

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Individuals with Disabilities Education Act ("IDEA")<sup>1</sup>

State-Level Complaint 2016:518  
Pueblo School District 60

DECISION

INTRODUCTION

Complainants are the parents ("Mother" and "Father," or collectively, "Parents") of a child ("Student") who is identified as a child with a disability under the IDEA. Parents brought this Complaint against Pueblo School District 60 ("School District") on behalf of Student. The complaint was properly filed on August 2, 2016, requiring that the decision be issued by October 1, 2016. The State Complaints Officer ("SCO") determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.<sup>2</sup>

COMPLAINT ALLEGATIONS

The SCO accepted for investigation the following issues:

1. Since the beginning of the 2015-16 school year, the District has denied Student a free appropriate public education (FAPE) by failing to properly implement Student's IEP. Specifically, the District has:
  - a. Failed to consistently and timely provide accommodations related to Student's sensory needs, e.g., lap pad, ball chair, various fidgets, and sensory breaks;
  - b. Failed to provide consistent access to District-issued laptop computer;
  - c. Failed to break large assignments, i.e., language arts project, into smaller chunks;
  - d. Failed to provide daily task-expectation list and visual schedule;
  - e. Failed to provide identified accommodations for standardized assessments, i.e., extended time, separate environment for testing, calculator, and frequent breaks;
  - f. Failed to implement behavioral intervention plan (BIP);
  - g. Failed to provide transition services, i.e., vocational interest survey, instruction in job application process, and linkage/referral to vocational service agency;
  - h. Failed to provide appropriate specialized transportation;
  - i. Failed to monitor and provide progress reports on IEP goals; and
  - j. Failed to provide paraprofessional support during extra-curricular activities.
2. The IEP meeting held on June 6,<sup>3</sup> 2016, violated IDEA's procedural requirements because the District:
  - a. Failed to provide notice of meeting;

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.*

<sup>2</sup> 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).

<sup>3</sup> The Complaint stated that the meeting in issue was held on June 16, 2016. During the course of the investigation, it was clarified that the Complaint contained a "typo" and that the actual date of the meeting was June 6, 2016.

- b. Failed to include a regular education teacher;
- c. Failed to properly excuse mandatory IEP team members; and
- d. Failed to provide prior written notice following the meeting.

### FINDINGS OF FACT

Based upon a careful and thorough review of the record, the SCO finds as follows:

1. Student is [age] years old and at all times relevant to this Complaint, has resided within the boundaries of the School District and attended High School. Student is identified and served as a student with autism spectrum disorder. Student is also diagnosed as having attention deficit hyperactivity disorder (ADHD).
2. By all accounts, Student is a “high functioning” student with autism. Student fully participates in the general high school curriculum, participates in extracurricular sports, has friends (including a “significant other”), and is accepted as a part of the High School community.<sup>4</sup> Student is described by his teachers as an excellent student who is highly intelligent, diligent about doing good work, and who achieves extremely high grades (all As and Bs).<sup>5</sup>
3. Nonetheless, as a result of his disabilities, Student experiences high levels of stress and anxiety that affect his ability to function and stay on task, whether in the classroom or in sports. Student has significant difficulties with executive functioning and is described by Mother as extremely disorganized and forgetful, and requiring significant support to keep him organized and on task. As is common for many individuals with autism, Student has difficulty with changes to routine. Both Parents and school staff described Student as a perfectionist who is extremely concerned about getting good grades, and who experiences stress and anxiety when he feels that he is not achieving as highly as he should or could. Student was also described as “constantly moving” and extremely fidgety, with “nervous energy” and sensory issues.<sup>6</sup>
4. During the 2015-2016 school year, Student was educated pursuant to an IEP dated April 20, 2015 (hereinafter, “2015 IEP”). Student’s IEP included goals to help Student learn organizational skills, a behavioral plan with strategies to help Student manage his stress and anxiety, and numerous accommodations to provide Student with, *inter alia*, sensory breaks and tools, support in both the classroom and extracurricular activities, and test taking accommodations.<sup>7</sup>
5. During the current school year (2016-2017), Student is being educated pursuant to an IEP developed over a number of days in April 2016 (hereinafter, “2016 IEP”). For purposes of the claims raised in Parents’ Complaint, many of the provisions in the April 2016 IEP are similar to those in the April 2015 IEP.<sup>8</sup>

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<sup>4</sup> Interview with Parents; Interviews with Special Education Director, ESS Specialists, Case Manager, School Psychologist, Language Arts Teacher, Learning Supports Teacher, and OT Assistant.

<sup>5</sup> *Id.*

<sup>6</sup> Interview with Parents; Interviews with OT Assistant, School Psychologist.

<sup>7</sup> Exhibit A-1.

<sup>8</sup> Exhibit A-3.

## Issue 1(a) - Access to Sensory Items

6. With respect to accommodations relating to Student's sensory needs, both the 2015 and 2016 IEPs had essentially the same provisions. The 2015 IEP states that Student will be permitted "sensory breaks as needed," access to sensory items in class (e.g., ball chair, podium, fidgets, standing desk, lap-pad), and "snacks as needed."<sup>9</sup> The 2016 IEP states that Student will get "sensory breaks as needed" and "access to sensory items, such as snacks, fidgets, weighted lap pads, ball chair, wiggle chair and gel pad, as needed to accommodate ADHD, anxiety and sensory needs snacks to help with anxiety and sensory needs."<sup>10</sup> Both IEPs provided for movement/walking breaks to help with Student's ADHD, anxiety and sensory needs, as well as for Student to be permitted to pace in the classroom within an area marked off on the floor by visual boundaries (*i.e.*, tape on the floor).<sup>11</sup>
7. The School District staff, including teachers and service providers, all explained that the IEP's list of sensory items was a "menu" of options for Student.<sup>12</sup> Student's sensory needs and preferences change from day to day, such that Student accesses certain modalities on some days and others on other days. Student is aware of his own sensory needs, is very vocal and forceful about advocating for himself with respect to his preferences, and is able to seek out those sensory modalities that he prefers.<sup>13</sup> The point of having a variety of sensory modalities was not that each one needed to be used at all times, but rather that Student would have a variety of options that he could access (or not) as his needs dictated and as he saw fit.<sup>14</sup> Indeed, the language of the IEPs emphasize that the various sensory modalities are to be used "as needed."<sup>15</sup>
8. The record demonstrates that at all times relevant to this Complaint, Student had access to sensory breaks, including the ability to leave the class and go for a walk (or even run on the track), or to pace during class. Student's teachers and support staff all reported credibly that he accessed and continues to access these accommodations regularly, that they help Student to regulate his energy, attention, and anxiety levels, and that Student's use of these accommodations help him to function and participate in his classes.<sup>16</sup> Further, the record shows that Student used a gel seat cushion and crunchy snacks as tools to provide him with sensory input to help with anxiety and attention issues.<sup>17</sup> Indeed, all of the professionals who worked with and observed Student in school stated that these sensory tools, particularly walking, pacing, and crunchy snacks, were Student's preferred sensory modalities.<sup>18</sup>
9. School Psychologist, for example, met with Student every week to talk to him about strategies for coping with anxiety and stress and to generally help Student learn how to deal with problems or issues that might come up in school. School Psychologist knew Student well, had

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<sup>9</sup> Ex. A-1, p. 21.

<sup>10</sup> Ex. A-3, p. 19 (*sic*).

<sup>11</sup> Exs. A-1, p. 21 and A-3, p. 19.

<sup>12</sup> Interview with Special Education Director, School Psychologist, OT Assistant.

<sup>13</sup> Interview with ESS Specialist;

<sup>14</sup> Interview with OT Assistant; Interview with Special Education Director.

<sup>15</sup> Ex. A-1, p. 21; Ex. A-3, p. 19.

<sup>16</sup> Interviews with Language Arts Teacher, Paraprofessional, OT Assistant, and Learning Supports Teacher.

<sup>17</sup> *Id.*

<sup>18</sup> Interviews with OT Assistant, Language Arts Teacher, Paraprofessional, Learning Supports Teacher, and School Psychologist; *see also* Ex. G-5.

participated in the development of the Student's IEP and behavior plan, and was familiar with all aspects of Student's educational program, including his sensory accommodations. School Psychologist described Student's sensory needs and preferences as follows:

[Student] knows what he needs and what he likes and what he gets relief from. He likes to pace ... if I had to pick one strategy for [Student] it would be pacing. He absolutely needs to be able to pace and that's something we made sure of. In every single class, it was explicit, it was clearly outlined with tape because he needs to know where he can be. ... The other is the crunchy snacks. He always had the snacks. ... He used the fidgets some, but the two big ones were the pacing and the crunchy snacks.<sup>19</sup>

10. Most importantly, Student's access to and use of the variety of sensory modalities at his disposal have been and continue to be effective in helping him to deal with his stress, anxiety and attention issues, and using them allows him to function and participate in his classes and access his education program. There is no doubt that Student gets stressed and frustrated and that, unchecked, his anxiety could escalate to the point that he would not be able to function in school. But from the start of the 2015-2016 school year to the present, that has not happened. Student has access to the tools he needs to help him manage that stress and anxiety and he is doing extremely well.<sup>20</sup>
11. Parents' claims with respect to sensory accommodations focus primarily on Student's access to a lap pad and a ball chair during his classes.<sup>21</sup> Parents contend that the School District did not consistently make the lap pad and ball chair accessible to Student in all of his classes.<sup>22</sup>
  - o Lap Pad
12. The lap pad is a fabric bag filled with sand, weighing approximately 10 pounds, that Student could place on his lap. The purpose of the weighted lap pad is to provide sensory input to help Student with anxiety and attention issues.<sup>23</sup>
13. The Parents contend that after the start of the 2015-2016 school year, a lap pad was not acquired until mid-November.<sup>24</sup> District staff do not dispute that because of various problems with the vendor of the item, they did not have a lap pad in place right away, but that since the middle of the first semester of the 2015-2016 school year, a lap pad has been available and accessible to Student.<sup>25</sup>
14. Numerous School District staff credibly explained that notwithstanding the availability of the lap pad, Student was not interested in using it.<sup>26</sup> OT Assistant, who worked with Student since

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<sup>19</sup> Interview with School Psychologist.

<sup>20</sup> Interviews with OT Assistant, Language Arts Teacher, Paraprofessional, Learning Supports Teacher, and School Psychologist.

<sup>21</sup> Interview with Parents.

<sup>22</sup> *Id.*

<sup>23</sup> Interviews with Parents, Special Education Director, ESS Specialist, Paraprofessional, OT Assistant, and Learning Supports Teacher.

<sup>24</sup> Complaint, attachment 1; Interview with Parents.

<sup>25</sup> *Id.*; Interviews with Special Education Director and OT Assistant.

<sup>26</sup> Interviews with Paraprofessional, Language Arts Teacher, ESS Specialist, and Learning Supports Teacher.

he was in second grade and is extremely knowledgeable about Student's sensory needs and modalities, stated that the lap pad was kept in a classroom but that Student did not want to use it.<sup>27</sup> The School District purchased another lap pad for Student to use, but Student did not use it because he did not like the color or pattern of the fabric.<sup>28</sup>

15. The lap pad is also listed as a sensory modality on the 2016 IEP.<sup>29</sup> The ESS Specialist made seven lap pads for Student to use during the 2016-2017 school year, and there is one in each of his classrooms. Student chooses not to use them.<sup>30</sup>
16. Parents assert that Student's refusal to use the lap pad is attributable to the School District's failure to have one in place for a long time. Mother explained that when Student does not use a particular sensory tool for a length of time, he loses interest in it and refuses to use it, such that essentially, any refusal by Student to use the lap pad is the School District's fault and amounts to a violation of the School District's obligation to make a lap pad accessible to Student. The SCO disagrees with this contention for a number of reasons.
17. First, there is no dispute that since November 2015, a lap pad has, in fact, been "accessible" to Student under any accepted definition of that term. The School District obtained multiple lap pads, keeps them where Student can get to them, and has them available to him should he elect to use them. Student cannot be forced to use a sensory tool he does not desire or need - the fact that the IEP presents a variety of sensory options for Student to use "as needed" underscores this point.
18. Second, Parent's argument treats the use of the lap pad (or any other sensory tool, for that matter) as an end in itself, rather than a means to an end, *i.e.*, helping Student deal with anxiety and attention problems in order to function in class and access his educational program. But the point of the various sensory modalities is to give Student options to use, based upon his preferences and needs on a given day. If Student expresses a preference for certain sensory modalities (such as pacing, sensory breaks, and crunchy foods) and accesses those modalities as needed to help him, and if they do, in fact, help him, then the sensory accommodations in the IEP have been available and have served their purpose, and the IEP has been complied with.
19. Accordingly, the SCO finds that the lap pad was not accessible to Student from the beginning of the 2015-2016 school year until November 2015, but that it has been accessible to Student since then.

- **Ball Chair**

20. The ball chair is a chair comprised of a large inflatable ball (like those used for exercise) secured in a frame to keep it in place. The purpose of the ball chair is to provide Student with sensory input by allowing him to sit in class while still being able to move and shift while seated.<sup>31</sup>

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<sup>27</sup> Interview with OT Assistant; Interview with Special Education Director;

<sup>28</sup> Interview with OT Assistant; Interview with Learning Supports Teacher.

<sup>29</sup> Ex. A-3, p. 19.

<sup>30</sup> Interview with OT Assistant; Interview with ESS Specialist.

<sup>31</sup> Interview with Parents; Interview with OT Assistant.

21. Though the exact chronology relating to the ball chair is not entirely clear, it appears that the School District did not have one available for Student at the beginning of the 2015-2016 school year but that one was available by sometime in September or early October of 2015.<sup>32</sup> Thereafter, the ball chair broke and needed to be repaired a few times, and then was being used by a High School staff member rather than being accessible to Student. However, by mid-November 2015, a repaired ball chair was provided to Student and was used by him primarily in his biology class.<sup>33</sup> During the current school year, the ball chair is used in Student's chemistry class.<sup>34</sup>
22. According to School District staff, Student uses the ball chair on some occasions but not others. Paraprofessional, who knows Student well and accompanied him to his classes for the bulk of the 2015-2016 school year, explained that Student was most interested in using the ball chair when other students wanted to use it or try it, or when they remarked that it looked "cool." Other days he would push it out of the way and kneel on the floor in front of the desk or pull up a different chair to sit in.<sup>35</sup> He did not express any particular affinity for it or aversion to it.<sup>36</sup>
23. OT Assistant stated that the use of the ball chair is helpful to Student when he desires it, but reiterated the statements of the other School District staff that Student's preferred sensory tools are pacing - as she explained, "he has to move" - and crunchy snacks.<sup>37</sup> Though the ball chair is generally located in a particular classroom, it is on wheels and could be moved easily if Student requests or exhibits a need for it.<sup>38</sup> As noted above, Student is not shy about expressing his needs and preferences for different sensory tools, and accesses those that he requires. There is no evidence that Student ever requested or expressed a need for the ball chair, or otherwise indicated a preference for it, where it was not made available to him.
24. The SCO understands the Parents' position that if there were a ball chair in every one of Student's classrooms, he might use it more frequently - that very well may be true. But the IEP's requirement is that a ball chair, along with the other sensory modalities listed, be accessible to Student as needed. Again, the use of any one particular sensory modality listed in the IEP is not an end in itself, but rather a means to help Student manage his anxiety and attention problems. If Student had the requisite sensory options available to him and used those he preferred to manage his anxiety, with the result being that he was able to function and participate in his educational program, then the School District has complied with the IEP with respect to those sensory accommodations.
25. The evidence demonstrates that once the ball chair was acquired and available to Student in November 2015, Student had access to the ball chair as needed, even if each classroom did not have its own dedicated ball chair for him to use. Accordingly, the SCO finds that the ball chair was not accessible to Student from the beginning of the 2015-2016 school year until mid-November 2015, but that it has been accessible to Student since then.

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<sup>32</sup> Complaint, Attachment 1.

<sup>33</sup> Interviews with Parents, OT Assistant, and Paraprofessional.

<sup>34</sup> Interview with OT Assistant.

<sup>35</sup> Interview with Paraprofessional.

<sup>36</sup> *Id.*

<sup>37</sup> Interview with OT Assistant.

<sup>38</sup> Interview with OT Assistant.

### Issue 1(b) - Access to a computer

26. Another accommodation in Student's 2015 IEP is that Student will have access to a "scribe as needed or access to computer allowing [Student] to type."<sup>39</sup> In the Present Levels of Academic Achievement and Functional Performance section of the IEP, the IEP noted that "[Student] has high anxiety during writing exercises. Having the use of a scribe and access to a computer for writing assists [Student] to lower this anxiety and makes him able to complete these writing assignments."<sup>40</sup> Similarly, the 2016 IEP provides for a "scribe or use of computer for written work."<sup>41</sup> "Written assignments tend to be the most stressful for [Student]. He needs to have access to the use of a scribe and access to a computer for written assignments."<sup>42</sup>
27. Parents' Complaint asserts that Student was not provided with "consistent access" to a "district issued laptop." The Complaint states that the laptop was inaccessible because it was kept in the case manager's office and then later moved to the Learning Supports room, and that Student would "become stressed if he had to leave class to find it or locate a key to try and get to it."<sup>43</sup>
28. The SCO has been unable to find any evidence in the record supporting this allegation. First, it bears noting that the IEP does not guarantee Student access to his own "district issued laptop," but rather, access to a "computer." The record demonstrates that at all times relevant to this case, Student has had access to a computer for writing, note-taking, and other purposes.
29. The School District staff explained that Student had access to a laptop computer at the beginning of the 2015-2016 school year, and that it was kept in one of his classrooms. Sometimes Student carried it from class to class, but it was cumbersome. In addition to the laptop, different classes had carts of computers or had desktop computers. Student also had easy access to High School's media center, which houses computers and printers. Further, by the end of the 2015-2016 Student was provided with a Chromebook (a tablet with a detachable keyboard).<sup>44</sup> Similarly, during the current school year, Student has access to a computer.<sup>45</sup> There was never a time when Student needed a computer when he did not have access to one.<sup>46</sup>
30. Accordingly, the SCO finds that at all times relevant to this Complaint, Student has had access to a computer.

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<sup>39</sup> Ex. A-1, p. 21.

<sup>40</sup> Ex. A-1, p. 10.

<sup>41</sup> Ex. A-3, p. 19

<sup>42</sup> Ex. A-3, p. 6.

<sup>43</sup> Complaint, p. 3; Interview with Parents.

<sup>44</sup> Interviews with Special Education Director, Learning Supports Teacher, Paraprofessional, Language Arts Teacher.

<sup>45</sup> Interview with Special Education Director.

<sup>46</sup> *Id.*

Issue 1(c) - Breaking large assignments into smaller "chunks"

31. One of Student's IEP accommodations is that "long-range assignments" be "split into chunks."<sup>47</sup> Parents contend that this accommodation was not provided.
32. With respect to this claim, the only incident identified by the Parents relates to a long-range reading project in Student's Language Arts class. Language Arts Teacher explained that "chunking" refers to breaking an assignment or a curriculum down into sections and subsections, to allow students to tackle one piece at a time. The curriculum used in the Language Arts class was actually designed to be broken up that way - each lesson is broken into smaller pieces - so as a general matter, the Language Arts curriculum was already "chunked."<sup>48</sup>
33. Language Arts Teacher described Student as one of the more advanced students in her class, and noted that she actually had to "chunk" assignments and projects far more for others than for Student. Language Arts Teacher stated that Student was very proactive about approaching her when he needed help with an assignment or project. He regularly asked questions and did excellent work.
34. The book project in question in this case was assigned at the beginning of the second semester of the 2015-2016 school year. The students were required to choose a book (Student chose *The Hitchhiker's Guide to the Galaxy*), keep a reading diary on a daily basis, and fill out a book report form to build a single project. Language Arts Teacher explained the assignment very thoroughly to the students and reminded the students on a regular basis to do their reading and keep their reading diary.<sup>49</sup>
35. The reading diary was a sheet on which students would fill out the start time and end time of their daily reading, a very brief summary of what they had read (one or two sentences), predict what happened next, and describe their personal feelings about what they had read.<sup>50</sup>
36. Student had started reading his book before he had the reading diary and was stressed about how to fill it out. He asked Language Arts Teacher what to do. She told him to write a summary of what he had already read. Student did that and according to Language Arts Teacher, "did an amazing job."<sup>51</sup>
37. Student apparently lost the reading diary sheet before leaving to go on a spring break vacation to Arizona (it was either lost or Student simply forgot to take it with him - either way, he did not have it with him on spring break).<sup>52</sup> While on spring break, Student remembered he needed to write reading times down and a few sentences about what he had read. He did that, and when he returned home, he printed out a new worksheet and filled it out as best he could.<sup>53</sup>

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<sup>47</sup> Ex. A-1, p. 21.

<sup>48</sup> Interview with Language Arts Teacher.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Interview with Language Arts Teacher; Interview with Parents.

<sup>53</sup> Interview with Parents; Interview with Language Arts Teacher; Complaint, Attachment 2.

38. Upon returning from spring break, Student approached Language Arts Teacher and explained that he hadn't had the reading diary worksheet while on vacation. Language Arts Teacher assured Student that it was not a problem and that he shouldn't worry about it. Ultimately, Student completed the project by writing some paragraphs about the book.<sup>54</sup>
39. There is no evidence that the independent book project was a problem for Student because of a failure to "chunk" the project into smaller sections. The project was naturally broken down by having students read and write a little bit each day. Rather, the confusion stemmed from the fact that Student did not have the reading diary with him while on spring break.
40. As for other assignments in the Language Arts class, Language Arts Teacher explained that the work in her class was mostly comprised of short term assignments, most of which were class-based. Parents have not identified any other long-range assignment with which they take issue, nor does the evidence in the record demonstrate any failure to break Student's long-range assignments into chunks.

#### **Issues 1(d) and (f) - Implementation of the Behavior Intervention Plan (BIP)**

41. Student's education program includes a Behavior Intervention Plan (BIP) designed to help him with his stress, anxiety, and sensory needs, as well as his difficulty with executive functioning (*i.e.*, attentional control, planning and organization, working memory). A BIP was developed in both the 2015-2016 and 2016-2017 school years.<sup>55</sup> The 2016-2017 BIP has some slight variations from the 2015-2016 BIP, but for purposes of this case, the relevant provisions are identical. The stated purpose of the BIP is to avoid escalations in stress and anxiety to prevent Student from engaging in aggressive or destructive behaviors.<sup>56</sup>
42. Parents' Complaint alleges that the School District failed to implement the following elements of the BIP: a) provision of a daily, visual schedule for each class, including a "task-expectations" list; b) failure to provide repeated reminders to Student for changes in his daily schedule and routine; c) failure to provide video modeling; d) failure to complete a "quick 1-4 anxiety rating scale at the beginning and end of each class period"; and e) failure to provide training to staff on Student's BIP and how to work with him.<sup>57</sup> Based upon the credible evidence in the record, the SCO disagrees.

#### **o Visual schedule and task expectations list**

43. A daily visual schedule for each class, including a task expectations list, was provided to Student in every class. Student was accompanied to every class by a dedicated paraprofessional who assisted him with organization, took notes for him, helped him keep track of assignments, and generally helped keep him on track. Paraprofessional described how she would start each class by making sure Student had gotten his supplies out and ready, and by setting out a list of tasks that needed to be completed. Initially, Paraprofessional and Student used a small notebook for this purpose, then moved to jotting items on a piece of

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<sup>54</sup> Interview with Language Arts Teacher.

<sup>55</sup> Exs. A-1 and A-3.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

paper, and then shifted to sticky notes. Paraprofessional and Student would also talk to review his schedule and what he needed to do in each class.<sup>58</sup> Other teachers confirmed seeing Paraprofessional work this way with Student at the beginning of class to get him organized and ready to work.<sup>59</sup>

44. Student's preferences with respect to the task expectation list shifted, largely because he bristled at having an array of items and papers set out on his desk that made him stand out or appear different from other students. Indeed, the School District staff uniformly and consistently described the need to be flexible and creative in developing methods to implement the BIP's provisions in order to balance Student's need for the support with his strong desire to fit in and be seen as a "normal" kid.<sup>60</sup>
45. Regarding Student's schedule, including the maintenance of a planner, Paraprofessional and School Psychologist worked together to come up with a system and format that worked for Student. As School Psychologist explained, the planner/schedule was an "evolving" tool, based upon Student's preferences.<sup>61</sup> They tried a notebook-type planner, a school planner, and a composition book, before ultimately settling on a computer-based Google document.<sup>62</sup> Student likes and is adept at working with and on computers, and is extremely technologically savvy. Student also dislikes writing by hand. Thus, the Google document is an effective tool for Student because it is "tech" and because it is not handwritten.<sup>63</sup>
46. Using all of these tools, in conjunction with support from Paraprofessional, School Psychologist, and Student's teachers, Student knew his schedule, did his work (and did it well), and completed his assignments on time. The format of the schedule/planner and task expectation list was a work in progress because Student's preferences shifted, but there is no evidence that it has not been consistently used.
47. Furthermore, the system in place has worked. Student's teachers and support staff all reported that most often Student was able to direct himself and make a task or to-do list, and that when he required assistance, a paraprofessional would keep him on track.<sup>64</sup> Student finished his work on time and knew how to self-advocate by talking to teachers or relying on his paraprofessional when he needed help.<sup>65</sup> There is no evidence in the record that the organizational tools in the BIP were not properly or sufficiently used with success.

- Reminders of changes in daily schedule

48. The IEP's accommodations section provides that Student should get advance knowledge of changes to schedule or routine.<sup>66</sup> The 2015 BIP provides that Student should get "repeated reminders at specific intervals for changes in his daily schedule and routine."<sup>67</sup> The 2016 BIP

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<sup>58</sup> Interview with Paraprofessional.

<sup>59</sup> Interviews with Language Arts Teacher and Learning Supports Teacher.

<sup>60</sup> Interviews with Special Education Director, Paraprofessional, Language Arts Teacher, Learning Supports Teacher.

<sup>61</sup> Interview with School Psychologist.

<sup>62</sup> Interview with School Psychologist.

<sup>63</sup> *Id.*

<sup>64</sup> Interview with Learning Supports Teacher; Interview with Language Arts Teacher; Interview with Paraprofessional.

<sup>65</sup> *Id.*

<sup>66</sup> Ex. A-1, p. 21.

<sup>67</sup> Ex. A-1, p. 12.

provides that Student should be provided with “prompting and reminders of changes to routine as soon as possible.”<sup>68</sup> Consistent with this requirement, School District staff explained that to the extent possible, changes in schedule or routine were communicated to Student in advance.

49. Parents contend that the School District did not comply with this requirement, but when asked for specifics, only pointed to one instance when, after the 2016 spring break, the date for the administration of a district-wide standardized test changed at the last minute.<sup>69</sup>

50. The School District does not dispute that the date of the assessment changed unexpectedly, but on the day of the assessment, Paraprofessional talked to Student about the change in schedule and Student indicated that he wanted to take the test.<sup>70</sup> Student took the test and was provided with extra time to do so.<sup>71</sup> There is no evidence in the record that the change in the test date was anything other than a one-time miscommunication, rather than an overall failure to implement the BIP.

- Video modeling

51. Another allegation with respect to implementation of the BIP is Parents’ assertion that video modeling was not used as a behavior teaching strategy.<sup>72</sup> The 2015 BIP states that as a behavior teaching strategy, “video modeling/lessons for appropriate behavior may be helpful.”<sup>73</sup> Likewise, the 2016 BIP provides for “video modeling of appropriate behaviors.”<sup>74</sup> This behavior teaching strategy uses videos to demonstrate appropriate behaviors and teach social expectations in order to help Student learn behavioral strategies.

52. Consistent with the BIP’s requirements, School Psychologist described in detail the different types of videos he selected and showed to Student.<sup>75</sup> Many of the videos are available on YouTube; some examples are *Stop Defending Yourself ... And Grow!*,<sup>76</sup> *What Exactly Is Responsibility*,<sup>77</sup> *Fear of Failure and Making a Mistake*,<sup>78</sup> and *Asperger’s and Executive Functioning*.<sup>79</sup>

53. Accordingly, the SCO finds that the School District complied with the BIP’s provision that video modeling be used as a behavior teaching strategy.

- Anxiety rating scale

54. Another BIP provision at issue involves the use of a rating scale to gauge Student’s anxiety level in each class so that appropriate interventions could be used to help him manage that

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<sup>68</sup> Ex. A-3, p. 10.

<sup>69</sup> Interview with Parents.

<sup>70</sup> Interviews with Special Education Director, Learning Supports Teacher, and Paraprofessional.

<sup>71</sup> Ex. P-3.

<sup>72</sup> Exs. A-1, p. 12 and A-3, p. 9.

<sup>73</sup> Ex. A-1, p. 12.

<sup>74</sup> Ex. A-3, p. 9.

<sup>75</sup> Interview with School Psychologist.

<sup>76</sup> [https://youtu.be/Fr\\_LRYUpDeM?list=PLeeYxHDvV7vqOab5PsiO-5T7Rno1MsEv\\_](https://youtu.be/Fr_LRYUpDeM?list=PLeeYxHDvV7vqOab5PsiO-5T7Rno1MsEv_)

<sup>77</sup> <https://www.youtube.com/watch?v=os4xEefk2eQ>

<sup>78</sup> [https://youtu.be/gplQ\\_WaRpRA](https://youtu.be/gplQ_WaRpRA)

<sup>79</sup> <https://youtu.be/g3UZHkJriWM>

anxiety. The 2015 BIP recommends the completion of a “quick 1-4 anxiety rating scale at the beginning and end of each class period. Implement appropriate intervention as indicated by this rating as necessary.”<sup>80</sup> The 2016 BIP provides for “periodic check-in for behavior rating (1-4).”<sup>81</sup>

55. The evidence in the record demonstrates that the School District complied with this requirement in the BIP. At every class period, Student’s paraprofessional would check in with him to gauge his anxiety level and help him manage stress and anxiety accordingly.<sup>82</sup> Though the BIP does not specifically require that the 1-4 anxiety rating scale be written, the School District most often did use different forms and check-lists for completing the anxiety rating; these documents were turned into School Psychologist or Student’s case manager.<sup>83</sup> Further, Paraprofessional, School Psychologist, and other teachers confirmed that the anxiety rating scale was used in Student’s classes and that Student was offered the various sensory tools and other appropriate interventions as he required.<sup>84</sup>

○ Staff training

56. Parents also allege that, contrary to the BIP’s requirements, teachers and staff working with Student have not been provided with proper training specific to working with students with autism generally, and Student in particular.<sup>85</sup>

57. Again, the SCO disagrees. On August 26, 2015, fifteen teachers, service providers and support staff attended a training entitled “Autism Training for Teachers of [Student].”<sup>86</sup> The training included a power point presentation setting out information about autism and its characteristics, and specific information about Student’s needs, including his BIP.<sup>87</sup> A similar training was provided to Student’s teachers and staff on August 25, 2016.<sup>88</sup>

58. Further, a handout was prepared for substitute teachers, detailing Student’s schedule, behaviors and appropriate interventions, strategies for assisting Student in class, and information about his accommodations.<sup>89</sup>

59. Accordingly, the SCO finds that the School District has provided trainings to staff each year that complies with the BIP’s requirements.<sup>90</sup>

60. The purpose of the BIP is to provide teachers and staff with strategies and teaching tools to help Student manage his stress and anxiety and to prevent escalations in anxiety-related behaviors that could present a harm to property or other individuals, or that could impede Student’s ability to function appropriately in school. During the time relevant to this case,

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<sup>80</sup> Ex. A-1, p. 13.

<sup>81</sup> Ex. A-3, p. 10.

<sup>82</sup> Interview with Paraprofessional.

<sup>83</sup> Exs. G-2, G-3, G-4.

<sup>84</sup> Interviews with Paraprofessional, School Psychologist, Language Arts Teacher, Learning Supports Teacher.

<sup>85</sup> See, Ex. A-1, p. 13.

<sup>86</sup> Ex. S; Interview with Special Education Director.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Ex. G-1.

<sup>90</sup> Interview with Special Education Director.

Student experienced no behavior escalations in school of the sort that the BIP was designed to prevent. Without question, Student does experience significant anxiety and stress on a regular basis in school, and requires access to his accommodations and to the behavior strategies in order to help him deal with that anxiety and stress. The evidence in the record, however, demonstrates that the strategies in the BIP were appropriately and successfully utilized.

61. In fact, the School District teachers and staff were glowing in their assessment of Student's progress at school. Special Education Director noted the fact that Student has excellent grades, has earned two academic letters, has lettered in sports, has a girlfriend, goes to the school's social events, and remarked that "he has come a long way and is doing so well."<sup>91</sup> Paraprofessional, who has known Student since he was a young child, stated that Student has done amazingly well at High School. She noted that Student is doing great in school, has great relationships with his teachers, including his math and language arts teachers (subjects that have historically been difficult for him), he has managed to form relationships with other students and has friends. "I have never seen him doing so well in any school."<sup>92</sup> School Psychologist stated that Student has been "hugely successful at High School ... he is flourishing and growing."<sup>93</sup>

#### Issue 1(e) - Standardized testing accommodations

62. With respect to the provision of standardized testing accommodations, Student's IEP states that he is to be allowed to take breaks during assessment, take assessments in a separate room, be allowed to eat snacks and drink water during assessments, and have access to a calculator. Student is also to have extended time for district assessments.<sup>94</sup>
63. The only standardized assessment mentioned either in Parents' Complaint or in their interviews was the district assessment mentioned above, in which the date of the assessment changed and Student was not provided with advance notice. With respect to testing accommodations, however, the record reflects that Student was provided with extra time to complete that assessment and was able to take the test in a separate environment.<sup>95</sup>

#### Issue 1(g) - Transition Services

64. The transition services section of Student's 2015 IEP calls for the case manager to conduct a "job-related interest inventory," and for Student "to receive instruction in completing job applications and a resume."<sup>96</sup>
65. Parents' Complaint does not dispute that Student received instruction in completing job applications and a resume in his Junior Reserve Officer Training Corps class.<sup>97</sup> Rather, Parents allege that a job-related interest inventory was not completed as of May 2016.

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<sup>91</sup> Interview with Special Education Director.

<sup>92</sup> Interview with Paraprofessional.

<sup>93</sup> Interview with School Psychologist.

<sup>94</sup> Ex. A-1, p. 22, *see also*, Ex. A-3, p. 21.

<sup>95</sup> Ex. P-3; Interview with Learning Supports Teacher.

<sup>96</sup> Ex. A-1, p. 17.

<sup>97</sup> Complaint, p. 5.

66. Special Education Director explained that a School District staff member who now works with the Department of Vocational Rehabilitation completed an initial interest inventory with Student sometime in 2015 (prior to the development of the 2015 IEP), using a form created by the Colorado Department of Education.<sup>98</sup> That interest inventory, in combination with Student's interest in computer systems and his consistent assertions that he is interested in being a video game graphic designer, was the basis for the 2015 IEP's stated employment goal that "[Student] will work as a concept artist for video games."<sup>99</sup> One of Student's IEP goals was a math goal geared toward helping Student be successful as a video game concept artist.<sup>100</sup>
67. Toward the end of the 2015-2016 school year, and in preparation for the annual IEP review, Student and his Case Manager reviewed his transition goals, and Student confirmed that employment in the field of computers, computer system design, and video game graphics continue to be his post-secondary goals.<sup>101</sup> Consistent with that interest, Student's 2016 IEP continues to list "video game concept artist" as Student's post-school goal, and includes an IEP goal geared toward helping Student be successful as a video game concept artist.<sup>102</sup>
68. Thus, while Case Manager may not have completed a full, formal interest inventory, she spoke to Student to review his post-secondary employment interests and confirmed that they had not changed.<sup>103</sup> Special Education Director stated that, in her opinion, this was an appropriate course of action. She explained that every year, a student's transition goals and services should be considered and reviewed. In this case, where an interest inventory had been completed in the past, having a conversation with Student about whether his stated employment goals had changed and confirming that they had not, met this requirement.<sup>104</sup>
69. Under the facts of this case, the SCO agrees. The School District's teachers and staff who knew and worked with Student all described his expertise in working with computers and computers systems, and all reiterated his frequent expressions of interest in pursuing employment in that field after completing his schooling. In addition, Parents themselves do not dispute that employment in the computer systems/video game design field is an interest of Student's, nor do they challenge the IEP's goals designed to help Student fulfill that interest. As such, the SCO finds that the School District took appropriate steps to review Student's post-school employment interests and that his IEP was developed to reflect those interests.

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<sup>98</sup> Interview with Special Education Director.

<sup>99</sup> Ex. A-1, p. 17.

<sup>100</sup> Ex. A-1, p. 20.

<sup>101</sup> Interviews with Special Education Director and Case Manager.

<sup>102</sup> Ex. A-3, p. 15.

<sup>103</sup> Interviews with Special Education Director and Case Manager.

<sup>104</sup> Interview with Special Education Director.

### Issue 1(h) - Special Transportation

70. Student's 2015 and 2016 IEPs both include "special transportation" as a related service. Parents claim that the School District did not provide Student with special transportation during the 2015-2016 school year.
71. Special Education Director explained that the inclusion of "special transportation" on Student's IEP is not based upon Student's need for certain transportation accommodations, such as a special bus, special seating, or similar. Rather, the School District provides bussing to all students with disabilities who are placed in a school that is not their home school. As such, because High School is not Student's home school, transportation is included on his IEP.
72. In any event, the parties do not dispute that Mother has been driving Student to school and has been reimbursed for the mileage associated with transporting Student to High School since December of 2014, well outside the one-year limitations period applicable to the SCO's jurisdiction over this case.<sup>105</sup> This arrangement continued throughout the 2015-2016 school year.<sup>106</sup> Mother felt that the bus ride was too long for Student and heightened his anxiety.<sup>107</sup> According to notes on Student's IEP, other IEP team members did not appear to disagree that the bus ride was too long for Student, and that other transportation options could be pursued.<sup>108</sup>
73. Since the beginning of the current school year, Student has been riding the school bus to school and Parents are satisfied with his transportation.<sup>109</sup>
74. The SCO finds that where the IEP included transportation as a related service, if the length of the bus ride was inappropriate for Student because of his stress and anxiety, a shorter bus ride or other transportation should have been provided by the School District during the 2015-2016 school year. Any failure to comply with that provision of the IEP, however, has already been corrected by virtue of the fact that the Parents have been reimbursed for the cost of transporting Student themselves, and by the fact that Student is now riding the bus with success.

### Issue 1(i) - Progress reports on IEP goals

75. In response to Parents' claims that the School District has failed to monitor and provide progress reports on Student's IEP goals, the School District provided progress reports from throughout the 2015-2016 school year, related to each of Student's IEP goals.<sup>110</sup> These reports constitute credible evidence that Student's progress on his IEP goals was tracked and monitored, and that, in fact, he made progress toward or met the goals on his IEP.<sup>111</sup> The information on the progress reports is backed up by data collected during the school year, see,

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<sup>105</sup> Ex. G-7; Interview with Special Education Director; Interview with Parents.

<sup>106</sup> *Id.*

<sup>107</sup> Ex.

<sup>108</sup> Ex. A-1, p. 26.

<sup>109</sup> Interview with Parents.

<sup>110</sup> Ex. E-2.

<sup>111</sup> *Id.*; Interviews with Special Education Director, Case Manager, Paraprofessional, School Psychologist, Language Arts Teacher, Learning Supports Teacher.

e.g., Ex. G-5, the statements of School District personnel, and the fact that Student received excellent grades.<sup>112</sup> Student ended the year with a 3.89 GPA.<sup>113</sup>

76. Parents assert that they were not provided with copies of the progress reports until the end of the 2015-2016 school year.<sup>114</sup> Special Education Director stated that Student's progress reports were sent home in Student's backpack, and opined that perhaps that the reports were lost or misplaced.<sup>115</sup>
77. On this point, the SCO has no basis to doubt the veracity either of the Parents or the Special Education Director, particularly because their accounts are not mutually exclusive - it is entirely possible that the progress reports were placed in Student's backpack as a means of delivering them to parents, but that they were lost and misplaced and thus were never actually received by Parents. Accordingly, the SCO has insufficient evidence to find that the School District failed to take steps to provide Parents with copies of the progress reports.<sup>116</sup>

### Issue 1(j) - Extracurricular Support

78. Student participates in both track and cross-country as extracurricular activities. By all accounts, Student is an excellent athlete and a valued member of his sports teams. He participates in after-school sports - either practice or meets - five days per week.
79. The 2015 IEP includes as an accommodation, "support provided during extracurricular activities."<sup>117</sup> The 2016 IEP states that Student shall have "support staff during extracurricular activities," and includes in the service delivery statement, "access to ESS support for extracurricular activities including practices including summer practices."<sup>118</sup>
80. The IEP does not state that support must come from a paraprofessional, does not specify that the support must come from an individual who would not already be at track or cross-country practices or meets (such as the coaching staff), and does not provide any explanation or detail as to what specific support Student needs.
81. Throughout the times relevant to this case, the parties have proceeded under the assumption that the extracurricular support called for in the IEP meant that a School District staff member, be it Student's paraprofessional or some other individual, would accompany Student to practices and meets. The parties do not dispute that on the vast majority of days, the School District arranged for a paraprofessional or other staff to support Student during track or cross-country.<sup>119</sup> The evidence is also clear that on a few occasions, because of an emergency

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<sup>112</sup> Ex. E-1; Interviews with Special Education Director, Paraprofessional, School Psychologist, Language Arts Teacher, Learning Supports Teacher.

<sup>113</sup> *Id.*

<sup>114</sup> Interview with Parents; Reply, pp. 8-9.

<sup>115</sup> Interview with Special Education Director.

<sup>116</sup> That said, the SCO notes that in the future, it would be a good idea for the parties to collaborate on a more reliable means of ensuring that the Parents receive their copies of Student's progress reports.

<sup>117</sup> Ex. A-1, p. 21.

<sup>118</sup> Ex. A-3, p. 19, 21 (*sic*).

<sup>119</sup> Interviews with Parents, Special Education Director, Case Manager, ESS Teacher and Paraprofessional.

or other last-minute exigency that caused the coverage to fall through, Student did not have cross-country coaching staff.

82. The question then becomes whether, on the days that coverage did fall through, the coaching staff was able to provide Student with the requisite “support” contemplated by the IEP.
83. Paraprofessional accompanied Student to track and cross-country for much of the 2015-2016 school year, but stated that often she was unclear as to what she was supposed to do, particularly during track, when the team stayed on the track rather than run in the community (as during cross-country).<sup>120</sup> ESS Specialist also occasionally supported Student during extra-curriculars when other coverage could not be arranged, and she stated that Student did not require assistance for track beyond what could be provided by the coach.<sup>121</sup> Similarly, Case Manager covered a number of meets and practices, and stated that Student did not require much support from her at all.<sup>122</sup>
84. On the other hand, during cross-country, Paraprofessional stated that she would, among other things, ride behind Student on a bike to make sure he took the right route if he fell behind, or would ride on the bus with him to keep him calm before meets. Sometimes Student became unfocused or disoriented and required assistance getting to the starting line.<sup>123</sup>
85. The best assessment of Student’s needs for support during track and cross-country came from Coach. Coach stated that having an extra person there who was looking out for and supporting Student was helpful, but not always necessary. Coach explained that for the most part, Student is able to function and participate well, particularly during practices, and that the coaches can generally handle him without additional support. During cross-country runs, the coaches will ride bikes with the students to follow along and watch them. However, during meets and races, particularly meets and races that involve out-of-town travel, Student has occasionally had difficulty understanding where he needed to be to start a race, or when he needed to line up.<sup>124</sup>
86. For example, on one occasion at an out-of-town meet, the race was getting ready to start and Student had wandered off; the person there to support him was able to locate him and get him back to start the race, but without that assistance, the coaches would have had a difficult time supporting Student without neglecting the other 29 students they were responsible for.<sup>125</sup>
87. On another occasion, again at an out-of-town meet, Student was not feeling well and became extremely agitated, worried that by not being able to participate in the meet, he would jeopardize his spot on the varsity squad or otherwise get in trouble. Student did not have additional support that day. Coach was able to talk to him, reassure him, and calm him down, but in doing so, Coach was not able to attend to the other runners he needed to talk to and coach before they started their races. Thus, in that situation, Coach was not able to

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<sup>120</sup> Interview with Paraprofessional; Interview with Special Education Director.

<sup>121</sup> Interview with ESS Specialist.

<sup>122</sup> Interview with Case Manager.

<sup>123</sup> Interview with Paraprofessional.

<sup>124</sup> Interview with Coach.

<sup>125</sup> *Id.*

adequately provide support to Student and also attend to his other coaching duties at the same time.<sup>126</sup>

88. The totality of evidence demonstrates that during the time period relevant to this Complaint, the School District has provided Student with extracurricular support by having a staff member accompany Student to meets and practices. On a small number of occasions, that support or coverage has fallen through or not been provided, in violation of the IEP's requirements.
89. In terms of the effect of those few instances of noncompliance, the SCO finds that notwithstanding the School District's failure to provide dedicated support personnel at every practice or meet, overall Student has had access to and has participated successfully in track and cross-country. Student is a varsity athlete, has received a varsity letter, and is a full and valued member of the team. His successes in athletics, which have been fostered by the support provided by the School District as well as his parents, should be celebrated.

### Issue 2 - The June 6, 2016 Meeting

90. Parents allege that a meeting held on June 6, 2016, violated the IDEA's procedural requirements governing IEP meetings because a) they were not provided with proper notice of meeting; b) the meeting did not include a regular education teacher; c) mandatory IEP team members were not properly excused from the meeting; and d) the School District did not provide them with prior written notice following the meeting.
91. Had the meeting in question been an IEP meeting, the alleged procedural violations, if true, would have been violations of IDEA. The SCO finds, however, that the meeting in question was not an IEP meeting at which an IEP team undertook the development of a document meeting the requirements of 34 C.F.R. 300.320 (setting out the definition and required components of an IEP) or involving the considerations set out in 34 C.F.R. 300.324 (setting out how an IEP must be developed). Rather, according to the minutes of the meeting, on June 6 the Parents met with School District staff to talk about the logistics of Student's summer program, and about steps to take to get ready for the start of school in the fall.<sup>127</sup>
92. Because the meeting in question was not an IEP meeting, the SCO finds that procedural requirements attendant to IEP meetings were inapplicable, such that there was no violation.

### CONCLUSIONS OF LAW

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

1. Under the IDEA, local education agencies (such as the School District) 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. FAPE is defined as special education and related services that: are provided free of charge; meet State standards; include an appropriate preschool, elementary school, or secondary

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<sup>126</sup> *Id.*

<sup>127</sup> Ex. K; Interview with Special Education Director.

school education; and are provided in conformity with a properly developed IEP. 20 USC § 1401(a)(9); 34 C.F.R. § 300.17.

2. 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 also result in a denial of FAPE. *Id.*; see also *K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10<sup>th</sup> Cir. 2005); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9<sup>th</sup> Cir 2007), *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8<sup>th</sup> Cir. 2003). Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g.*, *K.C. v. Utah State Bd. of Educ. et al.*, *supra* (minor 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, supra* (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, supra* (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); *Lewis Palmer Sch. Dist. 38*, Colorado State Complaint 2015:505.
3. This means that a finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry. Rather, the SCO must also determine whether the failure was material.
4. With respect to Issue 1(a) (relating to the provision of sensory accommodations, particularly the lap pad and ball chair), the SCO has found that the School District violated Student's IEP by failing to make those sensory accommodations available and accessible to Student from the beginning of the 2015-2016 school year until the middle of the first semester. Both accommodations have been accessible to Student since then.
5. The SCO concludes that the violation was immaterial and did not result in the loss of educational opportunity or a denial of FAPE. Neither sensory tool was a preferred tool for Student and during the time that the lap pad and ball chair were not available, Student had access to all of the other sensory accommodations listed on his IEP. As noted above, Student's overwhelming preference is for pacing/walking and crunchy snacks, and he has used those tools successfully to help him manage anxiety and stress so that he can participate and function in school.
6. With respect to Issues 1(b)-(g) and 1(i), the SCO has found no failure to provide access to a computer, break large assignments into chunks, provide a daily task-expectation list or visual schedule, provide accommodations for standardized assessments, implement the BIP, provide appropriate transition services, or monitor and provide progress on IEP goals. Accordingly, the SCO concludes that there has been no violation of IDEA as to these issues/claims.
7. With respect to Issue 1(h) (relating to special transportation), the SCO concludes that to the extent that the length of the bus ride available to Student during the 2015-2016 year was inappropriate because it negatively impacted his stress and anxiety, then the School District violated its obligation to provide Student with appropriate special transportation.
8. With respect to Issue 1(j) (relating to extracurricular support), the IDEA provides that a school district must provide "supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in

the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities." 34 C.F.R. § 300.107.

9. In this case, in order to afford Student an equal opportunity to participate in track and cross country, Student's IEP accommodations include a requirement that Student receive "support" in those activities. Though Student has been provided with paraprofessional or other staff support for most of his practices and meets, there have been occasions when coverage has not been provided, and on those occasions, the IEP has been violated.
10. The question is whether these violations have been material. As explained above, notwithstanding occasional lapses in support at track and cross country, Student has had access to and has participated successfully in track and cross country. Accordingly, the SCO concludes that consistent with the IDEA's requirements, the School District has provided Student with supplementary aids and services sufficient to provide Student with extracurricular services in the manner necessary to afford Student an equal opportunity for participation in those services. 34 C.F.R. § 300.107.
11. The SCO notes that scheduling and securing staff support during track and cross-country is an issue that has and continues to cause considerable stress and anxiety to the parties, resulting in a sense of heightened conflict and distrust. Though the SCO has not found a violation of law with respect to support during extracurricular activities and thus lacks the jurisdiction to order a legal remedy, the SCO encourages the parties to work together to develop a more detailed plan/schedule setting out the specific duties of any staff member providing support to Student, including the different types of support that may be appropriate in different situations. As noted above, Student appears to require less support during track than he does in cross country, and less support in practices than he does in races and meets, particularly out-of-town meets. A plan with greater detail, specifically tailored to Student's different support needs depending on the situation, could help the parties reduce the anxiety and tension permeating the situation.
12. Finally, with respect to Issue 2, relating to the June 6, 2016 planning meeting, the SCO concludes that the School District did not violate the IDEA's procedural requirements attendant to IEP meetings because the meeting in question was not an IEP meeting.

### REMEDIES

1. The School District violated the IDEA by failing to provide Student with sensory accommodations (specifically, the lap pad and ball chair) for part of the first semester of the 2015-2016 year. Because those violations have been long corrected, however, no remedy is ordered.
2. To the extent that the length of Student's bus ride during the 2015-2016 year rendered it inappropriate for Student, School District violated the IDEA by failing to provide him with appropriate special transportation. However, any violation has already been remedied because Mother drove Student to school and was reimbursed for her mileage. In addition, during the current school year, Student is riding the bus with success. As such, no further remedy is ordered.

## 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.

Signed this 30<sup>th</sup> day of September, 2016.

A handwritten signature in blue ink that reads "Wendy Jacobs". The signature is written in a cursive style with a long, sweeping underline.

Wendy Jacobs, Esq.  
State Complaints Officer

## APPENDIX

### Complaint

Attachment 1 - June 20, 2016 email  
Attachment 2 - March 28, 2016 email

### Response

Ex. A-1 (2015 IEP)  
Ex. A-2 (IEP amendment)  
Ex. A-3 (2016 IEP)  
Ex. A-4 (IEP amendment)  
Ex. D (2015 evaluation)  
Ex. E-1 (Report card)  
Ex. E-2 (progress reports)  
Ex. E-3 (language arts grading sheet)  
Ex. E-4 (geometry grading sheet)  
Ex. F (schedule)  
Ex. G-1 (memo for substitutes)  
Ex. G-2 (anxiety rating form)  
Ex. G-3 (anxiety rating form)  
Ex. G-4 (end of day survey)  
Ex. G-5 (data on sensory tools)  
Ex. G-6 (standardized testing accommodations)  
Ex. G-7 (mileage reimbursement documents)  
Ex. G-8 (bus schedule)  
Ex. G-9 (overtime compensation sheets)  
Ex. H (special education contact log)  
Ex. I (school calendar)  
Ex. K (June 6, 2016 meeting notes)

### Reply

Ex. L-2 (email correspondence)  
Ex. L-4 (email correspondence)  
Ex. L-6 (calendar)  
Ex. L-7 (advocate's meeting notes)  
Ex. L-8 (advocate's meeting notes)  
Ex. L-9 (communication book pages)  
Ex. L-10 (email correspondence)  
Ex. L-11 (email correspondence)  
Ex. L-12 (email correspondence)  
Ex. L-13 (calendar page)  
Ex. L-14 (IEP amendment)  
Ex. L-15 (February 2016 meeting notes)  
Ex. L-16 (May 2016 meeting notes)  
Ex. L-17 (IEP amendment)  
Ex. L-18 (request for mediation)  
Ex. L-19 (April 2015 letter from parents)  
Ex. L-20 (email correspondence)  
Ex. L-21 (email correspondence)  
Ex. L-22 (email correspondence)

- Ex. L-23 (notes)
- Ex. M-1 (email correspondence)
- Ex. M-2 (email correspondence)
- Ex. N (email correspondence)
- Ex. O-1 (planner pages)
- Ex. O-2 (planner pages)
- Ex. O-3 (planner pages)
- Ex. O-5 (anxiety rating forms)
- Ex. P-1 (communication book pages)
- Ex. P-3 (email communication)
- Ex. Q (email communication)
- Ex. R-1 (email communication)
- Ex. R-2 (email communication)
- Ex. R-3 (email communication)
- Ex. R-4 (email communication)
- Ex. R-5 (email communication)
- Ex. S (training handouts)