

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 2009: 506**

South Central BOCES

**Decision**

**INTRODUCTION**

This state-level complaint (Complaint), dated 05/29/2009, was properly filed on 06/01/2009.

The Complainant is the mother of a child with a disability. Hereafter, the Complainant is referred to as “Parent” and the child is referred to as “Student.”

The State Complaints Officer (SCO) determined that the Complaint identified five (5) allegations subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA).

The overriding issue, and therefore, the scope of the investigation identified by the SCO, between the dates of 06/01/2008 and 06/01/2009, is:

Whether the 11/13/2008 IEP denied [Student] a free appropriate public education (FAPE) in the least restrictive environment (LRE), in violation of IDEA, 20 U.S.C. § 1400 et seq. and its implementing regulations, 34 CFR Part 300.

The SCO notified the South Central BOCES (BOCES) of the Parent’s allegations in a letter dated 06/03/2009. The letter to the BOCES included a copy of the Complaint and supporting documentation (i.e., 11/11/2008 Prior Written Notice, 11/13/2008 Multidisciplinary Evaluation Team Report, 11/13/2008 Individualized Educational Program (IEP) and 11/13/2008 IEP Meeting Notes). The SCO also enumerated inquiries that the BOCES was directed to answer in conjunction with any response (Response).

The BOCES’ Response, including a cover letter, answers to each of the SCO’s inquiries and supporting documentation, was timely received on 06/19/2009. In a letter dated 06/19/2009, [Parent] was supplied with a copy of the Response, answers and supporting documentation and advised that any reply (Reply) was due within 10 days of receipt of the Response. The Parent’s

Reply was timely received on 06/29/2009 and a copy was sent to the BOCES by certified mail the same date.

Due to the sharp conflict between the Parent's initial Complaint and Reply as compared to the BOCES' Response, the SCO arranged to conduct face-to-face interviews in [City], Colorado.

On 06/30/2009, the SCO telephoned and e-mailed the Special Education Director concerning specific staff the SCO wished to interview on 07/07/2009. The SCO also requested that the Special Education Director supply the following documentation in advance of the interviews conducted in [City], Colorado: a complete copy of the last IEP that was done for the Student prior to 11/13/2008 by the BOCES or District; the 2007 manifestation determination meeting documentation; all enrollment documentation and paperwork signed by or given to the parents between 2008 and present; complete copies of policies, procedures and parental information distributed concerning home-based and homebound services; complete copies of the outside evaluation reports completed by [Development Center] dated 04/18/2008 and 05/08/2008; and a complete copy of the draft IEP brought to the 11/13/2008 IEP meeting.<sup>1</sup>

On 07/02/2009, the SCO telephoned [Parent], [Student' Father] and [Developmental Services] ([Developmental Services]) Program Manager, [hereafter "Advocate,"] and made arrangements to conduct face-to-face interviews of these individuals on 07/08/2009 in [City], Colorado.

On 07/02/2009, the SCO emailed [Special Education Director] and requested that staff attending the 07/07/2009 interviews be directed to bring to the interview any notes they wrote either in preparation for, during or as a result of the 11/13/2008 IEP meeting.<sup>2</sup>

On 07/07/2009, the SCO conducted recorded interviews with the following persons at the BOCES office, [Address] [City], Colorado: [Special Education Director]; [Elementary School Principal]; [Elementary School Counselor]; [Occupational Therapist] (OT); [Former Special Education Teacher] and [Special Education Teacher].<sup>3</sup> Although the SCO also requested to interview [School Psychologist], due to previously arranged medical appointments, he could not attend. Also present during each of the above recorded interviews was Melinda Graham, hereafter "CDE Autism Consultant."

On 07/07/2009, the SCO and CDE Autism Consultant viewed the room at the BOCES office where [Student] received special education services during the fall of 2008.

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<sup>1</sup> On 07/01/2008, [Special Education Director] advised the SCO that a draft of the 11/13/2008 IEP was not retained by the Caseworker.

<sup>2</sup> None of the three staff members whom attended the 11/13/2008 IEP meeting brought the requested notes to the 07/07/2009 interviews.

<sup>3</sup> During the 2008-2009 school year, Student was provided special education services by [Special Education Teacher] who was also the Student's Case Manager. This same teacher supplied Student with special education services during the 2005-2006 school year. During the 2007-2008 school year, [Former Special Education Teacher] provided special education services to [Student].

On 07/07/2009, the SCO requested that [Elementary School Principal] supply the SCO with a copy of her 11/13/2008 IEP meeting notes and also a copy of [Student's] 2007-2008 attendance records. Subsequently, [Elementary School Principal] reported that she could locate no notes that she may have taken during the 11/13/2008 IEP meeting. The Student's enrollment information for 08/29/2005 through 05/20/2009 was supplied on 07/21/2009.

On 07/08/2009, the SCO conducted recorded interviews with the following persons at the [Developmental Services] offices, [address], [City], Colorado: [Advocate]; [Parent]; [Student's Father]; and [Private Tutor] who provides tutoring to [Student] at [Developmental Services] two hours each week. The CDE Autism Consultant was present during all of these interviews. At [Parent's] request, [Grandmother] was present during the recorded interviews with [Parent], [Student's Father] and [Private Tutor].

On 07/08/2009, while at [Developmental Services], the SCO and CDE Autism Consultant observed [Student] while [Student] was working with [Private Tutor].

On 07/09/2009, the SCO received an email from [OT] in which he elaborated about how parents can seek to have an IEP modified and explaining why there was no behavior plan for [Student] between 11/2008 and 04/2009.

On 07/10/2009, the SCO conducted a brief follow-up telephone interview with [Parent].

On 07/13/2009, the SCO conducted a brief follow-up recorded telephone interview with [Special Education Director].

On 07/17/2009, the SCO conducted a brief follow-up recorded telephone interview with [Special Education Teacher] and [Parent].

On 07/21/2009, upon receipt of the final requested documentation from [Special Education Director], the SCO closed the record.

### **THE PARENT'S COMPLAINT ALLEGATIONS**

The Parent's Complaint, in relevant part, alleges as follows:

Allegation #1: [Student] began school on 10/01/2008 but was only allowed to attend 12 hours of school a month all year long [2008 through 2009];

Allegation #2: [Student] should [have been] attending school [Elementary School] full time when all other children [were] present;

Allegation #3: [Student] should have received a full time [Para-Educator] (Para) [during the school year];

Allegation #4: [Student] was denied [special] transportation to and from school and the Parent was denied reimbursement for [Student's] transportation expenses to and from school; and

Allegation #5: [Student] was [improperly] denied summer [extended school year (ESY)] services.

### **THE BOCES' RESPONSE**

In response to Parent's Allegation #s 1 through 3, above, the BOCES states as follows: "The student was not denied time in school or any needed service. Rather the parents' choices have resulted in the limitations on services and instructional time that have occurred." [Special Education Director's] 06/17/2009 Cover Letter, pg. 1.

In response to Parent's Allegation # 4, above, the BOCES states as follows: "The student has not been denied transportation services." [Special Education Director's] 06/17/2009 Cover Letter, pg. 3.

In response to Parent's Allegation #5, above, the BOCES states as follows: "The student has not been denied ESY services for the summer of 2009." [Special Education Director's] 06/17/2009 Cover Letter, pg. 3.

### **THE PARENT'S REPLY**

In reply to the BOCES' Response to Allegation #1, the Parent states in relevant part as follows: [Student] received minimal services even though [Student] continued to display continued progress throughout the year. [Student] was only allowed to attend 12 hours of school a month all year long despite [Advocate], on behalf of [Student's Father], asking for more hours for [Student]. [Parent's] 06/24/2009 cover letter, pg. 1.

In reply to the BOCES' Response to Allegation #2, the Parent states as follows: [Student] was not in an inclusion setting during educational services and never progressed to that environment during the school year. The [11/13/2008] IEP demonstrates [zero] contact with other non-disabled students. [Student] was limited to an office space for the [first] half of the school year and to a classroom after school hours for the [second] half of the year. This [placement] continued although [Student] continued to show progress throughout the school year. [Parent's] 06/24/2009 cover letter, pg. 1.

In reply to the BOCES' Response to Allegation #3, the Parent states as follows: "[Student] did not receive a full time aid[e] because [Elementary School Principal] did not want [Student] at her school." [Parent's] 06/24/2009 cover letter, pg. 2.

In reply to the BOCES' Response to Allegation #4, the Parent states as follows: [Student] should have received adequate transportation to school or parents should have received reimbursement

costs for transportation. [The] IEP stipulates that [Student] requires special transportation and [OT] [11/13/2008 IEP Meeting Notes] confirm the same information.” [Parent’s] 06/24/2009 cover letter, pg. 2.

In reply to the BOCES’ Response to Allegation #5, the Parent states as follows: “[Student’s] IEP designates that ESY services were to be determined by 5/25/2009.” [Parent’s] 06/24/2009 cover letter, pg. 2.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>4</sup> the SCO makes the following FINDINGS:

#### **Background:**

- 1) [Student] is a [Age] year-old [Gender] residing within the boundaries of the BOCES and eligible for special education on the basis of [Disability]. [Student] lives with [Parent] within the jurisdictional boundaries of [District] which is a member of the BOCES.
- 2) [Student] was most recently enrolled on 10/01/2008 at [Elementary School], [Student’s] neighborhood school. According to [Student’s] 11/13/2008 IEP, prior to the 11/13/08 IEP meeting, [Student’s] educational setting was homebound. After the 11/13/08 IEP meeting, [Student’s] educational setting, per the 11/13/08 IEP, was inside the regular class less than 40% of the time and not homebound.
- 3) The historical relationship between [Parent] and [Elementary School] staff (specifically: the [Elementary School Principal]; [Elementary School Counselor]; and [Former Special Education Teacher]) is relevant here. The relationship between the parties has been strained and ultimately became estranged due to actions by both [Parent] and some [Elementary School] staff.
- 4) [Parent] was extremely reluctant to re-enroll [Student] at [Elementary School] during the 2008-2009 school year due to the strained relationship with some [Elementary School] staff. Specifically, [Parent] was concerned that [Student’s] disability was not understood by these [Elementary School] staff and that, as a consequence, [Student] would not receive a FAPE.

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<sup>4</sup> The record consists of the following: Prior Written Notices of 11/11/2008; 11/13/2008 Multidisciplinary Evaluation Team Evaluation; 11/13/2008 IEP; 11/13/2008 IEP Meeting Notes; [Special Education Director’s] 06/17/2009 Cover Letter; 10/15/2007 Interim IEP; 10/16/2007 [IEP] Team Meeting Notes; 11/14/2007 Manifestation Determination; 04/18/2008 Diagnostic Evaluation from [Development Center]; 05/08/2008 D&E Pediatric Evaluation from [Physician], M.D.; 04/23/2008 OT Evaluation from [Rehabilitation Center]; 09/04/2008 Quarterly (Speech Language Pathology) Progress Report from [Rehabilitation Center]; [Private School] Reports dated 02/13/2007, 04/07/2007 and 07/17/2007; 09/06/2006 IEP; [Student’s] 2008-2009 Schedule and Attendance Log; [Special Education Teacher] 10/02/2008 to 05/08/2009 Service Log; 05/06/2009 IEP and IEP Meeting Notes; 04/15/2009 Notice of Meeting; 05/06/2009 Prior Written Notices; 2008-2009 ESY Documentation from [Special Education Teacher], [SLP]; and [OT]; [Student] enrollment records; BOCES and District 2008-2009 School Calendars; [Advocate’s] 11/13/2008 IEP meeting notes; [Student’s] attendance records, 08/29/2005 through 05/20/2009; [Parent’s] 06/24/2009 Cover Letter; as well as recorded face-to-face and telephone interviews with [Special Education Director], [Elementary School Principal], [Elementary School Counselor], [Special Education Teacher #1], [Special Education Teacher], [OT], [Parent], [Father of Parent], [Advocate], and [Private Tutor].

5) Given [Parent's] allegations and the sharp conflict of the BOCES' Response, the SCO determined that, in conjunction with the investigation, it was necessary and relevant to examine [Student's] past educational enrollment history, (including identified educational needs and services previously delivered). Special education services to be supplied to [Student] between 2<sup>nd</sup> and 5<sup>th</sup> grade are briefly summarized below:

<u>Grade/School Year</u>	<u>Location</u>	<u>Special Ed. Services</u>
<b>2<sup>nd</sup> Grade:</b> 2005-2006	Elementary School	Five days per week: full-time, with [Special Education Teacher], 1:1 para-educator; inclusion
<b>3<sup>rd</sup> Grade:</b> 09/09/06–12/06	Pueblo SD #70: (Pilot Program)	33.5 special education service hours p/wk; .5 speech/language & .5 occupational therapy p/month; behavior intervention plan; para-educator during inclusion
01/07 -08/07	[Private School]: (private school placement by [Parent])	4 hrs p/day; 4.0 days p/wk - of private special education services, which included speech/language services
<b>4<sup>th</sup> Grade:</b> 10/04/07	Elementary School	Five days p/wk, full time with [Former Special Education Teacher]; no IEP in place when [Student] began classes on 10/10/2007; no 1:1 para-educator; inclusion; no behavior plan; <i>NOTE: [Student] was sent home within 90 minutes after beginning 1<sup>st</sup> day of school due to [Student's] running and hitting behaviors</i>
10/18/07-11/5/07	BOCES	Per: 10/15/07 IEP Meeting: 2.0 hours Special education p/wk; 1.0 hrs Speech/language p/wk & 0.5 occupational therapy p/wk; no para-educator; no planned contact w/other students; no behavior plan
11/14/07	Elementary School	Manifestation Determination Meeting: no consensus - "Just to document occurrence;" no behavior plan; [Parent] response: withdrew

[Student] from [Elementary School] for the remainder of the 2007-2008 school year

**5th Grade:** 10/02/08-11/6/08 BOCES

Initial services, pending evaluation and IEP meeting: 2.0 hours special education p/wk; 0.5 hours of occupational therapy p/wk; & 3.0 hours of speech/language p/month; no para-educator; no behavior plan; no planned contact w/other student (i.e., 3.45 hours of services per week).

11/18/08-12/18/08 BOCES

Per 11/13/08 IEP meeting: 2.0 hours special education p/wk; 1.0 hours of occupational therapy p/wk; & 3.0 hours of speech/language p/month; no para-educator; no behavior plan; no planned contact w/other student (i.e., 3.75 hours of services per week).

01/6/09-4/28/09 Elementary School

No change in services; no para-educator; no behavior plan; no planned contact w/other students (i.e., 3.75 hours of services per week)

**10/02/2008 Initial Services:**

6) On 10/02/08, [Student] began receiving initial special education and related services of: 3.45 hours per week (i.e., 2.00 hours of special education services p/wk; 0.5 hours of occupational therapy p/wk; & 3.0 speech language (S/L) services p/month) pending an evaluation and IEP meeting. The services were provided by [Special Education Teacher], [OT], [SLP] and Speech Language Pathologist Assistant [SLPA].

7) All of [Student's] services between 10/02/2008 and 11/13/2008 were delivered at the BOCES office in an alcove area, (room dimensions 13'8" by 12'), which is located between a main hall and a staff break room. The alcove area has a large, arched opening (i.e., no door) which adjoins the main hallway. The area has overhead, florescent lighting and the room is painted white. A table and chairs for [Student] and providers were located in the room during the provision of services. The parents brought [Student] to the BOCES offices in order to receive all services. The service providers came to the BOCES for the purpose of delivering all services and

brought with them items specific to [Student's] lessons and goals. [Student] received one-on-one services from the providers. There were no other students present.

### **11/13/2008 MET Team Evaluation:**

8) The Multidisciplinary Evaluation Team (MET) (i.e., [Student's Father], [Special Education Teacher], [Elementary School Principal] – serving as BOCES representative, [Elementary School Psychologist], [SLP], [SLPA], [OT] and [Advocate]) met on 11/13/2008.

9) Due to a scheduling conflict, [Special Education Director] did not participate in either the MET Evaluation or the 11/13/2009 IEP Meeting. In her absence, [Elementary School Principal] acted as the BOCES representative in both meetings.

10) The 11/13/2008 MET Report was written by [OT]. The MET team considered: data from a 09/04/08 quarterly report from [Rehabilitation Center] [[Rehabilitation Center]]; evaluations dated 04/18/08 and 05/08/08 from the [Development Center] [[Development Center]]; previous IEPs; teacher reports; parental reports; review of educational records; work samples; and discipline records.

11) The MET Report quotes portions of the 04/18/2008 Diagnostic Evaluation from the [Development Center] noting: [Parent] thought [Student] was too withdrawn and [Parent] expressed concerns with [Student's] sleeping patterns, activity level and difficulties with extreme sensitivity to smells, noises and clothing. The MET Report also notes:

[Student's] mother completed the Dunn Sensory Profile. The questionnaire is used to examine the contributions of sensory processing and modulation and/or barriers to function. Based on the response provided, [Student] is scoring in a 'Definite Difference' category from [student's] peers in the area of Auditory Processing, Vestibular Processing, and Touch Processing. This is noted to affect sensation seeking behaviors, inattention/distractibility, poor registration, and fine motor/perceptual skills. [Student's] mother reports that [Student] frequently seeks oral input. Majority of behaviors consist of spitting and continued hitting. Typical play consists of peeling bark and branches off trees. [Student's] mother also expresses concerns with masturbation, as well as inappropriate touching. She is expressing concerns with upcoming puberty at this time.

12) The MET Report also quoted portions of the 05/08/2008 [Development Center] Pediatric Evaluation, including the observation that "Issues regarding [Student's] inappropriate behaviors are certainly problematic..."

13) The MET Report, quoting portions of the OT's evaluation, under the heading 'Present levels of educational performance and educational needs' noted: "[Student's] behavior and communication are of primary concern." Within the MET report, the [OT] observed:

[Student] is echoalic typically repeating the last part of a question that is presented to [Student] . . . [Student] engages in self stimulating behavior including hand and finger movements, slapping [Student's] hands together, vocalizations, and giggling. [Student]

can also sabotage work sessions by giggling, spitting, or poking/touching the therapist's face and eyes. [Student] frequently laughs or looks for a reaction after this type of behavior. Other than poking, [Student] has not been physically aggressive with the therapist in any sessions this fall. [Student's] Mother has reported being anxious about [Student] returning to school due to previous conflicts with therapists, teachers, administration and other students. . . [Student] is a good candidate for therapy because [Student] works well in 1:1 sessions in structured environments.

14) According to the 04/18/2008 [Development Center] occupational therapy evaluation: "[Student] was noted to attempt interaction with the evaluator by hitting or kicking at the therapist. It did not appear to be in [sic] attempt of aggression, more so in seeking response and interaction." The [Development Center] occupational therapist noted areas of concern regarding [Student's] tolerance to environmental input, social interaction, age appropriate interaction with fine motor tasks, and attention. This information was not noted in the MET Report.

15) The 04/18/2008 [Development Center] speech language evaluation noted that "[Student's] receptive language skills are profoundly delayed and are reflective of the skill level of a 25-month-old child." An informal [Development Center] evaluation of expressive language skills also indicated "a profound delay of expressive language" including "limited single word approximations, gestures, vowels and consonant-vowel combinations. [Student] is reported to use approximately four signs at home. Pragmatically, [Student] requires consistent cues for maintaining eye contact and attention to auditory and visual stimuli." This information was not noted in the MET Report. However, the MET Report contained details of an Assessment of Basic Language and Learning Skills [ABLLS] dated 11/11/2008 although it is unclear who conducted this evaluation.

16) The 04/23/2008 [Rehabilitation Center] Evaluation noted that [Student] demonstrates delayed coordination and delayed skills for in-hand manipulation. As to sensory issues:

[Student] struggles with organization and tactile input, brushing program to be implemented for increased ease with transitions and tactile input. [STUDENT] [sic] seeks and needs movement and especially vestibular and proprioceptive input. [Student] will need a lot of deep pressure to organize and may spend more time with sensory exploration with limited table top time initially until organization occurs for school table top activities. Assessment: [Student] will need significant treatment of 2x week to have input on gross, fine motor skills, sensory motor delays.

17) There is no indication that the MET Team considered any of the reports from [Private School], a private school that [Student] attended four hours a day, four days a week, from 01/07 through 08/07. In a report dated 04/07/2007, the [Private School] teacher/therapist recommended a "weighted blanket for [Student] which will help decrease anxiety and behaviors, i.e., constant running, spitting and hitting." The 08/17/2007 [Private School] report recommended that [Student] continue with: academic programs, specifically ABLLS and Touch Math; daily sensory diet (i.e., walks, bouncing on a ball or trampoline, squishing a ball, hitting a pillow, rubbing [Student's] hands and arms with lotion, listening to soft music); current

communication programs (i.e., sign language and vocalization skills); and social skills development per the RDI Program and prompting in social settings.

18) At the conclusion of the 11/13/2008 evaluation, the MET Team determined that [Student] is a child with disabilities which prevented [Student] from receiving reasonable educational benefit from general education. The MET Team concluded that, given [Student's] disabilities, [Student] needed special education, continual monitoring, intervention and specialized programming. The MET Team also determined that [Student's] disabilities interfered with [Student's] attention, coordination, communication, self-help skills and other activities of daily living to such a degree as to require special services and equipment.

### **11/13/2008 IEP Meeting:**

19) The 11/13/2008 IEP Meeting was conducted immediately after the MET Team Evaluation. The IEP Team consisted of: [Student's Father], [Special Education Teacher], [Elementary School Principal] – serving as BOCES representative, [Elementary School Psychologist], [SLP], [SLPA], [OT] and [Advocate]. The 11/13/2008 IEP Meeting Notes were recorded by [OT].

20) During the 11/13/2008 IEP Meeting, [SLPA] observed that according to the 04/23/2008 [Rehabilitation Center] report “[Student] responds well to brushing, a weighted belt, aroma therapy and linear movement.” However, [OT] opined that:

There is theory that explains why the brushing program could have calming effect on children, but there is no rigorous research that demonstrates the effectiveness of this intervention. [OT] suggested that this intervention may be appropriate to use in private therapy or at home, but not necessarily at school. [Student] records indicated that [Student] demonstrated inappropriate touching at school with teachers and students. In addition, [Parent] had previously reported that there were allegations that [Student] was a victim of sexual abuse (to the best of our knowledge these allegations were false).

Given these factors, [OT] concluded that “interventions involving touching/brushing at school are not appropriate.” There is no evidence that the IEP Team discussed any other sensory therapies (i.e., such as weighted belt or blanket) that [Student] should be offered.

21) The 11/13/2008 IEP Meeting Notes indicate that, according to the [Development Center] medical report, [Student] should be enrolled in a public school setting and would benefit from more educational and therapeutic interaction. However, during the 11/13/2008 IEP Meeting, [Elementary School Psychologist] observed: “[Student] would be challenged more in a school setting, versus the current setting for education and therapy (The BOCES office).” [Elementary School Psychologist] reported that [Student] would be more likely to “act out” at school, which could result in conflict due to a more challenging and stimulating environment.”<sup>5</sup>

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<sup>5</sup> The basis for these opinions is not noted in the 11/13/2008 IEP Meeting Notes and there is no evidence in the record which indicates that [Elementary School Psychologist] ever had any contact with [Student]. As noted above, [Elementary School Psychologist] was not available when interviews were conducted by the SCO on 07/07/2009.

22) During the 11/13/2008 IEP Meeting, [Special Education Teacher] reported that [Parent] would like [Student] to come to a “school setting” to receive school and therapy services. [Special Education Teacher] volunteered to work with [Student] in her room at [Elementary School] and suggested that the team could evaluate the success of [Student] in this setting. The 11/13/2008 IEP Meeting Notes do not reflect further discussion of [Special Education Teacher’s] quoted comments and the SCO specifically finds that no further discussion of these matters occurred.

23) Despite recitation of [Parent’s] numerous concerns in the MET Report, there is no evidence that the 11/13/2008 IEP meeting considered concerns of [Parent] or made inquiry as to concerns of [Student’s Father].

24) At the meeting [Special Education Teacher] reported that [between 10/02/2008 and 11/12/2008]: [Student] had demonstrated some touching, poking [and] head butting during therapy sessions; [Student] worked better with her when [Student] sits in close proximity; [Special Education Teacher] rubs [Student’s] back and allows [Student] to touch her appropriately to help manage [Student’s] behavior during work sessions; [Student] gives physical indicators that show stress or anxiety. A description of the ‘physical indicators’ observed by [Special Education Teacher] was not noted in the meeting notes.

25) During the 11/13/2008 IEP Meeting, [Special Education Teacher] reported that [Student]: can write the letters in [Student’s] name, but not in the correct order or spatially appropriate; can gather any letter and present it with a verbal prompt; cannot write all letters with a verbal prompt; knows upper case letters more than lower case letters; can count 1-5 and can write some of those numbers, but struggles with concepts higher than five. [Special Education Teacher] also reported that [Student] responds to food reinforcement with high success, she uses verbal, visual and other modes of communication when educating [Student]; and that [Student] can demonstrate good self-control at times.

26) [Advocate] inquired as to whether [Student] could continue to receive services at “both the BOCES office and at school.” The service providers (i.e., Special Education Teacher, OT, SLP and SLPA) agreed that they would prefer to work at the school exclusively “if that is [Student’s] educational placement.” However, there is no credible evidence that the IEP Team discussed [Advocate’s] inquiry about delivery of services at both the BOCES office and [Elementary School].

27) The 11/13/2008 IEP Meeting Notes do not indicate that [Student’s Father] was ever asked or communicated the services or school hours that he sought for [Student]. The last page of the 11/13/2008 IEP Meeting Notes merely indicate “[Student’s Father] reported that he was pleased with this plan.”

28) During the 11/13/2008 IEP Meeting, [Elementary School Psychologist] “suggested that [Family] would have the ultimate say in whether they would like [Student] to attend school more in an integrated setting, or continue to receive services in a less stimulating setting (like the BOCES office).”

29) The [Elementary School Psychologist] suggested that “[Student] would be challenged more in a school setting, versus the current setting for education and therapy (The BOCES office).” [Elementary School Psychologist] reported that “[Student] would be more likely to act out at [Elementary School], which could result in conflict due to a more challenging and stimulating environment.” Neither the [Elementary School Psychologist] nor any other members of the IEP Team proposed or discussed steps that should be taken to allow [Student] to have any inclusion whatsoever with other students (i.e., such as during lunch, music or physical education), even after transitioning to [Elementary School].

30) The 11/13/2008 IEP lists “one-on-one assistance” as an accommodation/modification. The IEP Meeting Notes make no mention of any discussions concerning a Para.

31) During the 11/13/2008 IEP Meeting, [Advocate] inquired as to whether [Student] could receive any more services or education at [Elementary School]. The only response to this inquiry was the [OT’s] offer to provide an additional 30 minutes of OT per week.

32) The 11/13/2008 IEP provides for “special transportation” and the Meeting Notes indicate that [Student’s Father] agreed that parents would transport [Student] to and from school. The SCO finds that since the 11/13/2008 IEP provided for special transportation as a related service, the BOCES was required to supply the special transportation.

33) During the meeting, [Advocate] inquired as to whether [Parent] could receive reimbursement for transporting [Student] to school. [Elementary School Principal] stated that she would have to ask the district transportation director if reimbursement was possible. There is no credible evidence that [Elementary School Principal] ever made any inquiries about [Parent] receiving transportation reimbursement. Nor did [Elementary School Principal] ever have any follow up communications with either [Parent] or [Student’s Father] concerning this inquiry.

34) The SCO finds credible the independent statements of [Advocate] and [Student’s Father] that, at the conclusion of the 11/13/2008 IEP Meeting, the IEP Team agreed that [Student] would be transitioned to [Elementary School] after the Christmas holidays and that another meeting would be convened at that time to discuss expanding [Student’s] services and hours.

35) At the conclusion of the 11/13/2008 IEP Meeting, the IEP Team concluded that [Student] was entitled to receive 3.75 hours per week (i.e., 2.00 hours of special education services per week, 1.00 hours of occupational services per week, and 3.00 hours of speech/language services per month). All services were to be delivered at the BOCES office until after the Christmas holidays when [Student] would transition to [Elementary School]. The IEP Team determined that [Student] required special transportation and assistive technologies consisting of a Picture Symbol Communication Board and picture symbols. The IEP Team also determined that [Student] required accommodations and modifications consisting of picture symbols and one-on-one assistance. The IEP made no provision for a Para, a behavior plan or accommodations for [Student’s] sensory issues. A follow-up meeting, in conjunction with [Student’s] transition from the BOCES office to [Elementary School], was not scheduled.

**Post 11/13/2008 Services:**

36) Between 11/13/2008 and 12/18/2008, all of [Student's] services (i.e., 3.75 hours per week) were delivered at the BOCES office. Special education services by [Special Education Teacher] were delivered during her planning time. No other students were present.

37) Between 01/06/2009 and 04/28/2009, all services to [Student] (i.e., 3.75 hours per week) were delivered at [Elementary School] in [Special Education Teacher's] classroom during her planning time, when she was not conducting classes with other students. During the delivery of special education services at [Elementary School] there was no planned contact with any other students although, from time to time, another student might enter the classroom while [Student] was receiving services.

38) No follow-up meeting was held after [Student] transitioned from the BOCES to [Elementary School] to discuss expansion of services or hours during the 2008-2009 school year.

39) [Advocate] sent two separate e-mails to [Special Education Director] (dated 03/05/2009 and 04/01/2009) inquiring about increasing [Student's] hours and to also discuss ESY services. There is no credible evidence that [Special Education Director] ever responded to either of these inquiries.

40) There is no credible evidence that, subsequent to the 11/13/2008 IEP Meeting, the [Special Education Teacher], [SLP], [SLPA] and [OT] ever had a formal meeting or otherwise specifically agreed upon a common plan or approach to address [Student's] behavioral issues, sensory issues or SLP services.

41) On 04/28/2009, while delivering [Student] to [Elementary School], [Parent] had a confrontation with [Elementary School Counselor] which resulted in a court-ordered temporary restraining order [TRO] being issued against [Parent].

42) Between 10/02/2008 and 04/24/2009, [Special Education Teacher] did the same rote activities with [Student] (i.e., work on alphabet recognition and order, number to 10, colors and shapes and one book - Brown Bear) with little variation and no enrichment.

43) The [OT] kept no service logs concerning day-to-day OT services provided to [Student] between 10/02/2008 and 04/24/2009.

44) Between 10/02/2008 and 04/24/2009, neither the [Special Education Teacher] nor [OT] maintained behavior logs to document the frequency of [Student's] inappropriate behaviors (i.e., spitting, kicking, hitting, running away, etc.) although such records would have provided clear documentation concerning [Student's] behavioral improvement or regression.

#### **05/06/2009 IEP Meeting:**

45) On 05/06/2009, a Transitional IEP Meeting was held to discuss: [Student's] transition from [Elementary School] to [Middle School], increasing the length of [Student's] day and the necessity of a Para.

46) The 05/06/2009 IEP Team consisted of: [Student's Father], [Advocate], [Middle School Assistant Principal], [Special Education Teacher], [Elementary School Psychologist]; [SLP]; [OT], [Middle School Counselor]; [Audiologist]; [Middle School Special Education Teacher]; [Student's Grandmother]; as well as [Special Education Director] and [Middle School Principal]<sup>6</sup> both of whom participated by telephone.

47) [Special Education Director] took no notes during this IEP meeting. The 05/06/2009 IEP Meeting Notes were recorded by [OT].

48) The 05/06/2009 IEP Team, including [Special Education Director], agreed that during the 2009-2010 school year, [Student] would benefit from attending school full time when [Student] was placed at [Middle School]. The [Middle School Assistant Principal] advised that there are eight periods of classes at [Middle School] and that [Student] would be expected to participate in 'full inclusion' for special education services.

49) [Advocate] inquired as to whether [Student] would have a 1:1 Para during [Student's] school day. The IEP Team did not directly respond to this inquiry, only advising that [Student] would never be 'left alone' during the school day.

50) During the 05/06/2009 IEP Meeting, [Advocate] inquired about transportation for [Student] and advised that [Student] would need to be supervised on the bus. The [SLP] stated that transportation would be provided.

51) During the 05/06/2009 IEP Meeting, [Middle School Principal] inquired about [Student's] behaviors and expressed concerns that transition from [Student's] current placement of two hours per week to full inclusion might be setting [Student] up to fail. In response, the IEP Team reported that [Student] "has been able to participate in a full time school day" and [OT] described [Student's] behaviors "as better – not resulting in any referrals for discipline . . . although [Student] does engage in some provocative behavior when anxious or upset including poking, inappropriate touching, laughing and spitting."

52) [Middle School Counselor], who left the meeting at 9:00 a.m., emphasized the importance of [Student] having a behavior plan in place and discussion of issues related to [Student's] school schedule. A behavior plan was not finalized as a result of the 05/06/2009 IEP Meeting.

53) The [Special Education Director] and [Middle School Principal] left the IEP meeting 10 minutes before the meeting was adjourned.

54) At the conclusion of the 05/06/2009 IEP Meeting, [Student] was to continue to attend [Elementary School] during the remainder of the 2008-2009 school year.

55) [Grandmother] inquired how [Parent] would be able to transport [Student] to school given the TRO then in effect.<sup>7</sup> The IEP Team did not have an answer this inquiry.

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<sup>6</sup> [Middle School Principal] began attending the 05/06/2009 IEP Meeting at an unknown time after the meeting convened.

<sup>7</sup> See Findings of Fact, number 41, above

56) At the conclusion of the 05/06/2009 IEP Meeting, the Team agreed that 1) [Middle School] staff would observe [Student] in [Special Education Teacher's] class on the afternoon of 05/06/2009 and, on 05/07/2009, [Student's Grandmother] would transport [Student] to the [Middle School] in the afternoon so that [Student] could be observed working with [Special Educator #2] in that setting.

57) The 05/06/2009 IEP was neither formalized nor finalized. Prior to adjourning, the IEP Team agreed that the following items needed to be addressed: 1) [SLP] would confer with the transportation director; 2) [Special Education Director] would arrange a visit for [Middle School] staff to observe [Student] working in [Student's] current placement at [Elementary School]; 3) appropriate staffing for [Student] needed to be determined; 4) having [Student] attend adapted P.E. this spring would be appropriate; and 5) the IEP Team would reconvene on 05/18/2009 or 05/19/2009 by telephone to discuss: the success of [Student's] transitional visits to [Middle School], additional plans for [Student's] transition and ESY matters. The 05/06/2009 IEP meeting adjourned at 10:25 a.m.

58) On 05/06/2009, subsequent to the 05/06/2009 IEP Meeting, [Student's Father] left a telephone message for [Special Education Director] advising [Student] would not be transitioning to [Middle School] and that all plans were on hold due to pending legal issues.

59) Because of the 05/06/2009 telephone message from [Student's Father], no further IEP meetings have occurred.

60) To date, neither [Parent] nor [Student's Father] has contacted the BOCES or [Elementary School] to reschedule further IEP meetings.

### **In Summary:**

61) The credible evidence is that, *prior to the 11/13/2008 IEP Meeting*, [Special Education Director] communicated with [Advocate] and suggested that [Student] would make the transition from [BOCES office] to [Elementary School] after Christmas.

62) During the 07/07/2009 interview with SCO, [Special Education Director] admitted that she had personal knowledge of the historically strained relationship between [Parent] and [Elementary School Principal]. [Special Education Director] also admitted that, given this very strained relationship, allowing [Elementary School Principal] to serve as the BOCES representative could, at a minimum, be perceived by [Parent] as making it unlikely that [Student] would obtain all the special education services to which [Student] was entitled during the 2008-2009 school year. Given her personal knowledge of the strained relationship between [Parent] and [Elementary School Principal], the [Special Education Director] should have personally attended the 11/13/2008 Evaluation and IEP Meetings or arranged to have the meetings rescheduled to a time when she could attend on behalf of the BOCES.

63) The SCO finds credible the independent statements of [Advocate] and [Student's Father] that [Student's Father] came to the 11/13/2008 MET Team evaluation and IEP meeting with the

intent of seeking increased services and increased number of school hours. However, [Student's Father] was never asked what services he sought for [Student] and instead was merely told what services could be provided.

64) The credible evidence is that, although the 11/13/2008 IEP provided for one-on-one assistance, during the 11/13/2008 IEP Meeting, provision of a Para was neither discussed nor offered to [Student's Father] as an option.

65) During the 07/07/2009 interview with SCO, [Special Education Director] admitted that it would have been appropriate to discuss use of a full-time Para during the 11/13/2008 IEP Meeting and that a Para would have facilitated an increase in [Student's] special educational services and hours, regardless of whether [Student] was receiving services at the BOCES office or at the [Elementary School].

66) The 11/13/2008 IEP Meeting Notes are devoid of any discussion concerning the number of hours and services that [Student] *needed*. Nor was there any explanation or rationale provided as to how 3.75 hours per week of educational services were sufficient to meet [Student's] needs. Given [Student's] documented needs, as noted by the 11/13/2008 MET and IEP Teams, as well as [Student's] educational history, regardless of whether the special education and related services were delivered at the BOCES office or the [Elementary School], the [Student] needed and, therefore, should have been supplied with *full-time* special education and related services, whenever [Elementary School] was in session. The SCO specifically finds that the overwhelming evidence is that, in drafting the 11/13/2008 IEP, the IEP Team did not consider the [Student's] educational needs and was simply unwilling to provide [Student] more than 3.75 hours per week.

67) Between 10/02/2008 and 04/28/2009, the BOCES failed to deliver to [Student] a total of 345 occupational therapy minutes and 660 special education minutes:

Services: 10/02/08-11/12/08	Entitlement	Received	Shortage
Occupational Therapy	210 minutes	135 minutes	75 minutes

Services: 11/13/08-04/28/09	Entitlement	Received	Shortage
Special Education Services	3,000 minutes	2,340 minutes	660 minutes
Occupational Therapy	1,200 minutes	930 minutes	270 minutes
Speech Language	1,080 minutes	1,320 minutes	None

68) The ultimate decision as to the building where educational services will be supplied is a BOCES decision, not a parental decision.

69) Although the 11/13/2008 IEP provides for services "Inside the Regular Class Less than 40% of the time" in fact no services were ever delivered inside the regular class between 11/13/08 and 04/28/09. Nor was there provision for any planned contact with other students, either disabled or non-disabled, in any inclusion setting (e.g., lunchroom or playground).

70) The record is replete with concerns about [Student's] multiple inappropriate behaviors and sensory issues (i.e., 11/13/2008 MET Report, 11/13/2008 IEP and IEP Meeting Notes, data from prior evaluation reports, teacher reports, provider reports, prior IEPs; and educational records). Although many of [Student's] behaviors and sensory issues were discussed in the 11/13/2008 IEP Meeting, the IEP Team never discussed a behavior plan to address these issues. In fact, the 11/13/2008 IEP indicates [Student] "does not require a behavior plan." Clearly, the overwhelming information available to the IEP Team indicated that [Student] needed a behavior plan.

71) The 11/13/2008 IEP does not provide any accommodations or modifications to address [Student's] multiple sensory issues. The 11/13/2008 Meeting Notes only indicate what sensory program (i.e., "brushing program") would not be appropriate in a school setting.

72) There is no evidence that, during the 2008-2009 school year, [OT] or [Special Education Teacher] ever used the assistive technologies (i.e., Picture Symbol Communication Board or picture symbols) listed in [Student's] 11/13/2008 IEP.

73) Although the IEP Team agreed that [Student] would transition to [Elementary School] after the Christmas holidays and that a transition meeting would be held at that time, the IEP Team never reconvened to discuss: [Student's] transition to [Elementary School]; expanding [Student's] school hours or services; or, based on [Student's] observed behaviors while at the BOCES office, the advisability of [Student's] inclusion in any activities with other [Elementary School] students.

74) Per the 11/13/2008 IEP, [Student] requires Special Transportation. Therefore, the BOCES was required to supply the [Student] with transportation to and from school, *regardless* of whether [Student] received [Student's] schooling at the BOCES office or [Elementary School].

75) [Parent] transported [Student] to school during the 2008-2009 school year as follows: Roundtrip from home to BOCES office: 7.5 miles per day, 17 days, at \$3.37 per day or \$57.29; and roundtrip from home to [Elementary School]: 7.0 miles per day, 23 days at \$3.15 per day or \$72.45. The SCO finds that [Parent] incurred a total of \$129.74 in transporting [Student] during the 2008-2009 school year.

76) Student has not attended school since 04/28/2009, when the confrontation between [Parent] and [Elementary School Counselor] occurred.

77) The TRO, issued as a result of the 04/28/2009 incident, precluded [Parent] from all BOCES property and therefore, she was unable to transport [Student] to [Elementary School] after that date. [Parent] had no other reliable means for transporting [Student] to [Elementary School]. [Student] last attended [Elementary School] on 04/28/2009.

78) Although [Grandmother] pointed out in the 05/06/2009 IEP Meeting that, because of the active TRO, [Parent] could not longer transport [Student] to [Elementary School], the BOCES still made no arrangements to transport [Student] to and from school.

79) The TRO was still in effect when the record was closed on 07/21/2009.

80) During a 07/07/2009 interview with the SCO, [Elementary School Principal] admitted that she has no special education expertise or training and that she was not knowledgeable about the special transportation services of the BOCES. The SCO specifically finds that, when [Elementary School Principal] served as the BOCES designee during the 11/13/2008 MET Team meeting and the 11/13/2008 IEP Meeting, she had insufficient background and training to supervise the provision of specially designed instruction to meet the unique needs of children with disabilities. Nor was she knowledgeable about the availability of resources of the BOCES.

81) Based on documentation supplied to SCO by [Special Education Director], the BOCES Comprehensive Plan fails to comply with 34 CFR § 300.115 in that it fails to include in its continuum of alternative placements, the placement of “home instruction.” Nor does the BOCES have any specific written policies concerning homebound instruction.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the SCO enters the following Conclusions of Law:

**Allegation #'s 1-3 Concerning: the Appropriateness of [Student's] Special Education and Related Services During the 2008-2009 School Year.**

1) Under IDEA and the corresponding Colorado law, the Exceptional Children's Educational Act (ECEA), students with disabilities have the right to a FAPE. (20 U.S.C. 1400 *et seq.*; ECEA Rule 2220-R-1.00 *et seq.*)<sup>8</sup> The relevant IDEA regulation defines a FAPE to mean special education and related services that are provided to a student at no cost to the parents, meet the standards of the State Educational Agency (i.e., Colorado Department of Education), and that are provided in conformity with the student's IEP. (34 CFR § 300.17; ECEA Rule 2.19).

2) The term “special education” is defined, in relevant part, as *instruction specially designed to meet the unique needs of a child with a disability*, including – instruction conducted in the classroom . . . and in other settings.” 34 CFR § 300.39; ECEA Rule 2.43 (emphasis added). The term “related services” means “transportation, and such developmental, corrective, and *other supportive services* as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology, . . . [and] . . . occupational therapy.” 34 CFR § 300.34(a); ECEA Rule 2.37(1) (emphasis added). The list of related services detailed in 34 CFR § 300.34 is not exhaustive and may include other developmental, corrective or supportive services, if they are required to assist a child with a disability to benefit from special education. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46569 (August 14, 2006).)

3) The United States Supreme Court, in *Board of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982), examined the level of instruction and services that

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<sup>8</sup> Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

must be provided to a student with disabilities in order to satisfy the requirement of FAPE under IDEA. Under *Rowley*, the standard for determining whether a school district's provision of services constitutes a FAPE involves four factors: (1) the services must be designed to meet the student's unique needs; (2) the services must be reasonably designed to provide some educational benefit; (3) the services must conform to the IEP as written; and (4) the program offered must be designed to provide these services to the student in the least restrictive environment. *Id.*, at 203. Although a school district is not required to maximize the potential of a child with a disability, it is required to provide a "basic floor of opportunity" that consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the student. *Id.*, at 201-202.

4) Reviewing the adequacy of an IEP is a two step process: first, whether the BOCES complied with IDEA procedures, including whether the IEP conformed with the requirements of the Act; and secondly, whether the IEP was reasonably calculated to enable [Student] to receive educational benefits. *Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10<sup>th</sup> Cir. 1996).

5) In reviewing the adequacy of [Student's] IEP, it is instructive to consider the factors to be considered by the IEP Team. Development of a child's IEP requires consideration of both general factors and special factors of the individual child:

(1) General. In developing each child's IEP, the IEP Team must consider-

- (i) The strengths of the child;
- (ii) The *concerns of the parents* for enhancing the education of their child;
- (iii) The *results of the initial or most recent evaluation* of the child; and
- (iv) *The academic, developmental, and functional needs of the child.*

(2) Consideration of special factors. The IEP Team must-

- (i) *In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;*

...

34 CFR § 300.324(a) (emphasis added).

6) The 11/13/2008 IEP Team did not consider the concerns of [Parent], [Student's Father] or the [Advocate]. Despite the [Development Center] evaluation and reports from [Rehabilitation Center], the team failed to adequately consider the unique academic, developmental and functional needs of [Student]. Nor did the IEP Team give adequate consideration to positive behavioral interventions and supports, (i.e., a behavior plan, Para, accommodations or modifications), to address behaviors and sensory issues which impeded [Student's] learning. Given [Student's] unique and significant needs, the 11/13/2008 IEP - providing, as the total education for [Student] only 3.75 hours of special education and related services per week in a self-contained environment - was not developed consistent with the IEP development procedures established by 34 CFR § 300.324(a), was wholly inadequate, and deprived the Student of a FAPE in the least restrictive environment.

7) [Elementary School Principal], who was the BOCES' representative at the 11/13/08 IEP meeting, did not have the requisite special education background to supervise the provision of special education services nor did [Elementary School Principal] have knowledge of the BOCES' special education resources. Consequently, the 11/13/08 IEP Team was not properly constituted in violation of 34 CFR §300.321(a)(4).

8) The BOCES' failure to provide to [Student] all of the direct services listed in [Student's] 11/13/2008 IEP (i.e., 345 minutes of occupation therapy services and 660 minutes of special education services) denied [Student] a FAPE.

#### **Allegation #4 Concerning: Special Transportation During the 2008-2009 School Year.**

9) The IDEA regulations define "transportation" in relevant part as "(i) travel to and from school and between schools; and (ii) travel in and around school buildings. (34 CFR §300.34(c)(16).) If the IEP Team determines that a child with a disability requires transportation as a related service in order to receive FAPE, the child must receive the necessary transportation at no cost to the parents. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).)

10) The BOCES violated IDEA when, contrary to the terms of the 11/13/2008 IEP, it failed to supply [Student] with special transportation. The BOCES could either supply special transportation to [Student] or reimburse [Parent] for supplying the transportation. The BOCES did neither in violation of 34 CFR §300.101, which also caused a denial of FAPE.

#### **Allegation #5 Concerning: Denial of ESY services.**

11) The 11/13/2008 IEP provided that the IEP Team was to determine ESY services by 05/25/2009. The 05/06/2009 IEP Team intended to reconvene on 05/18/2009 or 05/19/2009 in order to further discuss matters, including ESY services. It was only because [Student's Father] ceased all further contact and communications with the BOCES effective 05/06/2009, that further meetings to discuss ESY issues did not occur. Consequently, the BOCES failure to address ESY services for [Student] by 05/25/2009 did not constitute a violation of the IDEA.

### **REMEDIES**

1) **Compensatory Services for Failure To Fully Implement the 11/13/08 IEP:** In order to compensate for the educational harm caused by the BOCES' failure to provide the direct services specified by the 11/13/2008 IEP, the BOCES shall provide [Student] with 345 minutes of occupational therapy services and 930 minutes of special education services. These compensatory services shall be in addition to any services [Student] currently receives or will receive, that are designed to advance Student toward [Student's] current IEP goals and objectives. These compensatory services shall be provided at a time and place reasonably convenient to [Student] and [Student's] family. Student's compensatory education under this paragraph shall be

completed no later than **12/31/2009**. The BOCES shall supply the SCO with written documentation of compliance with this remedy no later than **01/15/2010**.

2) **Compensatory Services for the Inappropriateness of the 11/13/09 IEP:** In order to compensate for the educational harm caused by the inadequate 11/13/2008 IEP, which resulted in [Student] being denied a FAPE, the BOCES shall provide [Student] with eighty-seven (87) hours of special education compensatory services. These compensatory services shall be in addition to those compensatory services ordered in Paragraph 1, above, and any other services [Student] currently receives or will receive, that are designed to advance Student toward [Student's] current IEP goals and objectives. These compensatory services shall be provided at a time and place reasonably convenient to [Student] and [Student's] family. Student's compensatory education under this paragraph shall be completed no later than **07/15/2010**, and the BOCES shall supply the SCO with written documentation of compliance with this remedy no later than **07/31/2010**.

3) **Transportation Reimbursement:** [Parent] transported [Student] to school during the 2008-2009 school year as follows: Roundtrip from home to BOCES office: 7.5 miles per day, 17 days, at \$3.37 per day or \$57.29; and roundtrip from home to [Elementary School]: 7.0 miles per day, 23 days at \$3.15 per day or \$72.45 for a total of \$129.74. In order to reimburse [Parent] for special transportation services that were not supplied to pursuant to the 11/13/2008 IEP, the BOCES shall reimburse [Parent] \$129.74 on or before **08/15/2009**. The BOCES shall supply the SCO with written documentation of compliance with this remedy no later than **08/31/2009**.

4) **IEP Team Meeting:** If the parents want the student's IEP Team to be reconvened to develop an appropriate IEP for the student, [Student's Father] shall do so in writing addressed to the BOCES' Special Education Director with a copy of such letter simultaneously submitted to the SCO. Upon receipt of such written request, the BOCES shall reconvene the student's IEP Team, as defined by 34 CFR §300.321 and ECEA Rule 4.03(5)(a), in order to develop an IEP, consistent with 34 CFR §300.320, that is designed to provide [Student] a FAPE in the least restrictive environment. This IEP Team meeting shall be convened within ten (10) calendar days following the BOCES' receipt of the written request from [Student's Father]. During such IEP Team meeting, the IEP Team shall adhere to the procedures for IEP development established by 34 CFR §300.324. During the IEP Team meeting, the IEP Team shall address and make decisions concerning:

- a) How [Student] will be integrated, to the maximum extent appropriate, with nondisabled students when [Student] begins attending [Middle School] consistent with 34 CFR §§300.114 through 300.118.
- b) How [Student] will be transitioned into [Middle School], including specific dates, times and Team members who will be involved;
- c) Details concerning how the BOCES will provide [Student] with transportation to and from school, including planning for any supports (e.g., a para-professional) necessary during transports;
- d) Scheduling of a specific date, a minimum of 45 calendar days prior to the end of the 2009-2010 school year, when the IEP Team shall reconvene in order to determine [Student's] ESY needs for the summer of 2010;

- e) Positive behavioral interventions and supports (such as a behavior plan) that need to be incorporated into [Student's] IEP and designed to advance [Student] towards meeting [Student's] goals and objectives;
- f) Accommodations and modifications (e.g., the extent of para-professional supports, sensory and communication supports) that will be in place to meet [Student's] needs during the 2009-2010 school year;
- g) Specific plans for how the IEP Team will: coordinate consistent implementation of [Student's] IEP accommodations, modifications and supports, ( including meetings the providers will schedule, and how providers will track [Student's] behaviors, speech-language progress, and OT progress);
- h) Any other matters noted and remaining to be addressed as per the 05/06/2009 IEP meeting; and
- i) Until such time as the TRO is vacated or dismissed, the BOCES shall ensure that, in addition to communications with [Student's Father], [Parent] is provided with timely written notification of all IEP and school meetings concerning [Student] consistent with §34 CFR 300.322 and prior written notice consistent with 34 CFR §300.503, to ensure her meaningful participation and input through a designated proxy or advocate. **The BOCES shall simultaneously supply the SCO with a copy of any written communications sent to [Parent] as well as written notification of when the TRO is dismissed.**

The BOCES shall supply the SCO with written verification of completion of each and every item, above, **no later than fifteen (15) calendar days after the IEP is finalized.**

5) The BOCES must correct the cited noncompliance as soon as possible but, in any event, no later than December 31, 2009. Consequently, on or before **September 2, 2009**, the BOCES must submit to the Department a proposed Corrective Action Plan (CAP) that effectively addresses how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the BOCES is responsible. See, 34 CFR §300.151(b). The [CAP] must address:

- a) How the BOCES will ensure that [Elementary School] staff and BOCES staff understand and correctly apply the requirements for IEP development at 34 CFR §300.324;
- b) How the BOCES will ensure that, when the BOCES Special Education Director cannot attend an IEP Team meeting, the Special Education Director's designee is qualified to supervise the provision of special education services, is knowledgeable about the availability of resources of the BOCES and is authorized to commit the resources of the BOCES consistent with 34 CFR §300.321(4) and ECEA Rule 4.03(5)(a)
- c) How the BOCES will ensure that the students with disabilities within the BOCES' responsibility receive the special education, transportation and occupational therapy services specified in their IEPs;

- d) How the BOCES will ensure that a full continuum of alternative placements is available within the BOCES such that children with disabilities are placed in the least restrictive environment consistent with 34 CFR §§300.114 through 300.117.

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

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

### **CONCLUSION**

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

Dated this 31st day of July, 2009.

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Jeanine M. Pow, Esq.  
State Complaints Officer