

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

State-Level Complaint 2019:573
Ute Pass BOCES

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on December 3, 2019 by the parents (Parents) of a child (Student) identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

Based on the written Complaint, the 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 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from December 3, 2018 through December 3, 2019 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether Student has been denied a Free Appropriate Public Education (FAPE) because the Ute Pass BOCES (BOCES):

¹ 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.*

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).

1. Failed to offer an IEP tailored to Student's unique needs in the area of speech and language from December 3, 2018 to January 15, 2019, consistent with 34 C.F.R. § 300.324(a).
2. Failed to provide Student with a FAPE in the Least Restrictive Environment (LRE) by educating Student in core general education courses for up to 80 percent of the school day without specialized instruction or services, from December 3, 2018 to present, consistent with 34 C.F.R. §§ 300.114(a)(2)(ii), 300.116(d).
3. Failed to develop an IEP that was tailored to meet Student's individualized needs in January and August of 2019 by:
 - a. Failing to consider the concerns of Parents for enhancing the education of Student in the development of Student's January 14, 2019 IEP and August 28, 2019 IEP, consistent with 34 C.F.R. § 300.324(a)(1)(ii);
 - b. Failing to consider recent evaluations of Student in the development of Student's January 14, 2019 IEP and August 28, 2019 IEP, consistent with 34 C.F.R. § 300.324(a)(1)(iii); and
 - c. Failing to review and revise Student's January 14, 2019 IEP and August 28, 2019 IEP to address the lack of expected progress toward annual goals, including a failure to provide special education and related services based on peer-reviewed research to the extent practicable, consistent with 34 C.F.R. §§ 300.304-305, 300.320(a)(4) and 300.324(b)(1).

FINDINGS OF FACT

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

A. Background

1. Student is a 13-year-old currently eligible for special education and related services under the disability category of Specific Learning Disability (SLD). *Exhibit A*, p. 43. Student is in the seventh grade at a middle school (School) located within the BOCES. *Id.* at pp. 22, 43; *Interviews with Father and Special Education Teacher*.
2. Student's disability presents challenges in the areas of basic reading, reading fluency, reading comprehension, written expression, math calculation and problem solving, oral expression, and listening comprehension. *Exhibit A*, pp. 7, 28, 49, 61. His learning disabilities are exacerbated by a significant working memory impairment, which impacts

³ The appendix, attached and incorporated by reference, details the entire record.

his ability to access and progress within the general education curriculum at the same rate as similar aged peers. *Exhibit A*, p. 61.

3. This dispute arose as student transitioned into the sixth grade. *Interviews with Father, Special Education Teacher, and Special Education Director*. During the summer before his sixth grade year, Parents took Student to a private speech and language provider (Private Provider) for evaluation and services. *Interview with Father; Exhibit 6*, pp. 1-2. Private Provider diagnosed Student with a specific reading disability-dyslexia and a mixed receptive and expressive language disorder, provided 27 therapy sessions, and drafted a related Speech/Language Progress Report. *Exhibit C*, pp. 26-27.
4. Father provided Special Education Teacher with the Speech/Language Progress Report at the start of the 2018-2019 academic year. *Exhibit 14*, pp. 33-34. Father also requested an IEP review and changes to Student's instruction, including a request for Student to spend less time in general education. *Id.* In response to Father's requests, the BOCES held IEP meetings in January and August of 2019 and funded an Independent Educational Evaluation (IEE). *Interviews with Father and Special Education Teacher*. Father objected to School's response to his requests and thus filed the instant Complaint. *Interview with Father*.

B. Speech and Language Needs/Services from December 3, 2018 to January 15, 2019

5. Due to concerns about Student's progress, the BOCES convened a properly constituted IEP team on May 2, 2018 to review existing evaluation data. *Interview with Special Education Director; Exhibit G*, p. 1. The May 2, 2018 IEP governed Student's special education programming from December 3, 2018 to January 15, 2019.
6. The May 2, 2018 IEP documents Student's present levels of performance in speech and language, noting that progress on language goals was significantly impacted by an impaired working memory and challenges applying learning in the generalized setting. *Exhibit A*, p. 4.
7. Additionally, the May 2, 2018 IEP contains the results of the most recent reevaluation of Student completed by the BOCES in April of 2017, in which Student demonstrated significant deficits in expressive and receptive vocabulary. *Interview with Speech Language Pathologist 1; Exhibit 2*, p. 24; *Exhibit A*, pp. 5-6.
8. The results of the evaluations—as noted in the May 2, 2018 IEP—show how challenges with working memory and oral expression impact Student's ability to retain vocabulary, read, and respond to grade level content orally and in writing. *Exhibit A*, pp. 7. Further, challenges with listening comprehension and working memory impact Student's ability to understand and recall oral/verbal instructions and make connections with grade level curriculum at the same rate as his peers. *Id.*

9. Student struggled to retain and generalize skills learned outside of the general education classroom. *Interviews with Special Education Teacher and Speech Language Pathologist 1*. For example, Student was able to recognize and explain the underlying meaning of figurative language with 72% accuracy in a supported, structured activity. *Exhibit A*, pp. 4. However, in the classroom and with peers, Student struggled to recognize figurative language. *Id.*
10. The IEP Team determined that Student was not making as much progress as desired—though he had made progress on his language goals—and found that services were not meeting his speech and language needs. *Interviews with Special Education Teacher and Speech Language Pathologist 1; Exhibit G*, p. 1. The IEP Team thus determined that speech and language services should be provided in the classroom and that a speech language pathologist (SLP) should support teachers and service providers on accommodations to help Student access the curriculum. *Interviews with Special Education Teacher and Speech Language Pathologist 1*.
11. The IEP Team drafted Reading Goal 2 and Social/Emotional Wellness Goal 6 to address speech and language needs. *Interviews with Speech Language Pathologist 1 and Special Education Teacher*.
12. Reading Goal 2 reads, “In order to improve listening comprehension, oral expression, and his ability to make meaningful connections to text, [Student] will answer open-ended comprehension questions with at least 80% accuracy, after reading and discussing an instructional level text.” *Interviews with Speech Language Pathologist 1 and Special Education Teacher; Exhibit A*, pp. 8-9.
13. Social/Emotional Wellness Goal 6 states that Student “will self-advocate for assistance when he is unclear about the current activity or expectations 65% of measured opportunities.” *Interviews with Speech Language Pathologist 1 and Special Education Teacher; Exhibit A*, p. 10.
14. Speech and language services were modified from 150 minutes of monthly direct SLP services to 350 minutes per year of indirect SLP services in the classroom to guide support staff with strategies to address listening comprehension, oral expression, and memory skills. *Interviews with Special Education Teacher and Speech Language Pathologist 1; Exhibit 4*, p. 65; *Exhibit A*, pp. 14. Also included in the IEP were 120 minutes per year of SLP consultation with general education teachers. *Exhibit A*, pp. 14. Additionally, specialized instruction increased from 330 to 450 weekly minutes of direct services. *Exhibit 14*, p. 65; *Exhibit A*, pp. 15-17.
15. The May 2, 2018 IEP includes accommodations to help Student access the general education curriculum, such as word prediction software; frequent checks for understanding; pairing auditory with visual/kinesthetic examples; small group or one-

on-one support; grade level text read aloud; use of memory strategies; and access to a word bank, among others. *Exhibit A*, pp. 10-11.

16. The IEP Team determined that it was appropriate for Student to spend 87.7% of his time in the general education environment and 12.3% of his time outside of general education in order for Student to receive enough specialized instruction in all areas of need to make progress on his IEP goals and better access the general education curriculum. *Exhibit A*, p. 16.
17. As of January 14, 2019, Student made progress on both of his speech and language goals. *Exhibit A*, p. 25. On Reading Goal 2, Student started at a baseline of 66% accuracy answering open-ended questions on a level 1.0 text. *Id.* By January 14, 2019, he averaged 73% accuracy on a grade 2.4 level text. *Id.*
18. Student's performance exceeded Social/Emotional Wellness Goal 6, as he advocated for assistance an average of 73% of measured opportunities. *Id.* The January 14, 2019 IEP notes that one of Student's strengths is his ability to ask questions, and that he is constantly communicating, advocating, and asking questions when he is unclear or needs reassurance. *Id.* Further, Student achieved passing grades in his courses. *Exhibit I*, p. 1.

C. Student's Literacy Instruction: The Hill Methodology

19. During the first quarter of the 2018-2019 academic year, Student received 90 minutes per day of special education instruction in reading, writing, and math using The Hill Methodology through Literacy Program instruction. *Interviews with Special Education Teacher and Literacy Coach*. Parents argue that The Hill Methodology is not peer-reviewed and therefore should not be used for Student's instruction. *Complaint*.
20. Literacy Program is a half-day program that serves students with "learning differences" by using The Hill Methodology with a four-to-one student to teacher ratio. *Interview with Literacy Coach*. Literacy Program is a Colorado Reading to Ensure Academic Development (READ) Act Approved Intervention, and it is accredited by the International Multisensory Structured Language Education Council (IMSLEC). *Interviews with Special Education Director, Literacy Coach, and CDE Literacy Consultants*.
21. The Hill Methodology—evidence-based but not peer reviewed—is an Orton Gillingham-based methodology designed in part for students with dyslexia. *Id.* The methodology uses a specific sequence of skills and follows the five components of reading: oral language, phonemic awareness, vocabulary, comprehension, and fluency. *Id.*
22. BOCES contracted with Literacy Program in 2018 so that special education teachers could receive instruction in implementing The Hill Methodology. *Interviews with Special Education Director and Literacy Coach*. Special Education Teacher and other BOCES staff

have participated in training and coursework, and also receive ongoing coaching and support from Literacy Coach. *Interviews with Special Education Teacher, Special Education Director, and Literacy Coach.*

D. The January 14, 2019 IEP Meeting

23. On January 14, 2019, the BOCES convened a properly constituted IEP Team to review and revise Student's IEP. *Exhibit G*, p. 7. The BOCES delivered a Notice of Meeting to Parents on December 21, 2018. *Interview with Father; Exhibit G*, p. 7.
24. Father attended the meeting in person, and his advocate attended by phone. *Exhibit A*, p. 20. Literacy Coach also attended the meeting to provide feedback regarding The Hill Methodology and her work with Student. *Interview with Literacy Coach; Exhibit A*, p. 20.
25. In preparation for the meeting, Father requested and received a copy of assessments, progress reports, and a draft IEP—which was used as a guide for discussion during the meeting and projected onto a screen—on which to provide feedback. *Interviews with Father and Special Education Teacher, Exhibit 14*, pp. 44, 49, 104, 117, 120. Father also sent Special Education Teacher written questions drafted in consultation with his advocate and received responses in advance of the meeting. *Exhibit 14*, pp. 117-18, 120, 122.
26. For instance, Father commented that Student required greater direct speech and language services than those outlined in the draft IEP, and that the finalized IEP should include accommodations for Student's working memory needs. *Exhibit N*, pp. 1-7. Father also requested that the BOCES consider a half-day placement at Literacy Program or a comparable option. *Id.*
27. The IEP Team meaningfully considered Father's concerns—as evidenced by incorporating them into the IEP and explaining why some requests were rejected. *Interviews with Father and Special Education Teacher; Exhibit A*, pp. 28, 40-41. In response to Father's request that goals be written so that Student could reach eighth grade level performance by the end of high school, the BOCES members of the IEP team explained that it would be inappropriate to forecast annual IEP goals this far into Student's academic future. *Interviews with Father, Special Education Director, Principal, and Special Education Teacher; Exhibit A*, pp. 28, 40. Specifically, Special Education Teacher explained that she could only draft goals for progress over one year based on available data and appropriately ambitious measures for Student to master skills in progression toward a reasonable growth target. *Interview with Special Education Teacher; Exhibit A*, p. 40. In accord with Special Education's Teacher explanation, the SCO finds that developing an annual goal based on expected progress over the course of multiple years would be inconsistent with the annual review process required by IDEA.

28. Father also requested an increase in speech and language services, and that reading interventions be delivered by an SLP. *Interviews with Special Education Director, Special Education Teacher, and Speech Language Pathologist 1; Exhibit A*, p. 40. BOCES members of the IEP Team explained that Special Education Teacher would be the most appropriate person to deliver literacy instruction because she was trained and received ongoing coaching in The Hill Methodology. *Id.* It was also explained that an SLP would provide weekly intervention to address receptive and expressive deficits, in coordination with academic intervention and in consultation with Special Education Teacher. *Id.*
29. The IEP Team reviewed Student's present levels of performance, including a summary of Student's goal progress and academic performance. *Interviews with Father, Special Education Teacher, and Special Education Director*. The present levels of performance document that as of this IEP meeting, Student made progress on all of his annual goals and was on track to achieve the goals. *Exhibit A*, pp. 24-26; *Exhibit E*, pp. 1-6. For example, Student made progress on his reading fluency goal, improving from his baseline by reading 27 words per minute with 84% accuracy. *Id.* Student achieved his functional math goals for telling time and counting money, as well as his goal for increased self-advocacy. *Id.*
30. The IEP Team also discussed Private Provider's Speech/Language Progress Report, a summary of the most recent BOCES evaluation, and observations from Student's teachers. *Exhibit A*, pp. 22-27; *Interviews with Father, Special Education Teacher, and Special Education Director*. The Speech/Language Progress Report was copied into the Present Levels section of the IEP, along with other assessments. *Exhibit A*, p. 24.
31. The Speech/Language Progress Report recommended, in part, that ". . . [Student] receive a daily individualized reading program of at least an hour using an explicit systematic multisensory approach such as Orton-Gillingham based lessons, Lindamood Bell decoding and comprehension strategies, and the use of decodable readers such as High Noon Book Series . . . [as well as] vocabulary and inferential thinking activities [and] multiple choice and word banks for testing . . ." *Exhibit C*, p. 27.
32. The January 14, 2019 IEP documents Student's needs and the impact of his disability, including that his disability is exacerbated by a significant working memory impairment, which impacts his ability to build upon knowledge and progress within the general education curriculum at the same rate as his peers. *Exhibit A*, p. 28. The January 14, 2019 IEP reflects Student's needs in basic reading, reading comprehension, reading fluency, written expression, math calculation, oral expression, and vocabulary retention, among others. *Id.*
33. The IEP Team reviewed and revised Student's annual goals based on his SLD needs and progress to date. *Exhibit A*, p. 28. The January 14, 2019 IEP contains updated annual

goals, including goals to address Student's needs in reading fluency, reading comprehension, and listening comprehension. *Exhibit A*, pp. 29-30, 33. The goals set measurable targets above Student's baselines. *Interviews with Special Education Teacher, Special Education Director, and Literacy Coach*.

34. For example, Reading Goal 1 states: "Given a familiar decodable passage at mid 2nd grade level, [Student] will orally read 40 words per minute, with 90% accuracy over 3 stories." *Exhibit A*, p. 29. Student's baseline was reading 23 words per minute at 83% accuracy at the mid first grade level. *Id.* Reading Goal 2 reads: "Given a familiar decodable passage at the mid 2nd grade level, [Student] will improve his reading comprehension by orally reading the passage and orally independently answering literal questions with 75% accuracy over 10 trials." *Id.* at p. 30. Student's baseline was 25% accuracy at the mid first grade level. *Id.* Both goals contain detailed objectives to track progress with The Hill Methodology. *Exhibit A*, pp. 29-30.
35. Communication goals were also added to address Student's needs in reading comprehension and vocabulary retention by orally answering inferential questions and defining and describing targeted vocabulary. *Id.* at pp. 33-34.
36. In consultation with Literacy Coach, and in consideration of the available evaluation and progress monitoring data and Father's feedback, the IEP Team decided that Student could make greater progress with an intervention level comparable to that provided by Literacy Program. *Interviews with Special Education Teacher and Special Education Director; Exhibit A*, p. 40. The Service Delivery Statement reflects an increase in direct services from 450 to 650 minutes weekly, with 130 minutes of daily, direct specialized instruction in the areas of basic reading, reading comprehension, reading fluency, written expression, math calculations, problem solving skills, and listening comprehension from a special education teacher in a pull out setting. *Exhibit A*, pp. 15, 37-38. Speech and language services increased to 120 minutes per month to address listening comprehension, oral expression, and memory skills. *Exhibit A*, pp. 37-38.
37. The January 14, 2019 IEP provides for accommodations similar to those outlined in the May 2, 2018 IEP, but with the addition of differentiated assignments and differentiated note-taking. *Exhibit A*, pp. 34-35.
38. The IEP Team adopted some services consistent with the recommendations made by Private Provider and Father, including implementation of a daily reading program using a systematic multisensory approach based on Orton-Gillingham and comparable to Literacy Program, increasing direct speech and special education services, and incorporating goals involving support for vocabulary and inferential thinking. *Interviews with Special Education teacher, Special Education Director, and Literacy Coach; Exhibit A*, pp.33-34, 37-38.

39. During the discussion of LRE, Father requested that Student spend no more than 40% of his time in general education. *Interviews with Father, Special Education Teacher, and Special Education Director; Exhibit A*, pp. 28, 40. However, the BOCES members of the IEP Team explained the BOCES' obligation to educate Student in the LRE and determined that based on the available data, it was appropriate to reduce Student's time in general education from 87.7% to 62%. *Interviews with Father, Special Education Teacher, and Special Education Director; Exhibit A*, pp. 28, 39-40.
40. The January 14, 2019 IEP documents the advantages of increased special education services, which included receiving specially-designed, research-based instruction in a small group in basic reading, reading comprehension, reading fluency, writing skills, math calculations, problem solving skills, oral expression, listening comprehension, and working memory strategies. *Exhibit A*, p. 39. General Education Teacher, Principal, and Special Education Teacher also described benefits of inclusion in general education, such as access to content specialists, background knowledge, and reinforcement of vocabulary. *Interviews with General Education Teacher, Principal, and Special Education Teacher*. They also described benefits of social interaction with peers in general education, an area in which Student excels. *Id.*

E. The Independent Educational Evaluation

41. On January 30, 2019, Father requested an IEE. *Exhibit 14*, p. 153. Father selected the evaluators and provided written consent on March 18, 2019. *Exhibit 14*, p. 174. The BOCES paid for an IEE that included a neuropsychological evaluation, an occupational therapy examination, and a speech and language evaluation. *Exhibit 14*, p. 169; *Exhibit G*, pp. 4-5.
42. Private Provider, the same private agency that evaluated Student in the summer of 2018, completed a comprehensive speech and language evaluation of Student on March 9, 2019. *Exhibit C*, p. 53. The evaluation showed, in part, that:
- “[Student] presents with a significant receptive/expressive language delay which interferes with academic success . . . [and that Student] demonstrates difficulty retrieving and labeling vocabulary, low ability to follow directions which include spatial and temporal concepts and slow processing skills.” *Id.* at p. 57.
 - “. . . these language skill weaknesses interfere with his ability to comprehend what he has read or retain what has been read to him...phonological memory is still a weakness...[Student's] short term auditory memory weaknesses also affect his ability to recall and retain language . . . [and that he] demonstrated semantic weaknesses in language concepts related to time, location, and serial order.” *Id.*
43. Based on the evaluation, Private Provider recommended that Student receive intensive, systematic, reading and language intervention and instruction in oral and written

language, decoding, and phonological processing. *Id.* Private Provider also found that Student would benefit from technology to improve spelling and punctuation, an emphasis on vocabulary and concepts, and working in small groups or one-on-one. *Id.*

44. Neuropsychologist completed a comprehensive developmental evaluation of Student on April 4, 2019. *Exhibit C*, p. 30. This evaluation concluded, in part, that:

- “[Student’s] primary challenge is a significant language disability. He has weaknesses in both receptive and expressive language, though expressive language organization appears to be the most significant challenge. He is also not very flexible with language (e.g., he cannot quickly think of what a word means when used in a different context).” *Id.* at p. 39.
- “[Student] is also severely dyslexic. His reading skills are not even consistent with his language skills. The language disability has been a contributing problem to his reading challenges, but the dyslexia is also independent of his language disability.” *Id.*
- “[Student] has a mild executive function disorder. This is more apparent in the language domains...[Student] does work well with structure and feedback.” *Id.*

45. Neuropsychologist also recommended that Student receive instruction using an intensive, systematic, multisensory reading program. *Id.* at p. 40. Neuropsychologist advised that a language therapist should deliver Student’s reading instruction. *Id.* Additionally, Neuropsychologist recommended a systematic math intervention with a visual instructional model, as well as language support to preview vocabulary. *Id.*

46. Parents and other members of the IEP Team received copies of the IEE, with the last evaluation completed in June of 2019. *Interviews with Special Education Director and Father*. The IEP team reviewed the IEE results and compared them to BOCES’ evaluation data. *Interviews with Special Education Director and Special Education Teacher*.

47. There are many consistencies between the IEE results and the BOCES’ evaluation data. *Interviews with Special Education Teacher and Special Education Director; Exhibit A*, pp. 7, 50-51; *Exhibit C*, pp. 39, 57. For example, each concluded that Student experiences significant deficits in expressive and receptive language and vocabulary, as well as in reading efficiency and decoding. *Id.* Each also documented the impact of Student’s challenges with working memory and oral expression on his performance. *Id.* Both the BOCES’ data and the IEE results indicate that a systematic, multi-sensory reading intervention is appropriate for Student. *Interviews with Special Education Teacher and Special Education Director; Exhibit A*, p. 40; *Exhibit C*, pp. 40, 57. Additionally, many of the services and accommodations outlined in Student’s IEPs are consistent with the

recommendations made by Private Provider and Neuropsychologist. *Interview with Special Education Teacher; Exhibit A*, pp. 10-11, 34-35, 69; *Exhibit C*, pp. 40-41, 57.

F. The August 28, 2019 IEP Meeting

48. On August 28, 2019, the BOCES convened a properly constituted IEP Team to consider the IEE results and Student's progress in updating his IEP. *Exhibit G*, p. 10. The BOCES provided Parents with a Notice of Meeting on July 30, 2019. *Id.* The IEP Team met again on August 30, 2019. *Interviews with Father, Special Education Director, and Special Education Teacher; Exhibit G*, p. 10.
49. Parents and Parents' Attorney attended the IEP meetings. *Exhibit A*, p. 44. Neuropsychologist attended the August 28, 2019 meeting by video to review the results of her evaluation and the evaluation completed by Private Provider, and to answer related questions. *Interviews with Father, Special Education Teacher, and Special Education Director; Exhibit A*, pp. 44-45, 75. An occupational therapist from BOCES was also present to review the results of the occupational therapy examination. *Id.*
50. During the meeting, the IEE was projected on a screen, reviewed, and discussed. *Interviews with Father, Special Education Teacher, and Special Education Director.* A summary of the IEE was incorporated into the August 28, 2019 IEP's present levels of educational performance summary, and a draft IEP was also projected onto the screen and used as a guide for discussion as live revisions were made. *Exhibit A*, pp. 58-60.
51. Parents and Parents' Attorney shared feedback and asked questions, and Father had his concerns addressed. *Interviews with Father and Special Education Director.* Father stated that he was in full agreement with the IEE and requested that all recommendations be adopted. *Interview with Father.*
52. The present levels of performance and progress monitoring reports document that Student met or made progress on all goals from the January 14, 2019 IEP. *Exhibit A*, pp. 52-57. Student achieved Reading Goals 1 and 2, and Writing Goal 5. *Id.* He partially met Mathematics Goals 3 and 4. *Id.* For example, on Goal 3, Student met his first two objectives, subtraction with regrouping (two by two and three by three) and independently solving the problems in writing with 80% accuracy. *Id.* He was able to solve x2 multiplication problems in writing with 100% accuracy if using finger skip counting taps. *Id.* On Goal 4, Student mastered one-step subtraction problems with 85% average accuracy. *Id.*
53. The August 28, 2019 IEP documents Student's needs and the impact of his disability, including that Student's "disability in basic reading (decoding/phonemic awareness), reading comprehension, and reading fluency affect his ability to access grade level text independently," as well as how Student's disabilities in memory and oral expression

impact his ability to retain vocabulary, read, and respond to grade level content both orally and in writing. *Exhibit A*, p. 61.

54. The August 28, 2019 IEP contains goals in reading, mathematics, writing, and communication that build upon Student's progress and incorporate IEE feedback. *Exhibit A*, pp. 62-69. For example, Writing Goal 6 addresses Student's needs in written expression by emphasizing concepts and sentence structure. *Exhibit A*, p. 66; *Exhibit C*, p. 57. Also, Communication Goal 8 addresses Student's needs in memory and oral expression by emphasizing targeted vocabulary and critical concepts from Student's reading program. *Exhibit A*, pp. 67-68; *Exhibit C*, p. 57.
55. Additionally, Parents requested that the IEP Team add a phonemic awareness goal developed through consultation with the BOCES, Private Provider, and Special Education Teacher. *Interviews with Father and Special Education Teacher; Exhibit A*, pp. 68-69, 75; *Exhibit N*, pp. 12-13, 15. During the IEP meeting, the IEP Team discussed this goal. *Interviews with Father and Special Education Teacher; Exhibit A*, p. 75. The prior written notice documents Parents' agreement that the goal would be developed outside of the IEP meeting with an updated IEP to be provided to Parents for review upon completion of the goal. *Exhibit A*, p. 75. Following the IEP meetings, Reading Goal 10 was developed consistent with IEP Team discussions, in coordination with Private Provider, Special Education Teacher, and an SLP, and Parents received a copy of the IEP. *Interview with Special Education Teacher; Exhibit N*, pp. 12-13, 15. The SCO finds that this modification was made consistent with 34 C.F.R. § 300.324(a)(4).
56. Father expressed that he was generally satisfied with the annual goals contained in the August 28, 2019 IEP. *Interview with Father*. However, Father submitted written feedback following the IEP meetings objecting to the progress monitoring methods outlined in Reading Goal 10, among other issues. *Interview with Father; Exhibit N*, pp. 11-13. Father's feedback was attached to the August 28, 2019 IEP. *Exhibit A*, p. 61.
57. After consideration of the IEE results, BOCES' data and Parents' feedback, the IEP Team agreed to increase direct speech and language services from 120 to 180 minutes monthly, and to double special education consultation to 60 minutes monthly. *Interviews with Special Education Teacher and Special Education Director; Exhibit A*, pp. 38, 73; *Exhibit N*, p. 11.
58. While the IEP Team did not adopt all of the IEE recommendations, many of the services and accommodations outlined in Student's IEPs are consistent with recommendations made by Private Provider and Neuropsychologist. *Interview with Special Education Teacher; Exhibit A*, pp. 10-11, 34-35, 69; *Exhibit C*, pp. 40-41, 57. These include the use of an intensive, systematic, multi-sensory reading program; regular progress monitoring; working one-on-one with a paraprofessional; checks for understanding; the use of word

prediction software; the use of visual examples or oral and audio presentation; the Math-You-See math intervention; and the use of vocabulary and note previews. *Id.*

59. During the discussion of LRE, Parents requested that Student be provided special education services during the entire language arts and math general education classes instead of during electives. *Interviews with Father and Special Education Teacher; Exhibit A*, p. 75. BOCES members of the IEP Team, based on the advantages of access to the general education curriculum and peers, declined to adopt Parents' request. *Exhibit A*, p. 75. However, the IEP Team determined that a slight decrease in Student's time in the general education classroom was appropriate in order to provide specially designed instruction to Student in a small group in the areas of basic reading, reading comprehension, reading fluency, writing skills, and oral expression, among other areas. *Exhibit A*, p. 74. Student's time in general education was decreased to 60.8%, and his time outside general education was increased to 39.2%. *Id.* at p. 75.
60. As outlined in FF #17-18, 30 and 52, Student made progress on his annual goals and earned passing grades during the 2018-2019 academic year. BOCES' progress monitoring also reflects that Student has made progress, met objectives, and earned passing grades during the 2019-2020 academic year. *Exhibit E*, pp. 29-51; *Exhibit I*, p. 1. For example, progress monitoring data from the 2019-2020 academic year indicates that Student met Reading Goals 1 through 3. *Exhibit E*, pp. 29-37. Additionally, Student's grade report for the first quarter of the 2019-2020 academic year reveals passing grades. *Exhibit I*, p. 1.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The BOCES offered an IEP tailored to Student's unique needs in the area of speech and language from December 3, 2018 to January 15, 2019.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. ____ (2017), 137 S. Ct. 988, 999.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law.

The instruction offered to a child “must be ‘specifically designed’ to meet [the] child’s ‘unique needs’ through an ‘individualized education program.’” *Id.* (alteration in original) (quoting 20 U.S.C. §§ 1401(29), (14)). An IEP should take into account a “child’s present levels of achievement, disability, and potential for growth.” *Id.*

Here, the findings show that the May 2, 2018 IEP—the IEP governing Student’s educational program at all times relevant to this allegation—was tailored to Student’s unique needs in speech and language. In developing the May 2, 2018 IEP, the IEP Team considered present levels of achievement, disability, and potential for growth (FF #5-18). The IEP Team reviewed evaluation data documenting Student’s deficits in expressive and receptive language, and listening comprehension. Additionally, the IEP Team considered how Student’s progress on language goals was significantly impacted by impaired working memory and difficulty applying learning in the generalized setting. The May 2, 2018 IEP contains examples of Student’s challenges with generalization, and it also documents Student’s functional self-advocacy needs.

As discussed in FF #8, the IEP documents the impact of Student’s challenges in working memory, oral expression, and listening comprehension. The IEP Team determined that, because of demonstrated difficulties retaining information and generalizing, Student’s speech and language services should be modified to indirect services in the general education classroom, and an SLP should provide guidance to teachers and service providers on accommodations to help Student access the curriculum. (FF #9-10). The IEP provides accommodations to address the impact of Student’s disability and help him access the general education curriculum. (FF #15). The IEP Team also completed a review of existing evaluation data and determined that, in order to address Student’s lack of progress, it was appropriate to increase Student’s direct services outside of the general education setting. (FF #5, 14).

The IEP contains goals to address Student’s identified needs in listening comprehension, oral expression, and self-advocacy, with measurable targets above Student’s baselines. (FF #11-13, 17-18). Student made progress toward his listening comprehension and oral expression goal, and he exceeded his self-advocacy goal. Student also earned passing grades.

For these reasons, the SCO finds and concludes that the BOCES offered an IEP tailored to Student’s unique needs in the area of speech and language from December 3, 2018 to January 15, 2019.

Conclusion to Allegation No. 2: The BOCES provided Student with a FAPE in the LRE.

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). Districts must ensure that children with disabilities are educated in the general education setting with children who are nondisabled to the maximum extent appropriate, and that they attend the school they would if

not disabled. 34 C.F.R. §§ 300.114 and 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “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).

The Tenth Circuit adopted a two-part test from *Daniel R.R. v. Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989) to determine if a school district has met the IDEA’s LRE provision: (1) whether education in a regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily, and if not, (2) whether the school district has mainstreamed the child to the maximum extent appropriate.

The following non-exhaustive factors are considered in determining whether the first prong of the *Daniel R.R.* test has been met: “(1) steps the school district has taken to accommodate the child in the regular classroom, including the consideration of a continuum of placement and support services; (2) comparison of the academic benefits the child will receive in the regular classroom with those he will receive in the special education classroom; (3) the child’s overall educational experience in regular education, including non-academic benefits; and (4) the effect on the regular classroom of the child’s presence in that classroom.” *Id.* at 976.

In this case, Parents argue that Student should have been educated in a more restrictive setting—spending no more than 40% of his time in general education. (FF #39). The findings show that the IEP Team did decrease Student’s time in general education in an appropriate manner and consistent with LRE principles. (FF #36-40). However, the factors outlined in *Daniel R.R.* as applied to the evidence here do not support Parents’ request for a more restrictive setting.

First, Student has been provided with a broad range of accommodations to ensure access to the general education curriculum, many of which were supported by BOCES’ evaluation data, the Speech/Language Progress Report, and the IEE. (FF #15, 37-38, 47, 58). For example, Student received, in part, one-on-one support from a paraprofessional, checks for understanding, word prediction software, and the use of visual examples or oral and audio presentation. The findings show that the IEP Team considered a continuum of placement and support services, ultimately working with Literacy Coach to adapt instruction to reflect the intensive, multi-sensory literacy intervention provided by Literacy Program. (FF #36, 38-40).

Second, Student achieved or made progress toward all of his annual goals, and earned passing grades in his general education courses. (#17-18, 29, 52, 60). While Student made progress leading up to the January 14, 2019 IEP, the IEP Team considered the available data, Parents’ feedback, and Literacy Coach’s opinion in determining that Student could make greater progress with an intervention level comparable to that provided by Literacy Program. (FF #33, 36, 38). The IEP Team updated goals and increased service time to provide greater academic intervention to Student using Literacy Program interventions. (FF #33-36, 39-40). In

determining LRE, the IEP Team considered benefits to Student from inclusion in the general education setting, such as access to content specialists and background knowledge, reinforcement of vocabulary in the general education curriculum, and increased social interaction with peers. (FF #39-40).

In sum, the IEP Team slightly decreased Student's time in the regular education classroom based on a determination that he would benefit academically from more time in a special education classroom and pull-out services. The SCO finds and concludes that the IEP Team's determination was appropriate based on the factors outlined above, and the BOCES provided Student with a FAPE in the LRE.

Conclusion to Allegation No. 3: The January 14, 2019 IEP and August 28, 2019 IEP were tailored to meet Student's individualized needs.

Parents allege that the January 14, 2019 IEP and the August 28, 2019 IEP were not tailored to the Student's individualized needs because:

- (1) The BOCES failed to consider Parents' concerns for enhancing the education of Student in the development of the January 14, 2019 IEP and August 28, 2019 IEP;
- (2) The BOCES failed to consider recent evaluations of Student in the development the January 14, 2019 IEP and August 28, 2019 IEP; and
- (3) The BOCES failed to review and revise Student's January 14, 2019 IEP and August 28, 2019 IEP to address the lack of expected progress toward annual goals, including a failure to provide special education and related services based on peer-reviewed research to the extent practicable.

As noted above, an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. ____ (2017), 137 S. Ct. 988, 999. The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. Each of the inadequacies alleged by Parents is addressed individually below in light of these legal standards.

A. The BOCES provided Parents with a meaningful opportunity to participate and considered Parents' concerns for enhancing the education of Student in the development of the January 14, 2019 IEP and August 28, 2019 IEP.

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v.*

Academy School District No. 20, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a school district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than a "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

The findings here do not support Parents' contention that the BOCES failed to consider their concerns for enhancing the education of Student. On the contrary, the evidence shows that Parents' feedback was meaningfully considered throughout the IEP development process, including in preparation for the January 14, 2019 and August 28, 2019 IEP meetings. (FF #25-28, 30, 36, 38-39, 46, 49-51, 55-59). Father requested and was provided with draft IEPs, progress reports, evaluations, and other documentation well in advance of the IEP meetings so that he could review the documents with his attorney and advocate and provide feedback. Father submitted questions that were addressed by Special Education Teacher and Special Education Director.

During both IEP meetings, the draft IEPs and evaluations were projected onto a screen to guide discussion, and Parents asked questions and expressed concerns as the IEP Team reviewed the documents. (FF #25, 27-28, 39, 49-51). Parents' feedback was incorporated into both IEPs. (FF #26-27, 30, 36, 38, 55-58). Additionally, private evaluations obtained by Parents were reviewed and incorporated into the IEPs. (FF #30-31, 36, 38, 46-47, 50, 54-55, 57-59).

Father confirmed that he was able to ask questions and express concerns, and that all were addressed. (FF #27, 51). Though Father did not always agree, meaningful consideration does not require that the BOCES simply agree to Father's requests. As outlined in FF #28 and 39, Father requested increased special education and SLP services. The BOCES did not fully agree to Father's requests, but the IEP Team was receptive and responsive to his concerns and requests.

For example, at the January 14, 2019 IEP meeting, the IEP Team considered available data and feedback from Father and Literacy Coach in determining that it was appropriate to significantly increase Student's direct services consistent with Literacy Program, though general education time was reduced to 62% instead of the 40% requested by Father. (FF #36, 39). As outlined in FF

#28, the BOCES members of the IEP Team also addressed Father's request that an SLP deliver Student's reading intervention. The prior written notice documents the IEP Team's refusal to develop Student's annual goals based on expected progress over multiple years, as doing so would be inconsistent with the annual review process required by the IDEA (FF #27).

Moreover, after requesting an IEE, Parents selected their own private evaluators, to include Neuropsychologist who was present for the August 28, 2019 IEP meeting. (FF #41, 49). The IEP meeting was extended into a second day to allow for a full discussion and consideration of the evaluations and Parents' feedback. (FF #48). Though the BOCES did not adopt all of Parents' suggestions for the August 28, 2019 IEP, the document reflects consideration of Parents' feedback and requests, and meaningful consideration of the IEE. (FF #49-51, 54-59). Furthermore, at the request of Parent, the IEP Team agreed to develop a goal addressing phoneme awareness in consultation with evaluators. (FF #55).

Because the BOCES was receptive and responsive to Parents' position at all stages, the SCO finds and concludes that the BOCES provided Parents with meaningful participation in the IEP development process and considered Parents' concerns for enhancing the education of Student in the development of the January 14, 2019 IEP and August 28, 2019 IEP.

B. The BOCES considered recent evaluations of Student in the development of the January 14, 2019 IEP and August 28, 2019 IEP.

In developing a child's IEP, the IEP Team must consider the results of the initial or most recent evaluation of the child. 34 C.F.R. § 300.324(a)(1)(iii). If a parent obtains an IEE at public expense, the district must consider the results of the IEE when making any decision regarding the provision of FAPE to the child. 34 C.F.R. § 300.502(c)(1). Though a district must consider the results of the evaluation, it is not obligated to accept the evaluator's recommendations or conclusions. *T.S. v. Bd. of Educ. of the Town of Ridgefield*, 10 F.3d 87 (2d Cir. 1993). *See also G.D. v. Westmoreland Sch. Dist.*, 17 IDELR 751 (1st Cir. 1991) (finding that the requirement for an IEE to be considered does not mandate that there be substantive discussion).

Here, Parents allege that the BOCES failed to consider: (1) the Speech/Language Progress Report from Private Provider at the January 14, 2019 IEP meeting, and (2) the IEE at the August 28, 2019 IEP meeting. *Complaint*. The SCO finds and concludes that the BOCES appropriately considered both the Speech/Language Progress Report and the IEE.

Father provided the IEP Team with the Speech/Language Progress Report prior to the January 14, 2019 IEP meeting, and it was incorporated into the January 14, 2019 IEP. (FF #4, 25, 30, 36, 38). During the meeting, a draft IEP containing the report was projected onto a screen, and there was a discussion of the report's findings. Although the IEP Team was not obligated to do so, it adopted some services consistent with the report's recommendations, as outlined in FF #38.

In terms of the IEE, it was provided to the IEP Team prior to the August 28, 2019 IEP meeting, and the IEP Team reviewed the results and compared them with BOCES evaluation data. (FF #46-50 and 57-58). As discussed in FF #48-50, Neuropsychologist and an occupational therapist were present for the IEP meeting. The meeting was extended into a second day to allow for full consideration of the IEE in development of the IEP.

There were many consistencies between the BOCES evaluation data and the results of the IEE. (FF #47, 58). Both the BOCES evaluation data and the IEE documented that Student experiences significant deficits in expressive and receptive language and vocabulary, as well as in reading efficiency, decoding, and working memory. Many recommendations made by Private Provider and Neuropsychologist are consistent with accommodations or interventions outlined in Student's IEPs and applied during his direct instruction. Furthermore, the IEP Team incorporated some recommendations from the IEE into the August 28, 2019 IEP and agreed to work with the IEE evaluators to develop a goal around phoneme awareness. (FF #54-55, 57-59).

In sum, the evidence shows that the IEP team reviewed and considered the Speech/Language Progress Report and the IEE, and incorporated recommendations from both into Student's IEPs. The SCO thus finds and concludes that the IEP Team considered recent evaluations of Student in the development of the January 14, 2019 IEP and August 28, 2019 IEP.

C. The BOCES reviewed and revised Student's January 14, 2019 IEP and August 28, 2019 IEP to address a lack of expected progress toward annual goals, and provided special education and related services based on peer-reviewed research to the extent practicable.

i. Review of Progress Toward Annual Goals

As noted above, to meet its substantive obligation under the IDEA, a school district must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 137 S. Ct. 988, 999 (U.S. 2017). As the vehicle for defining and providing FAPE, "[t]he IEP must aim to enable the child to make progress." *Id.* In emphasizing the importance of this aim, the Court further stated that "[a] substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act." *Id.*

In order to ensure that a child is making progress, the IEP Team must meet to review a child's IEP no less than annually in order to determine whether the child's annual goals have been achieved. 34 C.F.R. § 300.324(b)(i). Further, the IEP Team must revise the IEP, as appropriate, to address, in part, any lack of expected progress toward the annual goals and in the general curriculum. 34 C.F.R. § 300.324(b)(1)(ii)(A). IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently than once a year to address changing

needs or an unexpected lack of progress. See 34 C.F.R. §§ 300.324(a)(4)-(6) and (b); *Andrew F.*, 37 S. Ct. at 994.

Here, the findings show that the BOCES reviewed and revised Student's January 14, 2019 IEP and August 28, 2019 IEP to address a lack of expected progress toward annual goals in consideration of additional evaluation data. Student's last IEP annual review had occurred on May 2, 2018, and therefore an annual review was not due until May of 2019. (FF #5). However, in the fall of 2018, Parents provided the IEP Team with evaluation data from Private Provider and requested changes to Student's IEP in light of that data. (FF #4). The BOCES worked with Father to schedule an IEP meeting to discuss the evaluation data, and to review and update Student's special education programming. (FF #23-30, 33).

The IEP Team reviewed Private Provider's report and made significant revisions to the IEP and Student's services at the January 14, 2019 IEP meeting. (FF #30-31, 33-39). Progress monitoring data indicated that Student had made progress toward or achieved his goals. However, the IEP Team determined that in light of the available data, Student could make greater progress with an intervention level comparable to that provided by Literacy Program. The IEP Team updated goals and increased service time to provide greater academic intervention using The Hill Methodology. The January 14, 2019 IEP documents a substantial increase in direct special education and speech and language services outside of the general education setting.

Father then requested an IEE shortly after the January 14, 2019 IEP meeting, which was provided and paid for by the BOCES. (FF #41). FF #49-59 reveal that during the August 28, 2019 IEP meeting, the IEP team reviewed the IEE, compared the results with existing evaluation and progress monitoring data, and revised Student's IEP accordingly. Student had achieved or made progress toward each of his annual goals. The IEP Team considered the available data in reviewing and revising Student's goals and accommodations, and the IEP Team agreed to work with evaluators to craft an additional goal to address Student's needs in phonemic awareness. The IEP Team created an IEP consistent with many of the recommendations made in the IEE.

Taken as a whole, the evidence supports that the IEP Team reconvened when appropriate to address new evaluation data, review Student's progress toward his annual goals, and revise Student's goals to reflect his progress. The SCO thus finds and concludes that the BOCES reviewed and revised Student's January 14, 2019 IEP and August 28, 2019 IEP to address a lack of expected progress toward annual goals and to consider additional evaluation data.

ii. Special Education and Related Services Based on Peer-Reviewed Research

Parents argue that The Hill Methodology used by BOCES is not peer-reviewed and therefore should not be used for Student's instruction. The SCO finds and concludes that the BOCES provided special education and related services based on peer-reviewed research to the extent practicable.

An IEP must include a statement of special education and related services, as well as supplementary aids and services, based on peer-reviewed research *to the extent practicable*, to be provided to the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance toward attaining his annual goals; to be involved in and make progress in the general education curriculum; and to be educated and participate with other children with disabilities and nondisabled children. 34 C.F.R. § 300.320(4) (emphasis added).

First, 34 C.F.R. § 300.320(4) does not state that a student's special education and related services must be based on peer-reviewed research, but rather *only to the extent practicable*.

Second, The Hill Methodology is evidence-based, though it has not been peer-reviewed. (FF #21). However, FF #20 shows that Literacy Program, which utilizes The Hill Methodology, is a READ Act Approved Intervention and is accredited by IMSLEC. The Hill Methodology is a systematic, multi-sensory, Orton-Gillingham based intervention. (FF #20-21). The BOCES contracted with Literacy Program to implement The Hill Methodology, and BOCES special education teachers receive ongoing training and coaching to ensure their implementation of the intervention with fidelity. (FF #22). Both the BOCES' data and the IEE results indicate that an Orton-Gillingham based intervention is appropriate for Student, and Student's special education and related services are designed in accordance with The Hill Methodology. (FF #31, 36, 38-40, 43, 45, 47, 58). Furthermore, Student has generally made consistent progress since beginning instruction with The Hill Methodology. (FF #29, 52, 60).

For these reasons, the SCO finds and concludes that the BOCES provided special education and related services based on peer-reviewed research to the extent practicable.

REMEDIES

The SCO finds and concludes that BOCES did not violate any requirements of the IDEA. Accordingly, there are no remedies ordered pursuant to the IDEA and my authority as an SCO.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 C.F.R. § 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 31 day of January, 2020.

Lindsey Watson
State Complaints Officer

Appendix

Complaint, pages 1-32

- Exhibit 1: Chart of Student's goals
- Exhibit 2: BOCES Evaluations of Student 2013-2018
- Exhibit 3: Determinations of eligibility
- Exhibit 4: IEPs April 22, 2013-August 28, 2019
- Exhibit 5: Progress reports
- Exhibit 6: Speech/Language Progress Report
- Exhibit 7: Parent feedback on draft January 14, 2019 IEP
- Exhibit 8: IEE reports
- Exhibit 9: Parent feedback on draft August 28, 2019 IEP
- Exhibit 10: Department of Education Dear Colleague Letter
- Exhibit 11: Student clinical diagnoses
- Exhibit 12: Student schedule 2016-2017
- Exhibit 13: Private Provider fees
- Exhibit 14: Email correspondence
- Exhibit 15: Meeting recordings

Response, pages 1-13

- Exhibit A: IEPs March 16, 2018-August 28, 2019
- Exhibit B: Service provider logs
- Exhibit C: Evaluation and assessment reports from December 3, 2018 to present
- Exhibit D: (No audio recording evidence provided)
- Exhibit E: Progress monitoring reports
- Exhibit F: Eligibility determinations from December 3, 2018 to present
- Exhibit G: Prior written notices and notices of meeting
- Exhibit H: (Notice of meeting evidence combined in Exhibit G)
- Exhibit I: Grade reports
- Exhibit J: Special Education Manual 2018-2019
- Exhibit K: Email correspondence
- Exhibit L: Contact information for BOCES and School staff
- Exhibit M: Verification of delivery of Response to Parents
- Exhibit N: Miscellaneous documentation
- Exhibit O: Examples of Student work

Telephonic Interviews with:

- School Psychologist: January 3, 2020
- Literacy Coach: January 3, 2020
- General Education Teacher: January 6, 2020
- Principal: January 6, 2020
- Speech Language Pathologist 1: January 9, 2020 and January 13, 2020
- Special Education Teacher: January 9, 2020 and January 13, 2020
- Parent: January 10, 2020

- Special Education Director: January 13, 2020, January 14, 2020, January 16, 2020, and January 17, 2020
- Speech Language Pathologist 2: January 14, 2020