

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

State-Level Complaint 2011:508

Falcon School District #49

DECISION

INTRODUCTION

This is a state-level complaint (Complaint) dated July 23, 2011 which was properly filed with the Colorado Department of Education (Department) on July 26, 2011.

The Complaint was filed by [Father] and [Mother], the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

In order to comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA))² and the IDEA and to protect the anonymity of the parents and parents' child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be abbreviated as follows and redacted prior to publication:

- [Father] and [Mother], Parents of Student (“Parents” or “Complainants”);
- [Mother], Student’s Mother (“Mother”);
- [Student], Child of Parents, (“Student”);
- Student’s age of [Age] (“Age”);
- Falcon School District #49 (“District”);
- [Special Education Director], Director of Special Education Services (“Special Education Director”);
- [CF Coordinator], District Child Find Coordinator (“CF Coordinator”);
- [Case Manager], District Special Education Case Manager (“Case Manager”);
- [School Psychologist #1], Former School Psychologist (“School Psychologist #1”);
- [School Psychologist #2], School Psychologist #2 (“School Psychologist #2”);
- [SLP], District Speech-Language Pathologist (“SLP”);
- [School] (“School”);
- Community Partnership for Child Development (“CPCD”);
- [CPCD Chief], CPCD Chief Operating Officer (“CPCD Chief”);

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

² FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974 to protect a parent’s access to education records and to protect the privacy rights of students and their parents.

- [CPCD Coordinator], CPCD Special Education Coordinator (“CPCD Coordinator”);
- [ECSE], CPCD Early Childhood Special Education Teacher (“ECSE”);
- [CPCD Teacher], CPCD General Education Teacher (“CPCD Teacher”);
- [TA #1], CPCD Teaching Assistant (“TA #1”);
- [TA #2], CPCD Teaching Assistant (“TA #2”); and
- [Private Psychologist], PhD, Private Psychologist (“Private Psychologist”).

The Complaint consisted of four pages and Exhibits “1” through “9.”

The State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaints process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.³ The SCO has jurisdiction to resolve the Complaint pursuant to those regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO, is:

Whether, between September 17, 2010 and July 29, 2011, the District committed procedural violations which resulted in Student being denied a free appropriate public education (FAPE) in violation of the IDEA and its implementing regulations.

On July 26, 2011, the SCO conducted a lengthy telephone interview with Mother to clarify the substance of her Complaint allegations.

On July 26, 2011, Special Education Director was notified of Complainant’s allegations in a cover letter which included a complete copy of the Complaint and Exhibits “1” through “9.” The District was specifically directed to supply the SCO with:

1. A written response that specifically admits or denies each and every Complaint allegation. If the District is claiming that any Complaint allegation was already resolved through the June 24, 2011 Settlement Agreement, please identify precisely which allegations were resolved.
2. All documentation supporting the District’s Response to the allegation, including, but not limited to:
 - A. A complete copy of the Student’s current (2010) IEP, including a legible sign in sheet listing each and every person who attended any IEP Team meeting held in conjunction with development of the current IEP;
 - B. A complete copy of all meeting notes written or recorded in conjunction with the current (2010) IEP;
 - C. A complete copy of all prior written notices supplied to the Parents between July 26, 2010 and July 26, 2011;

³ 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).

- D. A complete copy of any other IEP that Student previously had during the 2010-2011 school year;
- E. A complete copy of all of Student's progress reports compiled in conjunction with the 2010-2011 school year;
- F. A complete copy of Student's grade reports for the 2010-2011 school year;
- G. Student's attendance records for the 2010-2011 school year;
- H. Complete copies of the District's policies and procedures in effect at the beginning of the 2010-2011 concerning: the placement and change of placement of students and preschool students; and the evaluation of preschool children (three through five years of age);
- I. The complete name, title and contact information for each District or Head Start staff member who has knowledge of the facts underlying the Complaint allegations;
- J. A legible copy of the District's 2010-2011 school calendar; and
- K. A complete copy of the June 24, 2011 Settlement Agreement.

On August 11, 2011 the District's Response (consisting of pgs. 1-6), and Exhibits "A" through "K" were timely received.

On August 11, 2011 the SCO sent Complainants a cover letter which included a complete copy of the Response and exhibits by overnight mail.

On August 15, 2011, at the SCO's request, the District supplied the page numbers of all exhibits that were referenced in the Response and also supplied a table of contents which listed the documents contained in each exhibit. With Mother's permission, the SCO then emailed this information to Complainants and extended the Reply timeline to 5:00 p.m. on August 26, 2011.

On August 25, 2011 Complaint's Reply (pgs. 1-7) and Exhibits (10-20) were timely received. On the same date, the SCO mailed to both parties a copy of the Reply and marked exhibits with a cover letter.

On August 31, 2011 the SCO interviewed Private Psychologist and the CPCD Chief by telephone.

At SCO's request, on September 2, 2011 the District supplied additional information which was marked Exhibit "L."

On September 8, 2011, the SCO conducted face-to-face interviews with: CF Coordinator; Case Manager; CPCD Teacher; ECSE; and TA #1. In conjunction with ECSE's interview, the SCO obtained additional documentation from ECSE which was marked as Exhibit "M."

On September 9, 2011, the SCO conducted telephone interviews with Mother, TA #2 and CPCD Coordinator. In conjunction with CPCD Coordinator's interview, the SCO obtained additional documentation which was marked as Exhibit "N."

On September 13, 2011, the SCO conducted a telephone interview with School Psychologist #2.

On September 13, 2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

Parents' Complaint allegations are summarized as follows:

1. Student's 2010 IEP is inappropriate for the following reasons:
 - a. Goal #3 fails to specify the method (i.e., verbally, pointing, matching, etc.) by which Student is to identify basic shapes;
 - b. Contrary to Student's educational needs, the IEP lists no measurable goals concerning the identification and verbalization of numbers 1-20 or the letters of the alphabet;
 - c. Contrary to Student's educational needs, the IEP contains no Behavior Intervention Plan, psychological services or speech language services to address Student's identified disability; and
 - d. During the 2010-2011 school year, Student failed to make the progress described in Special Education Teacher's progress reports (Exhibit #2).
2. In anticipation of the 2011-2012 school year, the District unilaterally changed Student's placement. Specifically:
 - a. The District improperly reduced Student's classroom hours from the 14 hours per week listed in the 2010 IEP to 12 hours per week (as evidenced by the May 2011 letter - Exhibit #4);
 - b. The District failed to supply Parents with prior written notice in conjunction with the May 2011 unilateral change of placement; and
 - c. The District improperly relied on the "high-risk" morning classroom to the "low-risk" afternoon classroom.
3. The District failed to properly evaluate Student in conjunction with the April 2010 Behavior Assessment System for Children (BASC) (Exhibit #3) as evidenced by the results of the May 2011 BASC (Exhibit #5).
4. The District's plan to re-administer the BASC on July 29, 2011 is inappropriate inasmuch as the BASC was previously administered by the District in April 2010 (Exhibit #3) and by a private psychologist in May 2011 (Exhibit #5).

Summary of Proposed Remedies: Parents proposed that the District: notify Parents of all placement, IEP changes and academic progress; honor the 14 hour week listed in the 2010 IEP; determine Student's appropriate risk factors; provide an appropriate IEP with goals and objectives for selective mutism; provide related services for selective mutism including psychological and speech services; and conduct appropriate social/emotional assessments.

DISTRICT'S RESPONSE⁴

The District's Response, denying of each of the Complaint allegations, is summarized as follows:

1. Student's 2010 IEP is appropriate for the following reasons:
 - a. Goal #3, consistent with the CDE's recommended Procedural Manual, properly describes the evaluation method (i.e., by teacher observation).
 - b. The IEP Team did not identify counting and reciting of the alphabet as educational needs requiring remediation.
 - c. The IEP Team did not identify educational needs requiring the development of a Behavior Intervention Plan. Although the Parents allege that Student suffers from selective mutism at home, this has not been observed at School and Parents have not supplied a DSM multi-axial diagnostic report to support this claim. The IEP Team determined that Student did not meet the ECEA criteria for identification as a Significant Identifiable Emotional Disability (SIED) but did meet the eligibility category of Preschooler with a Disability. The initial multidisciplinary evaluation did not support a need for psychological services.
 - d. The District denies that Student failed to make the progress described in Special Education Teacher's progress reports.

2. The District has not unilaterally changed Student's placement in anticipation of the 2011-2012 school year. Furthermore, the claims raised by Complainant in items a-c below are not matters protected under the IDEA. Specifically:
 - a. The District has not reduced Student's classroom hours from the 14 hours per week listed in the 2010 IEP to 12 hours per week. The May 2011 letter (Exhibit #4) was written by a CPCD employee. CPCD is the Head Start grantee for the county. The letter advised the Complainants of changes in the CPCD programming. The letter was not from a District employee and did not notify the Complainants of changes to Student's special education programming but merely of changes in the CPCD programming.
 - b. The District has not changed Student's placement in anticipation of the 2011-2012 school year and therefore the District had no obligation to provide Complainants with prior written notice in conjunction with the May 2011 letter from CPCD.
 - c. The risk factor assessment (Exhibit #8) is an assessment which CPCD administers to applicants. The risk assessment is neither required nor administered by the District. Based on the CPCD risk assessment, CPCD makes a determination as to whether a student is placed in a morning slot (a 14 hour program) or an afternoon slot (a 12 hour program). Based on CPCD's risk assessment, CPCD assigned Student to the afternoon CPCD preschool program. The District has notified Complainants of other preschool programs in the District that are able to deliver the services listed in Student's IEP. However the

⁴ Many of the exhibits attached to the District's Response were duplicative, not relevant, or referred to matters outside of the Complaint and, as noted in the Record, Appendix A, were not considered by the SCO.

Complainants have chosen to access CPCD and, despite CPCD's risk assessment, want Student to attend CPCD's morning preschool program.

3. The District denies that it failed to properly evaluate Student in conjunction with the April 2010 Behavior Assessment System for Children (BASC) (Exhibit #3) as evidenced by the results of the May 2011 BASC (Exhibit #5). The April 25, 2010 BASC was appropriately administered, scored and interpreted. Furthermore, the results of the April 25, 2010 BASC were commensurate with the results of the May 18, 2011 result.

4. The District's plan to re-administer the BASC on July 29, 2011 was not inappropriate. The BASC is normed and standardized to be administered and re-administered. The BASC is often re-administered to evaluate a student's progress or to evaluate a change in a student's emotional status as was the District's plan in this case.

PARENTS' REPLY⁵

Parents' Reply is summarized as follows:

1. Student's 2010 IEP is inappropriate for the following reasons:
 - a. Reiterated the allegation and raised a new claim ("We have asked for copies of the progress reports that were given throughout the school year [2010-2011] and have not been provided any").
 - b. Reiterated the allegation and raised a new claim ("By not setting out services or having the assessment completed for a new IEP, the District and Headstart (sic) are violating the mediation agreement").
 - c. Reiterated the allegation and noted that the District has not contacted Student's private psychologist or requested a DSM.
 - d. Reiterated the allegation.
2. In anticipation of the 2011-2012 school year, the District unilaterally changed Student's placement. Parent's reiterated claims a through c.
3. Reiterated the allegation and raised a new claim (The District has predetermined Student's disability, as evidenced by the 7/1/2011 prior written notice).
4. Reiterated the allegation.

⁵ Parents' Reply included numerous exhibits (i.e., #s 10-19) which were not relevant or concerned matters occurring outside the Complaint timelines (i.e., 7/26/2010 to 7/26/2011). As noted in the Record, Appendix A, these exhibits were not considered by the SCO. The SCO notified Parents that, consistent with the State Complaint Procedures, new allegations raised in the Reply would require a new complaint so that the District would have an opportunity to file a Response. However, Parents' new claim that they were never supplied IEP progress reporting during the school year is addressed in the Decision in as much as the SCO was able to interview District and CPCD staff responsible for this activity.

FINDINGS OF FACT

After thorough and careful analysis of the Record,⁶ the SCO makes the following FINDINGS:

Factual Background:

1. At the time of the Complaint, Student was [Age] years of age.
2. Student was determined eligible for Part C early intervention services under an Individual Family Service Plan (IFSP) effective March 3, 2008.⁷
3. **The 2009 Determination of Eligibility.** Mother requested an initial evaluation due to concerns regarding Student's "speech intelligibility" and "selective mute speech." The Student's evaluation consisted of an interview of Mother; a health screening; administration of the Clinical Assessment of Articulation and Phonology (CAAP); and analysis of present levels of performance. The September 17, 2009 Evaluation Report noted that Student had reached all developmental milestones within average timeframes with the exception of speech development and articulation. During the evaluation interview, Mother expressed concern that Student "does not speak in public environments" although [Student] "speaks without prompting at home." The report noted that "there has been discussion of selective mutism but no formal diagnosis."⁸
4. On September 18, 2009 the District Multidisciplinary Team met and determined that Student was a Preschool Child with a Disability.⁹
5. **The 2009 (Initial) Individualized Education Program (IEP).**¹⁰ On September 18, 2009, the IEP Team met to discuss Student's strengths, present levels of performance and educational needs. The team determined:
 - Student's disability as a Preschooler with a Disability;
 - Student's needs were: educational - special education support to develop age appropriate pre-academic skills;
 - Student did not need: a Behavior Intervention Plan (BIP); assistive technology devices or services; speech-language services; or special transportation;
 - Special education and related services would consist of 30 direct minutes per week of support in class in either a small group and/or a one-on-one setting;
 - Student's least restrictive placement (LRE) was in the regular early child program at least 80% of the time;
 - Four measurable goals were appropriate: (i) Student will name 5 colors (blue, yellow, white, black and purple); (ii) Student will identify 5 shapes (circle, square, triangle, oval and rectangle); (iii) Student will verbally answer questions when

⁶ Appendix A, attached and incorporated by reference, details the entire Record.

⁷ Interview of CF Coordinator.

⁸ Exhibit A, pgs. 112-114.

⁹ Id., pg. 111.

¹⁰ Exhibit A, pgs. 101-110.

asked in all classroom situation; and (iv) Student will request items from teachers and express wants and needs verbally in all classroom situations; and

- In order to access the general curriculum and/or to make effective progress, Student was to be given a variety of choices to communicate when not complying verbally (i.e., blinking, head nod, pictures, pointing, etc.).¹¹

6. **The 2010 (Special Evaluation) IEP Meeting.**¹² Parents and Former Preschool Teacher requested that Student receive further speech/language and social emotional evaluations since, until recently, Student had not been verbally communicating with adults and peers in the preschool setting. In advance of the April 27, 2010 meeting, a Behavior Assessment System for Children, second edition (BASC:2) and CAAP were administered. School Psychologist #1 prepared a detailed psycho-educational assessment and report in advance of the meeting.¹³

7. Based upon her observations and assessments, School Psychologist #1 concluded that although Student showed signs of withdrawal, anxiety and shyness, these social emotional concerns were not impacting [Student's] access to education since Student was able to participate in the classroom setting with supports from the teacher. School Psychologist #1 recommended that Student not receive psychological support services through [Student's] IEP.¹⁴

8. Based on her observations and assessments, SLP concluded that Student had developmentally age appropriate speech and language skills to participate in the general education setting. "After two sessions of visiting the speech room, [Student] was answering questions, conversing with friends, and telling stories. . . Although it does take [Student] a couple of minutes to warm up at first, [Student] seems to enjoy the opportunity to participate in a small group with peers [Student's] age." SLP recommended that Student not receive speech and language services.¹⁵

9. On April 27, 2010 the IEP Team met and concluded that:

- Student's identification (i.e., Preschooler with a Disability) remained appropriate;
- Student's 2009 IEP goals and placement (i.e., the regular early child program at least 80% of the time) remained appropriate;
- Student's 2009 IEP special education and related services (i.e., 30 minutes per week of direct educational support in the classroom) remained appropriate;
- Student did not demonstrate a need for social emotional support services or speech and language services; and
- Accommodations and Modifications: In order to access the general curriculum and/or to make effective progress: Student be given additional time to respond verbally;

¹¹ Id. The IEP also noted that Student would be enrolled in a 12 hour per week general education preschool program.

¹² Exhibit A, pgs. 85-95.

¹³ Exhibit A, pgs. 96-99 and Exhibit I, pgs. 10-13.

¹⁴ Exhibit I, pg. 13.

¹⁵ Exhibit A, pgs 98-99.

be encouraged to respond verbally instead of nodding [Student's] head; be supplied small group instruction; be encouraged to interact with peers and build relationships.¹⁶

The 2010 IEP Claims

10. **The 2010 (Annual Review) IEP Meeting.** The IEP Team¹⁷ met on September 17, 2010. The team determined that:

- Student's disability continued to be a Preschooler with a Disability;
- *Student's needs consisted of: needing encouragement to "voice" [Student's] wants and needs, encouragement to play and be with others, and to identify basic shapes;*
- Student did not need: a Behavior Intervention Plan (BIP), assistive technology devices or services, or special transportation;
- Special education and related services would consist of 30 direct minutes per week of support in the classroom in either a small group and/or a one-on-one setting;¹⁸
- *Student's least restrictive placement (LRE) continued to be in the regular early child program at least 80% of the time where [Student] would receive small group and one on one support to develop verbalizations in the classroom;*
- Four measurable goals (detailed below) concerning verbalizations and some academics were appropriate; and
- Accommodations and Modifications: In order to access the general curriculum and/or to make effective progress, *Student would be paired with staff to establish a trusting environment in order to have [Student] vocalize [Student's] wants, given extra time for oral response and be prompted for sounds for response.*¹⁹

11. The September 17, 2010 IEP meeting notes, written by School Psychologist #2 and signed by Mother, note that:

Parental Concerns: Parent indicated good growth over the summer and during [Student's] short time at [School]. Dad will be deployed in February of 2011 and Mother is concerned about regression at that time.

Classroom Teacher Report: [Student] is vocalizing in the classroom and is progressing nicely. [Student] can name several colors.

Present levels of performance and evaluations . . . Still not as verbal as expected; will answer simple questions w/one word responses . . .

...

¹⁶ Exhibit A, pgs. 85-95. The IEP also noted that Student was enrolled in a 12 hour per week integrated general education preschool program.

¹⁷ The 2010 IEP team consisted of: Mother; CPCD Teacher; ECSE; School Psychologist #2; and Case Manager, Exhibit A, pg. 12.

¹⁸ Id., pg. 19. Although Section 13 of the IEP listed the services as "30.0 per day," Section 14 indicates "30 minutes per week" as do the meeting notes, Exhibit A, pgs. 25. After interviewing Case Manager, the SCO concludes that the "per day" notation in Section 13 was a typographical error.

¹⁹ Id., pgs. 13-20 (emphasis added).

Additional comments/concerns/notes: Demands for vocalization should not occur until after [the] October break and after pairing w/staff has occurred.”²⁰

12. Neither the 2010 IEP nor the September 17, 2010 meeting notes make any mention of Mother or other team members having expressed concern that, given Student’s educational needs, the IEP goals should include the identification and verbalization of numbers 1-20 and the letters of the alphabet. Parent recalled expressing this concern although no other team member recalled anyone expressing such a concern.²¹ The SCO finds credible School Psychologist #2’s statement that if this had been mentioned as a concern, she would have recorded the concern in her meeting notes.²² The SCO also finds credible CPCD Teacher’s statement that the CPCD preschool curriculum specifically focuses on these cognitive skills with all preschool students.²³ The SCO concludes that, contrary to Parents’ Complaint allegation, the team did not express concern nor did Student demonstrate a specific educational need in this area.

13. Neither the 2010 IEP nor the September 17, 2010 meeting notes make any mention of Mother or other IEP team members having expressed concerns during the meeting that, given Student’s educational needs, psychological services or speech-language services were appropriate. In fact, neither Parent nor any other team member recalled either psychological or speech-language services being raised as an area of concern during the meeting.²⁴ The SCO finds credible School Psychologist #2’s statement that if the need for such services had been mentioned as a concern, she would have recorded the concerns in her meeting notes, a Functional Behavioral Analysis (FBA) would have been arranged and another IEP meeting scheduled.²⁵ Furthermore, as noted in Finding of Facts (“FFs”) 6-9 above, Student’s need for psychological and/or speech language services was fully evaluated, considered and rejected by the IEP team during an April 27, 2010 Special Evaluation meeting. The SCO concludes that, contrary to Parents’ Complaint allegations, the team did not express concern nor did Student demonstrate any educational need for a BIP, psychological services or speech-language services.

14. **2010 IEP Goals and Progress Notes.** Given Student’s educational needs, the team identified four goals, the progress for which was to be measured at four intervals by ECSE during the school year. The goals and ECSE’s progress reporting are as follows:

- i) Student will verbally answer questions when asked in all classroom situations in 4 out of 5 trials (baseline: Student will answer simple questions with simple responses):
 - 10/28/2010: progress made with familiar adults;
 - 01/13/2011: progress made 50%;
 - 03/07/2011: progress made 60%;
 - 06/01/2011: 75%.

²⁰ Exhibit A, pg. 25.

²¹ Interviews of: Mother; CPCD Teacher; ECSE; Case Manager; and School Psychologist #2.

²² Interview of School Psychologist #2,

²³ Interview of CPCD Teacher and Exhibit C, pgs. 12-15.

²⁴ Interviews of: Mother; CPCD Teacher; ECSE; Case Manager; and School Psychologist #2.

²⁵ Interview of School Psychologist #2.

- ii) Student will verbally make [Student's] wants and needs known in 4 out of 5 trial (baseline: none at this time):
 - 10/28/2010: progress made will point;
 - 01/13/2011: progress made use[s] words when prompted;
 - 03/07/2011: progress made emerging; and
 - 06/01/2011: 75% with familiar adults.

- iii) Student will identify basic shapes in 4 out of 5 trials (baseline: two consistent shapes – circle & triangle – at this time):
 - 10/28/2010: progress made inconsistent;
 - 01/13/2011: progress made 60%;
 - 03/07/2011: goal met.

- iv) Student will verbally and non-verbally interact with peers within the routine of the day in 4 out of 5 trials (baseline: non verbally interacts at times 10% of the time); and
 - 10/28/2010: progress made;
 - 01/13/2011: progress made;
 - 03/07/2011: progress made 80%; and
 - 06/01/2011: goal met.²⁶

The SCO concludes that Goal #3 should have specified the method by which Student was to identify [Student's] basic shapes (i.e., verbally, pointing, matching, etc.). However, the credible information in the Record is that Student's progress occurred along a continuum, first by having [Student] stand on the shapes and, ultimately, by having [Student] verbalize the shapes.²⁷

15. Given Student's educational needs, the SCO concludes that the goals, special education services and accommodations devised by the team were appropriate interventions and strategies to address those needs.

16. During the school year, in addition to completing quarterly progress reports, ECSE kept hand written anecdotal notes²⁸ and "connect notes" concerning Student's progress associated with the four IEP goals. The "connect notes" are computer logs maintained for each student whereby teachers, providers and staff can record notes concerning a student's services, progress, conversations with parents, etc. These notes are typically recorded within two days of an event.²⁹

17. Given the credible information in the Record,³⁰ the SCO concludes that quarterly progress reported by ECSE accurately reflects Student's progress on each of the four IEP goals during the 2010-2011 school year.

²⁶ Exhibit C, pgs. 8-9.

²⁷ Interviews of: ECSE; CPCD Teacher and TA #2 and Exhibit C, pg. 3.

²⁸ At CPCD's request, ECSE typed up her anecdotal notes in advance of voluntary mediation which occurred between Parents and the District on June 24, 2011. Interview with ECSE and CPCD Coordinator.

²⁹ Interviews of: ECSE and CPCD Teacher.

³⁰ Interviews of: ECSE; CPCD Teacher; TA #2; and Exhibits C, pgs. 3-4 & 8-9; D, pgs. 1-6 & 8-13; E, pgs. 5-9; and M, pgs. 1-7.

18. The credible information in the Record indicates that during the school year Parents were not supplied with formal IEP progress reporting (i.e., Exhibit C, pgs. 8-9).³¹ ECSE confirmed that she had never personally sent or hand delivered Student's quarterly progress notes to Parents. Interviews revealed that CPCD's practice was to have the service providers record each student's quarterly progress, including Student's, which were then to be given to the classroom staff for distribution to the parents. ECSE did not know who was responsible for supplying the progress reporting to classroom staff nor do the CPCD policies provide clear procedures. CPCD's policies and procedures provide that therapists are to supply copies of the quarterly progress reporting for distribution to parent, district, teacher and office file but do not specify precisely to whom the therapist is to deliver the reports for distribution.³² CPCD Teacher stated that she never received the IEP progress reporting and, therefore, did not supply it to Parents during parent-teacher conferences conducted on November 5, 2010 and May 19, 2011. The District's expectation was that the Case Manager would supply progress reporting to parents. However, Case Manager never delivered the progress notes to Parents.³³

19. The SCO concludes that Parents were first supplied with formal quarterly IEP progress reporting on July 12, 2011.³⁴ However, there is extensive credible evidence in the Record leading the SCO to conclude that although Parents did not receive timely written IEP progress reporting, they were very knowledgeable about Student's progress during the 2010-2011 school year. Mother came to the classroom on a daily basis to drop off and pick up Student. During those visits, Mother frequently remained for 10-15 minutes; observed Student in classroom activities; spoke with the CPCD teaching staff and, from time to time, ECSE.³⁵ For example, Mother spoke with ECSE on January 7, 2011: "[Mother] was pleased with [Student's] progress and felt [Student] was coming out of [Student's] shell at school . . ."³⁶ Additionally, during the 2010-2011 school year, CPCD staff also conducted at least two home visits and filed written reports for visits occurring during the fall and spring. Mother was present during both of these home visits. The report from the spring, 2011 visit indicates "CD Services (Language, Cognitive, Social/Emotional, Physical development): Mother of child does not have any concerns at this time. [Student] is thriving in preschool . . . Parent's request/plan for next visit: Mother of child to call if needed."³⁷ Finally, during the November 5, 2010 and May 19, 2011 parent-teacher conferences, classroom staff personally reviewed extensive written reports with Parents concerning Student's strengths in social-emotional, physical, language and cognitive development.³⁸

Change of Placement Claims:

20. CPCD is a private, nonprofit agency serving parents living in El Paso County and their children from prenatal to age five in partnership with area school districts, including District.

³¹ Interviews of: Mother; ECSE; CPCD Teacher; Case Manager and CPCD Coordinator.

³² Exhibit N.

³³ Interview of Case Manager and September 13, 2011 email from Special Education Director.

³⁴ Interview of CPCD Coordinator.

³⁵ Interviews of: Mother; ECSE; CPCD Teacher; and TA #2.

³⁶ Exhibit M, pg. 5.

³⁷ Exhibit C, pgs. 5-6.

³⁸ Interviews of CPCD Teacher and TA #1; Exhibit E, pgs. 5-9.

CPCD is the Head Start and Early Head Start grantee for El Paso County. CPCD contracts with select school districts, including District, to provide Head Start and Colorado Preschool Program (CPP) services. Because CPP program dollars cannot be used to serve children with special needs, the District also contracts with CPCD for the supply of therapy and preschool services to children with special needs in an inclusive setting (i.e., a “blended program” consisting of CPP/special education services).³⁹ The services are provided in two part-day classroom slots (i.e., an a.m. class and p.m. class) where there are typically-developing children and children with identified special needs. The same inclusive setting (i.e., the same classroom, teachers, team, curriculum and facilities) is used during both the a.m. and p.m. classes regardless of whether the child is receiving services through the Head Start, CPP or the blended program. The a.m. class is 3.5 hours long, Tuesday through Friday (i.e., 14 hours per week) and typically serves children having a high number of risk factors, while the p.m. class is 3.0 hours long, Tuesday through Friday (i.e., 12 hours per week) and serves children having a lower number of risk factors. This arrangement also allows for the CPCD staff to take a 30 minute lunch between the a.m. and p.m. classes.⁴⁰

21. Head Start is a federal program with a limited number of available slots and, therefore, applicants must meet specific federal eligibility guidelines, including risk factor criteria approved annually by the local Parent Policy Council. Head Start requires that children/families served be at or below 100% of the Federal Poverty Level (FPL), and no more than 10% of the total allotted slots may be over this 100% FPL. A risk factor assessment is completed in conjunction with a parent’s initial application to Head Start. The risk factors weigh and score a variety of factors specific to both the family and child (i.e., homelessness, family violence, deaf parent, teen parent, absent parent, child needs language development, etc.). Those selected for Head Start typically have from 3-9 risk factors with scores ranging from 9 to 34 points.⁴¹

22. During the 2010-2011 school year, Parents applied to have Student accepted for enrollment into the Head Start program. In conjunction with that application, a risk factor assessment was completed and Student was determined to have one risk factor (i.e., child with special needs) with a score of three points. Student did not meet the income eligibility requirements but because there was a slot available in the “10% over FPL” allotment, [Student] was offered and accepted a Head Start slot in the CPCD classroom. The available slot was in the a.m. preschool classroom at School, 3.5 hours per day (i.e., 14 hours per week), Tuesday-Friday.⁴²

23. For the 2011-2012 school year, there were many more children competing for the limited number of “10% over FPL” slots. Student still did not meet the income eligibility requirements and, given [Student’s] low risk factor score (i.e., one risk factor with a score of three points), coupled with the very limited number of “10% over FPL” slots, [Student] did not qualify for Head Start. However, because [Student] was a returning student with an IEP, CPCD offered Student a slot in the “blended program.” The slot was in the p.m. preschool classroom at School,

³⁹ Interview with CPCD Chief and Exhibit G, pgs. 2-12.

⁴⁰ Interview with CPCD Chief and Exhibit G, pg. 15.

⁴¹ Id.

⁴² Interviews of Mother and CPCD Chief.

3.0 hours per day (i.e., 12 hours per week). As noted in FF #20 above, the p.m. classroom serves children having a lower number of risk factors.

24. Consistent with FF #23 above, in May, 2011, CPCD sent Parents a letter offering their child a CPCD “blended program” slot during the 2011-2012 school year. The slot offered was at the same school, with the same CPCD Teacher and ECSE albeit in the p.m. classroom (i.e., 12 hours per week).⁴³ Parents claim that CPCD’s offer is contrary to Student’s 2010 IEP, improperly reduced Student’s preschool hours from 14 hours per week to 12 hours per week and, consequently, constituted a unilateral change in placement.⁴⁴ Having carefully reviewed the extensive Record, the SCO concludes that Parents’ “change of placement” claims are baseless for a number of reasons:

- a) Being a preschooler, Student is not entitled to receive any set number of general education services per week. The “14 hours per week” designation referenced in the 2010 IEP is used by school districts for annual reporting requirements. Additionally, these “14 hours per week” indicate the number of general education hours based on the particular classroom the student is attending and not the number of special education program hours. Because Student was 3-5 years of age and, during the 2010-2011 school year, was attending the a.m. classroom, it was appropriate for the 2010 IEP to list “14 general education hours per week.”⁴⁵ This notation has nothing whatsoever to do with the special education and related services to which Student is entitled under the IDEA.
- b) Under the 2010 IEP, Student was entitled to receive and, in fact, did receive 30 minutes per week of direct special education services. These special education and related services remained the same, regardless of whether Student attended the a.m. or the p.m. classroom.
- c) Consistent with the 2010 IEP and as noted in FF #10, above, the IEP team determined that Student’s *placement* was in the regular early child program at least 80% of the time where [Student] would receive small group and one on one support to develop verbalizations in the classroom. This is Student’s placement regardless of whether Student attends the a.m. or p.m. CPCD classroom during the 2011-2012 school year. Therefore, contrary to Parents’ claims, Student’s placement was not unilaterally changed when CPCD offered [Student] a slot in the p.m. classroom.
- d) Because CPCD’s May 2011 letter offering Parents a slot in the p.m. classroom did not constitute a change in placement, it follows that the District had no duty to supply Parents with prior written notice.
- e) Contrary to Parents’ claims, the District did not improperly rely on the risk factor assessment to offer Student a slot in the p.m. program during the 2011-2012 school year. Rather, as fully explained in FF #s 20-23, above, and consistent with federal law, the risk factors are used by CPCD to determine each student’s eligibility for the programs CPCD is charged with administering. In conformance with federal law and local Parent Policy Council rules, it was appropriate for CPCD to rely on the risk

⁴³ Exhibit E, pg. 26.

⁴⁴ Interview of Mother and Complaint.

⁴⁵ Exhibit A, pg. 19.

factor assessment in determining whether Student would be offered a seat during the 2011-2012 school year and, if so, which classroom.

The BASC:2 Claims:

25. The April 2010 BASC:2 is computer-generated raw data⁴⁶ that School Psychologist #1 analyzed in conjunction with her extensive Psycho-Educational Assessment.⁴⁷ That assessment also included detailed information gathered through numerous classroom and speech therapy session observations and after conferring with Student's classroom teacher and speech-language pathologist.⁴⁸ As noted in FF #s 6-9, above, the assessment was supplied to the 2010 IEP team in conjunction with the April 27, 2010 Special Evaluation.

26. The May 2011 BASC:2 is also computer generated raw data which was conducted under the supervision of Private Psychologist.⁴⁹ No report accompanied the raw data and SCO confirmed that Private Psychologist merely reviewed the raw data with Parent during a subsequent appointment.⁵⁰ Private Psychologist did not observe Student in the classroom setting nor confer with CPCD teachers or providers. Although Parent stated that she supplied Private Psychologist with a copy of the District's April 2010 BASC:2 and Psycho-Educational Assessment, the credible information in the Record indicates that these records were never supplied to Private Psychologist.⁵¹ Furthermore, the F Index which professionals use to gauge the validity of the raw data indicates that rater #2 was biased.⁵² Nor could Private Psychologist explain why there was no F Index rating was listed for rater #3.⁵³

27. The April 2010 raw data and the May 2011 raw data are similar. Raw data in both computer generated reports evidenced high Student scoring for anxiety and withdrawal. Given the credible information in the Record, the SCO concludes that contrary to Parents' claims, the District properly evaluated Student in conjunction with the April 2010 BASC:2 and Psycho-Educational Assessment.

28. Parents' final claim is that because the BASC:2 was administered in April 2010 and May 2011, District plans to re-administer the BASC:2 on July 29, 2011 is inappropriate. The SCO notes that Parents chose not to share with the District a copy of the of the May 2011 raw data until they filed this Complaint.⁵⁴ Additionally, the SCO is particularly persuaded by the fact that in July 21, 2011 email communications with the District, Mother expressed concern that re-administration of the BASC:2 would provide evidence that Student has "gotten better since May."⁵⁵ The SCO also finds credible the District's assertion that the BASC is normed and

⁴⁶ Exhibit I, pgs. 3-7.

⁴⁷ Exhibit I, pgs. 10-13.

⁴⁸ Id.

⁴⁹ Exhibit I, pgs. 15-22.

⁵⁰ Interviews of Private Psychologist and Mother.

⁵¹ Interview of Private Psychologist.

⁵² Exhibit I, pg. 18.

⁵³ Id.

⁵⁴ Interview of Mother.

⁵⁵ Exhibit J, pgs 1-2.

standardized to be administered and re-administered.⁵⁶ Parents have supplied no evidence that the District’s plan to re-administer the BASC:2 would be inappropriate or in any way invalidate the results of earlier BASC:2 results. Given the credible information in the Record, the SCO concludes that this final claim is without merit.

CONCLUSIONS OF LAW

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

1. In asserting a violation of the IDEA, the burden of proof is properly placed on the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528 (2005) (“The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.”) Accord *A.E. v. Indep. Sch. Dist. No. 25*, 936 F.2d 472 (10th Cir. 1991) (“The burden of proof rests upon the party attacking the child’s IEP.”)
2. Under the IDEA and the corresponding Colorado law, the Exceptional Children’s Educational Act (ECEA), students with disabilities have the right to a free appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA 1 CCR 301-8, 2220-R-1.00 *et seq.*)⁵⁷
3. The IDEA defines a FAPE to mean *special education and related services that:*
 - (a) Are provided at public expense, under public supervision and direction, and without charge;
 - (b) Meet the standards of the [Colorado Department of Education];
 - (c) Include an appropriate preschool, elementary school, or secondary school education; and
 - (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

Section 300.17 (emphasis added).

4. The standard for determining whether a student has received a FAPE is whether the student received “some educational benefit.” *Board of Education v. Rowley*, 458 U.S. 176 (1982). The educational benefit required by the IDEA must be “more than *de minimis*.” *Urban ex re. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 727 (10th Cir. 1996).
5. In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of the IEP. *Garcia v. Board of Educ.*, 520 F.3d 1116, 1125 (10th Cir. 2008). Next, the court looks at whether the special education

⁵⁶ Response, pgs. 5-6.

⁵⁷ Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

Whether the 2010 IEP was inappropriate.

6. Parents' various IEP claims called into question whether the District complied with the relevant IDEA procedures in revising the 2010 IEP. The relevant IDEA regulations are found at §§ 300.320 through 300.324.

7. In developing, reviewing or revising an IEP, the IEP Team must consider:

- (a) The strengths of the child;
- (b) The concerns of the parents;
- (c) The results of the initial or most recent evaluation of the child; and
- (d) The academic, developmental, and functional needs of the child.

Section 300.324(a)(1)(i)-(iv). In the case of a child whose behavior impedes the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. § 300.324(a)(2)(i).

8. The concern consistently expressed by Parents was that, although Student freely vocalized at home, [Student] would not vocalize in public settings. Consistent with Parents' concerns and Student's educational needs, the 2009 IEP was devised and implemented. Initially, during the 2009-2010 school year, Student was not observed to vocalize in the school setting. However, as the year progressed and Student became more comfortable with [Student's] teachers, providers and peers, [Student] slowly began vocalizing in various educational settings. (FF #s 3-5).

9. The annual goals of an IEP must meet the child's needs resulting from the disability and must meet each of the child's other educational needs. § 300.320(a)(2)(i)(A)-(B). Parents claim that, contrary to Student's educational needs, the 2010 IEP:

- a) Listed no measurable goals concerning the identification and verbalization of numbers 1-20 or the letters of the alphabet; and
- b) Contained no Behavior Intervention Plan (BIP), psychological services or speech-language services.

The SCO's investigation revealed that during the September 17, 2010 IEP meeting no team member expressed concerns that Student needed the additional specific cognitive goals raised by Parents' Complaint. (FF #s 10-12). Parents' concerns regarding a BIP, psychological services and speech-language services were fully considered during the April 27, 2010 Special Evaluation meeting. At that time, the IEP team determined that Student did not need psychological or speech-language services in order to have [Student's] educational needs met. (FF #s 6-9). Furthermore, during the September 17, 2010 meeting, no team member expressed concern that Student had educational need for these services. (FF #13). The IEP goals, accommodations and services were appropriate interventions and strategies to address Student's educational needs.

(FF #s 14-15). Because Student had no need for additional goals or services, there was no violation of the IDEA.

10. An IEP must include a statement of measurable annual goals. § 300.320(a)(2)(i). Goal #3 did not specify the method (i.e. verbally, pointing, matching, etc.) by which Student was to identify basic shapes. Therefore, on its face, the goal as written failed to describe precisely how Student was to identify shapes and, consequently, whether [Student] had made progress on the goal. However, investigation revealed that Student's progress on this goal had been measured along a continuum. During the early part of the 2010-2011 school year, Student was asked to stand on the appropriate shapes and, by the second half of the school year, Student was vocalizing the shapes to ECSE, CPCD Teacher and TA #2. (FF #14). Certainly the goal, as written, should have been more specific in describing how Student was expected to respond and be measured. However, as implemented, the goal was measurable and Student clearly made progress. Consequently, although the goal, as written, constituted a technical procedural violation, the goal, as implemented, provided Student with educational benefit.

11. The IEP must describe how the child's progress in meeting the annual goals will be measured and this progress must be reported to parents through the use of quarterly or other periodic reports concurrent with the issuance of report cards. § 300.320(a)(3)(i)-(ii). Student's progress on the four IEP goals was measured and recorded by ECSE throughout the school year. Parents' claim that Student failed to make the progress described in ECSE's progress report is simply not supported by the Record. (FF #s 14 and 16-17).

12. As to the IEP allegations raised in the initial Complaint, Parents' have failed to meet their burden as to the appropriateness of the 2010 IEP. *A.E. v. Indep. Sch. Dist. No. 25*, 936 F.2d 472 (10th Cir. 1991). Given the extensive credible evidence in the Record, the IEP as developed and implemented, was reasonably calculated to provide Student with educational benefit and was therefore appropriate.

13. In their Reply, Parents alleged for the first time that they were not supplied quarterly progress reporting during the school year. Although ECSE recorded Student's progress in a variety of ways, including quarterly progress notes, investigation revealed that Parents were not supplied with copies of the written quarterly progress reports during the school year. Although Parents were knowledgeable about Student's progress, the District's failure to supply quarterly progress reports on each of the IEP goals constituted a procedural violation. (FF #s 18-19). However, because Parents knew of Student's progress during the school year, this procedural violation did not constitute a denial of FAPE.

Whether the District unilaterally changed Student's placement.

14. The terms "placement" and "educational placement" are used throughout the IDEA. Although the term "educational placement" is not specifically defined in the IDEA regulations, the term is discussed in the Preamble. "Educational placement" means the setting along a continuum of alternative placements (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) where the provision of special education services are to be delivered rather than the specific place, such as a specific

classroom or specific school. See Preamble, 71 Fed. Reg. 46687 (August 14, 2006). Simply put, the IEP Team determines a child's placement while the District determines the location (i.e., classroom) where the child's special education and related services will be delivered.

15. In conjunction with design of the 2010 IEP, the IEP Team determined that Student's appropriate placement was in the regular early child program at least 80% of the time where [Student] would receive small group and one-on-one support to develop verbalizations in the classroom. (FF #s 10 and 24).

16. CPCD contracts with District to provide Head Start services, CPP services and CPP/special education services (i.e., "blended program" services). Contrary to Parents' claims, the Student's placement remained the same, both before and after Parents received CPCD's May 2011 letter. (FF #24). Parents expressed a desire for Student to continue to attend the CPCD program at School during the 2011-2012 school year. Both the District and CPCD have attempted to honor Parents' request. Through the May 2011 letter, CPCD offered Student a slot in the p.m. CPCD classroom. As fully described in FF #s 20-24, no change of placement occurred in conjunction with CPCD's May 2010 letter; CPCD's actions were entirely appropriate; and, as a result of CPCD's classroom offering, neither the District nor CPCD violated any IDEA regulation.

17. Furthermore, it is important to note that preschool education is not mandatory in Colorado. Because Student is under the age of six, Colorado's compulsory school attendance statute has no application to [Student's] situation. C.R.S. § 24-33-104. In other words, although Student is entitled to receive 30 minutes per week of *special education services*, the District is not required by law to supply [Student] with any set number of *general education classroom hours* per week. On December 8, 2008, the Department issued a guidance memo to administrative units, including District, recommending that preschoolers be supplied with a minimum of ten contact hours per week.⁵⁸ However, the Department's guidance does not carry the force of law. Student is not entitled to any specific number of general education hours each week. Finally, the 12 hours per week of general education hours that CPCD offered to Student during the 2011-2012 school year clearly complied with the Department's guidance.

Whether the District's administration of the April 2010 BASC:2, the April 27, 2010 Special Evaluation, or the proposed July 2011 re-administration of the BASC:2 violated the IDEA.

18. Parents claim that the May 2011 BASC:2 results serve to demonstrate that the District's April 2010 BASC:2 and the subsequent April 27, 2010 reevaluation were improper.

19. In conducting a reevaluation, *the district* "must ensure that the reevaluation of each child is conducted in accordance with §§ 300.304 through 300.311 . . ." Section 300.303(a) (emphasis added). When conducting evaluation, *the district* must:

⁵⁸ The Guidance Memorandum is available at:
www.cde.state.co.us/early/downloads/Final_SpEdPreschool_120308.pdf

(b)(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent . . .

...

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavior factors, in addition to physical or developmental factors.

Section 300.304(b)(1)-(3) (emphasis added).

20. As part of a reevaluation, the IEP Team and other qualified professionals must:

(a) Review of existing evaluation data. . .

(1) Review existing evaluation data on the child, including-

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-

...

(i)(B) In the case of a reevaluation of a child, *whether the child continues to have such a disability, and the educational needs of the child;*

(ii) The present levels of academic achievement and related *developmental needs of the child;*

...

(iii)(B) In the case of reevaluation of a child, *whether the child continues to need special education and related services;* and

(iv) *Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.*

...

(c) Source of data. The *[district]* must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.

...

Section 300.305(a)-(c) (emphasis added).

21. In gathering reevaluation information, the District administered the April 2010 BASC:2 and the CAAP. School Psychologist #1's Psycho-Educational Assessment included information gathered from Parents, classroom teachers and SLP as well as her observations of Student in the classroom and during the supply of services. (FF#s 6-8). On April 27, 2010 the IEP Team met

and, based on review of the Psycho-Educational Assessment, reached several conclusions, including the conclusion that Student did not need psychological or speech-language services. (FF #s 9 and 25).

22. The May 2011 BASC:2 was found to be deficient for a number of reasons. (FF #26). Therefore, any comparisons between the April 2010 BASC:2 and the May 2011 BASC:2 are highly suspect. However, even ignoring the deficiencies of the May 2011 BASC:2, the raw data of both tests was similar. (FF# 27). The SCO concludes that District's April 27, 2010 reevaluation was proper and fully complied with the relevant IDEA regulations. Parents have supplied no evidence to the contrary.

23. Likewise, Parents have presented no evidence supporting their claim that the District's plan to re-administer the BASC:2 in July 2011 was inappropriate. (FF #28).

24. Parents have failed to meet their burden of proof as to these two claims. *A.E. v. Indep. Sch. Dist. No. 25*, 936 F.2d 472 (10th Cir. 1991).

REMEDIES

The SCO has concluded that in failing to supply Parents with quarterly progress reports during the 2010-2011 school year, the District violated § 300.320(a)(3)(ii). To remedy this violation, the District is ordered to take the following actions:

1. No later than **5:00 p.m. on October 28, 2011**, supply the Department with complete copies of written quarterly progress reporting policies and procedures to be followed when the District contracts with a third party provider to supply special education services. Such policies and procedures must clearly identify the District staff person responsible for supplying quarterly progress reports to parents.
2. No later than **5:00 p.m. on October 28, 2011**, supply the Department with written evidence that a meeting was conducted at which time the District's quarterly progress reporting policies and procedures were reviewed with and supplied to all meeting participants. At a minimum, the meeting participants shall include the following persons previously identified in this Decision: CPCD Chief; CPCD Coordinator; CPCD Teacher; [CPCD's] ECSE; Special Education Director; and Case Manager. For purposes of this Order, "written evidence" means: the meeting agenda, including the date and location of the meeting; a legible sign in sheet for all meeting participants; and complete copies of all documentation supplied in conjunction with the meeting.

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

Colorado Department of Education
Exceptional Student Leadership Unit
Attn.: Joyce Thiessen-Barrett, Senior Consultant
1560 Broadway, Suite 1175

Denver, CO 80202-5149

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 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 20th day of September, 2011.

Jeanine M. Pow

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A 2011:508 Record

Complaint, pgs. 1 through 4;

- Exhibit 1 9/17/2010 IEP (pg. 9 missing);
- Exhibit 2 10/28/2010 through 6/1/2011 Progress Reports;
- Exhibit 3 4/27/2010 BASC:2 Assessment;
- Exhibit 4 5/2011 CPCD Preschool Programming Letter;
- Exhibit 5 5/18/2011 BASC:2 Raw Data;
- Exhibit 6 5/19/2011 Family Conference Report;
- Exhibit 7 5/23/2011 Letter from Private Psychologist to Head Start Personnel;
- Exhibit 8 6/28/2011 Email from Head Start Chief to Mother w/Student's Risk Factor Report;
- Exhibit 9 9/28/2009 Initial IEP

DISTRICT's Response, pgs. 1-6.

- Exhibit A
- Pgs. 1–10* Annual Review IEP 09/17/2010 (Infinite Campus copy)
- Pgs. 11–20 Annual Review IEP 09/17/2010 (Scanned copy of original IEP with signatures)
- Pg. 21 Notice of Meeting 09/10/2010
- Pg. 22-23 Timeline Waiver 09/17/2010
- Pg. 24 Prior Notice of Special Education Action 09/10/2010
- Pg. 25 IEP Staffing Meeting Notes 09/17/2010
- Pgs. 26–35* Annual Review IEP 09/17/2010 (Duplicate)
- Pg. 36* Pikes Peak Regional Policy on Student Medication 09/01/2010
- Pgs. 37–46* Annual Review IEP 09/17/2010 (Duplicate)
- Pg. 47* Record of Access for Student
- Pg. 48* Request to Release or Secure Confidential Information 05/18/2010 (To School Liaison)
- Pg. 49* Prior Notice of Special Education Action 09/10/2010 (Duplicate)
- Pg. 50-51* Timeline Waiver 09/17/2010 (Duplicate)
- Pg. 52* Notice of Meeting 09/10/2010 (Duplicate)
- Pg. 53* Record of Access for Student
- Pg. 54* Request to Release or Secure Confidential Information 05/18/2010 (To Mental Health)
- Pg. 55* Request to Release or Secure Confidential Information 05/18/2010 (To School Liaison- duplicate)

Pg. 56 IEP Team Member Excusal 04/27/2010
 Pg. 57 Notice of Meeting 04/15/2010
 Pg. 58 Prior Notice of Special Education Action 04/14/2010
 Pg. 59* Prior Notice & Consent for Evaluation 03/04/2010
 Pg. 60* Prior Notice of Special Education Action 09/17/2009
 Pg. 61* Notice of Meeting 08/18/2009
 Pg. 62* Prior Notice & Consent for Evaluation 09/17/2009
 Pg. 63* Prior Notice & Consent for Initial Provision of Special Education and Related Services 09/18/2009
 Pg. 64* Response to Intervention Plan – Parent Letter 08/28/2009
 Pg. 65* Home Language Survey 08/28/2009
 Pg. 66 Director/Designee Checklist for Annual 09/17/2010
 Pg. 67* Staffing Meeting Notes 09/17/2010 (Duplicate)
 Pg. 68–77* Annual Review IEP 09/17/2010 (Copy of original IEP with signatures – duplicate)
 Pg. 78 4/27/2010 Student Record Checklist (In-District Transfer)
 Pg. 79 09/09/2010 Transfer Student From Within State
 Pg. 80 05/18/2010 Meeting Notes
 Pg. 81 IEP Amendment 05/21/2010
 Pg. 83–83 IEP Amendment 05/18/2010
 Pg. 84 5/7/2010 Director/Designee Checklist (Special Evaluation)
 Pg. 85–94 Special Evaluation IEP 04/27/2010
 Pg. 95 Determination of Eligibility: Preschool Child with a Disability 04/25/2010
 Pgs. 96–99 Evaluation Report 04/26/2010 (Special Evaluation)
 Pg. 100* Director/Designee Checklist 09/18/2009 (Initial)
 Pgs. 101–110 Initial IEP 09/18/2009
 Pg. 111 Determination of Eligibility: Preschool Child with a Disability 09/18/2009
 Pgs. 112–114 District Evaluation Report (Initial Evaluation) (9/17/2009)
 Pgs. 115–123 Individualized Family Service Plan 03/02/2009 (Annual)
 Pg. 124 [] Speech Associates 08/26/2009
 Pgs. 125–126 [] Speech Associates 07/16/2009 (Speech-Language Evaluation)
 Pgs. 127–128 [] Speech Associates 07/16/2009 (Speech-Language Evaluation)
 Pgs. 129–132 Early Child Development Inventory 08/28/2009
 Pg. 133* Pikes Peak Regional Policy on Student Medication 09/01/2010
 Pg. 134 Health History/Health Screenings (8/27/09 & 9/18/09)
 Pgs. 135–137 Health and Social History (8/18/2009)

Exhibit B

Pg. 1 Procedural Manual Cover page (CDE)
 Pg. 2 Procedural Manual (CDE) Annual Goals instructions

Exhibit C

Pg. 1 Progress Report Notes
 Pg. 2 Teaching Strategies GOLD 06/13/2011
 Pgs. 3–4 Progress Reports on IEP Objectives by ECSE Teacher 3/14/2011 to 6/1/2011
 Pg. 5-6 CPCD Personal Visit Reports 09/20/2010

Pg. 7	CPCD MEMO 07/12/2011
Pgs. 8–9	Progress Reports on 2010 IEP Goals 10/28/2010 to 6/1/2011
Pgs. 10–11*	Progress Reports on IEP Objectives by ECSE Teacher (Duplicate)
Pgs. 12–15	CPCD Curriculum
Exhibit D	
Pgs 1-4	Teaching Strategies GOLD – 6/13/2011 Development and Learning Report
Pg. 5-6	Teaching Strategies GOLD – 5/19/2011 Family Conference Form for Student
Pg. 6a*	05/25/2011 Head Start Chief email (Duplicate)
Pgs. 7–13	Teaching Strategies GOLD 06/13/2011 (Individual Child Report)
Pgs. 14–17* (Duplicate)	Teaching Strategies GOLD -06/13/2011 Development and Learning Report
Exhibit E	
Pgs. 1–3*	Home Visit Reports CPCD Personal Visit Report 09/20/2010 (Duplicate)
Pgs. 4–9	2010-2011 Family Conference Reports
Pg. 10	Notice of Placement Note
Exhibit F	
Pg. 1	Peak View Psychology, LLC 05/23/2011
Exhibit G	
Pg. 1	Board of Education Agenda Item 05/12/2011
Pgs. 2–12	7/1/2011 Agreement between District and CPCD
Pgs. 13-14	Eligibility and Selection Criteria for CPCD Colorado Preschool Program
Pg. 15	5/27/2011 Memo from Head Start Chief to Special Education Director 05/27/2011
Pgs. 16–17	Component Guidance for Parent Involvement
Pgs. 18–22	Eligibility and Selection Criteria for CPCD Head Start Programs
Pgs. 23-24	CPCD Preschool and Early Head Start Recruitment
Pg. 25	Placement Letter for Student
Pg. 26	CPCD Memo 5/2011
Pgs. 27–29	Early Childhood Learning & Knowledge Center Regulations
Pgs. 30–34	Early Childhood/Head Start Risk Factor Eligibility
Pgs. 35–36	CPCD Transition Policy
Pg. 37	Email from Head Start Chief regarding Risk Factor Report
Pgs. 38–41	Risk Factor Report
Pgs. 42-48*	Teaching Strategies Gold 6/13/2011 Report (Duplicate)
Pgs. 49–50	Child Find Process pamphlet
Exhibit H	
Pg. 1*	Chronology of events from May 6 – June 14
Pg. 2*	Prior Notice of Special Education Action form 9/10/2010
Pg. 3	Prior Notice of Special Education Action form 7/1/2011
Pg. 4	Prior Notice of Special Education Action form 7/29/2011
Pgs. 5–13*	Draft IEP 8/12/2011
Pgs. 14–15	Chronology of events May 6 – July 29

Pg. 16 Notice of meeting 7/29/2011
 Pg. 17 Prior Notice of Special Education Action 7/29/2011
 Pg. 18* Prior Notice of Special Education Action 9/10/2010
 Pg. 19* Notice of Meeting 9/10/2010
 Pg. 20 Prior Notice of Special Education Action 4/14/2010
 Pg. 21 Notice of Meeting 4/15/2010
 Pg. 22 5/25/2011 Head Start Chief email
 Pg. 23 5/25/2011 School Psychologist email
 Pg. 24 5/25/2011 [School Psychologist #1] email

Exhibit I

Pg. 1 School Psychologist #2 memo on DAY-C scores
 Pg. 2* DAY-C scores 7/29/2011
 Pgs. 3-7 BASC:2 Raw Data 4/26/2010
 Pgs. 8-9 Documentation
 Pgs. 10-13 4/27/2010 Psycho-Educational Assessment (including interpretation of 4/26/2010
 BASC results)
 Pg. 14* 8/10/2011 School Psychologist #2 email re BASC
 Pgs. 15-22 BASC:2 Raw Data 5/18/2011

Exhibit J

Pgs. 1-2 7/20-7/21/2011 Emails between Special Services Specialist & Mother

Exhibit K (Addendum – Materials requested by CDE)

Pgs. 1-3 District Enrollment Transfer Policy
 Pgs. 4-6 District Choice/Open Enrollment Policy
 Pgs. 7-11 District Choice/Open Enrollment Transfer Policy
 Pgs. 12-14 District Inter-District Choice/Open Enrollment Policy
 Pgs. 15-17 Child Find Referral Process
 Pgs. 18-21 District Early Childhood Centers pamphlet
 Pgs. 22-28 Comprehensive Plan for Colorado Preschool Program
 Pg. 29 Child Find Flow Chart
 Pgs. 30-40 2010 – 2011 Attendance
 Pg. 41 Contact names, titles, & email addresses
 Pg. 42 District Calendar 2010-2011
 Pgs. 43-45 Partial Settlement Agreement
 Pg. 46* Staffing Meeting Notes 9/17/10
 Pgs. 47-57 Contract between CPCD & District
 Pgs. 58-59 Chronology of Events 5/6/2011 – 7/29/2011(Duplicate)

Complainant's Reply, pgs. 1-7;

Exhibit 10* 5/6/2010 email to SCO;

Exhibit 11* 5/6/2010 email to CDE Consultant Susan Smith;

- Exhibit 12* 8/12/2011 Draft of IEP
- Exhibit 13* 8/12/2011 letter from Mother to CPCD
- Exhibit 14* 8/12/2011 letter from Mother to District and CPCD
- Exhibit 15* 8/3/11 to 8/10/11 string emails between Mother and District
- Exhibit 16* 8/19/2011 letter from Private Psychologist
- Exhibit 17* 8/23/2011 Memo from the [Military]
- Exhibit 18* 8/18/2011 [Military] Family Member Medical Summary
- Exhibit 19* 8/12/11 to 8/15/2011 emails between Mother and District
- Exhibit 20 7/20/2011 email from Military Liaison to Mother

Additional Information:

- Exhibit L Clarifications as to Previously Submitted Exhibits
- Exhibit M 2010-2011 Connect Notes
- Exhibit N CPCD Policy and Procedures on IEP progress reporting

Interviews of: Mother; Private Psychologist; CPCD Chief; CF Coordinator; Case Manager; CPCD Teacher; ECSE; TA #1; TA #2; and School Psychologist #2.

*This documentation was not considered by the SCO in conjunction with the Complaint investigation because the information was: duplicative; not relevant to the Complaint allegations; or served to document communications that occurred after the Complaint was filed.