

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 2010: 511**

**Colorado Springs School District 11**

**DECISION**

**INTRODUCTION**

This is a pro-se, state-level complaint (Complaint), dated 06/15/2010.

The Complainant is the mother of a child with a disability. In order to comply with the federal regulations (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))<sup>1</sup> and to protect the anonymity of Complainant and her child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be abbreviated as follows and redacted prior to publication:

- [Parent], Complainant [Parent];
- [Student], Child of Parent, [Student];
- [Student's] age of [Age] [Age];
- [Charter School], [Charter School];
- Colorado Springs School District 11 [District];
- [Special Education Director], District Executive Director of Special Education [Special Education Director];
- [Special Education Facilitator], District Special Education Facilitator [Special Education Facilitator];
- [Principal], Globe Charter School Education Director/Principal [Principal];
- [School Psychologist], School Psychologist [School Psychologist];
- [Special Education Teacher], Special Education Teacher [Special Education Teacher];
- [Mentor], Special Education Teacher Mentor [Mentor];
- [General Education Teacher], General Education Teacher [General Education Teacher];
- [Behavior Consultant], Behavior Consultant [Behavior Consultant];
- [SLP], Speech Language Pathologist [SLP];
- [Non-Profit Organization] [Non-Profit Organization]; and
- [Private Reporter], [Non-Profit Organization] Evaluator [Private Reporter].

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<sup>1</sup> FERPA, codified at 20 U.S.C. 1232g, was enacted in 1974, to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.*

The former State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaints process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The overriding issues and, therefore, the scope of the investigation identified by the SCO, between the dates of 06/15/2009 and 06/15/2010, are:

- I. Whether [Student] was denied a free and appropriate public education (FAPE) due to the District's improper refusal to supply [Student] with a paraprofessional (Para) between 11/21/2009 and 05/27/2010; and, if so, whether the District's refusal violated the IDEA regulations concerning the least restrictive environment (LRE), §§ 300.114 through 300.120; and
- II. Whether [Student] was denied a FAPE by the District's failure to provide [School] with Para services that the District provides to traditional public schools in the District.

The former SCO wrote the [Special Education Director] on 06/16/2010 and enclosed a copy of [Parent's] Complaint but failed to enclose copies of Complaint Exhibits A-D. In conjunction with the Response, the District was specifically directed to supply the SCO with all supporting documentation substantiating the District's Response including:

- The District's policies and procedures regarding special education service provision to District Charter schools.
- All information pertaining to District's provision of special education and related services to [School], including [School's] contract with the District.
- All documentation pertaining to [Student's] IEP, including all communications between District and Complainant with regard for the need for paraprofessional support.
- Any communications between the District and [School] regarding [Student's] need for paraprofessional support.
- Any other information the District believed would be helpful in resolving the Complaint.

The District's Response, submitted by the District's legal counsel, Deborah S. Menkins, Esq., consisted of an eight page cover letter and supporting documentation (Exhibits 1-5) and was timely received on 07/06/2010.

In a letter dated 07/06/2010, [Parent] was supplied with a complete copy of the District's Response and supporting documentation and was advised that any reply (Reply) was due no later than 07/16/2010.

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<sup>2</sup> Hereafter IDEA regulations will be referred to by regulation number, e.g., § 300.000.

On 08/05/2010, the SCO interviewed the following District personnel: [Special Education Facilitator]; [General Education Teacher]; [Special Education Teacher]; [Principal]; [Behavior Consultant]; [School Psychologist]; and [Mentor].

On 08/05/2010, the SCO learned that the District had never received Complaint Exhibits A-D. Therefore, on the same date, complete copies of Complaint Exhibits A-D were sent by Fed-Ex overnight mail to District's legal counsel.

On 08/06/2010, the SCO interviewed [Parent]. In conjunction with that interview, [Parent] noted that she had not filed a Reply to the Response since she "has not been able to read or write for at least 10 years." [Parent] requested that any Complaint documentation be emailed to her in PDF format so that she could listen to the documentation on her computer.

On 08/09/2010, the SCO emailed [Parent] in PDF format a complete copy of the District's Response, including Exhibits 1-14; all Complaint correspondence; the Procedural Safeguards; and the State Complaint Procedures. In the accompanying cover letter, [Parent] was advised that any Reply to the Response was due by 5:00 p.m. on 08/19/2010.

On 08/09/2010, [Parent] supplied the SCO with additional requested documentation.

On 08/11/2010, District's legal counsel supplied the SCO with additional requested documentation.

On 08/12/2010, the SCO notified the parties by PDF formatted email that, due to exceptional circumstances, the Decision deadline had been extended to 08/27/2010.

On 08/17/2010, the SCO interviewed [Private Reporter]; [Special Education Director]; [Special Education Facilitator]; [Principal]; [General Education Teacher]; and [Behavior Consultant].

On 08/19/2010 at 7:49 p.m., the SCO received [Parent's] untimely Reply and attached documentation (i.e., Exhibits E through H).

On 08/19/2010, the SCO received the final requested documentation from the District, Exhibits 16-19, and closed the Record.

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

[Parent's] Complaint makes two allegations that are summarized below:

- 1) Between 11/21/2009 and 05/21/2010, The District improperly refused to supply [Student] with needed Para support and, as a result, [Student] was only able to attend school 3 ¾ hours per day between 03/03/2010 and 05/21/2010; and
- 2) The District failed to supply [School] with special education services (i.e., Para support) that District made available to other public schools in the District.

Proposed Remedy: Supply [Student] with a Para; clarify District's special education responsibilities to [School]; and include staff and parent training on [Student's] IEP.

### **THE DISTRICT'S RESPONSE**

The District's Response is summarized as follows:

- 1) [Student] does not require paraprofessional support; and
- 2) The District did not fail to provide paraprofessional support to [Student] because [Student] attended a charter school.

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

[Parent's] Reply reiterated the general complaint allegations and restated the information obtained in the 08/06/2010 interview. The Reply included Exhibits E through H, most of which duplicated documentation already contained in the Record. Although untimely, [Parent's] Reply was considered by the SCO.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **Background:**

1. [Student] is [Age] years of age. In conjunction with the 2009-2010 school year, [Student] was enrolled in [School]. At the time of [Student's] enrollment, [Parent] did not notify [School] that [Student] had an IEP.<sup>4</sup> However, the SCO concludes that previously, [Student] had been identified as a child with a disability and had an IEP.<sup>5</sup>

2. **[Private Report] dated 10/21/2009.**<sup>6</sup> [Parent] contacted [Private Reporter] at [Non-Profit Organization] early in the Fall of 2009 due to concerns that [General Education Teacher] seemed to be struggling with how to address [Student's] behaviors in the classroom.<sup>7</sup> [Parent] requested that [Private Reporter] interview [General Education Teacher], observe [Student] in the classroom, and make written recommendations concerning how to address [Student's] behaviors. The SCO specifically finds that, given [Private Reporter's] training and background,

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<sup>3</sup> Appendix A, attached and incorporated by reference, details the entire Record.

<sup>4</sup> Exhibit 19.

<sup>5</sup> Interview with [Parent].

<sup>6</sup> The Private Report, Exhibit D, pgs. 10-12, was requested by [Parent] and paid for by Medicaid.

<sup>7</sup> Interviews with [Parent] and [Private Reporter].

(i.e., an M.A. in Behavioral Analysis and a Board Certified Behavior Analyst),<sup>8</sup> she was qualified to make observations and recommendations concerning methods of addressing [Student's] classroom behaviors.

3. During a 09/22/2009 interview, [General Education Teacher] communicated to [Private Reporter] that [Student] was exhibiting numerous negative behaviors (i.e., difficulty working independently; becoming frustrated and engaging in property destruction; difficulty keeping hands to self; quickly becoming aggressive with other students; repeatedly shouting out and talking out of turn rather than raising hand; and targeting specific peers). [General Education Teacher] reported that [Student's] aggressions were often exhibited without any identifiable precipitating event.<sup>9</sup>

4. At [Parent's] request and with knowledge of [School], on 09/24/2009 and 10/09/2009, [Private Reporter] observed [Student] at [School] over a period of four hours. As a result of her observations, [Private Reporter] wrote a report (Private Report) dated 10/21/2009. [Private Reporter] had difficulty contacting [Parent] after completing the Private Report and neither [Private Reporter] nor [Parent] could say when [Parent] was supplied with the Private Report.<sup>10</sup> The SCO specifically finds that it is more likely than not that [Parent] was supplied with a copy of Private Report no later than 10/28/2010, the same date that [Private Reporter] supplied [General Education Teacher] with a copy of the Private Report.

5. In her report, [Private Reporter] noted that during her observations: “[Student] demonstrated a variety of physically aggressive behaviors (e.g., slapping; pushing; bumping into others; name calling; tearing/bending cards; hitting desk; kicking chair; speaking out of turn; non-compliance; out of seat; whining; extravagant stories; lying; etc.).”<sup>11</sup> [Private Reporter] made six specific recommendations in her Private Report as a result of her classroom observations and interviews with [Parent] and [General Education Teacher] which are summarized as follows:

- Conduct a one to one meeting between [Student] and [General Education Teacher] to explain positive and negative behaviors and consequences that will follow;
- Ensure that, when [Student] is sent to [Principal's] office for inappropriate behaviors, consistent procedures be in place to ensure negative rather than positive reinforcement of behaviors;
- Hold [Student] to the same classroom standards as peers and provide immediate consequences for inappropriate classroom behavior – *“This may require the use of an additional staff to assist while the classroom teacher continues to attend to regular classroom activities”*;
- When [Student] engages in inappropriate behaviors to obtain attention from peers and adults, the behaviors should be ignored by turning away and not responding through visual or verbal contact;

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<sup>8</sup> Interview with [Private Reporter].

<sup>9</sup> Interview with [Private Reporter].

<sup>10</sup> Interviews with [Parent] and [Private Reporter].

<sup>11</sup> Exhibit D, pg. 10.

- *“Because [Student’s] high levels of non-compliance occurred in the classroom but not in 1:1 situations it is recommended that [Student] receive additional services from the school (i.e., a classroom paraprofessional) to assist [Student] throughout the day and ensure that consequences are delivered immediately and [Student] is participating to [Student’s] maximum capacity with classroom activities”*; and
- Give [Student] positive reinforcement of 1:1 time with office staff when appropriate classroom behaviors are demonstrated.<sup>12</sup>

On 10/28/2009, [Private Reporter] met with [General Education Teacher]; supplied her with a copy of the Private Report; and reviewed the six recommendations contained in the report.

6. [General Education Teacher] implemented some of [Private Reporter’s] recommendations in the classroom that did not involve Para support.

7. During 10/2009, [Student] received three disciplinary office referrals (i.e., 10/08/2009 – disrespectful to teacher; 10/09/2009 – arguing and spitting at another student; and 10/15/2009 – not keeping hands to self on the playground).<sup>13</sup> [Student] also received an in-school suspension on 10/06/2009 for deliberately kicking another student.<sup>14</sup>

8. **10/29/2009 Reevaluation and IEP Meeting.** Because [Student] was not making satisfactory progress, a reevaluation of [Student] was scheduled for 10/29/2009. The meeting was attended by: [Parent]; [Student]; [General Education Teacher]; [Special Education Teacher]; [Mentor]; [Principal]; [SLP]; and [School Psychologist].<sup>15</sup> As a result of that reevaluation meeting, [Student] was determined to be eligible for special education and related services on the basis of [disability]. The 10/29/2009 IEP was developed the same date and did not include a behavior plan.

9. On 11/11/2009, [Student] received an in-school suspension for deliberate aggressive physical contact with another student.”<sup>16</sup>

10. On 11/21/2009, [Parent] emailed [Special Education Director] expressing concerns about [Student’s] school behaviors. [Parent] noted that she had recently hospitalized [Student] for five days at a local psychiatric hospital and that [Student] had recently received another in-school suspension. In the email, [Parent] requested an IEP meeting and noted “I would prefer a para over day treatment. [Student] is unsafe at school.”<sup>17</sup> Given the credible evidence in the Record, the SCO finds that [Parent] first requested Para services for [Student] on 11/21/2009.

11. [Special Education Director] forwarded [Parent’s] 11/21/2009 email to [Special Education Facilitator] the same date but did not forward it to [Special Education Teacher]. As a

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<sup>12</sup> Id., pg. 12 (emphasis added).

<sup>13</sup> Exhibit D, pgs. 5-7.

<sup>14</sup> Incident Log, Exhibit 3, pg. 198.

<sup>15</sup> Exhibit 3, pg. 169.

<sup>16</sup> Incident Log, Exhibit 3, pg. 198.

<sup>17</sup> Exhibit 3, pg. 179.

result of [Parent's] meeting request, [Special Education Teacher] prepared a Notice of Meeting for an IEP meeting to be held on 12/17/2010.<sup>18</sup> The meeting notice indicated that the purpose of the meeting was an "IEP Review . . . to determine how well the current program is meeting the identified needs of your student and to discuss any possible changes in his or her special education program." The meeting notice also notified [Parent] that "Other individuals who have knowledge or special expertise regarding your child may participate at your discretion."<sup>19</sup> Given the credible evidence in the Record, the SCO concludes that [Special Education Teacher] had no knowledge of [Parent's] 11/21/2009 email to [Special Education Director] requesting that a meeting be scheduled to discuss a Para.<sup>20</sup>

12. In advance of the 12/17/2009 IEP meeting, in 11/2009 [Behavior Consultant] conducted a functional behavior assessment (FBA) of [Student]. In conjunction with the FBA observations while [Behavior Consultant] was conducting in the classroom observations on 11/18/2009 and 11/19/2009, [General Education Teacher] briefly discussed and also supplied a copy of the Private Report to [Behavior Consultant].<sup>21</sup> The SCO specifically finds that the Private Report was received by the [School] through [General Education Teacher], on 10/28/2009 and by the District, through [Behavior Consultant], on 11/19/2009.

13. The [Behavior Consultant] "glanced at the recommendations" in the Private Report but noted "[Non-Profit Organization] works in a 1:1 setting so typically in my experience, that 1:1 support is often one of their first recommendations." When asked what she had done with the Private Report, [Behavior Consultant] stated that she had "just stuck the Private Report in my documentation of information."<sup>22</sup> The SCO specifically finds that [Behavior Consultant] never considered the Private Report recommendations nor discussed the Private Report with [Parent], [Private Reporter] or with any other IEP Team members at any time during the remainder of the school year.

14. On 12/09/2009, [Behavior Consultant] completed the FBA of [Student].<sup>23</sup> In conjunction with the FBA, [Behavior Consultant]: did classroom observations; interviewed [General Education Teacher] and [Special Education Teacher] and reviewed [Student's] Incident/Behavior Tracking Log (Incident Log).<sup>24</sup> However [Behavior Consultant] collected no baseline frequency data concerning the problem behaviors noted in the FBA, described by [General Education Teacher], or noted in the Private Report.<sup>25</sup>

15. **12/17/2009 Reevaluation Team Meeting.** The IEP Team was comprised of the following persons: [Parent]; [Special Education Teacher]; [Special Education Teacher as

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<sup>18</sup> Interview with [Special Education Teacher].

<sup>19</sup> Exhibit 9.

<sup>20</sup> Interviews with [Special Education Teacher] and [Special Education Director].

<sup>21</sup> Interviews with [General Education Teacher] and [Behavior Consultant].

<sup>22</sup> Interview with [Behavior Consultant].

<sup>23</sup> FBA, Exhibit 3, pgs. 180-185.

<sup>24</sup> The Incident Log was compiled from [Principal's] personal observations as well as incidents reported by [General Education Teacher].

<sup>25</sup> Interview with [Behavior Consultant].

Special Education Director Designee]; [General Education Teacher]; [Behavior Consultant] and [Mentor].<sup>26</sup> [Parent] did not invite [Private Reporter] to the Team meeting.

16. During the 12/17/2009 IEP meeting, the team discussed [Student's] behaviors; the FBA; development of a Behavior Intervention Plan (BIP); increased special education services; and a plan to have [Behavior Consultant] work with [General Education Teacher] regarding implementation of the BIP and monitoring of [Student's] behaviors.<sup>27</sup> BIP goals were developed by the team to address the following behaviors:

- “Verbal acting out – yelling/shouting, calling out, arguing, name calling, whining (frequency = @ 20xs per am); and
- Physical aggression – pushing/kicking (3 incidents this semester). Function of the behavior: to gain attention from adults and peers.”<sup>28</sup>

17. At the conclusion of the meeting, [Special Education Teacher] supplied [Parent] with a prior [written] notice (PWN) in which the 12/17/2009 meeting was characterized as a reevaluation meeting. The PWN also indicated that the IEP Team BIP action/refusal was based in part upon “teacher report/data [and] parent report/data.” The SCO finds that:

- The BIP baseline data concerning ‘verbal acting out’ was anecdotal and no formal frequency data was collected by [Behavior Consultant];<sup>29</sup>
- The 12/17/2009 meeting was a reevaluation meeting; and
- The IEP Team did not discuss [Parent's] concerns regarding a Para, the Private Report, or [Private Reporter's] recommendations contained in that report.<sup>30</sup>

18. **12/17/2009 IEP – Relevant (Amended) Provisions.** In addition to incorporating a BIP to the IEP and deleting one IEP goal, the IEP Team amended [Student's] IEP as follows:<sup>31</sup>

- How does the student's disability impact access to and progress in the general curriculum/activities? [Added] Behavior impacts success in the classroom.
- Accommodations, modifications and supports: [Added] Use of a tracking strip when reading;
- Supplemental Aids and Services: [Added] Consultation with Specials Teachers regarding behaviors by special education teacher 10 min/month; and
- Added a behavior [intervention] plan.

[Student's] recommended placement in the least restrictive environment (LRE) remained in the general education class at least 80% of the time.<sup>32</sup>

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<sup>26</sup> Exhibit 3, pg. 190.

<sup>27</sup> Interviews with [Special Education Teacher]; [General Education Teacher]; [Behavior Consultant]; and [Parent].

<sup>28</sup> Exhibit 3, pg. 187.

<sup>29</sup> Interview with [Behavior Consultant].

<sup>30</sup> Interviews with [Special Education Teacher]; [General Education Teacher]; and [Behavior Consultant].

<sup>31</sup> Exhibit 3, pgs. 186-194. The amended 12/17/2009 IEP and BIP goals are listed in FF 33, below.

<sup>32</sup> Id. at pg. 189.

19. As a result of the 12/17/2009 IEP meeting, staff continued to log [Student's] behaviors using the Incident Log and [General Education Teacher] kept an Intervention Tracking log (Intervention Log) which recorded interventions (i.e., accommodations and modifications) that were implemented throughout the school year by [General Education Teacher], [Special Education Teacher] and [Principal].<sup>33</sup>

20. During 01/2010, [Student] was allowed to sleep in the nurse's office on four different occasions after complaining of being tired:

- 01/06/2010 – [Student] slept for two hours;
- 01/07/2010 – [Student] slept for 90 minutes. Parents notified of concern of student being overly tired;
- 01/21/2010 – Slept for 1 ½ hours in morning 8:15-9:45 a.m. Mother notified of sleeping concerns;
- 01/22/2010 – Slept for 2 ¼ hours in the morning.<sup>34</sup>

21. During SCO's interview, [Parent] attributed [Student's] excessive tiredness at school to increased medications [Student] had been prescribed. [Parent] noted that [Student] had been on medications "every since [Student] began school" and had variously "been prescribed antipsychotics, antidepressants and Ritalin." [Parent] noted that "[Student's] medications and dosages change on a monthly basis."<sup>35</sup> During interviews, the [School Psychologist] expressed concerns about the types of medications described in [Student's] past school records. [Principal] also noted that she was aware that [Student] was taking medications and, consistent with [School] policy and student safety concerns, she had requested that [Parent] supply specific information on medications [Student] was taking. Despite repeated requests throughout the school year, [Parent] never supplied [School] with a list of [Student's] current medications.<sup>36</sup>

22. Between 01/15/2010 and 02/11/2010, [Student's] disruptive behaviors (e.g., verbal disruptions and physical aggressions) increased and resulted in loss of recesses; numerous visits to [Principal's] office; and a one day suspension.<sup>37</sup>

23. On 02/11/2010, [Parent] emailed [Special Education Facilitator] requesting another IEP meeting for the specific purpose of discussing [Student] receiving Para support in the classroom.<sup>38</sup> The following morning, [Special Education Facilitator] emailed [Parent] a response stating:

. . . The first thing I will need to look at is the current instructional programming

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<sup>33</sup> Exhibit 3, pgs. 198-201 and 204-207 and Interview with [General Education Teacher] and [Principal].

<sup>34</sup> Exhibit 3, Incident Log, pg. 199.

<sup>35</sup> Interview with [Parent]. On 08/06/2010, [Parent] offered to supply SCO with a copy of all medications prescribed to [Student] during the 2009-2010 school year and was told the information would be appreciated. On 08/12/2010, the SCO formally requested that [Parent] obtain a complete list from the pediatrician of all medications [Student] was prescribed during the 2009-2010 school year. [Parent] had still not supplied the SCO with the requested information by 08/19/2010 when the Record was closed nor by the date that this Decision was issued.

<sup>36</sup> Interviews with [School Psychologist] and [Principal].

<sup>37</sup> Exhibit 3, pg. 199 and Interviews with [Parent]; [Behavior Consultant]; and [School Psychologist].

<sup>38</sup> Exhibit 3, pg. 196 and [Parent] interview.

[School] is providing. Adding a Para Professional support can be considered if the [School] staff can show that they are providing appropriate instructional programming and support but they are still not able to meet [Student's] instructional needs. [School] staff may have the required documentation and I am just not aware of that data . . . I will find out as soon as I am back in town. I plan to be at [School] on Tuesday morning and someone will be in touch with you to arrange a meeting.<sup>39</sup>

24. A conference was scheduled for 03/01/2010. In advance of the conference, [Special Education Facilitator] instructed [Special Education Teacher], [General Education Teacher] and [Principal] to meet and jointly complete a District Severity/Impact Rubric (Rubric) questionnaire to “help us determine the degree to which [Student's] needs are impacting [Student's] success at school.”<sup>40</sup> Consequently, the three staff members met, discussed and jointly scored between “0” (i.e., the lowest rating) and “3” (i.e., the highest rating) [Student's] needs in four discrete areas: Instructional; Communication; Behavioral; and Physical.

25. The [Special Education Director] explained to SCO that: the Rubric has been in effect for three years; was designed by a team of District special educators; and is used primarily for determining a student's Para needs in both traditional public schools and charter schools. The Rubric poses a total of 12 specific questions in the four discrete areas. “If the total [score] is fairly low, (i.e., 17-18) that implies that there is no para support needed and the student's needs can be met by special education and general education teachers without para support. If the total is above 17 or 18 . . . the school can request additional para support for the student.”<sup>41</sup>

26. In completing the Rubric, the [School] staff scores resulted in [Student] receiving a total score of “16” with an assigned a rating of “3” to three specific inquiries:

- Home/School Communications: Home-school communication daily, personal contact w/family 1-4 x mo.;
- Behavioral Supports: BIP is in place with specialized replacement behaviors, frequent access to quiet area, crisis plan to include physical intervention; and
- Safety Concerns: *[Student] engages in behaviors that are dangerous to self and others on a daily basis.*<sup>42</sup>

27. **03/01/2010 Conference.** The conference was attended by the following IEP Team members: [Parent]; [Special Education Teacher]; [General Education Teacher]; [Principal]; [Behavior Consultant] and [Special Education Facilitator].<sup>43</sup> The attendees discussed the advisability of a Para, a SIED center based school placement and the option of adding a Classroom Management Plan. In conjunction with those discussions, the Team reviewed [Student's]: Incident Log; Intervention Log; the Rubric; and the FBA.<sup>44</sup> As a result of that

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<sup>39</sup> Exhibit 3, pg. 196.

<sup>40</sup> Exhibit 3, Rubric, pg. 202 and email pg. 212; Interviews with [Special Education Teacher]; [General Education Teacher] and [Principal].

<sup>41</sup> Interview with [Special Education Director].

<sup>42</sup> Exhibit 3, pg. 202 (emphasis added).

<sup>43</sup> Exhibit 3, pg. 197.

<sup>44</sup> Interviews with [Parent]; [Special Education Teacher]; and [Special Education Facilitator].

meeting, the Team agreed [Student's] needs did not require a Para or a more restrictive SIED placement but that: (i) [Special Education Teacher] and [School Psychologist] would spend more time in [Student's] classroom; (ii) [Student's] time with [School Psychologist] would be increased through participation in a social skills group; and (iii) staff would assist [Student] with [Student's] vocabulary.<sup>45</sup> The Team also determined that insufficient data had been collected regarding interventions. Therefore, [Behavior Consultant] was to “work with [the] team re: data [and also] help with social skill strategies.”<sup>46</sup> The SCO specifically finds that the credible evidence in the Record concerning the 03/01/2010 IEP conference is as follows:

- No formal frequency data concerning [Student's] problem behaviors was collected in advance of the meeting;
- [Student's] progress to date on the two BIP goals was not discussed;
- Neither the [Private Report] nor the [Private Reporter's] recommendations contained in that report were discussed by the Team; and<sup>47</sup>
- The IEP was not amended subsequent to the conference nor was [Parent] supplied with prior [written] notice concerning the Para denial.

28. As a result of the 03/01/2010 IEP conference: [Behavior Consultant] observed [Student] in [General Education Teacher's] classroom for approximately one hour; and discussed with [Special Education Teacher] what social skills the teachers should focus on with [Student].<sup>48</sup> Subsequent to her observations and discussions, [Behavior Consultant] drafted a Classroom Management Plan which targeted certain [Student] behaviors and made recommendations:

- Following adult directions across settings;
- Increasing flexibility/tolerance for transitions/participation in classroom activities; and
- Approximately 20 written recommendations for staff to implement in addressing the following behaviors: yelling/shouting/calling out; name calling; hitting/kicking staff; transitions; refusal to follow adult directions; and accepting “wait” and accepting “no.”<sup>49</sup>

In conjunction with her Classroom Management Plan, [Behavior Consultant] collected no baseline frequency data concerning any of the behaviors detailed in the Classroom Management Plan.<sup>50</sup> The Classroom Management Plan was not completed until 04/20/2010 and therefore, the SCO finds that any implementation of the plan occurred after that date.

29. **03/01/2010 Meeting with [Principal].** Subsequent to the 03/01/2010 conference, [Parents]<sup>51</sup> met with [Principal] for a mandatory meeting<sup>52</sup> to discuss [Student's] current five-day suspension. The suspension had been precipitated by [Student] pushing or shoving a teacher and

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<sup>45</sup> Exhibit 3, pg. 197 and Interviews with [Special Education Teacher] and [Parent].

<sup>46</sup> Exhibit 10.

<sup>47</sup> Exhibits 3, pg. 197; and 10. Interviews with [Behavior Consultant] and [Special Education Facilitator].

<sup>48</sup> Interview with [Behavior Consultant].

<sup>49</sup> Exhibit 11, pgs. 208-209.

<sup>50</sup> Interview with [Behavior Consultant].

<sup>51</sup> Both Mother and Father met with [Principal].

<sup>52</sup> Pursuant to C.R.S. § 22-33-105(3)(a) and (b)(II), the [school principal] must meet with the parent to review the suspension and the student cannot be readmitted until the meeting has occurred.

other students and [Student] making suicidal statements.<sup>53</sup> [Parents] noted that [Student] was to begin individual therapy on 03/02/2010.<sup>54</sup> One of the topics discussed in the meeting was whether [Student] should attend school on a modified schedule at the conclusion of the suspension. During these discussions, [Principal] conferred by telephone with [Special Education Facilitator] regarding a modified school day. [Special Education Facilitator] opined that she “supported the decision as long as [Student] [continued to receive] all services and the modified day was a positive intervention as opposed to a punitive reaction.”<sup>55</sup> As a result of the discussions, [Parents] agreed that, on 03/05/2010, at the conclusion of the current five-day suspension, [Student] would begin attending school on a reduced schedule, three and ¾ hours per day, in the morning and through lunch, and that when at home in the afternoons, [Student] would do homework that had been sent home by teachers or that was available on line.<sup>56</sup> The SCO concludes that the modified school day constituted a significant change in placement since, as a result, [Student] would spend less time with nondisabled peers than was indicated on the 12/17/2009 IEP (i.e. LRE placement: in general education class at least 80% of the time).

30. **04/26/2010 Conference.** At [Parent’s] request, a conference was conducted on 04/26/2010 to discuss how [Student] was doing on the modified day and plan for the next school year.<sup>57</sup> The IEP Team members attending that conference were: [Parent]; [Behavior Consultant]; [General Education Teacher]; [Special Education Teacher] and [Special Education Facilitator].<sup>58</sup>

31. During the 04/26/2010 conference, [Parent] expressed concerns about the modified school day.<sup>59</sup> Several Team members reported feeling very positive about [Student’s] improved behaviors with implementation of the modified school day.<sup>60</sup> Conversely, [Parent] did not believe that there had been any change in [Student’s] behaviors.<sup>61</sup> The 04/26/2010 conference notes, recorded by [Special Education Teacher], report that [Student’s] participation in the Earth Day event “went very well, [General Education Teacher] stated [Student’s] behaviors (physical) decreased. Intervention have [sic] been working. (i.e. ½ day, more time with psychologist and sped teacher)”<sup>62</sup> [Special Education Teacher] recalled that [Parent] appeared to be “pleased with the meeting.”<sup>63</sup> This is consistent with [Special Education Facilitator’s] meeting notes which also note “Mom agrees modified day is working.”<sup>64</sup>

32. The SCO specifically finds that given the credible evidence in the Record concerning the 04/26/2010 IEP conference:

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<sup>53</sup> Exhibit D, pg. 9 and Interviews with [Parent] and [Principal].

<sup>54</sup> Exhibit 13.

<sup>55</sup> Interview with [Special Education Facilitator].

<sup>56</sup> Interviews with [Principal] and [Parent].

<sup>57</sup> Interviews with [Parent]; [Special Education Teacher]; [Behavior Consultant]; [General Education Teacher] and [Special Education Facilitator].

<sup>58</sup> Exhibit 3, pg. 203.

<sup>59</sup> Interviews with [Parent] and [Special Education Facilitator].

<sup>60</sup> Interviews with [Behavior Consultant]; [Special Education Teacher]; and [General Education Teacher].

<sup>61</sup> Interview with [Parent].

<sup>62</sup> Exhibit 3, pg. 203.

<sup>63</sup> Interview with [Special Education Teacher].

<sup>64</sup> Exhibit 5, pg. 219.

- [Student's] aggressive behaviors had decreased appreciably by 04/26/2010 and this was attributable to implementation of the modified school day as well as increased time with [School Psychologist] and [Special Education Teacher];
- The IEP Team agreed that it was appropriate to continue the modified day through the remainder of the school year; and
- The IEP Team agreed that [Student] should begin the 2010-2011 school year on the modified day and gradually add more time to the school day in increments of 15-30 minutes, over a period of four weeks.

33. **[Student's] Progress Reports.** [Student's] 12/17/2009 IEP and BIP were implemented on 12/17/2009. The IEP and BIP Measurable Objectives and progress reports are as follows.<sup>65</sup>

i) IEP: Given instructional level text, [Student] will retell what [Student] has read with 80% accuracy. Baseline: 0 PM 19. Progress notes: 03/12/2010 - Inconsistent progress - [Student] has made some progress; 05/14/2010 - Inconsistent progress – [Student] still needs to work on this.

ii) IEP: [Student] will use upper and lower case letters when writing words with 80% accuracy. Baseline: 50% accuracy. Progress notes: 03/12/2010 – Inconsistent progress – [Student] has made inconsistent progress; 05/14/2010 – Inconsistent progress – Still needs work on this.

iii) IEP: Given topic, [Student] will write 2 to 4 sentences in logical order on the topic in 3 out of 3 opportunities. Baseline: [Student] is writing short sentences off topic. With cues writes 3 sentences on topic. Progress notes: 03/12/2010 – Inconsistent progress – [Student] is still working on this goal; 05/14/2010 – Inconsistent progress – Still needs to work on this.

iv) BIP: [Student] will use appropriate means (hand –raising, tapping on shoulder, saying “Excuse me”, etc.) to gain attention from adults and peers across educational settings with fading modeling/prompts/cues (to independence) in 9 out of 10 trials. Baseline: [Student] uses appropriate means inconsistently across settings @ 2 out of 10 trials. Progress notes: 03/12/2010 – Inconsistent progress – [Student] has worked inconsistently; 05/14/2010 - Steady progress - [Student] has made improvement.

v) BIP: [Student] will appropriately ask for a break (or use other identified self-regulation strategy) across educational settings with fading modeling/prompts/cues in 9 out of 10 trials. Baseline: [Student] will occasionally ask for a break/use strategy (typically prompted) @ 5 out of 10 trials. Progress notes: 03/12/2010 – Inconsistent progress – [Student] still needs to work on this goal; 05/14/2010 – Steady progress – [Student] has improved on this goal.

34. **Grade Reports for 2009-2010 School Year.**<sup>66</sup> Throughout the school year, none of [Student's] grades were below a “C.” [Student] frequently received “B’s” and occasionally

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<sup>65</sup> Exhibit 3, pgs. 187-188.

“A’s” for [Student’s] course work. During the first three quarters, [Student] also received poor citizenship grades in several of [General Education Teacher’s] classes. However, in the fourth quarter, [Student] received no poor citizenship grades from any teacher. When [Student] was on the modified school day between 03/05/2010 and 05/21/2010, [Student] attended Reading, Math, Writing, and electives (i.e., Computer Technology; Music; Art; and P.E.) at [School] and was assigned Reading, Math and Spelling homework during the afternoons when not in [School].<sup>67</sup>

35. Given the credible evidence in the Record, the SCO finds that, [Student’s]:

- Baselines for the BIP behavior goals were based on anecdotal information rather than formal frequency data;
- Progress on the IEP and BIP goals was not based upon any measurable supporting data;
- Problem behaviors had decreased by the end of the school year;
- Grades ranged from average to excellent (i.e., “C’s,” “B’s,” and “A’s”) during the school year; and
- Citizenship grades demonstrated marked improvement between the first and fourth quarters.<sup>68</sup>

36. The SCO finds that, between 03/05/2010 and 05/27/2010:

- Per [Parents’] agreement, [Student] attended [School] on a reduced schedule of three and  $\frac{3}{4}$  hours per day;
- At school, [Student] attended classes in reading, math, writing and electives (i.e., technology; music; art; and physical education);
- At home, [Student] had reading, math and spelling homework;<sup>69</sup>
- While on the modified school day, [Student] still participated in [School] field trips;
- On at least one [School] field trip, [Parent] chose to have [Student] accompanied by an private aide although the [School] did not make this a condition of [Student’s] participation in field trips;<sup>70</sup> and
- Consistent with the 12/17/2010 IEP, 03/01/2010 conference and 04/26/2010 conference, during the modified school year [Student] continued to receive all of the special education services to which [Student] was entitled.<sup>71</sup>

37. Given the evidence in the Record, the SCO also finds:

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<sup>66</sup> Exhibit 16.

<sup>67</sup> Interview with [Principal].

<sup>68</sup> Exhibits 3, pgs. 187-188, 16 and Interviews with [Behavior Consultant], [General Education Teacher], [Principal], [Special Education Teacher], [School Psychologist] and [Parent].

<sup>69</sup> Interviews with [Parent] and [Principal].

<sup>70</sup> Exhibit F and Interviews with [Principal]; [General Education Teacher]; and [Special Education Facilitator].

<sup>71</sup> Exhibits 12 and 14 and Interviews with [Special Education Teacher], [Behavior Consultant] and [School Psychologist].

- Subsequent to the 03/01/2010 IEP Team conference, [Parent] was not supplied with an amended IEP noting the specific change in services or with prior [written] notice concerning the Team decision not to supply [Student] with a Para;
- Subsequent to the 03/01/2010 meeting with [Principal], [Parent] was not supplied with an amended IEP or prior [written] notice concerning the significant reduction in the amount of time that [Student] was in the general education classroom; and
- Subsequent to the 04/26/2010 conference, [Parent] was not supplied with an amended IEP or prior [written] notice concerning the change in placement continuing into the 2010-2011 school year with a graduated increase in class time.

38. [Parent's] Complaint included a Private Diagnostic Evaluation dated 05/11/2010. However, because this evaluation was never supplied to the District prior to the filing of the Complaint, it was not considered by the SCO.<sup>72</sup> Additionally, the District's Response included a "Treatment Plan." The SCO could not determine who wrote the plan, the date of the plan, or who requested the plan and therefore this document was not considered in the investigation or Decision.<sup>73</sup>

39. **The District Policies and Contract for Special Education Services between District and [School].** The District has written policies concerning its contractual relations with all public charter schools operating within the District.<sup>74</sup> Pursuant to those policies, authorized charter schools are held to all of the same requirements as traditional public schools operating within the District.<sup>75</sup>

40. Since 07/01/2005, the District has had a continuous contract (Contract) with [School].<sup>76</sup> The Contract fully describes all agreements between [School] and the District during the 2009-2010 school year including the supply of special education support. Pursuant to the 2009-2010 Contract, [School] purchased "full coverage"<sup>77</sup> special education support from the District. In conjunction with this coverage, the District was responsible for 100% of the total annual costs incurred by [School] to deliver the special education and related services described in the IEPs of students enrolled in the [School], "including, without limitation, costs of providing all special education related services."<sup>78</sup> This coverage included the District's responsibility to supply [School] with Para support whenever such support was deemed to be necessary by the IEP Team.<sup>79</sup>

41. In devising the annual District budget for special education support and staffing needs, in April of each year, all traditional public schools and charter schools within the District, including [School], supply the District with the school's:

<sup>72</sup> Exhibit D, pgs. 13-22 and Interviews with [Parent] and [Special Education Facilitator].

<sup>73</sup> Exhibit 11, pgs. 210-211 and Interview with [Special Education Director].

<sup>74</sup> Exhibit 1.

<sup>75</sup> Id. pg. 1.

<sup>76</sup> Exhibit 2 and Interview with [Special Education Director].

<sup>77</sup> "Full coverage" is also known as "buy back" coverage.

<sup>78</sup> Exhibit 2, pgs. 34-35 and Interview with [Special Education Director].

<sup>79</sup> Interview with [Special Education Director].

- Projected Fall student enrollment; as well as
- The school’s special education support needs, based on the individual special education needs of their then enrolled students.

Using a formula,<sup>80</sup> the District allocates one Para for every 100 students enrolled in the school. This same formula is used in both traditional public schools and charter schools. If a school’s population changes (i.e., increases or decreases) between April and October 1<sup>st</sup>, the school can request an increase or decrease in Para support. Schools do not incur any additional fees for an increase in Para services. Based on this formula and given the [School’s] enrollment, during the 2009-2010 school year [School] could have received one Para. However, [Principal] never requested the District to supply the [School] Para support in April, 2009, by October 1, 2009, nor at any other during the 2009-2010 school year.<sup>81</sup>

42. In order to accommodate Para staffing needs that arise *after the formula has been finalized* for the school year, the administrator (i.e., Principal) can request that the District supply additional Para support at anytime. When the administrator requests additional Para support after October 1st, the Rubric<sup>82</sup> is completed for each student in the school who has a Para or who is thought to need a Para. According to the [Special Education Director], “this gives [the District] a picture for the entire school to make sure the special education students are getting their needs met.”<sup>83</sup> However, the [Special Education Facilitator] has variously explained the purpose of the Rubric. In a 02/16/2010 email to [Special Education Teacher] and [Principal], [Special Education Facilitator] explained that the Rubric “will help us determine the degree to which [Student’s] needs are impacting [Student’s] success at school.”<sup>84</sup> Conversely, in her 03/01/2010 email to [Special Education Teacher], [Special Education Facilitator] explained “We use this [total Rubric] number to determine the impact a student is having on a school.”<sup>85</sup>

43. Given the credible evidence in the Record, the SCO specifically finds:

- During the 2009-2010 school year, the District had a continuing duty to supply [School] with all *special education support needs of students, including Para services*, as determined by the IEP Team and described in the IEPs of students enrolled in [School];
- The District employed the Rubric as a method of gauging the *Para needs for each traditional public school and charter school* within the District, including [School], during the 2009-2010 school year;
- The Rubric is not an appropriate tool for determining the *Para needs of individual students at any school within the District* because the Rubric fails to take into account the *individual and unique needs of [Student]*; and
- It was inappropriate for the IEP Team to use the Rubric as a factor for determining [Student’s] Para needs at the 03/01/2010 IEP meeting.

<sup>80</sup> Exhibit 18.

<sup>81</sup> Interview with [Special Education Director].

<sup>82</sup> Exhibit 3, pg. 202.

<sup>83</sup> Interview [Special Education Director].

<sup>84</sup> Exhibit 4, pg. 212.

<sup>85</sup> Id, pg. 214.

## CONCLUSIONS OF LAW:

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

- I. Whether [Student] was denied a free and appropriate public education (FAPE) due to the District's improper refusal to supply [Student] with a Para between 11/21/2009 and 05/27/2010; and, if so, whether the District's refusal violated the IDEA regulations concerning the least restrictive environment (LRE), §§ 300.114 through 300.120.**
1. Under the IDEA and the corresponding Colorado law, the Exceptional Children's Educational Act (ECEA), students with disabilities have the right to a free and appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA 1 CCR 301-8, 2220-R-1.00 *et seq.*)<sup>86</sup>
  2. The IDEA defines a FAPE to mean *special education and related services* that:
    - (a) Are provided at public expense, under public supervision and direction, and without charge;
    - (b) Meet the standards of the [Colorado Department of Education];
    - (c) Include an appropriate preschool, elementary school, or secondary school education; and
    - (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

§ 300.17 (emphasis added).
  3. The standard for determining whether a student has received a FAPE is whether the student received "some educational benefit." *Board of Education v. Rowley*, 458 U.S. 176 (1982).
  4. In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of the IEP. *Garcia v. Board of Education*, 520 F.3d 1116, 1125 (10<sup>th</sup> Cir. 2008). Next, the court looks at whether the special education services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

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<sup>86</sup> Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

5. **The 12/17/2009 IEP meeting.** A core principal of the IDEA is parental participation. Therefore, the Procedural Safeguards require that parents be afforded the opportunity to participate in IEP meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. To that end, the district must provide notice indicating the purpose of the meeting. §§ 300.501(b) and 300.322(b)(1)(i). [Special Education Teacher] was not notified of [Parent's] specific request that the Team discuss [Student's] need for a Para. As a consequence, the meeting notice did not list this topic as a purpose for the meeting. (Finding of Fact11).<sup>87</sup> These actions constituted procedural violations of §§ 300.322(b)(1)(i) and 300.501(b)(2).

6. This was a reevaluation meeting. (FF 17). When conducting a *reevaluation*, the IEP Team must:

- (a)(1) Review *existing evaluation data* on the child, *including* –
  - (i) Evaluations and *information provided by the parents of the child*;
  - (ii) Current classroom-based, local, or State assessments, and *classroom-based observations*; and
  - (iii) Observations by teachers and related services providers; and
- (2) On the basis of that review, *and input from the child's parents*, *identify what additional data, if any are needed to determine* –
  - ...
    - (i)(B) ...*[T]he educational needs of the child*; and
    - ...
      - (iv) *Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participated, as appropriate in the general education curriculum.*
  - ...
    - (c) *The [district] must administer such assessments and other evaluation measures as may be needed to produce the data identified in (a), [above].*
  - ...

§ 300.305(a) and (c) (emphasis added). Despite [Parent's] request, [Student's] Para needs were not discussed by the IEP Team at the meeting nor was the Private Report reviewed. (FF 17). This was a violation of the provisions of § 300.305(a).

7. In preparation for the meeting, [Behavior Consultant] conducted classroom observations, conferred with [General Education Teacher] and prepared an FBA. However, [Behavior Consultant] did not collect any formal frequency data regarding [Student's] behaviors for either the FBA or BIP. (FFs 14 and 16-17). Furthermore, although three IEP Team members (i.e., [Parent]; [General Education Teacher] and [Behavior Consultant]) had received copies of the Private Report, the observations and recommendations of the [Private Reporter] were not considered. (FFs 4, 5 12, 13,16 and 17). These actions constituted procedural violations of § 300.305(a)(1)(i)-(ii) and (c), above.

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<sup>87</sup> Hereafter, 'Finding of Fact' will be designated as 'FF.'

8. Subsequent to implementation the 12/17/2009 IEP and BIP, on several occasions [Student] was so tired that [Student] was allowed to sleep in the nurse's office (FF 20) and [Student's] disruptive behaviors increased. (FF 22). [Parent] attributed [Student's] excessive tiredness to the medications [Student] was then taking. (FF 21) Although [Student] was prescribed a variety of medications throughout the school year, [Parent] has consistently failed to supply the [School] with information concerning the specific medications prescribed to [Student]. (FF 21). The SCO concludes that [Student's] prescription information is a key piece of information which the IEP Team must have to properly assess [Student's] special education needs and related services in order to provide a FAPE. § 300.17.
9. **The 03/01/2010 IEP Team Conference.** [Parent] requested this meeting to discuss [Student's] need for a Para support. (FF 23). At the conference, in considering [Student's] Para needs, the Team considered the information contained in the Incident Log; the Intervention Log; the FBA and the Rubric. (FF 27).
10. In the review or revision a child's IEP, the District must ensure that the IEP Team revises the IEP, as appropriate to address: the results of any reevaluation conducted under § 300.303; *information about the child provided to, or by, the parents, as described in § 300.305(a)(2)*; and, 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.* § 300.324(b) (emphasis added).
11. As previously noted, above, the FBA was not based on formal frequency data collection concerning [Student's] behaviors and, therefore, did not provide measurable baseline data to inform the IEP Team about [Student's] Para needs. (FF 14). However, the Team's use of the Rubric is particularly troubling. The District is using the Rubric for two distinct purposes:
  - As a budgeting tool to assist in assessing the annual Para needs of each school within the District; (FFs 41-43) and
  - To assist in determining the special Para needs of individual students. (FF 25). According to the [School] staff scoring on the Rubric, [Student's] total Rubric score indicated that [Student] did not need Para support (FF 24-26). Use of the Rubric may be an appropriate tool for the District to attempt to predict the annual *special education Para needs of each school* within the District. However the Rubric is not an appropriate tool to assess the *special education needs of individual students.* (FF 43). The inappropriateness of using of the Rubric "score" as a basis for denying [Student] a Para is readily apparent when, as here, the [Student] "engages in behaviors that are dangerous to self or others on a daily basis." (FF 26).
12. Additionally, the Team failed to consider the Private Report although that report was based on four hours of classroom observations and made specific recommendations

concerning [Student's] need for a Para. (FFs 2-5). Nor did the Team discuss [Student's] progress to date on the BIP goals. (FF 27). The SCO concludes that the remaining documentation relied upon by the Team (i.e., the Incident Log and the Intervention Log) was insufficient information upon which to make a determination as to [Student's] needs regarding a Para and therefore a violation of §§ 300.324(b) and 300.306(c).

13. After the annual IEP Team meeting for a school year, in making changes to a child's IEP, the parent and the [District] may agree not to convene an IEP Team meeting for the purposes of making changes to the child's IEP, and instead may develop a written document to amend or modify the child's current IEP. § 300.324(a)(4). Consistent with the Procedural Safeguards, a district must supply parents with prior [written] notice that meets the requirements of § 300.503(b) a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. § 300.503. Subsequent to the conference, [Student's] IEP was not amended and [Parent] was not supplied with prior [written] notice of the District's refusal to provide [Student] with a Para. (FFs 27 and 37) in violation of §§ 300.324(a)(4) and (6) and 300.503.
14. **The 03/01/2010 Meeting Between [Parents] and Principal.** An amended IEP must reflect the extent to which the child will not participate with nondisabled children in the regular classroom as well as the special education and related services and supplementary aids and services to be provided to the child. § 300.320(a)(4) through (5).
15. Subsequent to the 03/01/2010 IEP conference, [Parents] met individually with [Principal] for a mandatory discussion concerning [Student's] current five day suspension. During the meeting, [Parents] agreed that, when [Student's] current suspension ended, [Student] would begin attending [School] on a reduced and modified schedule. (FF 29). There no evidence in the Record and, therefore, no factual findings, that [Parents] agreed to the modified school day because [Student] was denied a Para in the earlier conference on 03/01/2010. Because [Parents] agreed to the modified school day, there was no violation of the IDEA regulations concerning LRE. §§ 300.114 through 300.120.
16. However, the modified school day constituted a significant change in placement even though [Student] continued to receive all of the special education services to which [Student] was entitled. (FFs 29, and 36). ECEA Rule 4.03(8)(b)(ii)(A)(II). Subsequent to this meeting, the District failed to amend [Student's] IEP to reflect the change in placement and also failed to supply [Parent] with prior [written] notice of the change in placement. (FF 37). The District's actions violated §§ 300.320(a)(5); 300.324(a)(4); and (6); 300.503 and ECEA Rule 4.03(8)(b)(ii)(A)(II).
17. **The 04/26/2010 Conference.** As a result of this meeting, the Team agreed that [Student's] behaviors had improved; the modified school day should continue through the end of the school year; and would continue into the 2010 through 2011 school year with a gradual increase in [Student's] school day. (FF 31 and 32). However,

subsequent to the conference, the District failed to supply [Parent] with prior [written] notice of the change in placement continuing into the 2010-2011 school year with a graduated increase in class time. (FF 37). The District's actions violated § 300.503.

18. In summary, between 11/21/2009 and 05/27/2010, the District committed numerous procedural violations of the IDEA. However, throughout the school year [Student's] behaviors improved and [Student] received average to above average grades. (FF 35). [Student] also received all of the special education services to which [Student] was entitled. (FF 35). The SCO concludes that, despite the District's procedural violations, the special education services supplied to [Student] did enable [Student] to receive educational benefits. Therefore, the District's procedural violations did not result in a denial of FAPE. *Garcia v. Board of Education*, 520 F.3d 1116, 1125 (10<sup>th</sup> Cir. 2008).

**II. Whether [Student] was denied a FAPE by the District's failure to provide [School] with Para services that the District provides to traditional public schools in the District.**

19. The IDEA requires that, with respect to special education service delivery and funding, a district treat its charter schools and students attending charter schools in the same manner as it treats its traditional schools and students attending those traditional schools. § 300.209.
20. There was no evidence in the Record to suggest that the District failed to supply [School] with Para services that are supplied to traditional public school. The District has a duty to supply special education services, including Para services, to both traditional schools and charter schools. All schools in the District, including [School] are held to the same District requirements. (FFs 39 and 40). In determining the annual special education budget, the same District formula was applied to both traditional and charter schools. (FF 41). Having found no inconsistency between the District's treatment of traditional and charter schools within the District, there is no violation of § 300.209. There being no violation of the IDEA, there is no denial of FAPE and no remedy is ordered.

The Decision of the SCO is final and is 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 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).

**REMEDIES**

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

- a) The meeting notice requirements of 300.322(b)(1)(i) and 300.501(b)(2);
- b) The requirements for conducting a reevaluation at § 300.305(a) and (c);

- c) The information needed to determine the educational needs of students with a disability at §§ 300.324(b) and 300.306(c);
- d) The general IEP review and revision requirements at § 300.324(a)(4) and (6) and (b);
- e) Prior written notice requirements at § 300.503;
- f) The IEP requirements concerning the LRE for the child at § 300.320(a)(5); and
- g) The provisions of ECEA 4.03(8)(b)(ii)(A)(II).

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

- 1) No later than 10/04/2010, the District must submit to the Department a corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must, at a minimum, provide for the following:
  - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address each of the cited violations no later than 14 calendar days of the date of this Decision.
  - b) Conduct effective staff training of all [School] staff working with children with a disability, (including each person whom the District uses or intends to use as an IEP Team member), concerning the policies and procedures to be provided no later than 10/15/2010. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets).
  - c) Evidence of correction via a Department file review conducted on or before 12/17/2010.
- 2) No later than 09/24/2010, the District shall reconvene [Student's] IEP Team to consider the special education needs of [Student], including [Student's] need for a Para. In preparation for that IEP meeting, the District shall collect, consistent with this Decision, complete and appropriate data from a variety of resources for the Team to consider. "Appropriate data" includes complete information concerning all of [Student's] current prescribed medications. Therefore, [Parent] shall timely provide District with written consent to obtain a complete list of the current prescribed medications from each physician treating and prescribing medications to [Student]. No later than 40 calendar days after the date of this Decision, the District shall submit to the Department documentation that the IEP team met, including copies of the meeting notice(s), prior written notice(s) and, as applicable, a revised IEP. The revised IEP must be fully compliant with the IDEA and this Decision and must document all data upon which the IEP Team decisions were made.

Please submit the CAP and all other documentation detailed above to the Department as follows:

Colorado Department of Education  
Exceptional Student Leadership Unit  
Attn.: Joyce Thiessen-Barrett, Senior Consultant  
1560 Broadway, Suite 1450  
Denver, CO 80202-5149

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

The enclosed sample template provides suggested formats for the CAP and includes sections for “improvement activities” and “evidence of implementation of change.”

### **CONCLUSION**

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

Dated this 26th day of August, 2010.

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Jeanine M. Pow, Esq.  
State Complaints Officer

**Appendix A**  
**2010: 511 Record**

**Complaint, pgs. 1-5;**

Exhibit A IEP of 10/29/2010

Exhibit B IEP of 12/17/209 and Incident Log, 01/06/2010 through 02/25/2010

Exhibit C IEP (12/17/2009) Progress Reports on BIP Measurable Goals

Exhibit D Miscellaneous Documentation

Exhibit E BIP Progress Reports

Exhibit F 04/15/2010 Communication Log

Exhibit G 12/17/2009 Eligibility Determination

Exhibit H IEP Progress Reports

**Reply, pgs. 1-3;**

**Response, pgs. 1-8;**

Exhibit 1: pages 1-10: District Eleven School Board Policy re: Charter Schools

Exhibit 2: pages 11-162: Contract between [School] and District 11

Exhibit 3: pages 163-211: Copies of [Student] Special Education File

Exhibit 4: pages 212-215: Copies of documentation from [Special Education Facilitator]

Exhibit 5: page 216 – Report card; page 217- [Special Education Facilitator] notes re: conversation with [School Psychologist]; page 218 - Student transcript; page 219 – [Special Education Facilitator] notes from 4/26/2010 IEP Team Meeting

**District Supplements to Record:**

Exhibit 6: [Student's] 2009-2010 School Attendance Records

Exhibit 7: Attachments that accompanied 02/16/2010 email from [Special Education Facilitator] to [Special Education Teacher] and [Principal], pages 222-229

Exhibit 8: 2009-2010 District Calendar & 2010-2011 District Calendar

Exhibit 9: Notice of 12/17/2009 Meeting;

Exhibit 10: 03/01/2010 Meeting Notes of [Special Education Facilitator];

Exhibit 11: Classroom Management Plan

Exhibit 12: [School Psychologist] Medicaid Records

Exhibit 13: 03/01/2010 Notes of [Principal] Regarding Meeting with [Parents]

Exhibit 14: [Special Education Teacher] Service Logs

Exhibit 15: Letter of 08/11/2010 from District Legal Counsel

Exhibit 16: Student Grade Reports for 2009-2010

Exhibit 17: ZANGLE Records for [Student]

Exhibit 18: District Formula Calculations

Exhibit 19: [Student's] 2009 Globe Enrollment Form

**Interviews of:** [Parent]; [Special Education Director]; [Special Education Facilitator]; [General Education Teacher]; [Special Education Teacher]; [Principal]; [Behavior Consultant]; [School Psychologist]; and [Mentor].