

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA¹)

State-Level Complaint 2014:514

East Central BOCES

DECISION

INTRODUCTION

The Complainant is the mother (Mother) of Student, who is identified as a child with a disability under the IDEA. Mother first filed a pro-se, state-level complaint on June 27, 2014. Mother filed a second pro-se, state-level complaint on July 29, 2014. Because SCO was already conducting an investigation that involved the same parties and would require a largely duplicative investigation, SCO notified both parties that the complaints would be consolidated and SCO would be issuing this final decision on all of the issues raised.

The SCO determined that the consolidated Complaint identified five 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.

MOTHER'S COMPLAINT ALLEGATIONS

Mother's consolidated Complaint raised five allegations, summarized as follows:

1. Since the beginning of the 2013-2014 school year, the BOCES has denied Student a free appropriate public education (FAPE) by failing to implement and comply with Student's 2012-2013 IEP.
2. Since the beginning of the 2013-2014 school year, the BOCES has denied Student FAPE by failing to implement and comply with Student's 2013-2014 IEP.
3. From October 4, 2013 until on or about May 1, 2014, the BOCES violated Parents' procedural rights under the IDEA and ECEA by failing to provide Parents with a written IEP for the 2013-2014 school year.

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. From October 4, 2013, the BOCES violated Parents' procedural rights under the IDEA and ECEA by denying them meaningful opportunity to participate in an IEP meeting.
5. From June 9, 2014 through July 11, 2014, the BOCES has denied Student FAPE by failing to implement and comply with Student's 2013-2014 IEP, specifically, the BOCES failed to provide Student with the correct hearing assistive technology equipment.

Summary of Proposed Remedies: To resolve the Complaint, Mother proposed that the BOCES comply with Student's IEP; provide Student with compensatory services (as chosen by Parents); reconvene IEP team in order to draft a new IEP using a neutral meeting facilitator (not employed by School, District, or the BOCES); terminate School and District employees who have denied Student's right to FAPE in a hostile manner; provide an identical hearing aid, three "boots", and three FM systems; and perform a daily hearing aid check, including battery and sound checks, and a log kept and sent home daily.

SUMMARY OF THE BOCES' RESPONSE

In response to the allegations in Mother's first filed Complaint, the BOCES generally denied the allegations accepted by SCO for investigation.³ The BOCES asserted that the BOCES afforded Parents an opportunity to participate and provide input during an October 4, 2013 IEP meeting and throughout the school year and provided Parents with a copy of the October 4, 2013 IEP on or about October 12, 2013. The BOCES also asserted that the BOCES provided Student with all of the special education and related services called for in Student's IEP and that Student made steady progress toward IEP goals and objectives.

In response to the fifth allegation accepted by SCO for investigation that arose from Mother's second filed Complaint, the BOCES denied the allegation and asserted that "[t]he lack of a working FM system for a few weeks this summer did not compromise [Student's] receipt of ESY services.

³ The BOCES' Response to the first Complaint explained in a footnote the following: "As CDE did not request the BOCES to respond specifically to any of Parent's allegations, the BOCES has not done so in this Response. If there are specific allegations that CDE would like the BOCES to address, please let us know, and we will provide a response." Although SCO afforded the BOCES additional time to respond to all of the specific allegations of the first Complaint, the BOCES chose not to provide any additional response. SCO notes that the failure to admit or deny the specific allegations in a state complaint can be fairly and reasonably treated as admissions by the SCO. State-Level Complaint Procedures ¶ 3.

FINDINGS OF FACT (FF)

After a thorough and careful analysis of the entire record,⁴ the SCO makes the following FINDINGS:

1. At all times relevant to the Complaint, Student has lived with Parents and currently attends first grade at School, which is within the boundaries of the BOCES.
2. Student has been diagnosed with Down Syndrome, severe to profound unilateral hearing loss, low tone peristalsis, vision loss, and a swallowing disorder. Due to the impact of these conditions, Student has been identified as a student with a disability, eligible for special education and related services under the IDEA and ECEA.

A. Student's IEP relevant to this Complaint

3. Student attended preschool at School during the 2012-13 school year with a February 14, 2013 IEP (Preschool IEP).⁵ In August 2013, Mother, Down Syndrome Education Specialist, Special Education Director Consultant, and Special Education Teacher #1⁶ met to discuss Preschool IEP prior to Student entering kindergarten. Student entered kindergarten in August 2013 with Preschool IEP in effect.
4. On October 4, 2013, the IEP Team met to discuss Student's eligibility for special education services. At that meeting, the IEP Team determined that Student continued to be eligible for special education as a child identified with a developmental delay.⁷ The IEP Team had planned to meet immediately after

⁴ The appendix, attached and incorporated by reference, details the entire record.

⁵ Exhibit 1A. Special Education Director Consultant and Mother both explained that while the IEP team agreed on Student's needs, special education and related services, modifications and accommodations, there were multiple mistakes, additions, and deletions in the IEP document itself and it continued to be edited through February 2014. In addition, compensatory education was provided for Student due to missing service hours and lack of implementation of Preschool IEP throughout the 2012-13 and 2013-14 school years.

⁶ Special Education Teacher #1 also served as Student's case manager for the 2013-14 school year.

⁷ Exhibit 1C. According to ECEA Rule 2.08(13)(a), a child should be determined to be eligible under the developmental delay category only in a situation in which a clear determination cannot be made under any other category as measured by developmentally appropriate diagnostic instruments and procedures. It appears that Student could have been found eligible for special education services and classified under the Deaf-blind category and, under a Colorado deaf-blind grant, both School and Student's family would have been eligible for additional

determining Student's eligibility in order to develop a new IEP, but did not meet that day due to time considerations. The IEP team never again met to develop a new IEP, but rather, Special Education Teacher #1 used the content from the Preschool IEP in order to complete a new IEP document, which was dated October 4, 2013.⁸ In their Response to Complaint, the BOCES states that it is the October 4, 2013 document that has been implemented since that date.

B. Kindergarten

5. Prior to kindergarten, Student attended the general education preschool program at School. Student's academic level was the same as Student's typical peers, however, as the year progressed, Student began experiencing behavioral difficulties. Student's behavior was a great concern as Student was transitioning into kindergarten.⁹
6. Preschool IEP provides, with considerable and thoughtful detail, the accommodations and modifications necessary to support Student appropriately while being fully included in the general education classroom.¹⁰ Preschool IEP, in part, specifies that Student be supported with the use of positive reinforcements and that all instruction be provided using a multi-modal approach (presenting instruction using visuals, sign language, and auditorily). Preschool IEP also specifies that Student have an "interpreter paraprofessional" in the general education classroom to provide Student access through sign language (CASE) and to support Student under the supervision and guidance of the general education teacher.
7. Student entered kindergarten in August 2013 with academic skills equivalent to Student's peers.¹¹ In the spring of 2013, prior to Student entering kindergarten, Kindergarten Teacher, Special Education Teacher #1, and Assistant Special Education Teacher were all trained in inclusive best practices and, specifically,

support and resources available under that grant, however, this was not an issue brought with this state complaint. Student is not listed on the Deaf-blind census with the Colorado Department of Education (Department).

⁸ Interviews with Assistant Special Education Director and Special Education Teacher #1 and Exhibit 1C.

⁹ Interviews with Preschool Teacher and Principal.

¹⁰ See Exhibit 1A.

¹¹ Interviews with Kindergarten Teacher, Special Education Teacher #1, Mother, and Down Syndrome Education Specialist.

how to support Student using positive reinforcements and visuals.¹² Instead of implementing Preschool IEP and fully including Student in the kindergarten classroom, however, Student received instruction largely from paraprofessionals rather than Kindergarten Teacher.¹³ Student was isolated from peers within the kindergarten classroom and punished when Student attempted to interact with peers and Kindergarten Teacher.¹⁴

8. In or around January 2014, Assistant Special Education Director became aware that Student's interpreter must be authorized.¹⁵ Interpreter Paraprofessional, who worked with Student for the first part of the 2013-14 school year, was not an educational interpreter authorized by the Department, but is fluent in ASL as a CODA (Child of a Deaf Adult).¹⁶ Kindergarten then became even more complicated for Student with multiple staffing changes and the change of support from one person acting as an interpreter paraprofessional to a separate paraprofessional and interpreter. Student continued that way and finished out kindergarten with separate interpreters and paraprofessionals.¹⁷ The number of adults present in the classroom to support Student added further distraction for Student and the rest of the class in an increasingly difficult situation.¹⁸

¹² Interviews with Kindergarten Teacher, Down Syndrome Education Specialist, Mother, Special Education Teacher #1, Assistant Special Education Director, and Principal.

¹³ Interviews with Mother, Down Syndrome Education Specialist, Interpreter Paraprofessional, and Summer Teacher.

¹⁴ Interviews with Mother, Down Syndrome Education Specialist, Interpreter Paraprofessional, and Summer Teacher.

¹⁵ Assistant Special Education Director and Special Education Teacher #1 explained that they were advised that an interpreter must be "certified," which is an inaccurate term. An educational interpreter must be "authorized" by the Department.

¹⁶ Interview with Interpreter Paraprofessional. Interpreter Paraprofessional worked from the beginning of the 2013-14 school year until February 13, 2014. Interpreter Paraprofessional stated working for the final few weeks only interpreting for Student. Paraprofessionals #3 and #4 presumably were providing the paraprofessional support for Student during those weeks. See Exhibit 6.

¹⁷ On March 13, 2014, Special Education Teacher #1 sent Mother a version of the October 4, 2013 document along with three IEP Amendments, which included an amendment to change the interpreter paraprofessional to a separate interpreter and a separate paraprofessional, to which Mother never agreed. Exhibit 1C, PP 3-4. SCO notes that Mother had agreed to the interpreter professional position being separated into two separate positions for a two week trial period, but no longer.

¹⁸ Interviews with Mother, Down Syndrome Education Specialist, Kindergarten Teacher, Principal, Summer Teacher, and Special Education Teacher #1.

9. As kindergarten progressed, Student's behavioral issues increased.¹⁹ Despite Mother's and Down Syndrome Education Specialist's continued encouragement and attempts to support Kindergarten Teacher in the proper use of positive reinforcements and visuals, they were never used consistently or effectively; Mother and Down Syndrome Education Specialist began to be viewed by School staff as problematic themselves.²⁰ Staff working with Student started recording Student's negative behavior and consistently and repeatedly putting Student in "time out" or sending Student out of the classroom to walk the hallways.²¹
10. Kindergarten Teacher did not seem to be Student's teacher at all. Student was increasingly isolated and physically directed by paraprofessionals who referred to students who receive special education services as "BOCES kids" who would be better served in the "BOCES room" and were solely responsible for Student.²² Staff working with Student discounted Student's hearing and vision needs, claiming that Student's hearing and vision "weren't that bad."²³
11. Student ended kindergarten with a very poor self-image, self-describing as "bad" and "stupid" and making very little, if any, progress.²⁴ Documentation provided by the BOCES notes, *inter alia*, that Student did not meet kindergarten standards and that "[m]ultiple changes throughout the 2013/14 school year" impacted Student's ability to maintain learned skills and knowledge.²⁵ In April 2014, Mother, Special Education Director Consultant, Special Education Director, Assistant Special Education Director, and Down Syndrome Education Advocate met and agreed to a year-round educational plan for Student. Signed on June

¹⁹ Exhibit 4, Interviews with Mother, Down Syndrome Education Specialist, Special Education Teacher #1, and Interpreter Paraprofessional.

²⁰ Interviews with Principal, Special Education Teacher #1, Kindergarten Teacher, Assistant Special Education Director and Exhibit 4.

²¹ Exhibit 4 and Interviews with Interpreter Paraprofessional, Assistant Special Education Director, Special Education Teacher #1 and Kindergarten Teacher. SCO notes that Assistant Special Education Director and Kindergarten Teacher opined that positive reinforcement had not been as effective with Student's behaviors as time outs, but that Mother would not allow School staff to put Student in time out. Email correspondence reveals that Assistant Special Education Director had directed staff members to place Student in time out facing the corner of the room, but later acknowledged that this was demeaning to Student and directed School staff not to have Student face the wall while in time out.

²² Interviews with Summer Teacher, Mother, Down Syndrome Education Specialist, Interpreter Paraprofessional and Paraprofessional #1.

²³ Interviews with Kindergarten Teacher and Interpreter Paraprofessional.

²⁴ Interviews with Mother, Father, Down Syndrome Education Specialist, Kindergarten Teacher, and Summer Teacher and Exhibit 13.

²⁵ See Exhibit 13, P.12.

11, 2014, “Six Year Agreement” is an unorthodox agreement that is essentially a guarantee of year round services and an understanding to bypass the annual consideration of ESY or compensatory services because it anticipates agreeing to provide Student with an annually agreed upon plan for growth over the summer.²⁶

C. Summer after kindergarten

12. Summer Teacher was suggested by Mother and Down Syndrome Education Specialist and hired by the BOCES to work with Student during the summer after kindergarten, pursuant to the “Six Year Agreement.”²⁷ Summer Teacher is a first grade teacher who works at a private school, where students with special needs are fully included in the classroom. Summer Teacher has experience teaching other first grade students with Down Syndrome and feels that Student is remarkably advanced, with “amazing language and social skills” and fully capable of following directions and being fully included in a first grade general education classroom with the appropriate structure and accommodations provided for in Preschool IEP. Summer Teacher supported Student by implementing the supports that are detailed in Preschool IEP, including the use of positive reinforcements and visuals. Student spoke, played and read every day with other children and adults and made significant growth throughout the summer. By the end of the summer Student was self-describing as “smart,” “a good girl” and “a good reader.” While Student continued to exhibit some negative behavior, it was effectively managed and diminished through the use of “think time” where Summer Teacher talked to Student about sad choices, rather than using time outs.²⁸
13. Summer Teacher briefly met with First Grade Teacher in early August 2014 and also shared with First Grade Teacher, Assistant Special Education Director, and Down Syndrome Education Specialist, via email, a summer progress report, calendar, and an editable schedule used over the summer. No one from School, District, or the BOCES, including First Grade Teacher, has communicated with

²⁶ Exhibit 13. SCO notes that within the documents attached to the Six Year Agreement, it is noted that Student’s behavior was not considered a factor in Student’s education and that there was no behavior intervention plan (BIP) for Student.

²⁷ Interviews with Special Education Director Consultant, Mother, Summer Teacher, and Down Syndrome Education Specialist and Exhibit 13.

²⁸ Interview with Summer Teacher and Exhibit 14.

Summer Teacher since.²⁹

D. First Grade

14. On the first day of the 2014-15 school year, there was no interpreter paraprofessional hired to support Student.³⁰ Special Education Director and Assistant Special Education Director contacted an interpreter agency the day before the 2014-15 school year started at School to request what was described as a “signing paraprofessional/interpreter” to begin the following day.³¹ Agency Interpreters #1 and #2 began work on the second day of the 2014-15 school year.³² When they requested training, Agency Interpreters #1 and #2 were told by Assistant Special Education Director that Mother insisted that they receive no training and that they would have to “learn on the job.”³³ Agency Interpreters #1 and #2 both felt overwhelmed by all of the information about the support they would be required to provide for Student and felt “hoodwinked” by Assistant Special Education Director into accepting the job when Agency Interpreter #1 was assured that Student did not have any behavioral issues and only required some redirecting like any typical student. Agency Interpreters #1 and #2 received little to no training on how to support Student and were left alone to be completely responsible for and support Student without assistance.³⁴
15. In the spring of 2014, Mother and Down Syndrome Education Specialist observed first grade classrooms and requested that Student be placed in First Grade Teacher’s class for the 2014-15 school year.³⁵ Mother explained that identifying Student’s teacher the previous spring would enable the teacher and staff to prepare to support Student when school began in the fall.³⁶ In the first weeks of

²⁹ Interviews with Summer Teacher and First Grade Teacher and Exhibit 14.

³⁰ Interviews with Paraprofessional, Assistant Special Education Director, Mother, and Principal.

³¹ Interview with Agency Interpreter #1. Agency Interpreter #1 is the staffing coordinator for the interpreter Agency.

³² Interviews with Principal, Agency Interpreters #1 and #2, and Assistant Special Education Director.

³³ Interviews with Agency Interpreters #1 and #2. SCO notes that Agency Interpreter #2 also reported that, prior to meeting Mother, Assistant Special Education Director told her that meeting Mother would feel like an interrogation.

³⁴ Agency Interpreters #1 and #2.

³⁵ Exhibit 4 and interviews with Mother, Down Syndrome Education Specialist and First Grade Teacher.

³⁶ Interviews with Mother, Down Syndrome Education Specialist, First Grade Teacher and Exhibit 4.

school, visuals had still not been created for Student.³⁷ First Grade Teacher feels overwhelmed and unable to provide the support Student needs while teaching the rest of the first grade students and feels apprehensive about communicating with Mother.³⁸

16. In the second week of school, the interpreter paraprofessional job was again separated into an interpreter and a paraprofessional.³⁹ Student's behavior continues to be the focus for School staff and Assistant Special Education Director believes that a Functional Behavior Assessment (FBA) is needed for Student. Student has already been suspended three times this school year for throwing gravel at paraprofessionals and for willful disobedience and open defiance and has been sent home early once "because Student was not following directions."⁴⁰
17. SCO observed that Student's paraprofessionals work with Student individually, exhibiting very little patience, using no visuals or visual schedules, and generally trailing behind Student while Student wanders around the first grade classroom. SCO also observed Agency Interpreter #3 sitting behind Student not signing at all or standing too far away from Student in the front of the classroom.⁴¹

E. Assistive Technology devices/services

18. Preschool IEP provides, in part, that Student will have a sound field system (Redcat), a personal FM system, a hearing aid in the left ear throughout the entire school day, and an Augmentative and Alternative Communication (AAC) device throughout the school day.⁴²

³⁷ Interviews with Agency Interpreters #1 and #2. SCO notes that Special Education Teacher #2 was hired and assigned to support Student in the first grade, but has no experience supporting a student receiving special education services in the general education classroom, having only worked in "self-contained classrooms."

³⁸ Interviews with First Grade Teacher and Agency Interpreters #1 and #2.

³⁹ Interviews with Agency Interpreter #1, Assistant Special Education Director and Paraprofessional #2.

⁴⁰ Interviews with Assistant Special Education Director, Principal, First Grade Teacher, Agency Interpreters #1 and #2, Mother, Father, and Down Syndrome Education Specialist.

⁴¹ SCO notes that Agency Interpreters #1 and #2 and D/HH Consultant all explained that younger children need to be taught how to use an interpreter and that kindergarten or first grade is quite young for a child who has not been raised by parents who are Deaf to be able to process the information provided by an interpreter standing at the front of a class.

⁴² Exhibit 1A .

19. The AAC has rarely been used at School and currently will not even power on.⁴³ Kindergarten Teacher explained that the AAC is a “talker” that was useless because of Student’s ability to speak.⁴⁴
20. In kindergarten, the FM system was not consistently working for Student.⁴⁵ First Grade Teacher is unsure of when or how to use the FM system and Redcat.⁴⁶ Agency Interpreters #1 and #2, who were responsible for checking Student’s hearing aid to ensure its proper functioning, were provided no training in how to do so.⁴⁷ Summer Teacher, who observed Student in a group story time at a public library both with and without the use of the FM system and interpreter, explained that the difference for Student was “huge.” Without the FM system and an interpreter, Student did not appear to understand much of the story being read, but with the use of both of these accommodations, Student was fully engaged, and able to understand the story.⁴⁸

F. Confidential Individualized Health Care Plan

21. The Confidential Health Care Plan in Student’s Preschool IEP includes, in part, a painstakingly detailed plan for Student’s eating and drinking. Student has a medical condition that results in silent aspiration and can lead to the serious and potentially fatal condition of aspiration pneumonia.⁴⁹ Student has documented choking risks where Student has had to have the Heimlich maneuver and numerous documented health concerns including a history of pneumonia. It is imperative that very specific precautions be taken to ensure Student’s safety at School as a single incident could lead to a fatal case of pneumonia.⁵⁰
22. In mid-February 2014, Special Education Teacher #1 gave Student a sippy cup had black mold inside the spout.⁵¹ Student has also been given drinks from cups

⁴³ Interview with Mother and Exhibit 4.

⁴⁴ Interview with Kindergarten Teacher.

⁴⁵ Exhibit 4 and Interview with Mother.

⁴⁶ Interviews with Mother and Down Syndrome Education Specialist.

⁴⁷ Interviews with Agency Interpreter #1 and #2.

⁴⁸ Interview with Summer Teacher and Exhibit 14.

⁴⁹ Silent aspiration is when a person exhibits no outward signs or symptoms of aspiration, such as coughing or throat clearing, when food or liquids enter the airway. Aspiration pneumonia is an infection resulting from aspiration of pathogenic bacteria that can occur during inhalation of food/liquids during swallowing.

⁵⁰ Interviews with Private Speech Language Pathologist and Pediatrician and Exhibits 1A through 1C.

⁵¹ Exhibit 4 and Interviews with Special Education Teacher #1 and Mother.

that were not Student's and cups that were not Student's were sent home in Student's backpack while in kindergarten.⁵²

23. During the 2013-14 school year, prior to March 5, 2014, School Nurse was required to email Private Speech Language Pathologist weekly, including a report of everything Student ate while at School that week, but School Nurse sent the emails "sporadically at best" and Private Speech Language Pathologist did not trust that the reports were truthful or accurate when they were provided. Due to School's sporadic and inconsistent compliance with Student's necessary feeding procedures, as well as choking incidents at School, Private Speech Language Pathologist developed a full feeding protocol in 2013 at the request of Principal and Mother to put in Student's IEP.⁵³
24. Private Speech Language Pathologist also recommended that Student's family provide all food for Student at School in order to avoid potential problems and dangers.⁵⁴ Private Speech Language Pathologist explained that Mother is the best judge of what foods are appropriate for Student to eat and stated that School should follow Mother's recommendations and should feed Student whatever Mother sends to school with Student to eat. In kindergarten, Student ate lunch alone in an office that was located next to the Principal's office with whoever was responsible for feeding Student until Student was later moved to the cafeteria for lunch.⁵⁵
25. Private Speech Language Pathologist evaluated Student and trained eight people in Student's feeding protocol on March 5, 2014.⁵⁶ Mother and Down Syndrome Education Specialist were also trained at that time. Private Speech Language Pathologist explained that under no circumstances should someone be feeding Student who has not been trained by Private Speech Language Pathologist or by Mother without Mother's express consent. Although Mother has made herself

⁵² Exhibit 4 and Interview with Mother.

⁵³ Interview with Private Speech Language Pathologist and Exhibit 1A.

⁵⁴ March 5, 2014 is the date that Private Speech Language Pathologist changed the recommendation to family providing all food for Student at School.

⁵⁵ Ibid. Private Speech Language Pathologist explained that she changed the recommendation from Student eating in a quiet area due to her concerns about how School was feeding Student and wanted Student to be where other people could see Student while eating.

⁵⁶ The feeding protocol that was developed after the evaluation and training provided on March 5, 2014 is appropriate for a one year period and has not been changed since that date. No training has been provided for School staff by Private Speech Language Pathologist since March 4, 2014.

available to train School staff responsible for feeding Student at School, Assistant Special Education Director told Mother that Special Education Teacher #1 and Assistant Special Education Director would train School staff responsible for feeding Student this year. Mother disagreed.⁵⁷

26. In the first grade, Special Education Teacher #1, Agency Interpreters #1 and #2, and paraprofessionals working with Student have been responsible for feeding Student.⁵⁸ Agency Interpreters #1 and #2 were never trained and were nervous about being unaware of what signs to look for that Student was choking, unsure of what Student should or should not eat, did not know how small to break up Student's food, and did not understand the drinking restrictions or precautions at all. Agency Interpreter #1 and Special Education Teacher #1 showed Student how to squeeze the sippy cup to give Student a "shot" of liquid right into Student's throat, disregarding the specific precaution not to allow Student too much fluid at one time due to the dangers of silent aspiration.⁵⁹
27. On August 22, 2014, Student returned home from School with a half empty eight ounce water bottle in Student's backpack, informing Mother that Student had drunk from the water bottle. Mother took Student to the emergency room at Private Hospital that evening, and to Pediatrician's office for follow up visits to obtain imaging to rule out pneumonia due to silent aspiration. Student had a low grade fever for several days after August 22, 2014 and the following week.⁶⁰

G. Special Transportation

26. The Special Transportation section of Student's Preschool IEP provides, in part, that Student will ride the school bus with an interpreter paraprofessional, will be carried on and off the bus and properly secured by School personnel, and will be immediately transported to Private Hospital in case of an accident. Preschool IEP

⁵⁷ Exhibit F and Interview with Mother. SCO notes that Paraprofessional #2 could not recall whether Paraprofessional #2 or Special Education Teacher #1 had "trained" Paraprofessional #1 in the feeding protocol.

⁵⁸ Interviews with Assistant Special Education Director, Paraprofessional #2, Agency Interpreters #1 and #2, and Principal. SCO notes that Agency Interpreter #1 was instructed by Assistant Special Education Director to provide Student with medication on the first day on the job, but Agency Interpreter #1 refused because there was no explanation or information provided about the medication.

⁵⁹ Exhibits K and 1A and Interview with Private Speech Language Pathologist.

⁶⁰ Interviews with Mother and Pediatrician. Risk factors that could alert a medical professional of silent aspiration include recurrent pneumonia or other respiratory infections and repeated unexplained low grade fevers.

also contains a safety (evacuation) plan that specifies that Student must hold hands with an adult when outside the school building, specifically when in proximity to parking lots and roads.⁶¹

27. District has one school bus that is state certified for Student's car seat; the bus was modified to allow Student's car seat to be installed. In the event that something is wrong with the school bus, District also has a car (School Car) with a car seat for Student to be safely transported.
28. For the first few months of kindergarten, Student rode the bus with Transporter who was neither a paraprofessional nor an interpreter.⁶² Student was always carried on and off of the school bus by family members or friends of family at home, but was allowed to walk on and off the bus unassisted when accompanied by Transporter and Principal at School.⁶³
29. On April 3, 2014 Student's school bus stopped mid-route to School during a heavy snow storm due to a problem with the brakes. Rather than drive Student in School car, Transportation Director directed that Student be carried by Student's interpreter to the replacement school bus and transported to School while sitting on the interpreter's lap.⁶⁴
30. On May 8, 2014, children on the school bus were "thrown around" when Bus Driver was forced to "slam hard on the brakes" while driving to School. Transportation Director, Principal, and Superintendent all stated that they did not consider the incident to be an accident and Student was transported to Private Hospital only after Mother insisted that Principal do so per the requirements on Preschool IEP. Student was diagnosed at Private Hospital with bruising, a strained neck, and whiplash, was not to be allowed outside for recess, to participate in PE or to run or bounce, and was required for one week to wear a neck brace for 24 hours per day until follow up x-rays were taken.⁶⁵

⁶¹ Exhibits 1A and 1B.

⁶² Exhibits 4 and 6 and Interviews with Mother, Bus Driver, Transporter, Transportation Director, and Principal. SCO notes that Mother was advised by Principal (via Special Education Director Consultant) that Transporter was a paraprofessional. SCO also notes that Transporter stated being able to "sign a bit."

⁶³ Interviews with Transporter, Bus Driver, and Principal. SCO notes that Principal stated being aware that Student's IEP required Student to be carried on and off the bus, but chose not to do so.

⁶⁴ Interview with Mother, Bus Driver, and Transportation Director and Exhibit 4.

⁶⁵ Exhibit 4 and Interviews with Transportation Director, Principal, Superintendent, Pediatrician, and Mother.

31. On the first day of the 2014-15 school year, there was no interpreter paraprofessional to ride the bus with Student.⁶⁶ On August 28, 2014, the Student's car seat that was installed on the school bus was found to be recalled by the State Patrol.⁶⁷
32. Numerous staff members stated that Student should not have to be carried on and off the bus. On August 25, 2014, Special Education Teacher #2⁶⁸ provided Parents with a Prior Written Notice (PWN) and Consent for Evaluation requesting a physical therapy evaluation due to "concerns about student getting on and off the bus safely."⁶⁹ On August 27, 2014, Parents refused consent in writing. The next day, Physical Therapist took Student out of class to the school bus and watched Student walk up and down the school bus steps.⁷⁰ Student then walked across the bus driving area and next to the parking lot without anyone holding Student's hand.⁷¹

CONCLUSIONS OF LAW

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

A. The BOCES violated Parents' procedural rights under the IDEA and ECEA that resulted in denying Student a free appropriate public education (FAPE)(Allegations 3 and 4).

1. Mother alleges that the BOCES violated Parents' procedural rights under the IDEA and ECEA by denying them meaningful opportunity to participate in an IEP meeting and failing to provide Parents with a written IEP for the 2013-14 school year. SCO agrees and further finds that the BOCES denied Student FAPE.
2. Under the IDEA, local education agencies such as the BOCES are required to provide eligible students with disabilities with a "free appropriate public education" (FAPE),

⁶⁶ Interviews with Principal and Mother.

⁶⁷ Interviews with Mother and Transportation Director. Transportation Director explained that the recalled car seat had been provided by Student's family the previous year and seemed to be implying that, therefore, the responsibility was on Mother to ensure the safety of Student's transportation.

⁶⁸ Special Education Teacher #2 appears to have been acting as Student's case manager at this time, but stated to SCO that Assistant Special Education Director is now acting as Student's case manager.

⁶⁹ Exhibit H

⁷⁰ Exhibit K

⁷¹ Ibid.

by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an IEP developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA's procedural requirements for developing, reviewing and revising the IEP require a school district to timely convene an IEP meeting with the required participants (including the child's parents) in order to review the student's progress, new evaluative information, parent concerns, etc., in order to develop a current education plan for the coming year.

3. In the seminal *Rowley* case, the Supreme Court explained that the IDEA established a procedure that would involve full participation of all concerned parties, including parents, at every stage of the process. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176 at 205-206 (1982). The IDEA thus requires educational agencies, teachers, and parents to jointly prepare and update an "individualized educational program" ("IEP") tailored to the unique needs of the child, specifying the child's present educational performance, annual goals, required services, and criteria for evaluating progress. *Id.* at 181. The IDEA's procedural requirements for developing a student's IEP are specifically designed to provide a collaborative process that places particular importance on parental involvement.

[W]e think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, see, e.g. 1415(a)-(d), as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrate[s] the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.

Rowley, 458 U.S. at 205-206.

4. Typically, contemplation of the two prong analysis set forth in *Rowley* is necessary to determine whether the procedural violation resulted in a denial of FAPE. *Rowley*, *supra* at 206-207. "[The inquiry in cases brought under IDEA] is twofold. First, has

the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits?" *Id.* It is well-established, however, that where the procedural inadequacies seriously infringe upon the parents' opportunity to meaningfully participate in the IEP process, the result is a "per se" denial of FAPE. *See, e.g., O.L. v. Miami-Dade County Sch. Bd.*, 63 IDELR 182 (11th Cir. 2014); *Deal v. Hamilton County Bd. Of Educ.*, 392 F.2d 840 (6th Cir. 2004); *see also*, 34 C.F.R. § 300.513(a)(2)(ii) ("In matters alleging a procedural violation, a hearing officer may find that the child did not receive a FAPE only if the procedural inadequacies ... [s]ignificantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child...").

5. In this case, the BOCES clearly violated the IDEA's procedural requirements because the October 4, 2013 document purporting to be Student's IEP for the 2013-2014 school year was developed without convening an IEP meeting at all. (FF 4). When the parents were cut out of the IEP process entirely, they were clearly denied an opportunity to participate meaningfully in the decision-making process regarding Student's IEP. Accordingly, when Special Education Teacher #1 unilaterally created the October 4, 2013 document without holding an IEP meeting or developing an IEP, the BOCES violated Parents' procedural rights, resulting in a denial of FAPE.

B. The BOCES failed to implement Student's IEP, thereby violating Student's right to receive FAPE (Allegations 1, 2 and 5).

6. The SCO next addresses Mother's allegations concerning the implementation of Student's IEP. Under the IDEA, local education agencies such as the BOCES are required to provide eligible students with disabilities with 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. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a material failure to implement an IEP can result in a denial of FAPE. *Id.* ; *see also K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9th Cir 2007), *Neosho R-V Sch. Dist. v.*

Clark, 315 F.3d 1022 (8th Cir. 2003).

7. Here, Mother alleges that the BOCES has denied Student FAPE by failing to implement countless special education and related services, accommodations and modifications detailed in Student's IEP during the 2013-14 school year. Mother also alleges that from June 9, 2014 through July 11, 2014, the BOCES denied Student FAPE by failing to provide Student with the correct hearing assistive technology equipment. Based on a thorough review of the documentation provided, numerous interviews with credible witnesses, and SCO's own observations, SCO agrees and concludes that the BOCES failed to implement Student's IEP, thereby denying Student FAPE.
8. Preschool IEP provides that Student's general education teacher is to provide all instruction (with support from an interpreter paraprofessional) using a multi-modal approach. Yet, on the first day of the first grade School was not even prepared to provide Student with an interpreter paraprofessional. Indeed, the day before school started Assistant Special Education Director and Special Education Director made a last minute call to an interpreter agency to hire an interpreter, any interpreter. Even after an entire kindergarten year of strife and behavior problems, which in part was due to the difficulties of providing the appropriate paraprofessional support for Student, no effort or thought had been made to finding or training an appropriate paraprofessional to support Student in the first grade. Moreover, the agency interpreters were misled into accepting the job and were not prepared or properly trained to appropriately or safely support Student, resulting in actions or inactions that may have endangered Student's life.
9. Further, the accommodations and strategies that were so carefully and specifically laid out in Student's IEP to support Student's academic and social growth have not been implemented consistently or effectively, if at all. Multiple witnesses report, and SCO's own observations confirm, that visual schedules and positive reinforcements have not been used or have been implemented ineffectively. Indeed, Kindergarten Teacher even questioned the legitimacy of Student's low vision and multiple witnesses shared their belief that Student's unilateral hearing loss was not a concern, stating that Student would be more appropriately served in the "BOCES room."⁷² This all adds up to a failure to provide specially designed instruction to meet Student's unique needs and ensure Student's access to the

⁷² The "BOCES room" refers to the center based learning program (self-contained program) at School.

general curriculum, depriving Student of a FAPE.

10. Student's behavioral issues are hardly surprising, even to Parents, who explained that it is the unfortunate but logical result of the lack of implementation of the thoughtfully designed Preschool IEP. Although Student clearly attempts to engage with classmates and to seek instruction directly from the general education teachers, Student is instead reprimanded for these efforts and, in the first grade, is being suspended for behavior that is clearly related to Student's needs not being met.
11. Moreover, not even the special transportation requirements detailed in Student's IEP have been implemented properly. While it is very clear in Student's IEP that Student is to be carried on and off the bus, Principal himself has chosen not to do so. In the first weeks of the current school year, the car seat on the school bus was found to be recalled. SCO finds the insistence that the May 8, 2014 incident on the school bus was not an accident (even though children were thrown around on the bus and Student and Bus Driver both sustained injuries) particularly disturbing. The SCO concludes that Student's right under the IDEA to be provided transportation services in a manner consistent with the IEP's requirements has been violated.
12. Most egregious and concerning is the management of Student's documented health concerns. Student's IEP contains a very explicit plan regarding Student's feeding, which ensures that Student is fed by School staff who are trained and knowledgeable about Student's health concerns. Something as simple as making sure that Student's sippy cup is clean and doesn't have mold built up in the spout appears to have been too much for School staff to handle, so a specific feeding protocol was provided by Private Speech Language Pathologist and eight staff members were trained. One would think that the lesson had been learned, but the blatant disregard that has been shown for Student's health concerns in the current school year is outrageous. Student's very specific feeding requirements are now in the hands of interpreters and paraprofessionals who not only have not been trained, but do not seem to understand the severity of Student's medical needs or the risks and potential consequences of letting Student drink out of an open water bottle. This is unacceptable and a denial of FAPE.
13. The SCO also notes that the BOCES' failure to implement Student's IEP has resulted in the violation of Student's right to be educated in the "least restrictive environment" (LRE). The LRE requirement is an explicit Congressional mandate

“that disabled children be educated in regular classrooms to the maximum extent appropriate.” *Nebo, supra, see also*, 20 U.S.C. 1412(a)(5); 34 C.F.R. § 300.114. The use of “special classes, separate schooling, or other removal of children with disabilities from the regular education environment [may] occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii).

14. Preschool IEP consisted of a very detailed and obviously thoroughly considered program designed to support Student’s full inclusion in the general education classroom. Yet, multiple witnesses who either provided services or observed Student in kindergarten and first grade classrooms, as well as SCO’s own observations, confirm Mother’s allegations that Student largely spent kindergarten and is now in first grade being minded by paraprofessionals, separate and apart from Student’s typical peers within the general education classroom. Though physically in the general education classroom, Student is isolated from the rest of the class and treated as if Student were not a part of it. This violates the IEP, and violates Student’s right to be educated in the LRE. 34 C.F.R. § 300.114 (a)(2).
15. For all of the reasons stated above, the SCO find that the BOCES violated Student’s rights and denied Student FAPE in failing to appropriately implement Student’s IEP and, further, violated Student’s right to be educated in the LRE.

REMEDIES

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

- a) Failure to provide specially designed instruction to meet the unique needs of a child with a disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.39 (b)(3).
- b) Failure to ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.114 (a)(2).
- c) Failure to provide transportation services to enable a child with disabilities to participate in nonacademic and extracurricular activities in the manner necessary to

afford the child an equal opportunity for participation in those services and activities to the maximum extent appropriate to the needs of that child, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.107.

- d) Failure to convene the IEP team to review the IEP annually, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.324 (b)(i).
- e) Failure to consider the use of positive behavioral interventions and supports, and other strategies, to address behavior that impedes the child's learning or that of others, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.324 (a)(2)(i).
- f) Amendment of an IEP without parent participation or an agreement to modify the IEP without an IEP meeting, resulting in a violation of Parents' procedural rights and a denial of FAPE, in violation of 34 C.F.R. §§ 300.501(b), 300.324(a)(4), and 300.324(a)(6).
- g) Failure to provide Student with the special education and related services in conformity with the IEP, resulting in a denial of FAPE, in violation of 34 C.F.R. § 300.17(b).

To remedy these violations, the BOCES is ordered to take the following action:

- 1) By no later than October 20, 2014, the BOCES must submit to the Department a proposed corrective action plan (CAP) that addresses each and every 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 violations, no later than November 10, 2014.
 - b. Effective training concerning these policies and procedures, which include effectively implementing an Individualized Education Program, must be conducted for Special Education Director and intended designees (which may include case managers, special education teachers, building administrators, district administrators, disability specific service providers, and general education teachers) who work with the child. 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 the Department no later than December 12, 2014.

2) **Conduct a functional behavioral assessment (FBA) as soon as possible, but no later than October 17, 2014.** The FBA must include the following:

- a. Consultation with a behavioral specialist who has demonstrated experience in treating behavioral challenges associated with Down Syndrome. The specialist shall be chosen by the BOCES, but may not be an employee of the BOCES or District.
- b. Detailed identification of Student's negative behaviors, including intensity, duration, and a detailed assessment of antecedents and consequences;
- c. A detailed hypothesis (summary statement) concerning the function of Student's behavior;
- d. Confirmation of the summary statement through formal observation of behavior, antecedents, and consequences; and
- e. Development of competing behavior summary to identify desired behavior, common reinforcing consequences, and alternative behaviors.

The District shall provide the Department with documentation that it has complied with these requirements no later than October 24, 2014. Documentation must include the resume and contract for the behavioral specialist, and signed consent for evaluation.

3) **Conduct an IEP meeting facilitated by a neutral facilitator (not employed by the BOCES or District) to review the results of the FBA and amend Student's IEP and create a behavioral intervention plan, as soon as possible, but no later than October 30, 2014.**

The District shall provide the Department with documentation that it has complied with this requirement no later than November 7, 2014. Documentation must include notice of meeting and prior written notice.

4) In order to assure that student's progress made over the summer does not regress:

- a. Assistant Director of Special Education (who has been serving as Student's case manager) shall observe student in the classroom on a monthly basis, beginning on October 17, 2014 and ending on May 30, 2015;
- b. Assistant Director of Special Education will monitor implementation of Student's IEP, review lesson plans and modifications and send copies of relevant documentation and a report to the Department on a monthly basis, beginning on October 17, 2014 and ending on May 30, 2015; and

- c. A copy of all progress reports sent to Parents must be sent to the Department within seven days of when Parents are sent or provided such reports.
- 5) In order to ensure that Student has appropriate access to hearing assistive technology, a daily log of sound field system, FM system, and hearing aid functionality (including battery and sound checks) and use will be kept. A copy of the log will be sent to Parents on the last school day of each month and must be sent to the Department within seven days of when Parents are sent or provided such logs.
- 6) In order to ensure that Student is being safely carried on and off the bus and being safely transported to School, Assistant Special Education Director will monitor implementation of the procedures provided for in the Special Transportation section of Student's IEP and provide a monthly report to the Department throughout the 2014-15 school year.
- 7) By October 30, 2014, Summer Teacher shall be hired to consult with Student's general education teacher, special education teacher, and paraprofessional(s) throughout the 2014-15 school year. In the event Summer Teacher is unable or unwilling to consult, a teacher experienced in inclusion of students with Down Syndrome using positive reinforcements and visuals will be hired.
- 8) By October 30, 2014 the Student will be supported by a special education teacher with experience in supporting students with special needs included in the general education classroom. If a special education teacher meeting this description cannot be found, then District must contract with a Consultant to work with the Special Education Teacher on how to implement appropriate accommodations and services within the general education classroom.
- 9) By October 30, 2014, Student shall be placed on Deaf-Blind census.
- 10) By October 30, 2014, the training of 3 adults identified (including all paraprofessionals working with Student) to support Student in feeding shall occur with Private Speech Language Pathologist or Mother. Documentation of such training shall be sent to CDE with 7 business days of its completion.
- 11) By November 21, 2014, the BOCES shall identify and hire two paraprofessionals who are capable of supporting Student's communication needs and who will be working with

Student during the 2014-15 school year, and provide them with training in inclusion practices, feeding from Private Speech Language Pathologist or Mother, and role clarification.

- 12) By December 5, 2014, a full comprehensive evaluation of the Student must be completed by the BOCES. While the BOCES is completing its evaluations, an independent evaluation must be conducted by an evaluator(s) of Parents' choosing. **The summary of the independent evaluation must be provided to the AU by November 26, 2014 in order for the IEP team to have time to review and consider the results.**

By December 12, 2014, the IEP team must convene to review and determine whether or not to accept the results of the independent evaluation. The IEP meeting should be conducted by a neutral meeting facilitator to develop an IEP; IEP team must include a behavioral specialist who has demonstrated experience with Down Syndrome, Summer Teacher (or the teacher who consults in Summer Teacher's place), a teacher of the deaf, a teacher of the visually impaired, and a Down Syndrome educational specialist with expertise and experience in inclusive practices.

The IEP team meeting and the resulting IEP must be consistent with the IDEA and this Decision. In conjunction with this IEP team meeting, the BOCES shall:

- a. Include the evaluator(s) Parents choose to perform the independent evaluation either in person or by phone;
- b. Share and consider the results of the independent evaluation;
- c. Modify Student's IEP consistent with § 300.324; and
- d. Supply a complete copy of the resulting IEP, including prior written notice, detailed team meeting notes and verification of items a-d to the Department within five days after the IEP team meeting and no later than December 19, 2014.

The Department will approve or request revisions of the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the BOCES' timely correction of the areas of noncompliance.

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 the timeline set forth above will adversely affect the BOCES' annual determination under the IDEA and subject the BOCES to enforcement action by the Department.

CONCLUSION

The Decision of the SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 CFR § 300.507(a) 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 25th day of September, 2014.

Lisa A. Weiss, Esq.
State Complaints Officer

APPENDIX

Complaint, dated June 26, 2014, pages 1-31

- Exhibit A: IEP, dated October 4, 2013
- Exhibit B: Correspondence, dated April 25, 2014
- Exhibit C: September 26, 2013 Observation Notes

Complaint, dated July 21, 2014, pages 1-2

- Exhibit D: Six Year Agreement, dated June 11, 2014
- Exhibit E: Complaint, dated August 19, 2014
 - August 8, 2014 correspondence
 - IEP Amendment, dated May 6, 2014
 - IEP Amendment, dated March 11, 2014
 - IEP, dated October 4, 2013 with handwritten notes and highlights
- Exhibit F: Complaint, dated September 1, 2014 with typewritten pages attached
- Exhibit G: Action Plan, dated August 21, 2014
- Exhibit H: Prior Written Notice and Consent for Evaluation, dated August 25, 2014
- Exhibit I: Classified advertisement, dated August 26, 2014
- Exhibit J: Page from School's handbook
- Exhibit K: August 28, 2013 Observation Notes

Response, pages 1-8

- Exhibit 1A: September 13, 2013 correspondence and IEP, dated February 4, 2013
- Exhibit 1B: IEP, dated February 4, 2013
- Exhibit 1C: March 13, 2014 correspondence
 - IEP Amendments dated March 11 and 12, 2014
 - IEP, dated October 4, 2013
- Exhibit 2: Certified Mail Receipts
- Exhibit 3A: Correspondence, dated September 20, 2013 with progress report, dated August 16, 2013
- Exhibit 3B: Progress Report, dated November 2, 2013
- Exhibit 3C: Handwritten note, dated December 9, 2013 with progress report, dated December 6, 2013
- Exhibit 3D: Progress report, dated February 28, 2014
- Exhibit 3E: Progress report, dated May 2014
- Exhibit 3F: Special Education Teacher #1's Attendance & Documentation Form for the 2013-14 school year
- Exhibit 3G: Teacher of the Deaf's Attendance & Documentation Form for the 2013-14 school

year

Exhibit 3H: Teacher of the Visually Impaired's service log for the 2013-14 school year

Exhibit 3I: Audiology contact log for 2013-14

Exhibit 3J: Speech Language Pathologist's Attendance & Documentation Form for the 2013-14 school year

Exhibit 3K: Occupational Therapy Attendance & Documentation Form for the 2013-14 school year

Exhibit 3L: PT Staff Notes

Exhibit 4: CD with email correspondence⁷³

Exhibit 5: Assurance of Administrative Unit Adoption of Special Education Comprehensive Plan, dated July 19, 2012

Exhibit 6: List of Individuals with Knowledge of facts underlying the Complaint allegations

Exhibit 7: Student's K-5 Report Card 2013-2014

Exhibit 8: Student's Attendance report 2013-14

Exhibit 9: District School Calendar 2013-14

Exhibit 10: Compensatory Service Time for Student, 2013/14 School Year, dated May 8, 2014

Exhibit 11: Certified mail receipt

Response, dated August 14, 2014, pages 1-6

Exhibit 12: Email correspondence

Exhibit 13: Six Year Agreement, dated June 11, 2014

Service delivery pages

Calendar pages May through August, 2014

Prior Notice of Special Education Action, dated May 22, 2014

Determination of Extended School Year Services

Exhibit 14: Summer Teacher's Progress Report, Summer 2014

Exhibit 15: Assistant Special Education Director's notes from conversation with Down Syndrome Education Specialist during observation of Student on July 29, 2014

Exhibit 16: Certified mail receipt

⁷³ SCO notes that documents provided in support of BOCES' Response included emails with attachments unrelated to Student, but related to another student at School.

Interviews with:

Mother
Father
Down Syndrome Education Specialist
Summer Teacher
Special Education Director Consultant
Special Education Director
Assistant Special Education Director
Principal
Superintendent
Interpreter Paraprofessional
Physical Therapy Assistant
Transportation Director
Bus Driver
Transporter
Pediatrician
School Nurse
Kindergarten Teacher
Special Education Teacher #1
First Grade Teacher
Special Education Teacher #2
Preschool Teacher
Paraprofessional #2
D/HH Consultant
Private Speech Language Pathologist
Agency Interpreter #1
Agency Interpreter #2

Observations of:

Student
Assistant Special Education Director
First Grade Teacher
Paraprofessional #1
Agency Interpreter #3
Paraprofessional #2
Art Teacher