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

State-Level Complaint 2014: 506
Northwest Colorado BOCES

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on March 17, 2014, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).[1]

Based on the written Complaint and a telephone interview with Parent on March 17, 2014, the State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.[2] The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT ALLEGATIONS

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

1. Since the beginning of the 2013-2014 school year, Student's February 2013 IEP has not been consistently implemented in her general education classes, specifically English and American History.

2. As a result of the failure to implement the IEP, Student has failed to make progress on her IEP goals and was pulled from two general education classes, English and American History.

3. Starting on or around December 2013, Parent has been denied a meaningful opportunity to participate in the development of Student's March 2014 IEP.

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

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

4. The BOCES has failed to timely provide Parent with a copy of Student's IEPs dated February 2013 and March 2014.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,[3] the SCO makes the following FINDINGS:

1. Student is eligible for special education and related services as a child with multiple disabilities.[4] At all times relevant to the Complaint, Student was approximately seventeen years of age and attended School.[5] The BOCES is the administrative unit (AU) for purposes of IDEA and is the entity responsible for providing Student with a free appropriate public education (FAPE).

2. Student is at the age when she is preparing for life after high school. To that end, Student's IEP team has identified her post-secondary education/training goal, career employment goals, and the activities and services that will help Student reach these goals. According to her 2013 IEP, Student plans to attend a program for individuals with disabilities to learn independent living and job skills after graduating from high school. Student plans to be employed in the field of customer, food, or animal (equestrian) service. The transition services and activities identified to support Student's post-secondary goals included "help and modifications in literacy, math, science, social studies, and electives as needed" from Student's special education teacher. In addition, Student was to receive assistance from her case manager, general education and special education staff in developing self-advocacy and job-readiness skills. Transition activities were also to include job-shadowing and work experiences that were "aligned with her individual goals." [6]

Implementation of the February 2013 IEP.

3. Parent has alleged that Student's February 2013 IEP was not properly implemented during the 2013-2014 school year in the areas of: accommodations and modifications in general education classroom, i.e., American History and English; peer support and social skills training; and IEP goals related to transition. As a result of the failure to implement the IEP, Parent further alleged that Student was removed from two general education classes, American History and English, and failed to make progress on her transition goals.

[3] The appendix, attached and incorporated by reference, details the entire record.
[4] Exhibit 1, p. 8.
[5] Exhibit 1, p. 8.
[6] Exhibit 2, p. 36.

4. Student's IEP included various modifications, including modification of assignments and tests, focus on life and job-readiness skills, and modification of grades in content classes.[7] Because Student has been identified as hard-of -hearing, the IEP also included a communication plan.[8] The communication plan identified Student's primary mode of communication as auditory and picture/symbols/photographs for receptive communication and spoken language for expressive communication. The plan also required all general education teachers to be "skilled at encouraging [Student] to develop her communication skills" and would provide cues for Student to use the mute button or remove her hearing device in loud environments.[9] Accommodations related to Student's hearing loss included: a personal hearing instrument, gaining Student's attention prior to speaking, clearly enunciating speech, frequent checks for understanding, and repeating or rephrasing information when necessary.[10]

5. In addition to ensuring that Student was provided with the modifications and accommodations identified on the IEP, Student's general education and special education teachers were responsible for teaching Student self-advocacy and job-readiness skills. Concluding that self-advocacy would help Student in the educational setting as well as the career/employment setting, the IEP team determined that Student needed to "increase her independence using different learning strategies and asking for accommodations and modifications." [11] To meet these identified needs, Student had one IEP goal in the area of job-readiness, i.e., time management, and one IEP goal in the area of self-advocacy. [12] Because Student's general education teachers were responsible for teaching Student self-advocacy and job-readiness skills, they should have been familiar with Student's IEP goals in these areas.

6. At the beginning of the 2013-2014 school year, Special Education Teacher provided Student's general education teachers with a document, referred to as the IEP "snapshot," that was intended to inform teachers about Student's educational needs, including instructional strategies, accommodations and modifications. The snapshot included general information about Student's grade-level in reading, writing, and math, identified certain accommodations related to hearing loss, and identified the need to modify assignments, tests, and grading.[13] The document did not list all of Student's identified accommodations, modifications, or details about her communication plan. In addition, the snapshot did not inform teachers about their responsibility for teaching self-advocacy and job-readiness skills nor describe Student's IEP goals in these areas.[14]

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[7] Exhibit 2, p. 37.
[8] Exhibit 2, p. 33.
[9] Exhibit 2, p. 34.
[10] Exhibit 2, p. 37.
[11] Exhibit 2, p.32.
[12] Exhibit 2, p. 36, 41, and 43.
[13] Exhibit 16, p. 112.
[14] Comparing Exhibit 2 with Exhibit 16.

7. By itself, the IEP snapshot is not sufficiently detailed or comprehensive enough to adequately inform teachers who have never worked with Student about their responsibilities related to implementation of the IEP, including necessary details about the communication plan and modifications and accommodations. For example, the document alerts teachers that Student has difficulty in loud environments due to hearing loss, but does not tell them that Student may need a reminder to mute or remove her hearing device, as the IEP does.[15] In addition, the document does not identify many of the accommodations and modifications described on her IEP, including gaining Student's attention before speaking, frequent checks for understanding, and repeating and rephrasing information when necessary. [16]

8. Because this document was the only source of information about Student's educational needs provided at the beginning of the school year to English Teacher and American History Teacher, the SCO finds that English and American History Teacher did not have adequate information about their responsibilities for implementation of Student's IEP in the areas of accommodations, modifications, and self-advocacy and job-readiness skills for approximately the first month of the 2013-2014 school year.[17]

9. For American History Teacher, this document was the only source of information concerning his responsibilities for implementing Student's IEP for the entire time Student was in his class.[18] Concerning to the SCO is the fact that American History Teacher never asked for assistance from special education staff regarding Student's needs even after he noticed that Student was resistant to accepting modified assignments and assistance from him or the paraprofessionals in the classroom and had withdrawn to the back of the classroom.[19] Based on these facts, the SCO finds that Student's IEP was never properly implemented in American History class.

10. Unlike American History Teacher, English Teacher did request, and received, additional assistance and support concerning Student's educational needs from Special Education Teacher around the beginning of October 2013. Because English Teacher was able to credibly describe Student's accommodations, modifications and educational needs, particularly those related to Student's hearing loss and self-advocacy skills, the SCO finds that English Teacher was adequately informed about her responsibilities concerning implementation of Student's IEP by October 2013. Unfortunately, English Teacher became familiar with these IEP requirements a month after school started and a week before Student would be removed from this class. [20]

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[15] Comparing Exhibit 16, p. 112 with Exhibit 2.

[16] Response; Comparing Exhibit 16, p. 112 with Exhibit 2; Interviews with Special Education Teacher, English Teacher, History Teacher, and Graphics Teacher.

[17] Interviews with English Teacher, American History Teacher, Graphics Teacher, and Special Education Teacher. The SCO focuses on Student's American History and English classes because these are the classes identified by Parent in her Complaint. Student's other general education class, Graphics, was taught by a teacher previously employed as a paraprofessional who knew Student and was well-informed of Student's IEP.

[18] Interviews with American History Teacher and Special Education Teacher; Exhibit H.

[19] Interview with American History Teacher; Exhibit H.

[20] Interview with English Teacher.

And even with adequate knowledge of Student's IEP, English Teacher admitted that she did not have the support necessary to properly meet Student's educational needs considering the size and difficult dynamics present in this particular class.[21] Consequently, the SCO finds that Student did not receive the accommodations and modifications identified on her IEP in English class.

11. Parent has also alleged that Student was not provided with the peer support and social skills training and opportunities to interact with typical peers, as described on her February 2013 IEP. Because a primary reason for Student to attend general education classes is to develop confidence, and communication and social skills through interaction with typical peers, this is a significant component of Student's special education program.[22] According to the IEP, Student needed to improve her ability to participate in group discussions by staying on-topic and by attending to the thoughts and opinions of others.[23] To meet this need, Student has an annual IEP goal in the area of communication dedicated to improving Student's ability to stay on topic when communicating with others.[24] In addition, Student's communication plan also provided that all general education teachers were "skilled at encouraging [Student] to develop her communication skills."[25]

12. According to Speech Language Pathologist and Occupational Therapist, Student does not yet have the ability or confidence to meaningfully interact and self-advocate with typical peers without structured support from an adult. When a peer or adult with whom she is not familiar approaches her, Student "turtles-up," meaning that she bows her head, folds-in, and avoids eye contact. To engage appropriately with typical peers, Student currently needs an explicit explanation of the expectations for the interaction, an opportunity to see the interaction modeled, and an opportunity to practice the interaction.[26]

13. Although Student was provided with opportunities to work on these skills once a week during a Life Skills class taught by Speech Language Pathologist and Occupational Therapist, Student was not provided with adequate support to develop these skills in American History or English class with typical peers. Consequently, Student was not provided with the support necessary to benefit, academically or socially, from being in the general education classroom, specifically American History and English. Because interaction with typical peers was an important piece of Student's transition plan, the SCO finds that the failure to provide the necessary support in the general education classroom significantly impacted Student's ability to benefit from her special education program, causing educational harm.

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[21] Exhibit H; Interview with English Teacher.
[22] Exhibit 2; Interviews with Parent, Speech Language Pathologist, and Occupational Therapist.
[23] Exhibit 2, p. 32.
[24] Exhibit 2, p. 42.
[25] Exhibit 2, p. 34.
[26] Interviews with Speech Language Pathologist, and Occupational Therapist.

14. On October 1, 2013, Parent emailed Special Education Teacher to express her concerns that Student's teachers were not familiar with her IEP goals and that the curriculum and assignments in some classes were not being appropriately modified. For example, Parent pointed out that Student had a recent assignment in English that included words like "ubiquitous" when Student's reading level had been identified in the IEP snapshot as fourth grade. [27] Special Education Teacher agreed with Parent that Student's assignment was not appropriately modified, but asserted that Student would not allow English Teacher to provide her with a modified assignment in front of her peers. Rather than offer alternative strategies, or convening an IEP meeting to problem-solve about this behavior, Special Education Teacher's response blamed the Student for not having a modified assignment.

15. On or around October 7, 2013, Parent met with Special Education Teacher and English Teacher to discuss her concerns that Student's teachers were not familiar with her IEP goals and that the curriculum and assignments in some classes were not being appropriately modified. During this meeting, they discussed changing Student's schedule because Student was essentially shutting down, or not participating, in English and American History class. At the end of the meeting, Special Education Teacher, English Teacher, and Parent all agreed that it would be best for Student if she dropped English and American History. [28] Based on Parent's emails and this discussion, the SCO finds Special Education Teacher was on notice, at least as early as October 7, 2013, that Student was not receiving support and services in the general education classroom in accordance with her IEP and was struggling in her classes.

16. In mid-October 2013, Student was removed from American History and English class and placed in a special education reading class, Women's Survival, and an internship intended to provide Student with work experience. The change in Student's schedule disrupted her educational program and caused substantive harm. Student was not provided with the promised internship opportunity until mid-December 2013, approximately two months after Student had been removed from class. This delay created confusion and frustration for Student when presented with assignments and work as she had come to understand that this class period was "free" time.[29] This misunderstanding led to "power-struggles" between Student and special education staff that resulted in Student further withdrawing for a period of time. And, as detailed directly below, Student failed to make progress on two IEP goals related to communication and self-advocacy.

17. Student had three IEP goals related to transition. The first goal was in the area of organization and stated:

> In order for [Student] to be successful in the field of customer service work, she will demonstrate improved time-management skills by beginning

[27] Exhibit H, p. 4.
[28] Interviews with Parent, Special Education Teacher, English Teacher, and American History Teacher; Exhibit H.
[29] Interview with Parent.

> work promptly (from 30 minutes to start to 10 minutes to start) after transitioning from one activity to the next by her next IEP as measured by quarterly observations.

According to the progress reports, Student made steady progress on this goal, meeting it on January 29, 2014.[30] Data was provided to demonstrate Student progress on this goal. This data was also consistent with the progress reports and observations of Student's teachers.[31]

18. Student's second IEP goal is in the area of communication and states:

> In order for [Student] to be successful in the field of customer service work, [Student] will improve her communication skills as demonstrated by commenting and asking questions on topic, during group work discussions, from one unprompted comment to 5 unprompted comments during a twenty minute discussion.[32]

According to the progress reports, Student has made steady progress on this goal, meeting it on January 29, 2014.[33] However, no data was provided to demonstrate Student's progress on this goal. In addition, the comments on the reports for October 2013 and January 2014 indicated that while Student had improved in the number of times she provided unprompted comments during a group discussion, she continued to struggle with asking questions about others and providing comments that were on-topic.[34] Consequently, the SCO finds it more likely than not that Student has not made progress on this goal during the 2013-2014 school year.

19. Student's third IEP goal is in the area of communication/self-advocacy and states:

> In order for [Student] to be successful in the field of customer service, she will improve her self-advocacy skills as demonstrated by increasing how frequently she asks for help or clarification from 0/4 opportunities unprompted and 2/4 prompted to 2/4 opportunities unprompted and 3/4 prompted.

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[30] Exhibit 2, p. 41.
[31] Exhibit 17; Interviews with Special Education Teacher, Graphics Teacher, English Teacher, and American History Teacher.
[32] Exhibit 2, p. 42.
[33] Exhibit 2, p. 42.
[34] Exhibit 2, p. 42.

According to the progress reports, Student has struggled to meet this goal. Although Student's progress was categorized as level three, i.e., progress made, goal to be met on time, no data was provided to demonstrate Student's progress on this goal. A finding that no progress has been made on this goal is consistent with statements from English Teacher, Special Education Teacher, and American History Teacher who all reported that Student has great difficulty accepting assistance or asking for clarification during class. For example, English Teacher reported that if she approaches Student in class, Student will refuse to engage or interact by pretending that she does not see English Teacher.

Importantly, there is no evidence that Student's difficulty in meeting this goal was addressed by offering different strategies and support and communicating them to Student's general education teachers during the first semester. Speech Language Pathologist and Occupational Therapist have knowledge and expertise with structured instructional strategies that have been effective with Student in supporting appropriate communication and social interaction. And they have shared these strategies with Special Education Teacher and English Teacher. Unfortunately, these strategies were not shared with English Teacher and American History Teacher at the beginning of the school year.

Parent Participation:

20. Parent has alleged that she was denied a meaningful opportunity to participate in the development of Student's education program in various ways. First, Parent alleged that the BOCES failed to schedule Student's IEP meeting when she initially requested it in December of 2013. On December 8, 2013, Parent emailed Special Education Teacher to request that an IEP meeting be held prior to the annual IEP, due February 2014, to discuss various concerns, including Student's progress in reading and math and the status of the internship opportunity promised in October. [35] Although Parent continued to email Special Education Teacher about her concerns, an IEP meeting was not scheduled until February 4, 2014.

21. The SCO agrees with Parent that the BOCES should have convened an IEP meeting sooner than February 2014, but further finds that the IEP meeting should have been held in October of 2013, months before Parent's request. Because Student had experienced significant disruptions to her educational program and was exhibiting unusual behavior and a lack of progress on her IEP goals, the BOCES had an affirmative duty to convene an IEP meeting in October 2013 when it was on notice that Student was not making progress in her educational program, and indeed, was so non-functional in two of her classes that she was withdrawn from them.

22. Student's IEP was developed over three meetings occurring on February 4, 2014, February 12, 2014, and March 4, 2014. There is no dispute that these IEP meetings were properly constituted and convened. Instead, Parent has further alleged that the BOCES failed to

[35] Exhibit H, p. 16.

present data on Student's present reading level and consider Parent's goals related to transition planning.

23. Contrary to Parent's allegation, the BOCES did present data concerning Student's present reading level at the IEP meeting on February 4, 2014. Approximately one week before the IEP meeting, Parent requested clarification concerning Student's current reading level and what the assessment was based on. Special Education Teacher immediately responded by identifying the various assessments that had been used and attaching Student's results. She further reminded Parent that these assessments would be discussed at the IEP meeting scheduled for February 4, 2014.[36] On February 4, 2014, Special Education Teacher presented assessment data regarding Student's reading level, as promised.[37] Parent disputed some of the assessment data and there was a robust discussion about Student's needs in reading. As a result of this discussion, Student's IEP included two annual goals in reading.[38] Consequently, the SCO finds that Parent's concerns regarding Student's reading level were meaningfully considered by the IEP team.

24. Because the IEP team was not able to finish Student's IEP in the amount of time scheduled for the meeting, another meeting was scheduled for February 12, 2014. At this meeting, the IEP team continued to discuss Student's present levels of academic and functional performance with a focus on Student's needs in the areas of social skills, self-advocacy, and transition planning.

25. During the IEP meeting on February 12, 2014, Parent expressed concerns about transition planning, including opportunities for internships or job-shadowing, and development of social skills.[39] Parent specifically requested that Student be provided with opportunities to socialize with typical peers through various activities, such as general education classes, the LINK program, cheerleading, and student council. Parent also questioned the usefulness of the transition assessment, "Who am I," because it was an inventory or Student's interests and likes, but it did not assess or measure Student's independent living skills, social skills, or vocational skills.

26. As a result of this discussion, it became apparent that Student had been struggling significantly for most of the school year with self-advocacy and social skills in the general education environment and with typical peers. English Teacher again reported that Student will ignore her when she attempts to talk to Student during class. Parent also reported observing Student sitting by herself during a cheerleading activity and requested that general education teachers learn strategies for supporting Student's social interaction with typical peers. Speech

[36] Exhibit H; Interviews with Parent and Special Education Teacher.
[37] Complaint: Interviews with Parent, Special Education Director, Special Education Teacher, English Teacher, Speech Language Pathologist, and Occupational Therapist.
[38] Exhibit 19.
[39] Interviews with Parent, Special Education Teacher, Special Education Director, Speech Language Pathologist, Occupational Therapist, and English Teacher.

Language Pathologist and Occupational Therapist agreed that Student does not yet have the social skills to meaningfully participate in social activities with typical peers without structured support from adults, such as teachers and paraprofessionals. Parent emphasized that improving Student's ability to socialize with typical peers was critical to her success after high school and requested support for Student to reach this goal.[40]

27. Because the IEP was not completed at this meeting, largely due to Parent's frustration and concern around the quality of transition planning, another IEP meeting was scheduled for March 4, 2014.

28. On March 4, 2014, a duly constituted IEP team met to finalize Student's IEP. At this meeting, the team continued to discuss transition planning and the importance of improving Student's socialization and self-advocacy skills. Based on this discussion, the IEP team developed new annual goals that included socialization and communication with typical peers. For example, one goal stated "Student will increase her ability to use open body language when approached by a typical peer."[41] The new IEP goals developed in the areas of communication and socialization with typical peers demonstrate that the IEP team meaningfully considered Parent's concerns in this area of transition planning.

29. The SCO agrees with Parent that the transition assessment, "Who am I," does not provide meaningful information about Student's post-secondary goals or identify the barriers in reaching these goals. Although the BOCES requested consent to evaluate Student in this area on or around February 18, 2014, Parent has not yet signed the consent form. [42] When Parent first received the consent form, she thought the BOCES was proposing to reevaluate Student for eligibility and was confused because Student's eligibility is not something she believed to be in question. Parent and Special Education Teacher exchanged several emails and the proposed evaluation was also discussed at the March 2014 IEP meeting. After the March 2014 IEP meeting, Parent expected to be contacted about the evaluation, but this has not yet happened. Based on these facts, the SCO finds that Parent was initially confused about the request to evaluate, but is not refusing an evaluation. Further, the SCO finds that the BOCES has considered Parent's concern that the transition assessment is inadequate and has attempted to conduct an appropriate assessment.

30. Finally, Parent has alleged that she did not timely receive a copy of Student's February 2013 IEP or March 2014 IEP. In Response, the BOCES admitted that it failed to timely provide Parent with a copy of Student's February 2013 IEP and March 4, 2014 IEP. Specifically, Parent did not receive a copy of the February 2013 IEP until May of 2013, approximately three months after the IEP was completed. Parent did not receive a copy of the March 2014 IEP until March

[40] Interviews with Parent, Special Education Director, English Teacher, Speech Language Pathologist, and Occupational Therapist; Consultation with CDE transition specialist.
[41] Exhibit 19, p. 20.
[42] Exhibit 1, p. 9; Exhibit H, p.67; Interviews with Parent and Special Education Teacher.

31, 2014, nearly a month after the IEP had been completed.[43] Consequently, the SCO finds that the BOCES failed to timely provide Parent with a copy of Student's IEPs.

31. The evidence suggests that these violations involve personnel and situations unique to School and are not systemic in nature. In addition, the BOCES has hired a special education coordinator who will be working in close proximity to School beginning July 1, 2014.

CONCLUSIONS OF LAW

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

Allegations One and Two: Student's February 2013 IEP was not properly implemented in American History and English, resulting in a denial of FAPE.

1. Under IDEA, local education agencies are required to provide eligible students with disabilities a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the BOCES, must implement a student's IEP in its entirety. 34 CFR § 300.323(c). To satisfy this obligation, the BOCES must ensure that each teacher and service provider responsible for implementing a student's IEP is informed of "his or her specific responsibilities related to implementing the child's IEP" and "the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." 34 CFR § 300.323(d)(2).

2. In this case, Student's general education teachers were not adequately informed about the requirements of Student's IEP and failed to implement the IEP in its entirety, in violation of 34 CFR § 300.323 (c) and (d)(2). Specifically, English Teacher and American History Teacher were not informed of their responsibility for providing the accommodations and modifications identified on the IEP, nor were they informed of their responsibility to provide support to help Student develop self-advocacy, communication, and socialization skills through interaction with typical peers. Like special education teachers, general education teachers are responsible for understanding their responsibilities for implementation of a student's IEP and have an obligation to ensure they understand what the IEP requires. Although English Teacher did eventually consult with Special Education Teacher to learn about Student's educational needs, American History Teacher failed to do so--even when Student was clearly suffering to the point that she had completely withdrawn from participating in his class.

3. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. *Id*. Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.,* 43 IDELR 29 (10th Cir. 2005)(minor

[43] Response; Reply; Interviews with Special Education Teacher and Parent.

deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)(*de minimis* failure to implement IEP does not deny FAPE).

4. In this case, the failure to implement the IEP significantly impacted Student's ability to benefit from her special education program, resulting in a denial of FAPE. Student is at the age when she is preparing for life after high school. To that end, the primary purpose for participating in the general education classroom is to learn how to advocate for herself with peers and adults, and to learn how to effectively communicate, collaborate, and socialize with typical peers. These skills are essential to Student's post-secondary goal to live and work in the community, as independently as possible. Student's difficulties in these areas present a significant barrier to achieving her post-secondary goals. For example, Student's refusal to respond to her English Teacher during class would be a significant barrier in the vocational or independent living setting. To meet this need, Student's IEP has annual goals in the area of self-advocacy and communication.

5. Currently, Student requires structured support from adults to develop self-advocacy skills and meaningfully engage with typical peers. For Student, effective structured support includes these three layers or components: 1) an explicit explanation of expectations for the interaction, 2) an opportunity for Student to see the interaction modeled, and 3) an opportunity for Student to practice the interaction.[44] Because Student's general education teachers were not aware of their responsibilities for supporting the development of Student's self-advocacy and social/communication skills and did not have adequate support from special education staff, Student could not participate meaningfully in the general education classroom and was not provided with a meaningful opportunity to interact with typical peers. As a result, Student had withdrawn from participating in these classes, leading Parent, Special Education Teacher, and English Teacher to decide that it would be better for Student to withdraw from English and American History. Withdrawal from these classes significantly disrupted Student's educational program, leading to confusion and behavioral challenges that impeded her ability to make progress on her IEP and transition goals.

6. Because she has been denied a FAPE, Student is entitled to compensatory education. Compensatory education is an equitable remedy intended to place a student in the same position they would have been, if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Here, the failure to properly implement Student's IEP impacted Student's ability to benefit socially from interaction with typical peers in the general education

[44] Interviews with Speech Language Pathologist and Occupational Therapist.

environment. Consequently, the compensatory services identified in the remedies section below are intended to address this harm.

Allegations Three and Four: Procedural Safeguards and Parent Participation.

7. In this case, Parent alleged that her ability to meaningfully participate in the development of Student's education program had been impeded in various ways, beginning with the failure to timely convene an IEP meeting at her request in December of 2013. What Parent has characterized an a denial of parental participation, i.e., the failure to convene an IEP meeting at her request, is more accurately described as a violation of the procedural requirements for the development, review, and revision of an IEP at 34 CFR § 300.324(b).

8. The IDEA provides that school districts must review each child's IEP "periodically, but not less than annually." 34 CFR § 300.324(b)(1)(i). If a student fails to make progress within a reasonable period of time, however, the district must convene an IEP meeting to address the student's lack of progress. 34 CFR § 300.324(b)(ii)(A). In this case, it was the obligation of the BOCES, *not* the Parent, to convene an IEP meeting when there is evidence that a Student's educational program is not working as expected.

9. By October 7, 2013, the BOCES was on notice that Student was struggling in two of her general education classes, American History and English. The fact that Parent agreed to withdraw Student from these classes did not excuse the BOCES of its obligation to review and revise Student's IEP. Shortly thereafter, rather than address Student's difficulties by convening an IEP meeting, Student was instead removed from her American History and English classes. The BOCES then ignored Parent's December plea to convene an IEP meeting because of Student's ongoing struggles. The BOCES then waited until February 4, 2014, the day Student's annual IEP review was due, to convene the IEP meeting. Further, the BOCES did not complete the IEP for another month and then failed to provide Parent with a copy of it. In the meantime, Student languished and missed out on essential educational services that she needs to transition to life after high school. This is unacceptable.

10. Consequently, the SCO concludes that the BOCES should have convened an IEP meeting in early October 2013, two months before Parent requested a meeting, and nearly five months before the BOCES actually convened an IEP meeting, in February 2014. This failure violated the procedural requirement for development of an IEP at 34 CFR § 300.324(b)(ii)(A).

11. However, it is well-settled that procedural violations of the IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20,* 538 F.3d 1306 (10th Cir. 2008). So, the question now is whether the BOCES failure to timely review and revise Student's IEP resulted in substantive harm to Student, i.e., impeded her right to FAPE or caused a deprivation of educational benefit.

12. Because Student had experienced significant disruption to her educational program, i.e., dropping two general education courses, and was demonstrating behavioral changes and lack of progress on IEP goals, the SCO concludes that the failure to convene an IEP meeting in October 2013 resulted in a denial of FAPE. In October 2013, Student was pulled from two general education classes a month into the school year, in large part due to the failure to properly implement her IEP and provide adequate support for Student's communication and socialization with typical peers. As a result, Student was placed in two different classes with the expectation that she would also be provided an internship opportunity. The internship was not developed until the week before Christmas. This disruption in her schedule created confusion, frustration, and power struggles that impeded Student's ability to make progress on her annual goals. The five-month delay in convening an IEP meeting to address Student's struggles and lack of progress impeded her right to FAPE.

13. Parent also alleged that her ability to meaningfully participate was impeded because the BOCES failed to present data on Student's reading level and failed to consider her concerns around Student's transition planning. The SCO does not agree. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, page, (10th Cir. 2008). Courts have found that parents have been afforded an opportunity for meaningful participation when an educational agency considers their suggestions and requests, and to the extent appropriate, incorporates them into their child's IEP. *O'Toole v. Olathe Dist. Schools,* 144 F.3d 692, 107 (10th Cir. 1998). Consideration does not mean simply agreeing to whatever parents have suggested or requested. Rather, meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parents' questions and incorporates some suggestions or requests into the IEP. *Id*; *See Deal v. Hamilton County Bd. of Educ.,* 42 IDELR 109 (6th Cir. 2004), *cert denied,* 546 U.S. 936 (2005).

14. The BOCES did present data concerning Student's reading level and included a new annual goal in the area of reading to address Parent's concerns in this area. In addition, the BOCES did agree to evaluate Student in the area of transition planning based on Parent's concerns that the transition assessment was not adequate and added goals in the area of communication/socialization with typical peers. Unfortunately, Student has not been reevaluated in this area due to misunderstanding about the purpose of the evaluation. Because the SCO agrees that the transition assessment completed was not adequate to assess Student's needs in this area, the BOCES must again request parental consent to evaluate.

15. Finally, to ensure parental participation in the development of the child's IEP, the District must provide a copy of the child's IEP to the parent at no cost. 34 CFR §300.322 (f). Here, the BOCES admitted that it failed to timely provide Parent with a copy of Student's February 2013 IEP and March 2014 IEP.

REMEDIES

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

a) Failure to properly implement Student's IEP, resulting in a denial of FAPE, in violation of 34 CFR § 300.17;
b) Accessibility of Student's IEP to teachers and others, in violation of 34 CFR § 300.323(d).
c) Parent participation at 34 CFR § 300.322; and
d) Development, review, and revision of IEP at 34 CFR § 300.324(b).

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

1) **By June 3, 2014**, the BOCES must submit to the Department a proposed corrective action plan (CAP) that addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the BOCES is responsible. The CAP must, at a minimum, provide for the following:

   a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address the cited violation, no later than July 31, 2014.

   b) Effective training must be conducted for all School general and special education teachers concerning the policies and procedures, to be provided no later than September 1, 2014.

   c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to CDE no later than September 8, 2014.

   d) Within 10 days of receiving this Decision, Special Education Director, or designee, must evaluate the "IEP snapshots" for each student on Special Education Teacher's caseload and confer with relevant general education teachers to ensure that general education teachers, paraprofessionals, and other staff responsible for implementation of each student's IEP are adequately informed of their responsibilities.

      By June 6, 2014, the BOCES must submit documentation for each student on Special Education Teacher's caseload that consultation and review have occurred. Documentation should include the name of the student, date each student's IEP was reviewed, and the signature and title of School staff who received consultation with the Special Education Director or designee.

2) **Compensatory Education Services for Failure to Provide Student with a FAPE**.

a) Within 5 school days after receiving this decision, the BOCES shall ensure that Student's general education teachers have access to and are fully informed of their responsibilities in implementation of Student's March 2014 IEP. BOCES must submit documentation that this has occurred no later than June 6, 2014.

b) Within 5 school days after receiving this decision, Speech Language Pathologist and Occupational Therapist shall meet with all of Student's teachers and paraprofessionals to provide instructional strategies for supporting Student's socialization and communication with typical peers. This kind of consultation shall occur each time Student has a new teacher or paraprofessional, until May 1, 2015.

c) Within 5 school days after receiving this decision, and once a month thereafter, Speech Language Pathologist or Occupational Therapist shall observe Student interaction with typical peers in the general education environment, internship, or extracurricular activity, and provide input to the teachers and paraprofessionals working with Student on effective strategies for improving Student's communication and socialization skills with typical peers. The monthly observation/consultation shall be summarized, including any tips or changes to instructional strategies, and provided to all professionals working with Student. The purpose of this consultation is to identify what strategies are effective and share them with the adults working with Student. This monthly consultation shall be provided until May 1, 2015, but only applies during the school year.

   The BOCES shall provide the Department with documentation that it has complied with this requirement by the second Monday of each month until May 1, 2015, excluding summer. Documentation must include the service logs for observation and consultation with Speech Language Pathologist or Occupational Therapist, identify the environment where Student was observed, summarize any changes to instructional strategies, and identify how and when Student's teachers and paraprofessionals were advised of any changes to instructional strategies.

d) By May 21, 2014, the BOCES must conduct a comprehensive evaluation of Student in the area of transition planning that includes an assessment of Student's independent living skills. In addition, the assessment must identify Student's career interests and skills, additional educational and training requirements, and barriers to successful integration into the community, such as appropriate social skills, communication, and self-advocacy. In addition, the evaluation must include observations of Student interacting with adults and typical peers in an extracurricular activity, internship, and the general education environment.

   If Parent refuses to provide consent to the evaluation within 5 days of receiving the request to evaluate, the BOCES will be excused from conducting the evaluation. The

BOCES must provide a copy of the evaluation results to the Department no later than May 30, 2014.

e) By May 25, 2014, the BOCES must convene an IEP meeting to discuss the results of the evaluation and amend Student's IEP, as appropriate. Upon consideration of the new transition evaluation, the IEP team must identify Student's long range measurable post-secondary schools goals in the areas of career/employment, post-secondary education and training, and community or residential needs. Based on Student's identified goals and needs, the IEP team must then identify the projected course of study related to Student's post-school outcomes to ensure that the courses and educational experiences offered to Student help achieve her desired goals. BOCES must provide a copy of the resulting IEP, including prior written notice, to Parent and the Department, no later than June 6, 2014.

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

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

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

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

CONCLUSION

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 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 2nd day of May, 2014.

Candace Hawkins

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Candace Hawkins, Esq.
State Complaints Officer

Appendix

Complaint, pages 1-8.

Exhibit A: Draft IEP dated February 2014.
Exhibit B: February 2013 IEP.
Exhibit C: February 2012 IEP.
Exhibit D: Notice of Consent for Evaluation and Notice of Meeting.
Exhibit E: Class Schedule Report Cards.
Exhibit F: Assessment Results.
Exhibit G: Meeting Notes.
Exhibit H: Email Correspondence.

Reply, pages 1-7.

Response, pages 1-7.
Exhibit 1: March 2014 IEP.
Exhibit 2: February 2013 IEP.
Exhibit 3: Service logs.
Exhibit 4: Notices of Meeting.
Exhibit 5: Prior Written Notices.
Exhibit 6: Report Cards for 2012-2013.
Exhibit 7: Report Cards for 2013-2014.
Exhibit 8: Class Schedule for 2012-2013.
Exhibit 9: Class Schedule for 2013-20134.
Exhibit 10: IEP Progress Reports for 2012-2013.
Exhibit 11: IEP Progress Reports for 2013-2014.
Exhibit 12: Assessments for 2013-2014.
Exhibit 13: Attendance Records for 2012-2013.
Exhibit 14: Attendance Records for 2013-2014.
Exhibit 15: Contact Information for BOCES and School staff.
Exhibit 16: Supporting documentation related to allegation one.
Exhibit 17: Additional information requested by SCO related to data for progress monitoring and School copy of IEP dated March 4, 2014.
Exhibit 18: IEP snapshot dated January 2014.
Exhibit 19: IEP dated March 2014, with handwritten comments provided by Parent.

Interviews with:

- Parent
- Special Education Director
- BOCES Executive Director

- School Principal
- Special Education Teacher
- American History Teacher
- English Teacher
- Graphics Teacher
- Speech Language Pathologist
- Occupational Therapist