24. On February 28, 2023, SSN Teacher emailed Student A’s Parent regarding her availability for an IEP Team meeting for Student A’s annual IEP review. *Exhibit I*, p. 10. SSN Teacher scheduled the IEP Team meeting for March 9, 2023; however, Parent was unable to attend due to illness. *Id.* at p. 15. Parent provided alternative dates to SSN Teacher on March 13, but the meeting was not rescheduled due to SSN Teacher’s resignation. *Id.* at p. 16; *Response*, p. 2.
25. On May 9, Parent emailed District’s Former Director of Exceptional Student Services (“Former Director”) and requested that Student A’s IEP Team be convened immediately. *Exhibit I*, p. 22. Former Director responded the same day, indicating that she was “securing a case manager to schedule” the meeting. *Id.* A special education teacher agreed to act as Student A’s case manager for the IEP Team meeting. *Id.* at pp. 25-27; *Interview with Student A’s Parent*.
26. The District convened Student A’s IEP Team on May 25, 2023 to develop his IEP. *Exhibit A*, pp. 58-82; *Exhibit G*, p. 1. That meeting resulted in an IEP dated May 25, 2023 (“May 2023 IEP”). *Exhibit A*, pp. 58-82. Student A’s annual review was completed nearly four months after it

was due. *Id.* at pp. 1, 58. The District conceded that the review was untimely. *Response*, pp. 9-10.

27. The IEP Team agreed that Student A had regressed during the 2022-2023 school year and offered Student A extended school year services (“ESY”). *Id.* at p. 3.
28. On July 18, Parent emailed the District’s Current Director to follow up on “multiple requests” for Student A’s May 2023 IEP. *Exhibit I*, p. 28. The District sent Parent a copy of the May 2023 IEP on July 19, nearly two months after the IEP Team meeting and only following multiple requests by Parent. *Id.* at p. 29; *Interview with Student A’s Parent*.

### **E. Student B’s Annual Review and IEP**

29. At the beginning of the school year, Student B’s IEP dated December 14, 2021 (“December 2021 IEP”) was in effect. *Exhibit J*, pp. 1-15. Student B’s annual IEP review meeting was due on or before December 14, 2022. *Id.* at p. 1.
30. The District convened Student B’s IEP Team on December 5 to complete her annual review. *Interview with Student B’s Parents; Exhibit J*, pp. 45-72; *Exhibit P*, p. 1. However, Student B’s IEP was never finalized following that meeting and was left incomplete in the District’s IEP software. *Response*, p. 4; *Interview with Student B’s Parents; Exhibit J*, p. 76. The goals, accommodations, modifications, service delivery, and least restrictive environment sections of her IEP were incomplete. *Exhibit J*, p. 76. The District conceded that, as a result, “many of [Student B’s] services and goals were not implemented thereafter.” *Response*, p. 4.
31. The District convened Student B’s IEP Team on May 3, 2023 to complete her IEP. *Exhibit J*, p. 76; *Interview with Student B’s Parents*. In its *Response*, the District does not acknowledge that Student B’s annual review was late; instead, the District implies the annual review was timely completed because the IEP Team meeting was held before the one-year cutoff. *See Response*, p. 3.
32. Prior to the IEP Team meeting, the District conducted a file review, comparing Student B’s previous and current levels of performance to identify any areas of regression. *Exhibit J*, pp. 79-83. The file review found that Student B experienced the most significant regression in the areas of self-help skills, health/physical/medical, vocational/functional skills, and discrimination. *Id.* at p. 79. Student B “dramatically regressed” in some subcategories, including, but not limited to, bladder training, sorting, and walking up and down stairs. *Id.*
33. The final version of Student B’s IEP was sent to Parents on May 16, 2023, less than two weeks after the IEP Team meeting. *Exhibit R*, p. 64.
34. Following the meeting, the District issued a prior written notice (“PWN”) regarding the updates to Student B’s IEP. *Exhibit Q*, pp. 1-3. The PWN admitted that the SSN classroom’s

“alternative curriculum was not implemented over the course of the school year.” *Id.* at p. 1. The PWN also acknowledged that Student B’s IEP was left incomplete for much of the school year and, as a result, not fully implemented. *Id.* at pp. 1-2.

#### **F. Student C’s IEPs and Annual Review**

35. At the beginning of the 2022-2023 school year, Student C’s IEP dated November 17, 2021 was in effect. *Exhibit S*, pp. 1- 7, 24-28. Student C’s annual review was due on or before November 17, 2022. *Id.* at p. 1.

36. On November 14, 2022, the District convened Student C’s IEP Team to complete Student C’s annual review. *Exhibit Y*, p. 1; *Exhibit S*, pp. 65-87. SSN Teacher sent a copy of the final IEP to Parent on January 3, 2023, one and a half months after the IEP Team meeting. *Exhibit AA*, p. 15.

#### **G. Student D’s IEPs and Annual Review**

37. At the beginning of the 2022-2023 school year, Student D’s IEP dated March 8, 2022 was in effect. *Exhibit BB*, pp. 1-17. Student D’s annual review was due on or before March 8, 2023. *Id.* at p. 1.

38. On May 23, 2023, the District convened Student D’s IEP Team to complete Student D’s annual review. *Exhibit BB*, pp. 45-74. A copy of the IEP was sent to Parent on June 1, 2023, after Parent emailed to request a copy. *Exhibit JJ*, p. 75. The District conceded that Student D’s annual review was untimely. *Response*, pp. 9-10.

39. In a PWN dated May 23, 2023, the District acknowledged Student had “skill regression in some areas due to lack of staff, training, and enforcement of skills.” *Exhibit II*, p. 1.

#### **H. Students’ Annual Goals**

40. Students’ IEPs did not contain any annual goals related to academics. *See Exhibit A*, pp. 1-86; *Exhibit J*, pp. 1-86; *Exhibit S*, pp. 1-131; and *Exhibit BB*, pp. 1-92. Collectively, Students’ annual goals were in the areas of access skills, communication, community, range of motion, gross motor skills, activities of daily living, and health/safety. *Exhibit A*, pp. 1-86; *Exhibit J*, pp. 1-86; *Exhibit S*, pp. 1-131; and *Exhibit BB*, pp. 1-92.

41. Example goals from Students’ IEPs include:

- Student A: “Given two options, [Student A] will indicate a preference using eye gaze and/or head turns toward his preferred choice within 15 seconds 5x/day by the annual review date.” *Exhibit A*, p. 29.

- Student B: “Across 2 person(s) and 1 setting, learner will engage in cardiovascular exercise (to include, but not limited to, treadmill, hand-bike, stationary bike, etc.) by increasing baseline by 10 minutes, fading teacher proximity in 100% of programmed opportunities across 2 consecutive weeks by November 2023.” *Exhibit J*, p. 63.
- Student C: “[Student C] will carry his communication device while transitioning between classrooms with occasional handheld assistance [in] 4/5 trials.” *Exhibit S*, pp. 48.
- Student D: “Across 2 settings, [Student D] will actively engage in community outings for 70% of the duration by March 2024.” *Exhibit BB*, p. 56.

### I. Paraprofessional Hiring and Training

42. All three paraprofessionals interviewed during this investigation acknowledged that the District provided them little, if any, training during the 2022-2023 school year. *Interviews with Paraprofessional 1, Paraprofessional 2, and Paraprofessional 3*. One paraprofessional remarked: “I think we all know we didn’t get any training last year.” *Id.*
43. Without training from the District, newer paraprofessionals turned to veteran paraprofessionals to learn skills on the job; however, those paraprofessionals often did not have time to assist or train others due to the staffing shortages. *Interviews with Paraprofessional 1 and Paraprofessional 3*. Meanwhile, veteran paraprofessionals looked to related services staff, such as occupational and physical therapists, to learn how they could better support Students. *Interview with Paraprofessional 2*.
44. The District significantly increased training for paraprofessionals during the 2023-2024 school year. *Interviews with Current Director and Paraprofessional 2*. This year, training occurred over three days at the beginning of the school year. *Interview with Current Director; Exhibit KK*, p. 462. Training topics included the ACE curriculum, roles of paraprofessionals, and student safety, amongst other topics. *Interview with Current Director*. Paraprofessionals also had time to review the IEP snapshots of their assigned student(s) and meet with teaching staff to discuss the students’ needs. *Id.*
45. The District also contracted with an education consultant who provided training to special education staff during the 2023-2024 school year. *Interview with Current Director*. The education consultant also conducted observations in the SSN classroom and helped develop programming for those students. *Id.*

### J. Progress Monitoring

46. The District does not have a written policy or procedure regarding progress monitoring or progress reports. *Id.* Current Director acknowledged that “data-driven progress monitoring”

was “not great” in the District. *Id.* Though the District is currently focused on IEP compliance and staff retention, Current Director hopes to improve progress monitoring as well. *Id.*

47. The District’s expectation is that School would collect data on students’ progress every two weeks and, at a minimum, provide progress reports to parents at the end of each semester. *Id.*
48. During the 2022-2023 school year, SSN Teacher did not prepare any standalone progress reports for Students. *Interview with SSN Teacher.* Instead, he entered notes on Students’ progress into the designated section of Students’ IEPs in Sped Advantage, the District’s IEP software. *Id.*; *Interview with Current Director.* This was consistent with the District’s practice. *Interview with Current Director.*
49. In late October 2022, SSN Teacher emailed Parents progress reports for all four Students. *See, e.g., Exhibit I, p. 1; Exhibit R, pp. 1-6; Exhibit AA, pp. 1-10; and Exhibit JJ, p. 5.* The entries in Students’ IEPs regarding their progress were largely anecdotal and often lacked any data. *See, e.g., Exhibit R, pp. 1-6.* As a result, the entries did little to demonstrate whether Students were making progress on their individual goals and, if so, how much progress. *See id.*
50. As an example, one of Student A’s access skills goals stated: “By February 2023, [Student A] will activate a device within 15 seconds to indicate a choice, begin an activity, or greet another person using his left arm with support of trunk [in] 80% of trials.” *Exhibit A, p. 41.* The October note on Student’s progress indicated he was making progress on this goal and was “activating his switch items when given a prompt to hit the switch.” *Id.* This note—which is quite similar to the note for May 16, 2022—does not indicate whether Student A was timely activating a switch, whether he was activating a switch for one of the identified purposes, or the frequency with which Student A was activating the switch. *Id.* His baseline was 40%; the progress note did not indicate how much, if any, progress Student A had made from that baseline. *Id.*
51. One of Student B’s access skills goals sought to prepare Student B “for work at a community business” by having her “push a cart and deliver copier paper and office supplies to the high school pod offices 3 times a week.” *Exhibit J, p. 33.* An entry dated October 14, 2022 indicated Student B was making progress on this goal as she “continue[d] to push a wheelchair consistently throughout the week.” *Id.* This entry was similar to the entry from May 2022. *Id.* Again, it is not clear if Student B was making progress on her actual goal, as the entry does not state whether she attempted to push a cart or deliver paper or how often she was pushing the wheelchair. *Id.*
52. The majority of the entries from second semester—to the extent there are any—are consistent with the October 14 entries and do not contain enough data to allow a reader to determine whether Student A was making progress. *Id.* at pp. 41-45. Nothing in the Record—including the District’s Response—indicates that any subsequent progress reports were

provided to Parents. *See Response*, pp. 1-7; *Interviews with Parent of Student A, Parents of Student B, Parent of Student C, and Parent of Student D*.

53. The District did not produce any progress monitoring data for Students other than Students' respective "Daily Schedule and Communication Tracker" forms. *See Exhibit D*, pp. 1-32; *Exhibit M*, pp. 1-30. Paraprofessionals used this form to track Students' days, and the forms were sent home to Parents. *Interviews with Paraprofessional 1, Paraprofessional 2, and Paraprofessional 3*. The District did not produce any daily logs for Student A, Student C, or Student D from the 2022-2023 school year. *See Exhibit D*, pp. 1-32; *Exhibit V*, pp. 1-30; *Exhibit EE*, pp. 1-28. The only logs provided were from the 2023-2024 school year. *See Exhibit D*, pp. 1-32; *Exhibit V*, pp. 1-30; *Exhibit EE*, pp. 1-28.
54. Regardless, the Students' daily logs did not include progress monitoring data. *See Exhibit D*, pp. 1-32; *Exhibit M*, pp. 1-130; *Exhibit V*, pp. 1-30; *Exhibit EE*, pp. 1-28. Instead, the logs contain information regarding Students' daily activities or moods, such as "morning walk" or "chilled on bean bag." *See, e.g., Exhibit M*, pp. 109, 112. The lack of data produced may explain why the entries on Students' IEPs were largely devoid of data.
55. All three of the paraprofessionals interviewed during this investigation indicated they were not tracking Students' progress on their IEP goals. *Interviews with Paraprofessional 2 and Paraprofessional 3*. Even if SSN Teacher had been tracking Students' progress prior to his resignation, it is clear no one was tracking Students' progress after his departure. *Interview with Interventionist*.

#### **K. SSN Teacher's Resignation**

56. On March 16, 2023, SSN Teacher announced his resignation; his last day was March 17, 2023. *Exhibit R*, pp. 11, 14. Following SSN Teacher's resignation, Interventionist took over the administrative responsibilities of the SSN classroom. *Interview with Interventionist*. These responsibilities included overseeing the schedule of the SSN classroom (such as making sure there was adequate paraprofessional coverage) and acting as mentor to the paraprofessionals in the SSN classroom. *Id.* Interventionist was adamant that he was not taking over SSN Teacher's role as a teacher or any of his case management responsibilities. *Id.*

#### **L. Relationship between BOCES and District**

57. In December 2023, per a District press release, the District's application to leave the BOCES and serve as its own administrative unit was approved. *CDE Exhibit 1*. Regardless, during the period relevant to this Complaint, the District was a member of the BOCES. *Interview with BOCES Special Education Director*.

58. Several years ago, when the District first sought to leave the BOCES, the BOCES and the District executed an agreement whereby the BOCES gave the District control over special education. *Id.* As a result of that agreement, the BOCES ceded control of all aspects of special education to the District and was only involved when issues arose or when asked to step in. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The BOCES failed to develop IEPs that were tailored to Students' individualized needs during the 2022-2023 school year, in violation of 34 C.F.R. § 300.320(a)(2). Additionally, the BOCES failed to review the IEPs of Student A, Student B, and Student D at least annually, in violation of 34 C.F.R. § 300.324(b). Finally, the BOCES failed to review and revise, as necessary, Students' IEPs based on information shared by Parents, in violation of 34 C.F.R. § 300.324(b). These violations resulted in a denial of FAPE to all Students.**

The first allegation in Parents' Complaint relates to the development of Students' IEPs during the 2022-2023 school year. Specifically, Parents contend the IEPs were not tailored to Students' individualized needs because: (1) the IEPs did not include measurable annual goals; (2) the BOCES ignored Parents' concerns regarding Students' education and safety; and (3) the BOCES failed to review and revise Students' IEPs at least annually.

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.* If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Here, the concerns raised by Parents challenge the development and sufficiency of Students' IEPs.

#### **A. Annual Goals**

An IEP must include measurable goals designed to "[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and any other educational needs that result from the child's disability. 34 C.F.R. at § 300.320(a)(2). To allow for the evaluation of a student's progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff'd*, 38 IDELR 63 (6th Cir. 2003, *unpublished*). Appropriate goals should be clear enough

that a stranger, or person unfamiliar with the IEP, would be able to implement the goal, monitor student's progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

Parents' concerns about annual goals relate to both the development of Students' IEPs, as well as the substantive adequacy of their IEPs. The first subpart of this allegation relates to the BOCES' failure to have annual goals in place for Student B between December 2022 and May 2023, when Student B's IEP was left incomplete. (FF #s 30. 31. 34.) During the time Student B's IEP was incomplete, she had no annual goals. (*Id.*) Goals are a required component of an IEP under the IDEA. 34 C.F.R. § 300.320(a)(2). Without any goals, Student B's IEP was procedurally deficient. For this reason, the SCO finds and concludes that the development of Student B's Fall 2022 IEP failed to comply with the IDEA's procedures, resulting in a violation of 34 C.F.R. § 300.320(a)(2).

The SCO also finds that Students' annual goals were not appropriately ambitious to allow Students to make progress in the general education curriculum or meet their needs resulting from their disabilities. Students' goals focused solely on access skills and communication. (FF #s 40-41.) None of Students' goals related to any academic learning. (*Id.*)

IEP goals should be developed using a presumption of competence. Unfortunately, Students' goals appear to have been created under the opposite mindset. Staff presumed Students could not complete any academic learning and, therefore, did not include any in their academic goals. For these reasons, the SCO finds and concludes that the goals in Students' IEPs were not tailored to their individual educational needs, in violation of 34 C.F.R. § 300.320(a)(2). The goals were not reasonably calculated to allow Students to receive an educational benefit and violated the IDEA's substantive requirements related to IEP development, resulting in a denial of FAPE. See *D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

## **B. Parents' Concerns**

An IEP is "the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a).

Here, Parents have not indicated that Students' IEPs were developed without considering Parents' input. (See FF #s 23-39.) Instead, Parents have alleged that the BOCES ignored concerns Parents raised regarding the lack of specially designed instruction and programming in the SSN classroom, as well as Students' safety at school. (FF # 17.) By expressing concern about programming, Parents indicated they thought Students' IEPs were not being implemented.

Under the IDEA, school districts must review and revise a student's IEP to address lack of expected progress toward annual goals and in the general education curriculum, the results of a reevaluation, information provided by parents, the child's needs, or other matters. 34 C.F.R. § 300.324(b). Here, the concerns raised by Parents about implementation of Students' IEPs warranted convening Students' IEP Teams to address the issue. For this reason, the SCO finds and concludes that the BOCES failed to review and revise, as necessary, Students' IEPs in response to Parents' concerns, in violation of 34 C.F.R. § 300.324(b). This resulted in a procedural violation of the IDEA.

### **C. Students' Annual Reviews**

Parents' concern is that the BOCES failed to review Students' IEPs at least annually.

Under the IDEA, school districts have an obligation to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). This obligation exists even when a student's needs have not changed or a student has made expected progress on annual goals. *Id.*

Here, as the Findings of Fact demonstrate, the BOCES failed to review and revise the IEPs for Student A, Student B, and Student D within the required one-year time period. (FF #s 23-39.) The BOCES acknowledged the violations as to Student A and Student D. (FF#s 26, 38.) However, the BOCES implied that Student B's annual review was completed on time. (FF # 31.) Even though the BOCES convened Student B's IEP Team before the deadline, the BOCES did not actually revise Student B's IEP. (FF #s 30, 31.) The IEP Team agreed to revise it, but the revisions were not made and finalized. (FF # 30.) Because of this, the BOCES reconvened Student B's IEP Team in May 2023 to finalize the IEP. (FF # 31.) For this reason, the SCO finds and concludes that the BOCES failed to timely complete the annual reviews for Student A, Student B, and Student D, resulting in a procedural violation of 34 C.F.R. § 300.324(b).

### **D. Procedural Violation**

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if the violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

In this case, the BOCES committed two separate violations: (1) failing to include annual goals in Student B's IEP; and (2) failing to timely complete the annual review for three Students. The SCO analyzes the impact of each violation separately.

### Annual Goals

The BOCES failed to complete Student B's IEP following her IEP Team meeting. (FF # 29.) As a result, Student B's IEP was incomplete for much of the 2022-2023 school year. (*Id.*) Student B was not working on annual goals during that time, because she had none. (*Id.*) The lack of annual goals limited Student B's ability to make progress during that school year and undoubtedly deprived her of an educational benefit. For this reason, the SCO finds and concludes that the failure resulted in a denial of FAPE to Student B.

### Annual Reviews

The BOCES neglected to complete the annual reviews for Student A, Student B, and Student D within the one-year period required by the IDEA. (FF #s 26, 30-31, 38.) Depending on the Student, the annual reviews were completed anywhere from two to six months late. (*Id.*) Given the multi-layered violations that occurred during the 2022-2023 school year, it is difficult to separate the impact of each violation. As detailed in this decision, Students were not receiving the specialized instruction required by their IEPs, and little progress monitoring was occurring. (FF #s 13-21, 48-55.) If Students' annual reviews had been completed on time, Parents would have learned sooner what was (or was not) happening within the SSN classroom. The delay in Students' annual reviews delayed Parents' access to information concerning their children. For that reason, the SCO finds and concludes that the BOCES' violation significantly impeded Parents participation in the decision-making process, resulting in a denial of FAPE to Student A, Student B, and Student D.

**Conclusion to Allegation No. 2: The BOCES failed to properly implement Students' IEPs during the 2022-2023 school year. Specifically, the BOCES failed to make Students' IEPs accessible to staff, failed to provide periodic reports on Students' progress, and failed to provide Students' specialized instruction. These failures resulted in violations of 34 C.F.R. §§ 300.323 and 300.320(a)(3)(ii). The violations caused a denial of FAPE.**

The second allegation in the Complaint concerns the implementation of Students' IEP during the 2022-2023 school year. Specifically, Parents contend the BOCES failed to make Students' IEPs accessible to District staff and failed to provide Parents with progress reports.

#### **A. Legal Requirements for IEP Implementation**

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

## **B. Accessibility of Students' IEPs to Staff**

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* To satisfy this obligation, each teacher and related services provider must be informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

Here, the Findings of Fact demonstrate that District staff printed snapshots of Students’ IEPs and placed them in binders for paraprofessionals to use. (FF # 12.) However, the IDEA requires more than mere administrative compliance. While the District made the snapshots available to the paraprofessionals, the District took no proactive steps to ensure the paraprofessionals were actually informed of Students’ IEPs. (*Id.*) For example, SSN Teacher or another District staff member could have met with paraprofessionals before school began to go over each IEP. Once school started—especially given the shortage of staff and Students’ needs—the District could not rely on the paraprofessionals to review the IEP snapshots. Interventionist even recognized the paraprofessionals’ lack of familiarity with Students’ IEPs once SSN Teacher resigned, more than seven months into the school year. (*Id.*) For these reasons, the SCO finds and concludes that the BOCES failed to comply with 34 C.F.R. § 300.323(d).

## **C. Progress Reports**

Under the IDEA, school districts must provide periodic reports on the progress a student is making towards the student’s annual goals. 34 C.F.R. § 300.320(a)(3). As the Findings of Fact demonstrate, the District failed to monitor Students’ progress during the second semester of the 2022-2023 school year. (FF #s 46-55.) As a result, Parents did not receive progress reports for the second half of the school year. (*Id.*) Additionally, the progress monitoring information from the first semester was largely anecdotal and lacked enough specificity to allow Parents to determine whether their child was making progress on their annual goals. (*Id.*) For these reasons, the SCO finds and concludes that the BOCES failed to provide Parents with adequate reports on Students’ progress, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

## **D. Specially Designed Instruction**

The IDEA defines “special instruction” as “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a). “Specially designed instruction” means “adapting, as appropriate to the needs of an eligible child, the content methodology, or delivery of instruction” to ensure the child has access to the general education curriculum. *Id.* § 300.39(b)(3).

Here, by virtue of their placement in the SSN classroom, each of the Students’ IEPs required a certain amount of specially designed instruction. Nearly all the witnesses interviewed asserted

that no curriculum was in place in the SSN classroom during the 2022-2023 school year, including SSN Teacher and the paraprofessionals. (FF #s 13-21.) SSN Teacher indicated no curriculum was in place when he assumed his position. (FF # 14.) SSN Teacher worked to develop a curriculum for Students but due to staffing shortages and lack of support from the District, SSN Teacher was unable to do so. (FF #s 11, 15.) Indeed, SSN Teacher himself had to work as a paraprofessional at times, limiting his ability to even teach Students. (FF # 11.) The paraprofessionals tried to identify appropriate tasks for Students, even though that was not their responsibility. (FF # 16.) Regardless, the paraprofessionals often resorted to going on walks, visiting the sensory room, or using screen time. (*Id.*) The District also acknowledged the lack of curriculum in a PWN issued at the end of the school year. (FF #s 33.)

Based on the Findings of Fact, Students did not receive all the required special instruction during the 2022-2023 school year. For this reason, the SCO finds and concludes that the BOCES failed to fully implement Students' IEPs, resulting in a violation of 34 C.F.R. § 300.323.

#### **E. Materiality of Failures to Implement**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not every deviation from an IEP's requirements results in a denial of FAPE. Only the failure to implement a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822.

Here, the BOCES' failures resulted in a denial of FAPE. As a result of the violations, SSN classroom staff were not adequately informed of the requirements of Students' IEPs, Parents did not receive progress reports, and, most importantly, Students did not receive their specialized instruction. Students' specialized instruction was the key component of their IEPs; however, it was not a key component of their daily schedules in the SSN classroom. Individually, one of these failures would be enough to deprive Students of a FAPE. Together, the violations were so impactful that only one conclusion exists. The BOCES failure to implement was material and resulted in a denial of FAPE. Given that Students were denied the benefit of an entire school year, Students are entitled to compensatory education. *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

**Conclusion to Allegation No. 3: The BOCES failed to timely provide copies of IEPs to Parents of Student A, Student B, and Student D, in violation of 34 C.F.R. § 300.322(f). This violation caused a denial of FAPE.**

The third allegation in Parents' Complaint concerns whether the BOCES provided copies of Students' IEPs to Parents.

Under the IDEA, school districts must provide parents with a copy of their child's IEP at no cost. 34 C.F.R. § 300.322(f). The IDEA does not require that the IEP be provided within a certain timeframe. *Id.*

Here, Student D's parents received a copy of her IEP nine days after the IEP Team meeting. (FF # 38.) By timely providing a copy of the IEP, the BOCES complied with 34 C.F.R. § 300.322(f) as to Student D. However, the same cannot be said for the remaining Students. Student A's Parents and Student C's Parents did not receive their child's IEP for nearly two months after the IEP Team meetings were held. (FF #s 28, 36.) And though Student B's IEP Team meeting was held in December 2022, the IEP was never finalized or provided to Student B's Parents. (FF # 30.) Once Student B's IEP Team reconvened on May 3, 2023, the BOCES quickly provided a copy of that IEP to Student B's Parents on May 16, 2023. (FF # 33.)

While the IDEA does not require an IEP to be provided within a specific timeframe, the SCO finds the BOCES' delays—which range from nearly two months to five months—are unacceptable in the context of a nine-month school year. Prior CDE state-level complaint decisions support this conclusion. *See, e.g., St. Vrain Valley Sch. Dist. RE-1J*, 122 LRP 12570 (SEA CO 2/15/22) (finding a two-month delay a violation of the IDEA); *Durango Sch. Dist. 9-R*, 122 LRP 13564 (SEA CO 2/4/22) (finding a ten-month delay a violation of the IDEA). The SCO finds and concludes that the BOCES failed to timely provide copies of the IEPs of Student A, Student B, and Student C to their parents, resulting in a procedural violation of 34 C.F.R. § 300.322(f).

A procedural violation causes a denial of FAPE where it “(1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

Here, the BOCES failures resulted in a denial of FAPE. Though Parents were participants at the IEP Team meetings, they never received the final version of Students' IEPs and, therefore, had no assurance that the resulting IEP matched the decisions made in the meeting. Given the concerns Parents expressed regarding Students' educational programming, it was of utmost importance that Parents receive a copy of their child's IEP. Indeed, “in enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.” *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017) (emphasis in original). For this reason, the SCO finds that the BOCES's failure significantly impeded Parents' opportunity to participate in the decision-making process regarding Students' FAPE. Parents exercised their procedural safeguards by filing this Complaint, so no further remedy is ordered to remedy the denial of FAPE.

**Conclusion to Allegation No. 4: The BOCES failed to establish and maintain qualifications to ensure that paraprofessionals were appropriately and adequately trained during the 2022-2023 school year, in violation of 34 C.F.R. § 300.156. This violation resulted in a denial of FAPE.**

The IDEA permits paraprofessionals who are appropriately trained and supervised to assist in the provision of special education. 34 C.F.R. § 300.156(b)(2)(iii); *Questions and Answers on Highly Qualified Teachers Serving Children with Disabilities*, Q-11, 47 IDELR 165 (OSERS 2007). In Colorado, individual school districts “determine the qualifications and competencies for paraprofessionals.” ECEA Rule 3.04(1)(e).

At the outset of the 2022-2023 school year, the paraprofessionals hired for the SSN classroom received only the most basic training that was also completed by all other District employees. (FF #s 42-43.) The training did not relate specifically to students with significant support needs and did little, if anything, to prepare paraprofessionals for their work in the SSN classroom. (*Id.*) For these reasons, the SCO finds and concludes that the BOCES failed to establish qualifications to ensure that paraprofessionals were appropriately trained, resulting in a procedural violation of 34 C.F.R. § 300.156.

As noted above, a procedural violation constitutes a denial of FAPE if the violation (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); see *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001). Here, the BOCES’ failure to adequately train the paraprofessionals in the SSN classroom affected implementation of Students’ IEPs and, in turn, Students’ ability to make progress on their annual goals. These impacts deprived Students of an educational benefit. For these reasons, the SCO finds and concludes that the BOCES’s violation resulted in a denial of FAPE.

**Compensatory Services: Students are entitled to compensatory services as a result of the BOCES’s violations.**

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the BOCES failed to provide Students with specialized instruction over the course of an entire school year. Other violations—such as the failure to make Students’ IEPs accessible or to have annual goals in Student B’s IEP—only duplicated the harm caused to Students by the failure to provide specialized instruction. Students’ lost specialized instruction totals at least 360 hours

per Student, if not more. Taking into consideration Students' needs and stamina, the SCO orders the BOCES to provide Students with 180 hours of compensatory services each.

**Systemic Nature of Violations: This investigation identified violations that are systemic and likely to impact the future provision of services for all children with disabilities in the BOCES if not corrected.**

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, the BOCES' failures (except paraprofessional training) stemmed from the District placing SSN Teacher in a different position than the one for which he was hired. (FF # 9.) The District assigned SSN Teacher to the SSN classroom even though he felt he did not have the skills, staff, or support to do the job. (*Id.*) As a result, Students' IEPs were not properly developed or reviewed, Students' IEPs were not properly implemented, and Students did not receive the instruction to which they were entitled. Ordinarily, this would lead the SCO to conclude that the violations were not systemic, because they could be tracked to a single staff member.

However, upper-level administrators—including Former Principal, Former Director, and, perhaps, Superintendent—were aware of concerns regarding the SSN classroom and failed to take any action to change the trajectory of the school year. Even after SSN Teacher resigned, Interventionist acted as a mentor to paraprofessionals but did not take over SSN Teacher's responsibilities. (FF # 56.) No one in the District stepped up to teach in the classroom full-time or even handle progress monitoring. (*Id.*) The lack of action by District administration allowed the violations to occur (and continue occurring). The SCO understands that many of these administrators are no longer with the District; however, the SCO cannot assume that their departure alleviates the risk of recurrent violations. For these reasons, the SCO finds and concludes that the violations in this investigation are systemic in nature.

### **REMEDIES**

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

- Failed to include annual goals in Students' IEPs, in violation of 34 C.F.R. § 320(a)(2);
- Failed to review the IEPs of Student A, Student B, and Student D at least annually, in violation of 34 C.F.R. § 300.324(b);

- Failed to review and revise, as necessary, Students’ IEPs based on information shared by Parents, in violation of 34 C.F.R. § 300.324(b);
- Failed to properly implement Students’ IEPs, in violation of 34 C.F.R. § 300.323;
- Failed to make Students’ IEPs accessible to staff, in violation of 34 C.F.R. § 300.323(d);
- Failed to provide periodic reports on Students’ progress, in violation of 34 C.F.R. § 300.320(a)(3)(ii); and
- Failed to ensure paraprofessionals were appropriately trained, in violation of 34 C.F.R. 300.156.

To remedy these violations, the BOCES and District are ORDERED to take the following actions:

**1. Corrective Action Plan**

- a. By **Friday, January 26, 2024**, the BOCES and District shall submit to the CDE a corrective action plan (“CAP”) that adequately 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 Students and all other students with disabilities for whom the BOCES and District are responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the timely correction of the areas of noncompliance.

**2. Final Decision Review**

- a. BOCES Director, District’s Current Director, and all School special education and related services staff shall review this Decision, as well as the requirements of 34 C.F.R. §§ 300.156, 300.320, 300.323, 300.324(b). This review must occur no later than **Friday, February 2, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Monday, February 5, 2024**.

**3. Training**

- a. BOCES Director, Current Director, and all special education teachers at School must attend and complete training provided by the CDE on proper development of annual goals for students with significant needs. If these individuals are no longer employed by BOCES or District, BOCES or District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This

training will address, at a minimum, the requirements of 34 C.F.R. § 300.320(a)(2) and the related concerns addressed in this Decision.

- b. BOCES Director, Current Director, and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. The training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.
- c. Such training shall be completed no later than **Friday, February 23, 2024**. Evidence that this training occurred must be documented (i.e. training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to the CDE no later than **Monday, February 26, 2024**.

#### **4. Compensatory Education Services for Students for Denial of a FAPE**

- a. Each Student named in the Complaint shall receive **180 hours of individualized specially designed instruction** provided by a District special education teacher, a District paraprofessional under the supervision of a District special education teacher, or through a contract between the District and a suitable provider at the District's expense. All 180 hours must be completed by **Friday, December 20, 2024**.
  - i. These compensatory services are separate from and in addition to any compensatory services Students received during Summer 2023.
  - ii. The District shall offer to provide a portion of Students' compensatory services through a specially designed program during Summer 2024. District staff shall develop the program based on Students' individualized needs, and the program shall target Students' annual goals.
- b. By **Friday, March 29, 2024**, the District shall schedule compensatory services in collaboration with each Student's Parent(s). A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Friday, April 5, 2024**. If the District and Parent(s) cannot agree to a schedule by May 16, 2023, the CDE will determine the schedule for compensatory services by **Friday, April 26, 2024**.

- i. The parties shall cooperate in determining how compensatory services will be provided. If Parent(s) refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent(s) and documents such efforts. A determination that the District diligently attempted to meet with Parent(s), and should thus be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parent(s) may opt out of some or all of the compensatory services.
- c. Monthly consultation between the provider(s) delivering compensatory services, Student's case manager, and Current Director shall occur to evaluate each Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred by **the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- d. To verify that Students have received the services required by this Decision, the District must submit records or service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- e. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. If for any reason, including illness, any Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent(s) and notify the CDE of the change in the appropriate service log.
- f. These compensatory services must be provided to Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Students are not deprived of the instruction Students are entitled to receive during the school day (including time in general education).

## 5. IEP Team Meeting

- a. The District must convene Students' IEP Teams, at mutually agreeable dates and times, by **Friday, March 8, 2024**. In consideration of the above training, Students' IEP Teams should review and revise, as necessary, Students' annual goals to ensure the goals are appropriately ambitious to allow Students to make progress in the general education curriculum or meet their needs resulting from their disabilities and consistent with 34 C.F.R. § 300.320(a)(2).
  - i. If any Parent refuses to participate in the IEP Team meeting, the District may convene a meeting without her, provided the District diligently attempts to secure Parent's participation at a mutually agreeable time and place and documents such efforts. A determination that the District diligently attempted to secure Parent's participation rests solely with the CDE. Regardless, unless Students are withdrawn from the District, the District must still convene Students' IEP Teams.
- b. By **Friday, March 22, 2024**, the District must provide notice of the IEP Team meetings, a signature page from each IEP Team meeting, and a finalized IEP to the CDE Special Education Monitoring and Technical Assistance Consultant.

## 6. Technical Assistance

- a. Education Consultant, Current Director, and School's SSN classroom teacher(s) shall participate in ongoing training and technical assistance ("TA") with Consultant at the District's expense. This TA shall, at a minimum, provide the District support with ongoing development of programming for the SSN classroom or development of IEPs for students in the SSN classroom.
  - i. Education Consultant and District staff must engage in at least 90 minutes per month of TA during the school year. This time must be in addition to any ongoing services between the District and Education Consultant. All time must be directly related to School's SSN classroom and its students.
  - ii. Director will keep a log of these sessions, including date, length, and subject of session, as well as any agreed upon action items. The District must submit an updated log by **the second Monday of each month**, once TA has begun, through December 2024.
  - iii. TA sessions will continue at **least monthly through December 2024**.
  - iv. If Education Consultant cannot or will not provide the ongoing TA for any reason, the District shall locate a suitable replacement to provide the TA.

As soon as possible, the District shall notify CDE that Education Consultant cannot or will no longer be providing TA and identify the District's proposed replacement. The CDE will approve or deny the proposed replacement within two weeks.

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

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

**NOTE:** Failure by the BOCES or the District to meet any of the timelines set forth above may adversely affect the BOCES's or the District's annual determination under the IDEA and subject the BOCES or the District to enforcement action by the CDE.

#### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 23rd day of December, 2023.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-6

- Exhibit 1: Photographs
- Exhibit 2: Email correspondence
- Exhibit 3: Student A's IEPs
- Exhibit 4: Email correspondence
- Exhibit 5: Student B's PWNs
- Exhibit 6: Student B's remedial plan
- Exhibit 7: Student B's regression analysis
- Exhibit 8: Student B timeline of events
- Exhibit 9: Student B daily logs
- Exhibit 10: Student B transcript
- Exhibit 11: Photographs
- Exhibit 12: Student C timeline of events
- Exhibit 13: Email correspondence
- Exhibit 14: Photographs
- Exhibit 15: Peer mentor notes
- Exhibit 16: Other statement
- Exhibit 17: Other statement

### Response, pages 1-19

- Exhibit A: Student A's IEPs
- Exhibit B: Blank
- Exhibit C: Student A's service logs
- Exhibit D: Student A's progress monitoring reports/data
- Exhibit E: Student A's schedule, grades & attendance reports
- Exhibit F: Blank
- Exhibit G: Student A's Notices of Meeting
- Exhibit H: Student A's PWNs
- Exhibit I: Email correspondence
- Exhibit J: Student B's IEPs
- Exhibit K: Student B's FBA
- Exhibit L: Student B's service logs
- Exhibit M: Student B's progress monitoring reports/data
- Exhibit N: Student B's schedule, grades & attendance reports
- Exhibit O: Blank
- Exhibit P: Student B's Notices of Meeting
- Exhibit Q: Student B's PWNs
- Exhibit R: Email correspondence
- Exhibit S: Student C's IEPs

- Exhibit T: Student C's BIPs
- Exhibit U: Student C's service logs
- Exhibit V: Student C's progress monitoring reports/data
- Exhibit W: Student C's schedule, grades & attendance reports
- Exhibit X: Blank
- Exhibit Y: Student C's Notices of Meeting
- Exhibit Z: Student C's PWNs
- Exhibit AA: Email correspondence
- Exhibit BB: Student D's IEPs
- Exhibit CC: Blank
- Exhibit DD: Student D's service logs
- Exhibit EE: Student D's progress monitoring reports/data
- Exhibit FF: Student D's schedule, grades & attendance reports
- Exhibit GG: Blank
- Exhibit HH: Student D's Notices of Meeting
- Exhibit II: Student D's PWNs
- Exhibit JJ: Email correspondence
- Exhibit KK: Paraprofessional training documents
- Exhibit LL: Applicable BOCES and District procedures

**Reply, none submitted, only additional exhibits**

- Exhibit 18: Student D's reply
- Exhibit 19: Student B's reply
- Exhibit 20: Email correspondence
- Exhibit 21: Student A's reply

**CDE Exhibit 1**: District press release

**Telephonic Interviews**

- BOCES Director of Special Education: November 16, 2023
- Current Director of Exceptional Student Services: November 16, 2023
- Paraprofessional 1: November 16, 2023
- Paraprofessional 2: November 16, 2023
- Paraprofessional 3: November 14, 2023
- Parent of Student A: November 28, 2023
- Parents of Student B: November 21, 2023
- Parent of Student C: November 20, 2023
- Parent of Student D: November 17, 2023
- Special Education Interventionist: November 16, 2023
- Special Education Teacher: November 17, 2023
- SSN Teacher: December 16, 2023