

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

State-Level Complaint 2024:543
Northwest Colorado BOCES

DECISION

INTRODUCTION

On April 16, 2024, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Steamboat Springs School District (“District”), a member district of the Northwest Colorado BOCES (“BOCES”). The State Complaints Officer (“SCO”) determined that the Complaint identified three 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. Therefore, the SCO has jurisdiction to resolve the Complaint.

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 April 16, 2023 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 BOCES denied Student a Free Appropriate Public Education (“FAPE”) because BOCES:

1. Convened an IEP Team meeting in December 2023 without all required IEP Team members, specifically a general education teacher, in violation of 34 C.F.R. § 300.321.
2. Failed to develop, review, and revise an IEP that was tailored to meet Student’s individualized needs from December 2023 to present, specifically by:

¹ 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.

- a. Failing to consider the concerns of the Parents for enhancing the education of Student—specifically as it relates to one-to-one staff support—in violation of 34 C.F.R. § 300.324(a); and
 - b. Failing to consider the academic, developmental, and functional needs of Student—specifically by removing one-to-one staff support from the IEP—in violation of 34 C.F.R. § 300.324(a).
3. Failed to properly implement Student’s IEP during the 2023-2024 school year, in violation of 34 C.F.R. § 300.323, specifically by:
- a. Failing to make Student’s IEP accessible to the teachers and service providers responsible for its implementation;
 - b. Failing to ensure Student participated in a work readiness internship as required by the IEP from August 2023 to December 2023; and
 - c. Failing to properly monitor Student’s progress on annual IEP goals for decoding and spelling and provide Parents with periodic reports on Student’s progress on these annual goals, as required by the IEP from November 2023 to February 2024.

FINDINGS OF FACT

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

A. Background

1. Student is seventeen years old and, during the 2023-2024 school year, is in the eleventh grade at a school (“School”) in District. *Exhibit A*, p. 42. District is a member of the BOCES. *Response*, p. 1. BOCES is responsible for providing FAPE to all IDEA-eligible children with disabilities attending school in its member districts. ECEA Rule 2.02.
2. Student is identified as a child who is eligible for special education and related services under the category of Autism Spectrum Disorders (“ASD”). *Exhibit A*, p. 42.
3. Student is a “very willing” and “excited student” who loves going to school every day. *Interview with Parent*. Student is a great athlete who enjoys running, biking, and Nordic skiing. *Interviews with Parent, Assistant Principal, and Special Education Director*.
4. He has trouble understanding social boundaries with female students. *Interviews with Parent and Assistant Principal*. He also struggles academically, particularly with reading. *Interview with Parents*.

² The appendix, attached and incorporated by reference, details the entire Record.

B. Student's 2022 IEP

5. On December 13, 2022, a properly composed IEP Team convened for the annual review and revision of Student's IEP (the "2022 IEP"). *Exhibit A*, p. 1; *Interviews with Case Manager, Assistant Principal and Parents*.
6. The 2022 IEP reviewed Student's present levels of academic achievement and functional performance, documenting results obtained during the reevaluation. *Exhibit A*, pp. 5-7.
7. Student's IEP Team identified his present reading and decoding levels as approximately at a third-grade level compared to his peers. *Id.* at 6. Further, his 2022 IEP noted that Student was challenged with reading comprehension at this level. *Id.*
8. The IEP team determined that he benefits from a highly structured school routine with paraprofessional support throughout the day for academic and social skills support. *Id.* at p. 9. His daily school routine includes targeted one-to-one instruction in reading, writing, math, Autism Curriculum Encyclopedia ("ACE") skills acquisition, selected general education academic classes with modifications to ability level, and elective classes. *Id.*
9. The 2022 IEP documented Parent's input from the reevaluation, such as that "[Student] enjoys school and is motivated to learn, socialize, and engage in athletics. Parents identify social awareness (especially with girls), interrupting with perseverative questions (driven by underlying anxieties), an ongoing obsession with death, reading comprehension (rushing through books) and voice volume challenges for [Student]." *Id.* at p. 9.
10. The 2022 IEP included annual goals in the area of reading, written language, writing, mathematics, speech/language, social communication and behavior. *Id.* at pp. 14-30.
11. The 2022 IEP contained the following annual goals and objectives that are relevant to the accepted allegations:
 - a. Goal #1 (Reading): "[Student] will increase his reading fluency skills by doing the following:
 - i. Maintaining >90% independent mastery on ACE 1916 Decoding Maintenance." *Id.* at 14.
 - ii. Maintaining >90% independent mastery on ACE 1858 Spelling Maintenance." *Id.* at 14.
 - iii. Decoding written multiple syllable words by blending the graphemes to read the word aloud 89% of opportunities for 3 consecutive sessions with at least 10 words for each digraph on ACE 1916. *Id.* at 16.

- iv. Spelling multiple syllable words in 89% of opportunities for 3 consecutive session(s) with 15 words on ACE 428. *Id.*
 - b. Goal #2 (Transition): In order to be prepared for post-secondary employment, [Student] with support will participate in varied work-based learning and community engagement activities in his local community
- 12. Per the 2022 IEP, Parents were to receive quarterly progress reports on annual goals. *Id.* at pp. 14-18.
- 13. The 2022 IEP contained accommodations to help Student access the general education curriculum. *Id.* at 31. Those accommodations included audiobooks or text to speech to adapt to reading level, manipulatives for math, and allowing for repetitive learning opportunities. *Id.* at 31. Student also needs a 1-on-1 paraprofessional throughout the day for educational and social skills support. *Id.* at pp. 9, 35.
- 14. The 2022 IEP provided the following specially designed instruction: (a) 450 minutes/week (direct) and 30 minutes/week (indirect) of Accessing Instruction General Education classes, (b) 1350 minutes/week (direct) and 30 minutes/week (indirect) of Academics, Modified ELA, Math and ACE Programming, and (c) 375 minutes/week (direct) of Adult Support Supervision/Social Skills. *Id.* at 35. The noted service provider for subsections (a) through (c) is a special education teacher or a paraprofessional under the director supervision of a special education teacher (“Resource Team Member”). *Id.*

One-on-One Paraprofessional Support Under the 2022 IEP

- 15. Under the 2022 IEP, all of Student’s instruction besides psychology, speech language, and occupational therapy, were to be delivered by a Resource Team Member. *Exhibit A*, pp. 35-36. The IEP noted that Student also needs “1:1 adult support and/or supervision to maintain appropriate interactions with other peers.” *Id.* at 8.
- 16. In the 2022 IEP, the title of 1:1 para/adult support was used interchangeably with a one-to-one resource member. *Id.* at pp. 1 to 38. It should be noted, that in both instances, Student was directly supported by a para or resource team member with no other students present. *Interviews with Parent and Special Education Director.* Furthermore, a Resource Team Member is defined as a special education teacher or a paraprofessional who works under the supervision of a special education teacher.

C. Student’s 2024 IEP

- 17. Parents, Special Education Consultant for BOCES and Case Manager met on December 7, 2023 for a two-hour meeting, prior to the December 19, 2023 IEP meeting, to discuss present levels and reports. *Exhibit D*, p. 2. This meeting was by parent request to allow time to go over Student’s evaluation and testing data in detail without having the entire IEP Team in

attendance. *Id* at 2; *Exhibit K*, p. 20. Student's current goals and service delivery were discussed briefly, but not finalized. *Exhibit D*, p. 2.

18. On December 19, 2023, January 17, 2024, and January 29, 2024 a properly composed IEP Team convened for the annual review and revision of Student's IEP (the "2024 IEP"). *Exhibit A*, pp. 40, 44; *Interviews with Case Manager, Assistant Principal and Parents*.

D. IEP Team Compositions

19. Parents' concern is that BOCES convened an improper IEP Team, which consisted of General Education Teacher 2 attending meetings as a substitute for General Education Teacher 1, during two continuing IEP Team Meetings on January 17, and January 29. *Exhibit C.1, C.2, C.3, and C.4*. Parents contend that General Education Teacher 2 should not have been able to attend 2 out of 3 of the IEP Team meetings because he is not familiar with student. *Id*.

December 19, 2023 IEP Team

20. The following participants were present at the December 19, 2023 IEP meeting ("First Meeting"): Parents, Student's Grandmother, Student, Special Education Teacher 1/Case Manager, General Education Teacher 1, School Psychologist, Speech and Language Pathologist, DVR Counselor, Parent Advocate 1, Parent Advocate 2, Occupational Therapist, Assistant Principal, Assistant Special Education Director, and Special Education Director. *Exhibit A*, pp. 3-4, 44; *Exhibit C.1 and C.2*. The meeting was facilitated by a CDE facilitator who is not a member of the IEP Team. *Id*.

21. While present at the meeting, General Education Teacher 1 spoke about Student's strengths and how he was progressing in his weight training class. *Exhibit C.2* at 45:17. General Education Teacher 1 spoke about the friends that Student made in Teacher's classroom, and how he set up Student's weightlifting program by incorporating Student's knowledge of Nordic skiing and running into some of Student's weightlifting routines. *Id*. General Education Teacher 1 stated that Student was able to go through his routine on his own, sometimes taking breaks to socialize. *Id*. The portion of Student's IEP that was relevant to General Education Teacher 1 was discussed in its entirety during First Meeting. *Id*.

January 17, 2024 IEP Team

22. On January 2, 2024, Parents sent an email to the other members of Student's IEP Team requesting that they change the continued meeting to a later date. *Exhibit K*, p. 24. The IEP Team decided on January 17 as the new meeting date. *Id*.
23. The following participants were present at the January 17, 2024 IEP meeting ("Second Meeting"): Parents, Student's Grandmother, Special Education Teacher 1/Case Manager, General Education Teacher 2, School Psychologist, Speech and Language Pathologist, DVR Counselor, Parent Advocate 1, Parent Advocate 2, Parent Advocate 3, Occupational Therapist,

DVR Counselor, Special Education Consultant for District, Assistant Principal, and Special Education Director. *Exhibit C.3. Exhibit A*, p. 44. The meeting was facilitated by a CDE facilitator who is not a member of the IEP Team. *Id.*

24. Parents agreed with BOCES' request to excuse General Education Teacher 1 for the Second Meeting and stated that "out of respect for [General Education Teacher 1's] time, [we] would be willing to sign an excusal form." *Reply*, p. 1.

January 29, 2024 IEP Team

25. The following participants were present at the January 29, 2024 IEP meeting ("Third Meeting"): Parents, Special Education Teacher 1/Case Manager, General Education Teacher 2, Parent Advocate 1, Parent Advocate 2, Parent Advocate 3, Assistant Principal, and Special Education Director. *Exhibit C.4; Exhibit A*, p. 44. The meeting was facilitated by a CDE facilitator who is not a member of the IEP Team. *Id.*
26. During the Third Meeting, after a review of the second page of the IEP where participants who composed Student's IEP Team were listed, Parents stated that General Education Teacher 2, who had also attended the Second Meeting, was not, and had never been, Student's general education teacher. *Exhibit C.4 3:58*. They also expressed concerns about not being able to sign an excusal for the General Education Teacher 1 for the Third Meeting. *Id. at 5:13*.
27. General Education Teacher 2 is certified in general education. *Id. at 4:34*. General Education Teacher 2 had been Student's special education teacher a year prior since he is dual-certified. *Interview with Special Education Director*. Additionally, Special Education Director stated that she and General Education Teacher 2 co-facilitate meetings with the various special education teachers and paraprofessionals to discuss student needs and concerns. *Id.*
28. The next concern for Parents arising under Student's 2024 IEP is the modification of Student's one-to-one Support.
29. Student's IEP Team determined that Student has shown advancement in his reading skills from his previous IEP and that as Student prepares for transition to adulthood, the focus should begin to shift to job readiness and independent living skills for his reading skills. *Id.*
30. The IEP Team determined that he benefits from a highly structured school setting with a resource teacher's support throughout his school day for academic and social skills support. *Id. at 51*. His daily routine includes targeted instruction by a resource team member in reading, writing, math, ACE skills acquisition, selected general education academic classes with modifications to ability level, and elective classes. *Id. at pp. 51-52*.
31. The 2024 IEP includes annual goals in the areas of relationship management, postsecondary transition/life skills, maintenance of math and reading skills, increase functional math skills,

increase literacy skills as Student prepares for adulthood, health and safety, and social/behavioral. *Id.* at pp. 14-30.

32. Per the 2024 IEP, Parents will be notified of their child's progress on his annual goals at the end of each grading period and by quarterly reports. *Exhibit A*, pp. 39-45.
33. The 2024 IEP contains a Parent Input section with the following information that is relevant to the accepted allegations:
 - a. Parents requested Student be in general education classes where his one-to-one paraprofessional can have a good relationship with the teacher. *Id.* at p. 53.
 - b. Parent requested that the discontinuation of the one-to-one support partner without adequate data to support that the same amount of academic growth can be made with a significant decrease in support. *Id.*
34. The 2024 IEP provided the following specially designed instruction: (a) 440 minutes/week (direct) of Accessing Instruction General Education classes, (b) 200 minutes/week of Lunch with peers in the cafeteria, (c) 700 minutes/week (direct) of Academics, Modified ELA, Math and ACE Programming, and (d) 430 minutes/week of Functional Skills: Transitional Life Skills & Vocational Skills, Transition support during the school day. *Id.* at 81. The noted service provider for subsections (a) through (d) is a special education teacher or a paraprofessional under the direct supervision of a special education teacher ("Resource Team Member"). *Id.*
35. The 2022 IEP was in effect from December 13, 2022 through February 3, 2024. *Id.* at pp. 1, 42. The timeframe of the accepted allegations spans from August 2023 through May 2024, both Students 2022 IEP and 2024 IEP were in effect for a portion of the relevant period. *Id.*

E. One-to-One Support in Student's IEP

36. Parents allege that during the First Meeting on December 19, 2023, BOCES "unilaterally decreased [Student's] one-to-one paraprofessional support without comprehensive data." *Complaint*, p. 1.
37. BOCES denies that it removed Student's paraprofessional support unilaterally; rather, it is BOCES' position that District members of the IEP Team proposed, and Student's Parents agreed, that Student did not require a one-to-one during the entire school day due to his current needs and IEP goals. *Response*, p. 4; *Exhibit C.4*, at 19:17 to 22:47. Furthermore, BOCES contends that Student's one-on-one support was not entirely removed; rather, he was put under the supervision of a resource team member who had at most, one other student to support. *Interviews with Special Education Director, Assistant Principal, and Case Manager*.
38. Student's needs for a one-to-one professional are addressed under both his 2022 and 2024 IEP, as well as his Behavior Intervention Plan ("BIP").

Prior Written Notice

39. The catalyst underlying Parents' allegations regarding one-to-one support was a draft IEP that was sent to Parents less than a week prior to the First Meeting, wherein that draft IEP, all language referring to Student having a one-to-one paraprofessional at school had supposedly been removed without a proper Prior Written Notice ("PWN"). *Interviews with Parents and Special Education Director; Exhibit 3.*
40. The SCO finds that no one-to-one paraprofessional support had been removed as of the December 19 IEP meeting and Student's 2024 IEP was not yet finalized; therefore, no PWN was necessary at that time. *Interview with Special Education Director.*
41. According to a January 17 PWN, Student's IEP Team had discussed BOCES' recommendation for Student to receive academic instruction support by a resource team member (who would also support one other student), instead of sole one-to-one paraprofessional support. *C.4 at 19:17 to 22:47; Exhibit D, p. 7.* Parents agreed to BOCES' proposal to remove the one-to-one support for academic instruction, but only if Student used a checklist and recorder on his maintenance goals as it would help Student build independence in lieu of having one-to-one support like he had under his 2022 IEP. *C.4 at 19:17 to 22:47; Exhibit D, p. 7.* Parents and BOCES did not come to an agreement about the use of a one-to-one resource team member or one-to-one paraprofessional for Student's growth objectives which are distinguished from Student's maintenance objectives. *Id.*
42. BOCES agreed to provide Student with a checklist and a recorder as accommodations for his maintenance goals in place of one-to-one support. *Id.*

One-to-One Paraprofessional Support Under the 2024 IEP

43. Per Student's 2024 IEP which was eventually finalized on February 3, 2024, all of Student's instruction besides psychology, speech language, and occupational therapy, was to be delivered by a Resource Team Member. *Exhibit A, pp. 81.* The 2024 IEP noted that "Parent acknowledged that [Student] does not require 1:1 resource team member support from a Resource Team member when he is working on several of his IEP goals." *Id.* at p. 82.
44. In its assessment of Student's need for continued 1-on-1 paraprofessional support, BOCES indicated that in an attempt to increase Student's independence, an analysis was conducted of Student's day, minute by minute, including lunch time and all courses, which allowed BOCES to identify two hours a day (lunch and ACE lesson) where they could have another peer and a resource team member in the space with Student. *Interview with Special Education Director.* That analysis included utilizing a student needs form/rubric which would determine the level of support Student required throughout the day. *Interview with Assistant Principal.* The rubric BOCES utilized captured both instructional and health and safety related indicators. *Id.; Exhibit A, pp. 85-87.*

45. BOCES' assessment was bolstered by recommendations from a Special Education Consultant for BOCES who said that Student could benefit from having another peer in proximity for more enriching conversations and to work on his social skills. *Id.* Additionally, BOCES looked at some of Student's classes and goals, specifically, BOCES knew that several goals around the ACE curriculum would be changing and therefore a one-to-one aid's support could be decreased to support that. *Interviews with Special Education Director and Assistant Principal; Exhibit A, pp. 80-83.*
46. The SCO finds that BOCES' decision to remove Student's one-to-one support as it pertains to academic instruction and social skills was based on a variety of factors including: BOCES' own assessment of Student's academic needs which derived from the results of a student needs rubric, a meaningful consideration of Parents' concerns and questions regarding the data to support Student's one-to-one removal, and supporting evidence obtained from Special Education Consultant for District.

F. Implementation of the 2022 IEP

Accessibility to Student's Teachers

47. IEPs are presented to teachers and service providers at the beginning of every school year and included in a binder in the resource room. *Interviews with Special Education Director, Assistant Principal, and Case Manager.* Every teacher, service provider, and paraprofessional who works with students in the resource room is trained on the location and use of the binder. *Id.*
48. General education teachers and parents regularly collaborate with Case Manager regarding needs and services of IDEA-eligible students. *Interview with Case Manager.* Case Manager uploads snapshot copies of the IEPs to the BOCES' student record management system, where teachers and staff can and do access the snapshot IEPs. *Interviews with Case Manager and Special Education Director.*
49. The email records provided during the course of this investigation demonstrate that, on multiple occasions, Parents, Assistant Principal, Case Manager, Special Education Director, and DVR Counselor exchanged email correspondence in an effort to ensure that Student's IEP was being implemented properly. *Exhibit K, p. 24.*
50. The SCO finds, based on the practice of keeping each IEP in a binder in the resource room, the regular and consistent communication between Student's IEP Team members, and the presence of snapshot copies of IEPs in the record management system, BOCES appropriately informed Student's instructors of their responsibilities under the 2022 IEP.

Work Readiness Programming

51. Parents contend that Student did not participate in District’s School to Work Alliance Program (“SWAP”) from August 2023 to December 2023, which was a component of Student’s postsecondary transition plan providing him with the opportunity to participate in work readiness internships while at School. *Complaint*, p. 1. Parents’ state that Student had been left in the resource classroom during the afternoons that he was scheduled to do work-based learning (“WBL”). *Interview with Parents; Reply*, p. 1; *Exhibit 5*, p. 6.
52. BOCES position is that there was an original plan to have Student participate in SWAP as he had done over the summer, but that due to staffing shortages with SWAP, Student instead worked through a program called True North, which contracts with DVR. *Response*, p. 6.
53. The 2022 IEP provided, “in order to be prepared for post-secondary employment, with support Student will participate in varied work-based learning and community engagement activities in his local community.” *Exhibit A*, p. 12, 30. Student’s score for his transition goal was a “1” on October 19, 2023, meaning “Student did not work on this goal.” *Id.* The evaluation method that Student’s IEP team selected to measure his progress on transition goals included weekly work-based learning and community engagement activities. *Id.*
54. On September 6, 2023, Parents emailed Special Education Director, Assistant Principal, Case Manager, and DVR Counselor regarding Student’s inability to be placed in a WBL program since the beginning of the school year, which amounted to almost five weeks of missed work-based learning. *Exhibit 5*, p. 1; *Exhibit 1*. Parents indicated they would continue to make weekly check-ins to ensure progress was being made on locating a placement for him. *Id.*
55. Assistant Principal suggested that the reason Student had been out of WBL was because Student was “not quite ready” for the grocery store job that Parents and Case Manager had previously discussed. *Exhibit 5*, p. 2. Assistant Principal indicated that there was an opportunity for Student to take a WBL job at iTrips. *Id.* Parents were not agreeable to iTrips because that placement was not as community facing and physically demanding as a job at the grocery store would have been and it did not relate to Student’s transition goals. *Interview with Parents*.
56. On September 11, 2023, Special Education Director informed Parents that Student would not be able to pursue WBL opportunities at this time and that instead Student would be participating in community engagement activities in the school setting. *Exhibit 5*, p. 4. The activities that Student would be participating in included skill development in the school environment, school-based lessons around job-related skills development, and access to SWAP Coordinators through BOCES. *Id.*
57. On September 19, 2023, Parents informed Special Education Director, Assistant Principal, and Case Manager of a WBL opportunity with a job coach through True North. *Exhibit 6*, p. 1. Student then began participating in WBL and community engagement activities with his job coach around that time. *Reply*, pp. 4-5; *Exhibit 6*, p. 1. Student had been without any work or

community engagement activities for at least five weeks from August 21, 2023 until September 19, 2023. *Exhibit I*.

58. Based on the credible evidence in the record, SCO finds that Student's IEP was not implemented from August 2023 to September 2023 because he was not able to pursue work-based learning and community engagement opportunities. Furthermore, Student missed two hours twice a week for a total of four hours per week of WBL (four hours per week multiplied by five weeks amounts to 20 hours of total missed hours). *Exhibit 4*.

Progress Monitoring and Reporting on Decoding Annual Goal

59. Parents' concern is that Student did not work on his annual reading goal from November 2023 to February 2024. *Complaint*, p. 1; *Interview with Parents*. Specifically, Parents allege that BOCES did not implement the following objective included in Student's 2022 IEP:

- a. Decoding written multiple syllable words by blending the graphemes to read the word aloud 89% of opportunities for 3 consecutive sessions with at least 10 words for each digraph on ACE 1916. *Exhibit A*, at 16.

60. Per the 2022 IEP, Parents were to receive quarterly progress reports on his reading goal and this objective. *Id.* at pp. 14-18.

61. Parents stated that Student's reading goal and objectives were not being worked on after the departure of Student's former case manager on October 19, 2023. *Interview with Parents*. Furthermore, Parents also allege that they had not been provided with weekly reports of Student's progress in these areas. *Interview with Parents; Complaint*, p. 1.

62. BOCES contends that Student's new Case Manager tracked Student's progress on his decoding maintenance and decoding multiple syllable words objectives almost daily, including from November 2023 to February 2024, and that Parents were provided with daily and weekly tracking sheets reflecting Student's progress toward these and other goals. *Response*, p. 6; *Exhibit G*, 14. Comments from Parents were written and acknowledged by Student's teachers on a majority of those daily progress reports. *Id.*

63. Student's 2022 IEP contained two distinct types of decoding objectives, Decoding Maintenance and Decoding Multiple syllable Words. *Exhibit A*, p. 14, 16.

64. The maintenance objective of ACE 1916 was independent mastery of previously mastered words. *Id.* at 14. The decoding multiple syllable words objective was intended to measure growth on ACE 1916. *Id.*

65. For decoding maintenance, Student's progress reporting showed that he scored a 3 on March 2nd, June 2nd, and October 18th. *Id.* On Student's last reporting date January 21, 2024, before his new 2023-2024 IEP was implemented, his decoding maintenance score on ACE 1916 had risen to a 4, indicating progress on this goal. *Id.* at 14; *Exhibit G*, p. 9.

66. For decoding multiple syllable words, Student's progress reporting showed that he scored a 3 on March 2nd, and June 2nd. *Id.* at 16. For the October 18th and January 21st reporting periods, and before his new 2023-2024 IEP was implemented, Student's score had risen to a 4, indicating progress on this goal. *Id.* at 16; *Exhibit G*, p. 10.
67. The credible evidence in the record supports a finding that Student worked on his multiple syllable words decoding objective from the week of November 6, 2023 until January 9, 2024, when it was decided that he met or exceeded his growth goals and therefore Student could only continue working on decoding maintenance and mastery. *Id.*
68. The SCO further finds that Student's progress reports were delivered consistent with the 2022 IEP Service Delivery Statement and progress reporting procedures selected by Student's IEP Team. *Exhibit A*, p. 35; *Exhibit G*, pp. 9, 10.

Progress Monitoring and Reporting on Spelling Goals

69. Parents allege that Student did not work on this objective for his annual reading goal:
- a. Spelling multiple syllable words in 89% of opportunities for 3 consecutive session(s) with 15 words on ACE 428. *Exhibit A*, p. 14-16.
70. Per the 2022 IEP, Parents were to receive quarterly progress reports on his reading goal and this objective. *Id.* at pp. 14-18.
71. BOCES contends that Student's new Case Manager tracked Student's progress on his spelling maintenance and spelling growth objectives almost daily, including from November 2023 to February 2024, and that Parents were provided with daily and weekly tracking sheets reflecting Student's progress toward these and other goals. *Response*, p. 6; *Exhibit G*, 14. Comments from Parents were written and acknowledged by Student's teachers on a majority of those daily progress reports. *Id.*
72. The 2022 IEP contained two distinct types of spelling objectives and goals, Spelling Maintenance and Spelling Progress. *Exhibit A*, p. 14, 16.
73. The maintenance objective of ACE 1858 was independent mastery of previously mastered words. *Id.* at 14. The spelling growth objective was intended to measure growth on ACE 428. *Id.* at 16.
74. For spelling maintenance, Student's progress reporting showed that he scored a 3 on March 2nd, June 2nd, and October 18th. *Id.* On Student's last reporting date, before his new 2023-2024 IEP was implemented, his spelling maintenance score on ACE 1858 had risen to a 4, indicating progress on this goal. *Id.* at 15; *Exhibit G*, p. 15.
75. For spelling growth, Student's progress reporting showed that he scored a 3 on March 2, a "1" on June 2, and a "3" on October 18. *Exhibit A*, p. 17. On Student's last reporting date

January 21, 2024, before his new 2023-2024 IEP was implemented, his spelling maintenance score on ACE 428 had risen to a 4, indicating progress on this goal. *Id.* at 17; *Exhibit G*, p. 15.

76. The credible evidence in the record supports a finding that Student worked on his spelling growth goals from the week of November 6, 2023 until January 9, 2024, when it was decided that he met or exceeded his growth goals and therefore Student could only continue working on spelling maintenance and mastery. *Id.*
77. The SCO finds that Student’s progress reports were delivered consistent with the 2022 IEP Service Delivery Statement and progress reporting procedures selected by Student’s IEP Team. *Exhibit A*, p. 35; *Exhibit G*, pp. 9, 10.

G. Implementation of the 2024 IEP

Accessibility to Student’s Teachers

78. IEPs are presented to teachers and service providers at the beginning of every school year and included in a binder in the resource room. *Interview with Special Education Director*. Every teacher, service provider, and paraprofessional who works with students in the resource room is trained on the location and use of the binder. *Id.* For the 2023-2024 school year, BOCES brought in a Special Education Consultant who sat with teachers and services providers and went over every Student’s IEP at School. *Interview with Special Education Director*.
79. Student’s 2024 IEP was developed over three different IEP Team meetings held on December 19, January 17, and January 29. *Exhibit E*, pp. 1-4.
80. The SCO finds, based on findings Nos. 24-26, the specialized training BOCES provided prior to the 2023-2024 school year, and the multiple meetings and pre-IEP meeting where Student’s IEP Team convened to discuss Student’s 2024 IEP, that BOCES appropriately informed Student’s instructors of their responsibilities under the 2024 IEP.

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 convened properly composed IEP Team meetings on December 19, 2023, January 17, 2024, and January 29, 2024, as required by 34 C.F.R. § 300.321. The BOCES complied with the IDEA.

A. IEP Team Meeting

Parents’ concern is that BOCES convened IEP Team meetings without including all required IEP team members on December 19, 2023, and two continued meetings on January 17 and January

29, 2024. Their concern specifically relates to General Education Teacher 1's absence from the meetings on January 17 and January 29.

The IDEA requires an IEP team to include:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) at least one special education teacher of the child;
- (4) a representative of the school district who:
 - i. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - ii. is knowledgeable about the general education curriculum; and
 - iii. is knowledgeable about the availability of resources of the public agency;
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6); and
- (6) At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (7) Whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a). The IDEA, therefore, differentiates between mandatory and discretionary members of an IEP team. *See Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16).

The individual chosen to serve as the general education teacher on a student's IEP team does not need to be the student's current teacher. However, the individual selected should have worked with the student. *A.G. v. Placentia-Yorba Linda Unified Sch. Dist.*, 52 IDELR 63 (9th Cir. 2009, unpublished).

In this case, BOCES ensured that at least one general education teacher was present at each of the three IEP Team meetings. (FF #s 19-25). General Education Teacher 1 was present for the First Meeting where he discussed Student's progress and goals in weight training. (FF #s 20-21). General Education Teacher 1 was not present at the Second Meeting because both BOCES and Parents agreed that he did not need to attend; indeed, General Education Teacher 2 attended in his place. (FF #s 22-25).

At the Third Meeting, Parents indicated that General Education Teacher 2 was not an appropriate member of the IEP Team because Student was not in his class. (FF #s 19, 26). However, there is

no requirement that General Education 2 be Student's current teacher. *A.G. v. Placentia-Yorba Linda Unified Sch. Dist.*, 52 IDELR 63 (9th Cir. 2009, unpublished). Nevertheless, the Record reflects that Student and General Education Teacher 2 were familiar with one another, as General Education 2, who is dual-certified, had been Student's special education teacher the year prior. (FF # 27). No excusal was necessary here for General Education Teacher 1 given General Education Teacher 2's attendance.

For these reasons, the SCO finds and concludes that the IEP team was properly composed on December 19, 2023, January 17, 2024, and January 29, 2024, as required by 34 C.F.R. § 300.321(a).

Conclusion to Allegation No. 2: BOCES developed, reviewed and revised an IEP from December 2023 to present that was tailored to meet Student's individualized needs, as required by 34 C.F.R. § 300.324. The BOCES complied with the IDEA.

Parents' concern is that Student's IEP did not meet his needs with respect to one-to-one support, specifically because the BOCES did not consider their concerns for enhancing the education of Student, and did not consider the academic, developmental, and functional needs of Student.

The IDEA requires a school 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. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

A. IEP Development Process

Apart from the issue raised by Parents regarding the attendance of a general education teacher in IEP meetings, they did not raise concerns regarding the IEP development process under the first prong. Furthermore, the SCO found that BOCES complied with the IDEA in terms of IEP team membership. Accordingly, the SCO turns directly to consider the second prong of whether Student's IEP was substantively adequate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of Student's IEP

i. Concerns of Parents

In developing a child's IEP, the IEP Team must consider the concerns of parents for enhancing the education of their child. 34 C.F.R. § 300.324(a)(ii). The IDEA requires that parental participation

be meaningful, to include carefully considering a parent’s concerns for enhancing the education of his or her child in the development of the child’s IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O’Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than “mere form.” *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.* Evidence that a district “was receptive and responsive at all stages” to the parents’ position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Here, the District members of Student’s IEP team proposed, and Parents agreed, that Student did not require the level of one-to-one support that Student was previously receiving under the 2022 IEP. (FF #s 36-42). This decision was the result of three IEP meetings wherein BOCES exhibited its willingness to listen to Parents concerns (FF #s 18, 19-27). Furthermore, the PWN captures Parents’ concerns regarding the lack of data to support the removal of one-to-one paraprofessional support, and how BOCES sought to address that concern through analyzing observational data obtained from a student needs rubric. (FF #s 39-42). Ultimately, Student’s final IEP reflects that his IEP team determined he would not qualify for one-to-support due to the data from the rubric, a meaningful consideration of Parents’ concerns and questions regarding the data to support Student’s one-to-one removal, and supporting evidence obtained from a third-party consultant. (FF # 46). Thus, because the BOCES complied with 34 C.F.R. § 300.324(a)(ii), the SCO finds and concludes the IEP was reasonably calculated to allow Student to make progress on annual goals and to be involved and make progress in the general education curriculum.

ii. Academic, Developmental, and Functional Needs of Student

In developing a child’s IEP, the IEP Team must consider the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(iv).

Here, Student exhibited significant growth in many of his 2022 ACE goals which prompted his IEP Team to assess whether it was necessary to have the same level of one-to-one paraprofessional support in his 2024 IEP to address his academic needs. (FF #s 43-45). Both BOCES and Parents felt that it was important for Student to learn how to function more independently, which was also a basis for the removal of his one-to one support. (FF # 44). For these reasons, the SCO finds and concludes that BOCES considered Student’s academic, developmental, and functional needs in developing his IEP. Thus, because the BOCES complied with 34 C.F.R. § 300.324(a)(iv), the SCO

finds and concludes the IEP was reasonably calculated to allow Student to make progress on annual goals and to be involved and make progress in the general education curriculum.

Conclusion to Allegation No. 3: BOCES properly implemented Student’s decoding, spelling and progress monitoring under the 2022 IEP from August 2023 to February 2024, as required by 34 C.F.R. § 300.323. However, BOCES did not implement Student’s transition services. A denial of FAPE occurred.

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).

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.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is 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).

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. However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

B. IEP Accessibility and Responsibilities

The SCO must first determine whether the BOCES satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Special Education Director, Assistant Principal, and Case Manager ensured School staff, including Student’s teachers and other relevant staff, were aware of their

responsibilities under Student’s 2022 and 2024 IEP as evidenced by BOCES’ practice of keeping each IEP in a binder in the resource room, the regular and consistent communication between Student’s IEP Team members, and the presence of snapshot copies of IEPs in the record management system (FF #s 47-49).

Case Manager and special education teachers collaborate frequently about Student, and both advocate for Student’s accommodations with his general education teachers. (FF # 49). The SCO therefore finds and concludes that BOCES ensured teachers and service providers working with Student were informed of their responsibilities under the 2022 and 2024 IEPs. (FF # 50).

C. 2022 IEP Implementation

Work-Based Learning

Parents allege that Student did not participate in any WBL or internships from August 2023 to September 2023 as required by the 2022 IEP. (FF #s 51-53). According to Student’s transition goals, Student was required to participate in “varied work-based learning and community engagement activities in his local community.” (FF # 53). Evidence in the record shows that Student went five weeks without WBL due to BOCES being unable to find a placement for him. (FF # 54). During those five weeks Student sat in the resource classroom not engaging in any type of WBL or community engagement activities. (FF # 51). Eventually Parents located a job coach and program for Student to pursue these opportunities outside the regular school setting. (FF # 55-57). Based on this information, the SCO finds that BOCES did not implement Student’s transition goals and services.

Monitoring and Reporting Progress on Decoding and Spelling Goals

Parents allege that Student did not work on his annual reading goal from November 2023 to February 2024, and that they did not receive progress reports for these goals. (FF #s 59-60). Specifically, Parents allege that Student did not work on the following objectives: 1. Decoding written multiple syllable words by blending the graphemes to read the word aloud 89% of opportunities for 3 consecutive sessions with at least 10 words for each digraph on ACE 1916; and 2. Spelling multiple syllable words in 89% of opportunities for 3 consecutive session(s) with 15 words on ACE 428. (FF #s 59, 69).

The evidence in the Record reflects data regarding Student’s work on decoding and spelling goals from November 2023 until February 2024. (FF #s 61-76). Not only had Student been working on these goals during that period, but Student also progressed from a three to a four in both goal areas until he eventually made progress that required his IEP Team to adjust his goals. (FF #s 65-66, 74-75). The evidence in the Record also reflects that Parents received quarterly progress reports consistent with the 2022 IEP. (FF #s 68, 77). Despite Parents stating that they had received weekly monitoring reports when Student’s DVR Counselor (and former case manager) was

overseeing this part of Student’s learning, the 2022 IEP did not require the provision of weekly progress monitoring reports.

For these reasons, the SCO finds and concludes that BOCES implemented the 2022 IEP with respect to monitoring and reporting progress on these goals, as required by 34 C.F.R. § 300.323.

D. Materiality of Not Implementing the IEP

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. However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App’x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services).

Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App’x 202, 205 (2d Cir. 2010). The omission of 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 ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, the transition goals in Student’s IEP stated that he would begin WBL and community engagement activities in his local community. (FF # 51). Student’s age is relevant to this inquiry because he is nearing his senior year when transition services and the ability to work and live in his local community is of prime importance. Because Student did not actually start those opportunities until at least five weeks after the start of the school year, the SCO finds that this was more than a minor discrepancy between the services described on the IEP and what was provided, resulting in a material failure to implement Student’s IEP. The resulted in a denial of

FAPE. This denial of FAPE entitles Student to an award of compensatory services. *See Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

E. Compensatory Education

Compensatory services are an equitable remedy designed to restore a student to the position they would be in if the noncompliance had not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018). The purposes of the IDEA guide compensatory awards, and those purposes include providing children with disabilities a FAPE that meets the particular needs of each 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 denied Student access to work-based learning under his transition services for from the beginning of the school year on August 21, 2023 until at least September 19, 2023 when Parents notified BOCES that they arranged for Student to begin work with True North. (FF #s 51-53, 58). The SCO finds and concludes that an award of 12 hours of work-based learning transition services is necessary to restore Student to the position he would be in but for the BOCES’ not implementing the IEP.

Systemic IDEA Concerns: This investigation does not demonstrate a concern that is systemic and will likely impact the future provision of services for all children with disabilities in District if not corrected.

Pursuant to its general supervisory authority, 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, Student’s specialized needs as it pertains to having a 1-on-1 paraprofessional to accompany him to a WBL placement that was tailored to allow him to work towards the specific goals of his transition services made locating a placement more challenging. BOCES had already begun taking steps to address the lack of paraprofessional support. (FF # 31). The SCO has found no evidence to support a finding that other students who are similarly situated would be prevented from accessing those transition services. Therefore, the SCO finds no systemic concerns.

REMEDIES

The SCO concludes that BOCES³ did not comply with the following IDEA requirements:

- a. Not properly implementing Student's IEP consistent with 34 C.F.R. § 300.323.

To demonstrate compliance, the BOCES and District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Friday, July 12, 2024**, District and BOCES shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violation 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 District is 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 District's timely correction of the areas of noncompliance.
- b. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. BOCES and District Special Education Director, Assistant Principal, and Case Manager must review this Decision. This review must occur no later than Friday, July 19, 2024. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than Friday, July 26, 2024.

3. Compensatory Education Services

- a. Student shall receive 12 hours of work-based learning and community engagement activities in his local community. These services must be designed to support Student's progress on his IEP goals. All 12 hours must be completed by January 12, 2025.
- b. By **Friday, July 12, 2024**, District shall schedule compensatory services in collaboration with Parents. 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. These compensatory services shall begin as soon as possible and will be in addition

³ On July 1, 2024, District will become its own administrative unit and will no longer be a member district of the Northwest BOCES. Accordingly, the District and BOCES shall cooperate on ensuring all activities in the CAP are completed. The compensatory education services award shall be the responsibility of the District.

to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives.

- a. The parties shall cooperate in determining how compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents their efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
- c. Monthly consultation between the provider(s) delivering compensatory services and Special Education Teacher shall occur to evaluate 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. 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.
- a. To verify that Student has received the services required by this Decision, the District must submit records of service logs to 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. The BOCES shall communicate with the District as necessary to obtain this information.
 - i. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District does not provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the monthly service log.

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
201 East Colfax Ave.
Denver, CO 80203

NOTE: If the BOCES and District do not meet any of the timelines set forth above, it may adversely affect their annual determination under the IDEA and subject them 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 14th day of June, 2024.



Tiera Brown
State Complaints Officer

APPENDIX

Complaint, pages 1-5

- Exhibit 1: IEP dated 12/13/2022-2/3/2024
- Exhibit 2: Parent input
- Exhibit 3: Draft IEP dated

Response, pages 1-9

- Exhibit A: IEPs
- Exhibit B: Evaluations and assessments
- Exhibit C: Meeting documentation
- Exhibit C.1: 12/23 IEP mtg recording
- Exhibit C.2: 12/19/23 IEP mtg recording
- Exhibit C.3: 1/17/24 IEP mtg recording
- Exhibit C.4: 1/29/24 IEP mtg recording
- Exhibit D: PWNs
- Exhibit E: Notice of meetings
- Exhibit F: Attendance records
- Exhibit G: Report cards, progress monitoring
- Exhibit H: Service logs
- Exhibit I: Calendars
- Exhibit J: Policies and procedures
- Exhibit K: Correspondence
- Exhibit M: Verification of delivery
- Exhibit N: Behavior documentation
- Exhibit O: Additional documentation

Reply, pages 1-6

- Exhibit 4: 2023-2024 Academic Planning
- Exhibit 5: Concerns Email
- Exhibit 6: Resources Email
- Exhibit 7: Letter from family
- Exhibit 8: Email and attachment
- Exhibit 9: Email and attachment
- Exhibit 10: BIP dated
- Exhibit 11: Email with CDE facilitator
- Exhibit 12: PWN dated 1/17/2024

Telephone Interviews

- Parents: May 15, 2024
- Special Education Director: May 20, 2024
- Assistant Principal: May 20, 2024
- General Education Teacher 1: May 20, 2024
- Case Manager: May 20, 2024