

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA)¹

State-Level Complaint 2015:523
San Juan BOCES

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed on December 18, 2015 by the mother (Mother) of a child (Student) identified as a child with a disability under the IDEA. Mother brings this Complaint against San Juan BOCES (BOCES).

Based on the written Complaint, dated December 15, 2015, 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 CFR §§ 300.151 through 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

COMPLAINT ALLEGATIONS

Mother's Complaint allegations raised the following issues, in summary:

1. Whether the BOCES has violated Parents' and Student's procedural rights:
 - a. by failing to provide Parents with a copy of the procedural safeguards notice on October 29, 2015;
 - b. by failing to complete Student's IEPs in a timely manner, including failing to provide Parents with a written IEP, from on or about December 19, 2014 through December 9, 2015;
 - c. by denying Parents and Student meaningful participation in the IEP process, from on or about December 19, 2014 through December 9, 2015; and
 - d. by failing to develop measurable annual goals and a transition plan in Student's October 29, 2015 IEP.

2. Whether the BOCES has denied Student a free appropriate public education (FAPE):
 - a. by failing to implement Student's IEP on the first day of the 2015-16 school year;
 - b. by failing to modify curriculum in accordance with Student's present levels of educational performance since on or about September 11, 2015; and
 - c. by denying Student the right to be educated in the least restrictive environment (LRE) since on or about October 28, 2015.

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).

Summary of Proposed Remedies. To resolve the Complaint, Mother proposed the following, in summary:

School, School District, and BOCES staff to participate in trainings related to inclusion training, lesson planning for Student, and adapting lessons to ensure Student's full inclusion and success, with respect to Autism Spectrum Disorder (ASD); compensatory time for failure to implement Student's IEP; immediate compliance with Student's IEP and work sent home to Parents daily to ensure compliance; monthly meetings at School with Parents; and paraprofessional to be supervised directly and daily by classroom teachers, case manager, and/or School principal and all work to be provided to Student from evidence based curriculum.

FINDINGS OF FACT

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

1. Student is a [age] year old eighth grader who is eligible for special education and related services under the IDEA and ECEA under the category of ASD. Student attends School in School District. The BOCES is the administrative unit responsible for special education services in the School District.³

Background

2. Student was homeschooled for seven years prior to Parents opting to open enroll Student at School in the sixth grade in the 2013-14 school year.⁴ Student's November 21, 2013 IEP team initially placed Student in general education classes less than 40% of the time. Student was served in a life skills center-based program at School that focuses on students with severe/profound disabilities. At a meeting held on May 22, 2014, Student's IEP team agreed to change Student's placement to general education classes at least 80% of the time with support provided in the life skills program.⁵
3. In terms of educational strengths, Student is a fluent reader, has an inquisitive nature and seeks to problem solve issues of high interest. Student can demonstrate understanding of complex issues, has excelled at visual-spatial challenges, has an excellent eye for detail, direct recall of information, and has proven extremely adept at manipulating graphics in computer class. Student is friendly, enjoys school, and is well-liked by peers and teachers.⁶
4. Relative to Student's needs, Student's low verbal reasoning, working memory, and processing speed skills when not performing a preferred activity, as well as Student's

³ Complaint, Response, and Exhibits A and G.

⁴ Exhibit A and Interviews with Mother and School Psychologist.

⁵ Exhibit A.

⁶ Exhibit A and Interviews with Mother, Principal, Special Education Teacher, Math Teacher, Reading Teacher, Language Arts Teacher, and Paraprofessional.

communication skills, significantly impact Student's adaptive skills across the board and Student's ability to grasp new concepts without a significant amount of specialized instruction, re-teaching, and repetition. Student's attention and preferred tasks/topics are observed to greatly impact Student's performance on a daily basis. Student needs adult supervision in order to maintain Student's safety both in school and during educational outings in the community. Student also requires adult supervision to maintain engagement with the curriculum being presented in class. As a result, to participate in the general education classroom, Student requires peer guidance or adult paraprofessional support throughout all times of the school day, and grade-level curriculum must be significantly modified based on extended evidence outcomes. To address Student's behavioral needs related to ASD, Student has an individualized behavior intervention plan (BIP).⁷

Development of Student's November 6, 2014 and March 9, 2015 IEPs

5. Based on the credible evidence in the record, the SCO finds that from December 19, 2014 through December 9, 2015 Student's IEPs were completed and provided to Parents and that Parents and Student participated meaningfully in their development.
6. In the seventh grade, Student's November 6, 2014 IEP team agreed to continue Student's placement in general education classes 80% of the time and developed new goals.⁸ Typically, the BOCES provides parents with a copy of the draft IEP document and finalizes the IEP in the BOCES' computer system at the conclusion of IEP meetings.⁹ In this case, Parents had requested at the IEP meeting that the IEP not be finalized until after Mother had an opportunity to review it and provide written feedback. The draft document was not provided to Parents on that day and, due to miscommunication between School, School District, and BOCES staff members, Parents did not receive the draft IEP until November 21st. Throughout December 2014, School Psychologist repeatedly attempted to obtain Mother's written revisions, but did not receive them until January 11, 2015, at which time Mother provided nine pages of line-by-line revisions to the draft November 6, 2014 IEP.
7. At a regularly scheduled monthly meeting on January 14th, Mother was given an updated copy of the draft IEP into which Mother's specific revisions had been incorporated. Mother, however, continued to request that the November 6th IEP remain open (or not finalized) in the BOCES system due to continued discussions at regularly scheduled monthly meetings at

⁷ Exhibit A and Interviews with Mother, School Psychologist, Paraprofessional, Special Education Teacher, Math Teacher, Language Arts Teacher, Reading Teacher, and Principal. SCO notes that although the appropriateness of the use of extended evidence outcomes and alternative state testing were not allegations raised in Mother's Complaint, during the course of the investigation SCO considered whether these areas were a root cause of the underlying dispute. Because they were not raised nor identified as issues in the investigation of this Complaint, SCO makes no findings or legal conclusions regarding Student's qualifications for alternative state testing and the use of extended evidence outcomes.

⁸ Exhibit A and Interviews with Mother, School Psychologist, and Assistant Principal.

⁹ Exhibit F and Interviews with Former Director of Exceptional Services and Director of Exceptional Services.

School.¹⁰ Finally, after School and School District staff members and Mother, who was at times assisted by advocates, were unsuccessful in resolving the issues about the wording of the IEP document itself, an IEP meeting was scheduled for March 9, 2015.¹¹

8. On March 9, 2015, the November 6, 2014 IEP was finalized in the BOCES' system and the IEP team met. At the meeting, the IEP team agreed that Student would be placed in general education classes 100% of the time without life skills program support. Parents were provided with Prior Notice of Special Education Action (PWN), dated March 9, 2015, which responded to all of Parents' expressed concerns since November 6, 2014. The PWN indicated specifically which of Parents' requests were accepted and which were considered and rejected.
9. On March 20th, Mother responded in writing to the PWN and another IEP team meeting was held on April 9th to discuss additional changes requested by Parents.¹² Another PWN, dated April 9, 2015, was provided to Parents indicating which of Parents' requests to change the wording of the IEP document were accepted and which were considered and rejected. The March 9, 2015 IEP document was provided to Parents and finalized in the BOCES' system.¹³

Development of Student's October 29, 2015 IEP

10. Based on the credible evidence in the record, the SCO finds that measurable annual goals and a transition plan were developed in Student's October 29, 2015 IEP.
11. On October 13, 2015, BOCES sent Parents a Notice of Meeting for an IEP meeting scheduled for October 29th. On October 26th, School Psychologist sent Mother a Transition Planning Inventory (TPI) to be completed by Parents prior to the IEP meeting in preparation for a discussion at the meeting related to transition planning. On October 27th, Special Education Teacher emailed Mother a draft of the IEP and an agenda for the meeting.
12. On October 29th the IEP team, including Parents, Student, and an advocate, met for three hours and fully reviewed and updated Student's IEP. Near the end of the meeting, the discussion turned to transition planning, but Parents had not completed the TPI. Mother indicated that she would complete the TPI over the weekend¹⁴ and the team agreed to reconvene in order to discuss transition planning to complete the IEP. Based on credible evidence in the record, SCO concludes that Parents were not provided with a copy of the draft IEP at the conclusion of the meeting due to the issues the IEP team experienced finalizing the IEPs during the previous school year, in addition to the IEP team's discussion

¹⁰ SCO notes that although the November 6, 2014 IEP was not finalized in the BOCES system, the IEP was implemented from November 6, 2014 through March 9, 2015.

¹¹ Exhibits C and D and Interviews with School Psychologist, Assistant Principal, Mother, and Former Director of Exceptional Services, and Chief School Advocacy Officer.

¹² Exhibits A, C and D and Interviews with Mother, Assistant Principal, and School Psychologist.

¹³ Exhibit A.

¹⁴ SCO notes that Mother never completed the TPI.

being incomplete at that time.¹⁵

13. Director of Exceptional Services and School Psychologist followed up several times with Mother after the weekend attempting to get the TPI, offering to interview Student to obtain information related to transition planning¹⁶, and to schedule a time to finalize the IEP. On November 6th Mother informed Director of Exceptional Services that Parents had not received a copy of the procedural safeguards notice at the October 29th meeting and Director of Exceptional Services emailed Mother a copy of the notice on the same day.¹⁷ Director of Exceptional Services continued to attempt to schedule a meeting with Parents to finalize the IEP and scheduled a meeting for November 18th, providing Mother with an agenda¹⁸ as well as a draft of the October 29, 2015 IEP.¹⁹
14. The IEP team met for two hours on November 18th²⁰ and discussed the transition process and Mother's concerns related to goals. Another meeting was scheduled for December 9th to finalize the IEP with both Parents in attendance. Director of Exceptional Services again provided Parents with an agenda.²¹
15. On December 9th, The IEP team met for three hours, discussing all sections of the IEP and projecting the IEP document onto a screen so that all team members could view the document.²² The goals in the IEP provide specific baseline data and target points and are directly tied to Student's identified needs, i.e., math, reading, written language, independence, life skills, access skills, and communication skills.²³
16. At the conclusion of the meeting, Parents both stated that they were in agreement with the IEP. Mother admits that the transition plan was finalized at the December 9th IEP meeting. On December 18th, Director of Exceptional Services sent Parents a PWN addressing all concerns that had been raised by Parents at the meeting and the IEP was finalized in the BOCES' system on that day.²⁴

¹⁵ Exhibits A, C and D and Interviews with Mother, Principal, Director of Exceptional Services, School Psychologist, and Special Education Teacher.

¹⁶ SCO notes that Mother refused to allow Student to be interviewed by School or School District staff members regarding transition planning.

¹⁷ SCO notes that Parents received the Procedural Safeguards Notice at the March 9, 2015 IEP meeting.

¹⁸ Agenda included a discussion of speech and language goal, changes to the BIP, post-secondary goals, questions about math goals and accommodations, and setting up a time to meet with Father.

¹⁹ Exhibit D.

²⁰ SCO notes that Mother was provided with a hard copy of the Procedural Safeguards Notice at that time, as well.

²¹ Interviews with Mother and Director of Exceptional Services.

²² Exhibit D. Parents were again provided with a copy of the Procedural Safeguards Notice.

²³ Exhibit A.

²⁴ Interviews with Mother and Director of Exceptional Services.

Implementation of Student's IEP during the 2015-16 school year²⁵

17. BOCES and Mother both acknowledge that Student did not attend School on the first day. BOCES contends that this was by agreement with Mother. Mother contends that this was because she was told that Student would not have paraprofessional support available on the first day of school. Principal confirmed that there was no one-to-one paraprofessional support available for Student on the first day of school. Based on credible evidence in the record, SCO finds that BOCES did not have one-to-one paraprofessional support available for Student on the first day of school.²⁶

18. Mother acknowledges that BOCES' detailed explanation in its Response about how School staff has modified curriculum in each of Student's general education classes, if communicated with Parents when requested during the school year, could have alleviated Parents' concern and prevented this allegation in her Complaint.²⁷ BOCES asserts and Mother admits that Student has been in general education classes 100% of the school day with one-to-one support of a paraprofessional and peer support, as agreed to in Student's IEP. Based on credible evidence in the record, SCO finds that the BOCES modified curriculum in accordance with Student's present levels of educational performance since on or about September 11, 2015 and that Student has been educated in the LRE in accordance with Student's IEP since October 28, 2015. Special Education Teacher, Reading Teacher, Math Teacher, Language Arts Teacher, and Paraprofessional all described how they collaborate to modify curriculum for Student. Moreover, Principal, Special Education Teacher, Language Arts Teacher, Math Teacher, Reading Teacher, and Paraprofessional all described how peers support Student and how Paraprofessional works under the supervision of Special Education Teacher and Student's teachers in each class, to help support Student in the general education classrooms. Work samples and progress reporting in the documentation further support SCO's finding that Student's curriculum has been modified in accordance with Student's present levels of educational performance during the 2015-16 school year.²⁸

²⁵ With regard to any allegations Mother may have sought to raise in the Complaint regarding implementation of Student's IEP during the 2014-15 school year that were not accepted by SCO for investigation, credible evidence in the record suggests that Student's IEP was implemented with fidelity during the 2014-15 school year, i.e., statements made in interviews with Mother, Assistant Principal, and Chief School Advocacy Officer, Chief School Advocacy Officer's report, and Student's Application for Open Enrollment at School for the 2015-16 school year signed by Mother on April 1, 2015.

²⁶ Exhibits A, 1, and D and Interviews with Principal, Mother, and Special Education Teacher.

²⁷ SCO notes that a Communication Plan was developed which includes a daily back-and-forth notebook and monthly meetings in order to facilitate effective communication between School, School District, and Parents regarding Students special education program and progress reporting.

²⁸ Response, Reply, Exhibit B, and Interviews with Mother, Paraprofessional, Math Teacher, Special Education Teacher, Language Arts Teacher, and Reading Teacher.

CONCLUSIONS OF LAW

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

A. The BOCES complied with the procedural requirements of the IDEA and ECEA in the development of Student's IEPs throughout the 2014-15 and 2015-16 school years.

1. Any analysis of the appropriateness of an IEP must begin with the standard established by the United States Supreme Court in *Rowley v. Board of Education*, 458 U.S. 176 (1982), in which the Court set out a two-pronged analysis for determining whether an IEP has offered a FAPE. The first part of the analysis looks to whether the IEP development process complied with the IDEA's procedures; the second looks to whether the resulting individualized educational program (IEP) was reasonably calculated to confer some educational benefit upon the child. *Id. at 207; see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008). If those two questions are affirmatively satisfied, then the IEP is appropriate under the law.
2. Under the first "prong" of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA's procedures. When a student's IEP is developed in compliance with the IDEA's procedural requirements, *Rowley* holds that a certain degree of deference is to be given to the resulting IEP. "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP ... demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." *Rowley*, 458 U.S. at 206.
3. In this case, the analysis begins with whether the BOCES violated the procedural requirements of the IDEA concerning the development, review and revision of Student's IEPs, specifically the allegations that the BOCES: (a) failed to provide Parents with procedural safeguards notice at an IEP meeting on October 29, 2015; (b) failed to complete Student's IEPs in a timely manner, including failing to provide Parents with a written IEP, from on or about December 19, 2014 through December 9, 2015; (c) denied Parents and Student meaningful participation in the IEP process, from on or about December 19, 2014 through December 9, 2015; and (d) failed to develop measurable annual goals and a transition plan in Student's October 29, 2015 IEP.
4. The IDEA's procedural requirements for developing, reviewing, and revising the IEP require a school district to timely convene an IEP meeting with the required participants (including the child's parents) in order to review the student's progress, new evaluative information, parent concerns, etc., in order to develop a current education plan. In the development of an IEP, parents must be afforded the opportunity to attend and meaningfully participate, which includes giving

consideration to their concerns about their child. 34 C.F.R. §§ 300.321 (a)(1), 300.324(a)(ii) and 300.501(b). In *Rowley*, the Supreme Court explained that the IDEA established a procedure that would involve full participation of all concerned parties, including parents, at every stage of the process. *Rowley* at 205-206. The IDEA thus requires educational agencies, teachers, and parents to jointly prepare and update an IEP tailored to the unique needs of the child, specifying the child's present educational performance, annual goals, required services, and criteria for evaluating progress. *Id.* at 181. The IDEA's procedural requirements for developing a student's IEP are specifically designed to provide a collaborative process that places particular importance on parental involvement.

5. SCO first addresses Mother's allegation that the BOCES violated parents' procedural rights when Parents were not provided with a copy of the procedural safeguards at an October 29, 2015 IEP meeting. The IDEA provides that a copy of the procedural safeguards must be given to the parents one time per school year, except that a copy also must be given to the parents upon their request. 34 C.F.R. § 504(a).²⁹ The BOCES admits that Parents were not provided with a copy of the procedural safeguards notice at the October 29, 2015 IEP meeting, however, when Mother requested a copy of the procedural safeguards by email the week following the IEP meeting, Director of Exceptional Services immediately emailed her a copy. Parents were also provided Mother with copies of the procedural safeguards at two subsequent meetings during the 2015-16 school year. Accordingly, SCO concludes that BOCES complied with the procedural requirement by providing Parents with a copy of the procedural safeguards upon Mother's request and during the 2015-16 school year.
6. Next, SCO addresses Mother's allegations related to the procedural requirements involving meaningful participation of Parents and Student in the development of Student's IEP and completing Student's IEPs in a timely manner, including not providing Parents with a written IEP from December 19, 2014 through December 9, 2015. Based on a thorough review of the documentation provided in this case, as well as numerous interviews with reliable witnesses, SCO concludes that Parents and Student participated meaningfully in the IEP process, that their input was consistently incorporated into Student's IEPs throughout the 2014-15 and 2015-16 school years, and that Parents were provided with written IEPs. The IEP team, including Parents, Student, and oftentimes advocates, met numerous times to develop Student's IEP. Parents' input, including their objections, was consistently noted in all IEP documentation and it is clear that it was considered by the IEP team. In an attempt to address Parents' concerns and regularly report progress, BOCES, School District, and School staff members met with Mother in regularly scheduled monthly meetings, communicated via a daily back and forth notebook, corresponded with Mother via email,

²⁹ SCO notes that although there is no finding of a violation in this instance, the BOCES' special education procedures manual should be revised to reflect the actual language of the IDEA.

and communicated on the phone and in person with Mother during her observations and visits at School. Mother contends that her meaningful participation was impeded by BOCES' failure to provide Parents with copies of drafts and finalized IEP documents throughout the IEP process. SCO concludes otherwise. Mother's line-by-line revisions incorporated into the IEP documents themselves support a finding that Parents received the IEP documents.³⁰ Accordingly, SCO concludes that Parents and Student participated meaningfully in the development of Student's IEPs and were provided with written IEPs and it was due to the efforts by BOCES to accommodate Mother's requests to keep Student's IEP open and, thus, not finalized, that the IEP was not completed according to BOCES' policies and typical procedures.

7. SCO next addresses the procedural requirements involving development of Student's October 29, 2015 IEP. Mother specifically alleges that the BOCES failed to develop measurable annual goals. The IDEA provides that an IEP must contain measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. 34 C.F.R. § 320(a)(2). In terms of drafting goals, an IEP team is required to write goals in a way that allows for an objective measurement of the child's progress toward achieving the annual goals. *See Jefferson County Sch. Dist. R1*, 110 LRP 22618 (SEA CO 12/01/09). Based on a thorough review of the documentation, as well as numerous interviews with reliable witnesses, SCO concludes that the IEP team developed measurable goals based on Student's identified needs in Student's October 29, 2015 IEP.
8. Mother also specifically alleges that the IEP team failed to develop a transition plan in Student's October 29, 2015 IEP. SCO concludes otherwise. Pursuant to 34 C.F.R. § 300.320(b), the IEP team must develop post-secondary goals and a transition plan. The BOCES asserts in its Response and Mother agrees in her Reply that the transition plan was completed at the December 9, 2015 IEP meeting when Student's October 24, 2015 IEP was finalized. Accordingly, SCO concludes that the BOCES complied with the procedural requirement to develop post-secondary goals and a transition plan in Student's October 29, 2015 IEP.

B. The BOCES modified curriculum for Student in accordance with Student's present levels of educational performance and educated Student in the LRE, but failed to implement Student's IEP on the first day of the 2015-16 school year.

9. SCO next considers Mother's allegations that the BOCES improperly implemented Student's IEP during the 2015-16 school year. Specifically, Mother alleges that School staff failed to modify

³⁰ SCO notes that although the November 2014 IEP document was not technically finalized for several months until March 2015 in that it was not "frozen" in the BOCES system, the November 2014 IEP was implemented.

curriculum in accordance with Student's present levels of educational performance, failed to educate Student in the LRE, and failed to implement Student's IEP on the first day of the 2015-16 school year.

10. The IDEA requires local education agencies such as the School District to provide eligible students with disabilities with a FAPE by providing special education and related services individually tailored to meet the student's unique needs, and provided in conformity with an individualized educational program (IEP) developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. The IDEA defines FAPE as special education and related services that: are provided free of charge; meet State standards; include an appropriate preschool, elementary school, or secondary school education; and are provided in conformity with a properly developed IEP. 20 USC § 1401(a)(9); 34 CFR § 300.17. 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 (10th Cir. 2005); *Van Duyn v. Baker Sch. Dist.* 5J, 481 F.3d 770 (9th Cir 2007), *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003).
11. Mother's allegations regarding modifications specifically points to Student's lack of meaningful progress and a few isolated instances of the use of books or materials that Mother felt were unsuitable for Student's age. While lack of progress on its own could be an indication of implementation issues, SCO concludes that Student did make meaningful progress, which is well documented and communicated with Mother in a variety of ways, including a daily back-and-forth notebook and regularly scheduled monthly meetings, in addition to report cards and reports at IEP meetings. Moreover, credible evidence in the record shows that Student's general education teachers collaborated with Paraprofessional daily to modify curriculum in accordance with Student's present levels and that Paraprofessional was supervised by and communicated with Special Education Teacher on a daily basis in order to provide support for Student. Language Arts Teacher and Reading Teacher explained how the books that Mother specifically identified in support of her allegation were used to modify the curriculum of the general education class to Student's educational level. Moreover, when Mother objected to the use of the books, Language Arts Teacher discontinued use of such books and continued to modify and adapt curriculum for Student in collaboration with Reading Teacher, Special Education Teacher, and Paraprofessional. Accordingly, SCO concludes that BOCES modified curriculum in accordance with Student's present levels of education performance during the 2015-16 school year.
12. Relative to the Complaint allegations regarding BOCES' failure to educate Student in the LRE, Mother specifically points to the manner in which Paraprofessional supports Student in the general education classes. Student's March 9, 2015 and October 29, 2015 IEPs both clearly provide that

Student receive direct academic and skill instruction within general education classes, that programming be provided under the direction or supervision of a special education teacher, and that Student receive adult paraprofessional support or peer guidance across all settings. SCO concludes, based on a thorough review of the documentation and numerous interviews with credible witnesses that Student is in general education classes 100% of the school day, receiving direct instruction from general education teachers with support from Paraprofessional or peers. Accordingly, the SCO finds no violation with regard to the implementation of LRE in Student's IEP.

13. Finally, Mother alleges that the BOCES failed to implement Student's IEP on the first day of the 2015-16 school year. SCO agrees. There is no disagreement between the BOCES and Mother that Student did not attend School on the first day of the school year due to lack of paraprofessional support; however, BOCES contends that it was by mutual agreement. Mother disagrees and contends that she felt she had no choice but to keep Student home on the first day of School after learning that Student would not have paraprofessional support on that day. Based on numerous interviews with credible witnesses, SCO concludes that the BOCES failed to implement Student's IEP on the first day of the school year.
14. SCO must then consider whether the violation resulted in a denial of FAPE. Not every deviation from an IEP's requirements, however, results in a denial of FAPE. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.2000)(*de minimis* failure to implement IEP does not deny FAPE). 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.
15. In this case, Student did not attend school on the first day of School without the appropriate support from a paraprofessional, which could have resulted in significant issues, i.e., Student's safety. Mother, Principal, and Special Education Teacher, however, all described that the first day of the school year is largely procedural, i.e., locker assignments, class schedules, etc., and that Student and Mother had already met with Principal and Special Education Teacher at School prior to the first day of School in order to "front load" these procedural issues for Student before school started. As a result, although Student did not attend the first day of school, the purpose of the first day was not frustrated. Although it is certainly unfortunate and arguably could have been prevented through

further communication between Mother, Principal, and Special Education Teacher regarding Student's needs and how to provide the appropriate support for Student on that first day of school in order to enable Student to attend, SCO concludes that this was not a material failure and, as such, finds no denial of FAPE.³¹

REMEDIES

Because the SCO has concluded that the School District has not violated the IDEA, no remedies are 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.

This 16th day of February, 2016.

Lisa A. Weiss, Esq.
State Complaints Officer

³¹ SCO notes the discordance between Mother's allegations regarding LRE related to adult support and her allegations regarding the lack of support preventing Student from attending the first day of school.

APPENDIX

Complaint, dated December 15, 2015, pages 1-7

- Exhibit 1: Email correspondence
- Exhibit 2: Examples of Student's work
- Exhibit 3: Parents' list of concerns, dated 12/9/15
- Exhibit 4: Correspondence, dated 11/10/15
- Exhibit 5: Special Education Progress Report, dated 3/30/15; IEP (Transition), dated 3/9/15; Inactive IEP, dated 10/29/15

Reply, dated January 25, 2016, pages 1-8

- Exhibit 6: Student Summary Report, dated 12/14/15
- Exhibit 7: Student's math sheets

Response, dated January 14, 2016, pages 1-40

- Exhibit A: Behavior Intervention Plan (BIP), dated 11/21/13; IEP, dated 11/21/13; IEP, dated 5/22/14; BIP, dated 11/6/14; IEP, dated 11/6/14; BIP, dated 3/9/15; IEP, dated 3/9/15; IEP notes, dated 4/9/15; BIP, dated 10/29/15; BIP, dated 11/3/15; IEP, dated 10/29/15; IEP finalized on 12/18/15
- Exhibit B: Eligibility Report, dated 11/21/13; Disability Determination, dated 11/21/13; Progress Monitoring, 11/21/14 through 5/19/14; Progress Monitoring, 11/6//14 through 10/29/15; Scholastic Math Inventory; Student Reading Report; Social Interaction Log; Samples of Progress Monitoring/Student's work product; Email correspondence re: progress monitoring
- Exhibit C: Prior Notice and Consent for Initial Provision of Special Education and Related Services, dated 11/21/13; Notice of Meetings, dated 10/15/14, 3/6/15, and 10/13/15; Prior Written Notices (PWN), dated 3/9/15, 4/9/15, and 12/9/15
- Exhibit D: Correspondence
- Exhibit E: School, School District, and BOCES staff members with knowledge of the Complaint allegations
- Exhibit F: BOCES' Special Education Procedures manual
- Exhibit G: Application for Open Enrollment; Student's schedule of classes; examples of work; videos

Supplemental Brief, dated February 11, 2016, pages 1-7

- Exhibit H: Email correspondence

Interviews with:

Mother

Reading Teacher

Language Arts Teacher

Math Teacher

School Psychologist

Principal

Assistant Principal

Paraprofessional

Director of Exceptional Services

Former Director of Exceptional Services

Chief School Advocacy Officer

Special Education Teacher