

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

State Complaint 2012: 505
San Luis Valley BOCES

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed with the Colorado Department of Education (CDE) on May 8, 2012 by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

To comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))² and to protect the anonymity of the parent and her child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be labeled as follows and redacted prior to publication:

- [Mother], Mother of Child, (“Mother” or “Parent”);
- [Father], Father of Child, (“Father” or “Parents”);
- [Student], Child of Parent, (“Student”);
- Student’s age of [age], [Age];
- San Luis Valley BOCES, (“BOCES”);
- [Superintendent], BOCES Superintendent (“Superintendent”);
- [School], [County] School District public school, (“School”);
- [Private Program], the private provider program, (“[Private Program]”);
- [Community Centered Board], (“Community Centered Board”);
- Children’s Extensive Services, (“CES”);
- [Special Education Director], BOCES Special Education Director, (“Special Education Director”);
- [Special Education Director Designee], Special Education Director Designee, (“Special Education Director Designee”);
- [ES Teacher], Case Manager and Extended Services Teacher, (“ES Teacher”);

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. The IDEA regulations are found at 34 CFR § 300.1, *et seq.*

- [Resource Teacher], Resource Teacher, (“Resource Teacher”);
- [OT], Occupational Therapist, (“OT”);
- [SLP], Speech Language Pathologist, (“SLP”);
- [General Education Teacher], Classroom Teacher, (“General Education Teacher”);
- [Para], Paraprofessional, (“Para”);
- [Principal], School Principal, (“Principal”); and
- [School Psychologist], School Psychologist, (“School Psychologist”).

A State Complaint, signed by Parent, was received on May 2, 2012. After reviewing the Complaint, the State Complaints Officer (SCO) contacted Parent on May 7, 2012 and conducted a lengthy telephone interview of Parent on May 8, 2012. As a result of this telephone interview, the SCO determined that the Complaint identified one allegation and four specific claims subject to the jurisdiction of the state-level complaint process and its implementing regulations at 34 CFR §§ 300.151 through 300.153.³ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The SCO also conducted telephone interviews of Parent on June 1, 2012 and July 11, 2012.

The SCO interviewed Special Education Director by telephone on June 11, 2012 and July 13, 2012.

On June 19, 2012, the SCO interviewed OT, Resource Teacher, General Education Teacher and Para by telephone.

On June 19, 2012, the SCO determined that an interview of ES Teacher was essential to the investigation. Because ES Teacher was out of the country until an undetermined date, on June 19, 2012, the SCO issued an Order extending the Decision due date from July 6, 2012 to July 31, 2012. A copy of the Order was sent to the parties by Federal Express overnight mail on June 19, 2012.

On July 9, 2012 the SCO interviewed ES Teacher by telephone. A second interview was conducted July 24, 2012.

On July 16, 2012 the SCO conferred with CDE employee Dr. Cynthia Millikin.

On July 24, 2012, the SCO closed the Record.

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

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).

Whether the BOCES failed to properly implement Student's September 12, 2011 IEP (2011 IEP) and, if so, whether the BOCES' actions denied Student a free appropriate public education (FAPE).

PARENT'S COMPLAINT ALLEGATION

Parent's Complaint allegation and claims are summarized as follows:

Allegation: Between September 12, 2011 and May 8, 2012, the BOCES failed to properly implement Student's September 12, 2011 IEP (2011 IEP). Specifically, the BOCES:

- a) Failed to implement or failed to provide progress reporting on the following 2011 IEP goals/objectives:
 - i) Implementation of the 2011 IEP objective "[Student] will read sight words within the context of a story with 90% accuracy in three consecutive trials;" (Exhibit #1, pg. 10);
 - ii) Progress reporting on the three IEP objectives listed at Exhibit #1, pg. 12; (Note: Parent alleges that this claim is buttressed by the lack of progress reporting on the three IEP objectives in Exhibit # 2, pgs. 1-2);
 - iii) Failed to include in Student's 2011 IEP the measurable goal "Social and social contexts that are associated with the expectations of age-level peers;" (Exhibit #3); and
 - iv) Failed to implement the two associated IEP (social skills) objectives; (Exhibit #3);
- b) Failed to modify the grade level curricula to Student's reading level in four classes (i.e., Reading, Writing, Science and Social Studies) as was agreed to in the September 12, 2011 IEP meeting; (Note: Parent claims that some modified reading materials supplied to Student are too low (i.e., Exhibit 4, pgs. 2-6) while other reading materials supplied to Student are too high (i.e., Exhibit 4, pg. 7));
- c) Failed to use assistive technologies (i.e., a computer for word processing and touch screen) as listed in the 2011 IEP (Exhibit #1, pg. 6); (Note: Parent claims that the BOCES's actions are contrary to the SLP's recommendations contained in Exhibit #5); and
- d) Unilaterally changed the 2011 IEP Student's accommodation from "z-vibe pencil with chew tips" to "z-vibe pencil with chew tips (as long as effective)" without Parent's consent. (Exhibit 6, pg. 3).

Proposed Remedies: Compensatory services; modification of curriculum to meet Student's needs; Student be supplied with and trained in the use of a computer word processor and touch screen; implementation of all accommodations without

limitation; supply progress reporting to Parent every eight weeks and staff be trained in all relevant areas.⁴

THE BOCES's RESPONSE

The BOCES denied that, between September 12, 2011 and May 8, 2012, it failed to properly implement Student's September 12, 2011 IEP (2011 IEP). Responses as to each claim are summarized as follows:

- a) The BOCES denied that it had failed to implement or failed to provide progress reporting on IEP goals/objectives.
 - i) The School team has been working on this objective with Student since September 12, 2011. ES Teacher supplied a written progress report on this objective on May 22, 2012 and oral progress reports at the IEP meetings held on January 23, 2012 and April 3, 2012.
 - ii) The three objectives listed at pg. 10 of the 2011 IEP have been implemented since September 12, 2011⁵ and Parent was supplied progress reporting in writing and during IEP meetings and during the school year.
 - iii) The Social Skills goal referenced by Parent was from the January 31, 2011 IEP and was purposefully removed from the 2011 IEP at Parent's request. As a result of meetings between January 23, 2012 and April 3, 2012, a Social Skills goal was added to Student's IEP and implemented.
 - iv) As previously noted, the Social Skills goal was removed from Student's 2011 IEP at Parent's request and therefore the two associated IEP social skill objectives were also removed from the IEP and not implemented during the school year.
- b) Student's curricula was provided at a level consistent with [Student's] current reading level (i.e., Level C - Kindergarten). In Social Studies and Science, Student was provided with alternate materials at [Student's] reading level or other appropriate accommodations or modifications to ensure access to the grade-level content.
- c) The 2011 IEP provides for the use of assistive technology, specifically a "computer for word processing." The IEP also indicated that other technology, such as a touch screen was "to be tried." A computer was made available to Student for writing assignments and [Student's] schedule includes dedicated time for computer use each school day. The touch screen and an iPad have been tried and, since January 2012, Student has been using an iPad for the purpose of tracing

⁴ Any remedies ordered by the SCO will be consistent with a determination that violation(s) of the IDEA have occurred.

⁵ The Response indicated "2012" but the BOCES's legal counsel confirmed that this is a typographical error and "2011" was intended.

sight words and working on fine motor skills. Use of the iPad has been reflected on Student's IEPs since April 3, 2012.

- d) Parent requested and the IEP team agreed to the z-vibe pencil accommodation during the January 23, 2012 IEP meeting. The accommodation was erroneously omitted from Parent's copy of the IEP sent home subsequent to the meeting. When Parent brought the omission to the attention of the BOCES, the IEP was amended to include the language on March 19, 2012. Consistent with correspondence between Parent and OT as well as IEP team discussions on April 3, 2012, the language "as long as effective" was added to the z-vibe accommodation of Student's IEP. Subsequent to the meeting, Parent objected to the language "as long as effective" and the BOCES agreed to remove language from the IEP although, due to an oversight, the language was still present in Student's IEP on May 8, 2012. Subsequent to filing of the Complaint, the language was removed from Student's IEP.

PARENT'S REPLY

Parents' Reply is summarized as follows:

- a) According to the 2011 IEP, Parents were to be supplied with four progress reports. The BOCES failed to supply progress reports on the objectives (i.e., claims (i) and (ii)) in the first two quarters and never supplied the third quarter progress report. During the January 23, 2012 IEP meeting, Parents requested but teachers were unable to supply data on Student's Reading and comprehension progress (i.e., claim (a)(ii)). Parent's copy of the 2011 draft IEP (i.e., Exhibit 8, pgs. 1-9) shows that Parents did not disagree with the Social Skills goal. Parent denies that she asked the team to consider adding a new Social Skills goal during the January 23, 2012 IEP meeting. Although a Social Skills goal and three objectives were added by the IEP team during the April 3, 2012 IEP meeting, Parent denies that this was at Parent's suggestion.
- b) Parent claimed that modified lesson plans with appropriate accommodations had not been provided and that documentation needed to be supplied for all general education classes Student attended during the preceding five months. Parent based her claim on an article "Jack Pickens - Man with a Secret" that was sent home with Student on February 15, 2012 and lack of evidence that a "Tommy Hilfiger" project had been modified to Student's needs.
- c) Parent reiterated the claim, admitted that Student was presently using an iPad, but questioned why Student was not using a touch screen. Parent alleged that she requested data on use of the touch screen during the January 23, 2012 IEP meeting but was told that no data had been collected.

- d) Parent acknowledged that, on February 27, 2012, OT emailed Parent advising that the IEP would provide the language “as long as effective” but alleged that, due to a family emergency, Parent was not able to respond to the email until three weeks later. Parent alleged that the language was added to the IEP on March 8, 2012 “without discussion.” Parent also raised a new claim, alleging that Parents’ names had been typed on the bottom of the IEP amendment form page which provides “I agree that my child’s IEP can be revised by the school staff without convening an IEP meeting.”⁶ Parent noted that the form had not been signed by Parents. Parent denied that permission had been given to make changes to the IEP without a meeting and insists that no discussions were held. Parent acknowledged having telephone discussions with the Special Education Director on March 15 and March 19, 2012 regarding the wording “as long as effective.” On March 30, 2012, Special Education Director told Parent that the language had been removed from the IEP. However, the language was not removed from the IEP until after the May 8, 2012 IEP meeting.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁷ the SCO makes the following FINDINGS:

Factual Background:

1. At all times relevant to the Complaint, Student, [age] years of age, was a resident of the BOCES and was identified as having a disability (i.e., autism). There is no dispute that Student is eligible for special education and related services.
2. Student has been enrolled in the BOCES since pre-school and, at the time of the Complaint, was in [grade] grade. At Parents’ request, throughout the 2010-2011 and the 2011-2012 school years, although School was in session four days per week, Student had a split schedule, attending School two days per week and [Private Program] two days per week. Parent prefers this arrangement because, unlike the School, [Private Program] provides an Applied Behavior Analysis (ABA) curriculum. Student’s tuition at [Private Program] is paid for through a waiver supplied by CES. The Community Centered Board manages the CES waiver. Parent plans to continue this split programming arrangement during the 2012-2013 school year.⁸
3. Between September 12, 2011 and May 8, 2012, the following meetings were conducted:

⁶ The SCO also investigated this new claim.

⁷ Appendix A, attached and incorporated by reference, details the entire Record.

⁸ Interview of Parent.

- **September 12, 2011 Annual IEP Review meeting.** The meeting was attended by Mother, Father, Special Education Director, ES Teacher, Classroom Teacher, SLP, OT, Resource Teacher and School Psychologist.⁹
- **January 23, 2012 Special Request IEP meeting.** The meeting was requested by Parent to discuss changes that she wanted to make to the IEP. The meeting was attended by Mother, Father, Special Education Director, ES Teacher, SLP and Resource Teacher.¹⁰
- **March 30, 2012 meeting.** The meeting was to discuss additional changes Parent wanted to make to the 2011 IEP. The meeting was attended by Parent and Special Education Director.¹¹
- **April 3, 2012 Special Request IEP meeting.** The meeting was initially scheduled for February 28, 2012 but rescheduled due to a family emergency. The meeting was convened to review data collected in conjunction with the two Reading goals and objectives. The meeting was attended by Mother, Father, Special Education Director Designee, ES Teacher, Resource Teacher and SLP.¹²
- **May 8, 2012 Special Request IEP meeting.** The meeting was requested by the IEP team to discuss ESY services and Student’s split programming at School and [Private Program]. The meeting was attended by Mother, Father, Special Education Director, General Education Teacher, ES Teacher, Resource Teacher and Principal.¹³

Claim a. The BOCES failed to implement or failed provide progress reporting on the two Reading goals or objectives.

4. The September 12, 2011 IEP (2011 IEP) provided six measurable goals, including two Reading goals. The IEP form used by the BOCES listed objectives beneath each goal. According to the form, four progress reports were to be made on each objective. Parents were to be notified of Student’s progress on the goals through “four progress reports, two parent-teacher conferences, [use of a] daily back-and-forth journal, and an annual IEP meeting.”¹⁴ The 2011 IEP did not indicate whether the four progress reports were to be supplied on a quarterly basis nor whether the four reports were to be in writing. Student did not receive grade reports.¹⁵ ES Teacher supplied Parents with written progress reports on Reading goal #1, Math and OT goals in October, January and May.¹⁶ Parent attended the October 27, 2011 parent-teacher conference but did not attend the February 9, 2012 conference.¹⁷

⁹ Exhibits A, pg. 2 and B.

¹⁰ Exhibits I, pg. 4 and B.

¹¹ Exhibits B and J (containing Special Education Director’s long hand notes reflecting changes that were discussed).

¹² Exhibits B and K, pg. 3.

¹³ Exhibits B and L, pg. 2.

¹⁴ Exhibit A, pgs. 8-17.

¹⁵ Interview of Special Education Director.

¹⁶ Id. and Exhibit F-1, pgs. 1-7.

¹⁷ Interviews of Parent, General Education Teacher and ES Teacher.

5. **Reading goal #1** provided “[Student] will master Elementary Reading skills at the 1st grade level as measured by equivalent criterion referenced pre and post testing.”¹⁸ ES Teacher was responsible for implementing and providing progress reporting on Reading goal #1 and the four associated objectives.¹⁹

6. Parent claimed that between September 2011 and May 2012, ES Teacher failed to implement or provide progress reporting on the following objective: “[Student] will read sight words within the context of a story with 90% accuracy in three consecutive trials” (“sight words objective”).²⁰ The BOCES denied the claim and argued that, since September 12, 2011, the school team had been working on the Reading objective as part of Student’s reading program.²¹

7. ES Teacher stated that she submitted three written progress reports (i.e., October, 2011, January, 2012 and May, 2012) on Reading goal #1. She also supplied oral progress reports during meetings conducted on January 23, 2012 and April 3, 2012. ES Teacher stated that she had supplied charted data in conjunction with at least one of the oral progress reports.²²

8. A review of the Record reveals that:

- Neither the October 2011 nor the January 2012 written progress reports provided any information on the sight words objective.²³
- During the October parent-teacher conference, ES Teacher reported orally to Parent on Student’s progress in her classes.²⁴
- During IEP meetings held on January 23, 2012 and April 3, 2012, ES Teacher supplied Parents with oral progress reports on the sight words objective.²⁵
- The May 22, 2012 written report supplied the following progress report on the sight words objective: “[Student] can read with fluency and comprehension Kindergarten level books. [Student] can read books with over 80 words without getting too distracted. We have begun Grade 1 books, but the longer pages become distracting to [Student]. We will continue in the fall with first grade reading level.”²⁶
- Between October 4, 2011 and May 14, 2012 ES Teacher provided Parents with several reports on Student’s sight words progress in the back-and-forth journal (“journal”).²⁷

9. The SCO specifically finds that:

¹⁸ Exhibit A, pg. 9.

¹⁹ Interviews of Special Education Director and ES Teacher.

²⁰ Interview of Parent and Exhibit A, pg. 8.

²¹ Response, pg. 2.

²² Interview of ES Teacher and Exhibit F-1, pgs. 1-13.

²³ Exhibit F-1, pgs. 4-7.

²⁴ Interview of ES Teacher.

²⁵ Interviews of ES Teacher and Special Education Director.

²⁶ Id., pg. 1.

²⁷ Id., pgs. 18, 22, 49, 93 and 94.

- Reading goal #1 and the four objectives were implemented in September 2011 and worked on throughout the school year;
- ES Teacher reported on the sight words objective on three occasions (i.e., oral reports in January and April and a written report in May);
- ES Teacher failed to supply a report on the sight words objective during the first half of the school year;²⁸
- At the beginning of the school year, Student knew five sight words and by September 12, 2011, Student knew over 60 words.²⁹
- On April 3, 2012, as a result of Student’s progress, the IEP team amended Reading goal #1 from “mastery of Elementary Reading skills at the 1st grade level” to “mastery of Elementary Reading skills at the 2nd grade level.” Although the sight words objective was not amended, the IEP team did amend the baselines of two objectives. Additionally, the fourth objective was met and replaced by a new objective: “[Student] will identify and read the first 100 *verbs* with 80% accuracy in 4 out of 4 weekly trials” with a baseline of 100 common nouns;³⁰
- In the May 14, 2012 journal entry, ES Teacher reported that “[Student] is on [Student’s] last set of sight words and [Student] is at 8/10;”³¹
- Over the course of the school year, Student made measurable progress on Reading goal #1, including the sight words objective; and
- Student’s reading comprehension and interest in reading books increased dramatically over the school year and Parents knew of this progress.³²

10. **Reading goal #2** provided “[Student] will recognize and make meaning of text through the completion of [three] short-term objectives.”³³ Resource Teacher was responsible for implementing and providing progress reporting on Reading goal #2 and the three associated objectives.³⁴

11. Parent alleged that between September 2011 and May 2012, Resource Teacher failed to provide progress reports on the three objectives:

²⁸ Exhibit A, pg. 17.

²⁹ Exhibit A, pg. 6.

³⁰ Exhibit K, pgs. 8-9 (emphasis added). Although the goal was changed as a result of the April 3, 2012 IEP meeting, the change to “2nd grade level” was erroneously omitted. See Exhibit N, pgs. 32-34 where Parent was supplied with a letter documenting that the April 3, 2012 IEP had been corrected to include the amended language in Reading goal #1 to “2nd grade level.” See also Exhibit P, pg. 1 where Special Education Director advised SCO, citing Exhibit I, pg. 3, that Reading goal #1 had been changed to “2nd grade level” on January 23, 2012. However, the January 23, 2012 IEP (i.e., Exhibit I), did not include Reading goal #1 and merely indicated that amendment to “2nd grade level” had been “proposed.” The SCO concludes that Reading goal #1 of the 2011 IEP was not amended until April 23, 2012, as indicated in Exhibit N, pgs. 32-34.

³¹ Exhibit M, pg. 94. The Back-and-Forth Journal contained 97 pages of hand written notes, most of which were communications between Parent and ES Teacher.

³² Id., pgs. 59, 65-66, 75, 87, and 88.

³³ Exhibit A, pg. 10.

³⁴ Interviews of Special Education Director and Resource Teacher.

- i) [Student] will accurately and fluently read words with a Vowel Consonant and Consonant Vowel Consonant structure both in and out of context with 80% accuracy unassisted;
- ii) [Student] will accurately and fluently read words with a Consonant Vowel Consonant Consonant and Consonant Consonant Vowel Consonant structure both in and out of context with 60% accuracy unassisted; and
- iii) [Student] will accurately and fluently read words containing common beginning and ending consonant digraphs (th, sh, ng, wh, ch, ck) both in and out of context with 50% accuracy while assisted.³⁵

12. The SCO reviewed with Resource Teacher the progress reports and supporting data for Reading goal #2 that he supplied to Parents during the course of the school year (i.e., Exhibit F-2, pgs. 1-10). Resource Teacher confirmed that, at the January 23, 2012 IEP meeting, he presented an oral progress report on Reading goal #2 and the three objectives. Parents then requested that Resource Teacher provide data supporting his oral report. As a result, Resource Teacher supplied Parents with phonics skills data from October 3, 2011. Resource Teacher also conducted assessments of Student on January 24, 2012 and February 15, 2012. A written report, progress notes on the three objectives, data and charts of the assessments were supplied to Parents on or about February 15, 2012.³⁶ Resource Teacher also reviewed the report and data with Parents during the April 3, 2012 IEP meeting. On May 25, 2012, Parents were supplied with a packet containing a second written progress report on the three objectives, assessment data from May 14-15, 2012 and a list of books which Student and Resource Teacher read together during the second half of the school year.³⁷

13. The SCO specifically finds that:

- Reading goal #2 and the three objectives were implemented in the fall of 2011 and worked on throughout the school year;
- Resource Teacher failed to supply Parents with a progress report during the first half of the school year;
- However, between January and May, 2012 Resource Teacher provided Parents with three reports;
- ES Teacher's progress reports were not consistent with the 2011 IEP reporting provisions;³⁸
- Over the course of the 2011-2012 school year Student made measurable progress on Reading goal #2 and the three objectives;
- As a result of Student's progress, on April 3, 2012 the IEP team amended the baselines on all three objectives and amended two of the objectives as follows:

³⁵ Interview of Parent and Exhibit A, pg. 10.

³⁶ Interviews of Resource Teacher and Parent, and Exhibit F-2, pgs. 6-9.

³⁷ Id., Exhibit F-2, pgs. 1-5.

³⁸ Exhibit A, pg. 17.

-[Student] will accurately and fluently read words with a Consonant Vowel Consonant Consonant and Consonant Consonant Vowel Consonant structure both in and out of context *with 80% accuracy* unassisted; and

-[Student] will accurately and fluently read words containing common beginning and ending consonant digraphs (th, sh, ng, wh, ch, ck) both in and out of context *with 80% accuracy* while assisted; and³⁹

- By May 15, 2012, Student had made progress on both of the amended objectives.⁴⁰

14. **Social Skills goal.** Parent claimed that the BOCES failed to include in the 2011 IEP the Social Skills goal and objectives that had been listed in Student's previous (i.e., January 31, 2011) IEP.

15. Parent stated that, during the September 12, 2011 IEP meeting, the Social Skills goal was "discussed briefly and we (i.e., Parents) understood these would be continued in the 2011 IEP."

⁴¹ Special Education Director also stated that the Social Skills goal was discussed briefly during the September 12, 2011 meeting. However, Parents told the team that they did not want the goal included in the 2011 IEP since social skills were being worked on at [Private Program]. Based on Parents' statements during the IEP meeting, a Social Skills goal was intentionally omitted from the 2011 IEP.⁴²

16. During the SCO's initial interview, Parent stated that the services supplied to Student by [Private Program] during the 2011-2012 school year were "ABA (i.e., Applied Behavioral Analysis) and related development intervention." Parent explained that "related development intervention" consisted of Student "working to develop relationships with others and learning social interactions with other people." Parent acknowledged that these were "social skills" services.⁴³

17. Both Parents attended the September 12, 2011 IEP meeting.⁴⁴ Parent was supplied with the finalized 2011 IEP the latter part of September, 2011. Sometime in January, 2012 Parent first noticed that no Social Skills goal was contained in the 2011 IEP.⁴⁵

18. Parent could not recall precisely when she requested that the 2011 IEP be amended to include a Social Skills goal. Special Education Director recalled that during the January 23, 2012 meeting Parents stated that they wanted a Social Skills goal to be developed and included in an amendment to the 2011 IEP.⁴⁶ During the March 30, 2012 meeting Special Education Director and Parent discussed proposed modifications to the two Social Skills objectives and the

³⁹ Exhibit K, pg. 10.

⁴⁰ Exhibit F-2, pg.1.

⁴¹ Interview of Parent.

⁴² Interview of Special Education Director.

⁴³ Interview of Parent.

⁴⁴ Exhibit A, pg. 2.

⁴⁵ Interview of Parent.

⁴⁶ Interviews of Parent and Special Education Director.

addition of a third objective.⁴⁷ The Social Skills goal and three proposed objectives were discussed by the IEP team during the April 3, 2012 meeting and, as a result, the 2011 IEP was amended to include the goal and three objectives.⁴⁸

19. Given the credible evidence in the Record, the SCO specifically finds that:

- The Social Skills goal was discussed during the September 12, 2011 IEP meeting;
- During the meeting Parents communicated that, because [Private Program] was working with Student on social skills, they did not want a Social Skills goal included in Student's 2011 IEP;
- Per Parent's request, a Social Skills goal was not included in the 2011 IEP;
- As a result of Parents' January 23, 2012 request and their March 30, 2012 meeting with Special Education Director, on April 3, 2012 the IEP team amended Student's 2011 IEP to include a Social Skills goal and three objectives; and
- By May 15, 2012, Student had made progress on all three objectives.⁴⁹

Claim b. The BOCES failed to modify the grade level curricula to Student's reading level in four classes (i.e., Reading, Writing, Science and Social Studies).

20. The 2011 IEP provided several accommodations and modifications. One of the modifications was to "adapt grade level material to [Student's] reading level."⁵⁰ Parent does not believe that the grade level curricula was modified to Student's reading level in the general education classes. In support of this claim, Parent alleged that modified reading materials sent home with Student on two occasions were "too low" while on another occasion the reading materials (i.e., Jack Pickens article) that were sent home were "too high."⁵¹ Parent noted that the document was beyond Student's reading abilities and demonstrated that the curricula was not being modified to Student's reading level.⁵² Parent offered no other evidence.

21. ES Teacher was responsible for modifying Student's curricula in the general education classes (i.e., Reading, Writing, Social Studies and Science). ES Teacher knew in advance what General Education Teacher would be teaching on a given day. Throughout the 2011-2012 school year, ES Teacher or, in her absence, two paraprofessionals working under her supervision, provided Student modified reading materials, thus allowing Student to do general education classroom work and activities to the best of [Student's] ability.⁵³ For example, when the students in the Social Studies class were discussing Creed, Colorado, ES Teacher reviewed the classroom materials and then wrote three sentences at Student's reading level for [Student] to read. Additionally, using a Colorado map, Student was shown where Creed is located and

⁴⁷ Interview of Special Education Director and Exhibit J, pg. 13.

⁴⁸ Exhibit K, pg. 16.

⁴⁹ Exhibit F-3, pg. 2.

⁵⁰ Exhibit A, pg. 17.

⁵¹ Exhibit 4, pgs. 2-7 (there was no page #1).

⁵² Interview of Parent and Exhibit 4, pg. 7.

⁵³ Interviews of ES Teacher and Para.

Student also studied pictures in the textbook. In Science class, ES Teacher would sometimes use “Science Reading A-Z” if it was relevant to the curriculum of the day or she would use a worksheet taken from the internet appropriate to Student’s reading level. ES Teacher noted that when the class worked on a group project, it was more difficult to modify the curriculum inasmuch as Student only attended School two days a week and, as a consequence, [Student] frequently missed the context of classroom group activities.⁵⁴

22. ES Teacher opined that Student’s reading level at the beginning of the 2011-2012 school year was at the first grade level in terms of reading sight words and at a Kindergarten level in terms of comprehension. By the end of the school year, Student was able to read at the second grade level and comprehended with about 80% accuracy at the first grade level.⁵⁵ General Education Teacher recalled that “[Student’s] reading abilities were very low - at a Kindergarten or first grade level.”⁵⁶

23. The SCO reviewed with ES Teacher the six pages of documentation (i.e., Exhibit 4) that Parent submitted in support of the claim. ES Teacher’s explanation of each document was as follows:

- Pgs. 2-3: Is the Reading A-Z program that Student was working on in the ES Reading class at the beginning of the school year. ES Teacher agreed that the words in the document were a little low for Student’s reading abilities, but the purpose of the exercise was to work on Student’s comprehension skills rather than [Student’s] reading skills.
- Pgs. 4-6: These documents were not for reading but for learning to put together sentences. Because Student could not write, as a preface to writing, ES Teacher first had Student cut pictures and paste them at the end of appropriate sentences. ES Teacher agreed that the words in the document were a little low for Student’s reading abilities, but the purpose of the exercise was to work on Student’s writing skills rather than [Student’s] reading skills.
- Pg. 7: This is the first page of an article entitled “Jack Pickens Man with a Secret.” During this activity, ES Teacher first read the article to Student and then wrote out some sentences at Student’s reading level. The first page of the article was sent home to show Parent the topic Student was working on. The modified curriculum was not sent home since Student had scribbled all over the page.

24. In her Reply, Parent claimed that there was no evidence that a research project on “Tommy Hilfiger” had been modified so that Student could work on the project.⁵⁷ ES Teacher stated that this was a project that Student selected to work on during the second to last week of School. During this project, ES Teacher read information on the topic to Student and printed five sentences on the topic at Student’s reading level. Student was to then type the five sentences. Student was not able to complete the project because [Student] only attends School

⁵⁴ Interview of ES Teacher.

⁵⁵ Id.

⁵⁶ Interview of General Education Teacher.

⁵⁷ Reply, pg, 5.

two days a week. In [Student's] absence, the class had finished the project and moved on to another project by the time Student next attended the class.⁵⁸

25. Typically, Para worked with Student on a daily basis in the general education classroom, the ES classroom or during specials (e.g., Physical Education, Library and Art). General Education Teacher engaged Student in classroom activities by asking [Student] questions she thought [Student] might answer. The other students also made efforts to engage and include Student in classroom activities.⁵⁹

26. The Record reveals that on at least one occasion ES Teacher sent home some proposed curricula and sought Parent's input on whether Student would benefit from the enclosures. Parent and ES Teacher agreed that the curricula would be used as a supplement rather than to replace the general education curricula.⁶⁰

27. Given the credible evidence in the Record, the SCO finds that:

- Consistent with the 2011 IEP, ES Teacher was responsible for adapting curricula in the general classroom to Student's reading level;
- The 2011 IEP did not require ES Teacher to supply Parents with copies of modified materials or modified lesson plans;
- Throughout the 2011-2012 school year the grade level curricula was modified to Student's reading level in the general education classes (i.e., Reading, Writing, Science and Social Studies); and
- Parent's claim is not supported by sufficient evidence to the contrary.

Claim c. The BOCES failed to use assistive technologies (i.e., a computer for word processing and a touch screen) listed in the 2011 IEP.

28. The 2011 IEP indicated that Student needed assistive technologies devices or services. Specifically a "computer for word processing . . . Other technology *to be tried* are touch screen and Super Talker."⁶¹

29. Parent does not believe that the BOCES supplied a computer for word processing or a touch screen to Student during the 2011-2012 school year but offered nothing concrete in support of this claim.⁶²

30. The BOCES obtained a touch screen on loan from the state loan bank. The computer that the touch screen was mounted on was located in the ES classroom. The touch screen was tried for a period of three weeks at the beginning of the school year. Use of the touch screen was

⁵⁸ Interview of ES Teacher.

⁵⁹ Interview of Para.

⁶⁰ Exhibit M, pgs. 39-41.

⁶¹ Exhibits A, pg. 5 and #1, pg. 6 (emphasis added).

⁶² Interview of Parent and Reply, pg. 2 .

discontinued after three weeks because it was not found to be helpful. ES Teacher noted that Student was very functional using a computer keyboard, liked using it and did not want to change to a touch screen. However, ES Teacher could not recall whether she communicated to Parent the time period during which Student used the touch screen or the reasons for discontinuing its use.⁶³

31. Student used a computer (i.e., a lap top or one of the two desk top computers) in the ES classroom at least once a day. Student used a lap top or iPad for word processing in Social Studies and Science approximately 3-4 times per month depending on the class project. Student also used a computer for word processing in the ES classroom on a daily basis and could type 12 sight words over a period of 30 minutes.⁶⁴ In Reading, Resource Teacher used a lap top and also used an iPad about once every other week. Resource Teacher had a variety of programs on the iPad that he used with Student. During the second half of the school year all of the books that Student and Resource Teacher read together in Reading class were on the computer. Student operated the computer to scroll to the next page. “[Student] loved the computer.”⁶⁵

32. The Super Talker was also tried at the beginning of the school year. The device was tried in Library Class during specials on Tuesdays. ES Teacher would record what the pictures meant and Student could then push a button and the recording would tell [Student] what the picture was. The Super Talker was also tried in the ES classroom where it was used to offer Student choices of activities [Student] wanted to do. ES teacher noted that Student has good speech but Parent wanted Student to try the Super Talker. ES Teacher concluded that “it was more confusing for [Student] to use [Super Talker] rather than just saying what [Student] wanted. [Student] would just push all the buttons to make [the device] talk – it wasn’t effective for [Student] because [Student] just thought it was fun to push the buttons.”⁶⁶

33. Given the credible evidence in the Record, the SCO specifically finds that:

- Student was offered a touch screen during the first three weeks of school but was not receptive to using the device;
- The Super Talker was used in two classroom settings at the beginning of the school year but its use was not found to be effective;
- Throughout the school year Student used an iPad or lap top computer in general education classes and, depending on the project, used the computer for word processing during some of those classes each month;
- Throughout the school year Student used a lap top or desk top computer in the ES classroom on a daily basis to do word processing;
- During the second half of the school year, Student used a lap top computer and an iPad in Reading; and
- Parent’s claim is not supported by the evidence.

⁶³ Interview of ES Teacher.

⁶⁴ Id.

⁶⁵ Interview of Resource Teacher.

⁶⁶ Interview of ES Teacher.

Claim d. The BOCES unilaterally changed the Z-vibe pencil accommodation in the 2011 IEP from “z-vibe pencil with chew tips” to “z-vibe pencil with chew tips (as long as effective).”

34. Parent claimed that, subsequent to the January 23, 2012 IEP meeting, the BOCES unilaterally changed the language in the z-vibe pencil accommodation without Parents’ consent. In support of this claim, Parent supplied a partial IEP entitled “Additional Changes 03/08/12” which she claimed to have received on March 19, 2012. The third page of the exhibit lists the accommodation “z-vibe pencil with chew tips (as long as effective).”⁶⁷ The BOCES denied the claim and, in support of the denial, supplied a complete copy of a cover letter and the March 8, 2012 amended IEP that was sent to Parent.⁶⁸

35. **Factual background of claim.** In December, 2011, OT tried the z-vibe pencil with Student and found that it stimulated [Student’s] interest in writing. OT advised Parent of this result and, as a consequence, Parent ordered the pencil through a catalog and sent it to School with Student in January or February.⁶⁹

36. During the January 23, 2012 Special Request meeting, Parent proposed, and the IEP team agreed, to add the z-vibe pencil as an accommodation to Student’s IEP. However, the BOCES erroneously omitted the accommodation from the January 23, 2012 amended IEP.⁷⁰ On February 27, 2012, prior to the IEP being amended to include the accommodation, OT emailed Parent and proposed that the IEP specify that the z-vibe pencil “be used as long as it is effective as although it is effective now, it might not be for the entire year.” In a March 19, 2012 email, Parent responded stating that the wording had not been discussed by the team in January and Parents did not agree to the language be added.⁷¹

37. At Parent’s request, the BOCES sent Parent an amended IEP on March 19, 2012. In this March 8, 2012 amended IEP, the z-vibe pencil accommodation is listed without the language “as long as effective”.⁷²

38. A Special Request IEP meeting was held on April 3, 2012. During this meeting the team discussed the “as long as effective” language and agreed that it was appropriate to add the language to the z-vibe pencil accommodation.⁷³ In her Reply, Parent neither admitted nor denied that the language was discussed by the IEP team during the April 3, 2012 meeting. However, given the credible evidence in the Record, the SCO concludes that the “as long as effective” language was discussed by the IEP team during the April 3, 2012 meeting and, as a result of

⁶⁷ Interview of Parent, Complaint, pg. 4 and Exhibit 6, pg. 3.

⁶⁸ Response, pgs. 4-5 and Exhibit N, pgs. 11-27.

⁶⁹ Interview of OT.

⁷⁰ Response, pgs. 4-5 and Exhibit I.

⁷¹ Interview of OT and Exhibit K, pg. 17.

⁷² Response, pg. 4-5 and Exhibit N, pg. 26.

⁷³ Response, pg. 5 and Interview of ES Teacher.

those discussions, the language was added to the z-vibe pencil accommodation. ES Teacher amended the IEP, including insertion of the “as long as effective” language and mailed the IEP to Parents.⁷⁴

39. On April 27, 2012, Parent wrote Special Education Director Designee again objecting to the “as long as effective” language, and, as a result, the BOCES agreed to remove it from the IEP.⁷⁵ However, due to a staff oversight, the language was not removed from the May 8, 2012 IEP. The oversight was brought to the BOCES’s attention by Parent’s Complaint. As a result, the language was removed from the IEP and mailed to Parents on May 23, 2012.⁷⁶

40. Having carefully reviewed the Record, the SCO specifically finds:

- No cover letter accompanied the partial, three page IEP (i.e., Exhibit 6) supplied by Parent in support of her claim;
- The SCO does not find Exhibit 6 persuasive and concludes that it is more likely than not that Parent is mistaken about when she received the three pages identified as Exhibit 6;
- The January 23, 2012 IEP (i.e., Exhibit I) did not list a z-vibe pencil accommodation;
- OT’s February 27, 2012 email to Parent proposing addition of “as long as effective” language did not constitute a unilateral change to the January 23, 2012 IEP;
- In a March 19, 2012 cover letter (i.e., Exhibit N, pg. 11) Parent was advised that the enclosed March 8, 2012 amended IEP, reflected changes made to the 2011 IEP as a result of the January 23, 2012 Special Request meeting;
- The March 8, 2012 amended IEP listed a “z-vibe pencil with chew tip” (i.e., Exhibit N, pg. 26) as an accommodation;
- Special Education Director’s meeting notes from March 30, 2012 consisted of long hand notes written on a copy of the March 8, 2012 amended IEP (i.e., Exhibit J);
- The accommodation “z-vibe pencil with chew tip” was in type written form on the March 8, 2012 amended IEP that Special Education Teacher used to record her meeting notes in longhand (i.e., Exhibit J, pg. 14);
- Consistent with discussions held by the IEP team, the April 3, 2012 IEP (i.e., Exhibit K, pg. 17) added the language “as long as effective” to the z-vibe pencil accommodation;
- As a result of Parent’s April 27, 2012 letter (i.e., Exhibit N, pg. 36) to Special Education Director Designee and, at Parents’ request, the BOCES agreed to remove the “as long as effective” language;

⁷⁴ Interview of ES Teacher and Exhibit K, pg. 17.

⁷⁵ Interviews of Parent and Special Education Director and Exhibit N, pg. 36.

⁷⁶ Id and Exhibit N, pgs. 37 and 54.

- The May 8, 2012 amended IEP (i.e., Exhibit K, pg. 12) still contained the language “as long as effective;”
- The BOCES did not unilaterally change Student’s 2011 IEP without Parents’ consent;
- Failure to remove the language from the May 8, 2012 amended IEP was due to the BOCES’ unintentional oversight rather than an intentional act done without Parents’ consent;
- In conjunction with receipt of Parent’s Complaint, the BOCES removed the erroneous language and, on May 23, 2012, supplied Parent with a corrected IEP (i.e., Exhibit N, pgs. 37 and 54);
- Parent have received the May 23, 2012 corrected IEP; and⁷⁷
- Between February and the end of the school year, Student had access to the z-vibe pencil in the ES classroom during Math and Reading to trace over numbers and words. During this time period, Student also used the z-vibe pencil each time [Student] met with OT.⁷⁸

41. In her Reply Parent also raised a new claim alleging that, Parents’ names had been typed into the signature section of the amendment form in the March 8, 2012 amended IEP, thereby allowing the BOCES to amend Student’s IEP without convening an IEP meeting.⁷⁹

42. Special Education Director denied Parents’ claim. She was uncertain whether ES Teacher typed Parents’ names on the signature line of the form or whether the automated IEP system automatically inserted Parents’ names.⁸⁰ Special Education Director noted that the BOCES had experienced numerous problems with its automated IEP system, including problems with the system automatically populating (i.e., filling in) spaces on the IEP forms, such as the names of parents or re-inserting language previously deleted, such as the “as long as effective” language.⁸¹ Special Education Director noted that regardless of how the Parents’ names came to be inserted on the signature line of the amendment form, to be an effective waiver, the form still required Parents’ signatures. She explained this to Parent during the March 30, 2012 meeting. Because Parent declined to sign the form, an IEP meeting was convened on April 3, 2012.⁸²

43. Given the credible evidence in the Record, the SCO specifically finds that:

⁷⁷ Interview of Parent.

⁷⁸ Interview of ES Teacher and OT.

⁷⁹ Reply, pgs. 1-3 and Exhibit N, pg. 14.

⁸⁰ Interview of Special Education Director.

⁸¹ Id. In 2012, CDE began offering Districts and BOCES throughout the state a new IEP programming system. However, due to delays at the state level, the new IEP programming system has not yet been implemented. Special Education Director has been working directly with Dr. Millikin at CDE since February or March, 2012 to replace the existing program with the new IEP programming system. However, as of the date of this Decision, the new program has not been implemented due to delays at the state level not within the control of Special Education Director. CDE anticipates that the new program will be up and running with the BOCES sometime in August, 2012.

⁸² Interview of Special Education Director.

- The BOCES did not insert Parents’ names on the IEP amendment form signature line for the purpose of amending Student’s IEP without an IEP meeting;
- Parents’ typed names did not provide the BOCES with authority to amend Student’s IEP without an IEP meeting;
- Student’s IEP was amended as a result of matters discussed in the April 3, 2012 IEP meeting; and
- Parent’s claim is not supported by evidence.

44. The SCO also found the Record to be replete with communications from Parent citing confusion as to what services were being provided due to the incomplete and inaccurate IEPs that the BOCES supplied between January and May, 2012.⁸³ The credible evidence in the Record indicates that during the school year, the BOCES experienced problems with its existing IEP program system which may have caused some of the IEP inaccuracies (i.e., *See* paragraph 42 and footnote 81, above). Nevertheless, ultimately, the multiple IEP inaccuracies are attributable to the typing and or proofing errors committed by various BOCES staff.⁸⁴ Because of these inaccuracies, between January and May, 2012, Parents did not have a clear understanding of the special education and related services being provided to Student. As a consequence, Parents’ ability to participate in the decision-making process was significantly impeded. It was only through the persistent efforts of Parent (i.e., letters, telephone calls and IEP Special Request meetings) that, on May 23, 2012, Parents were finally supplied with a complete IEP that accurately reflected the special education and related services agreed to by the parties.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact (FF), 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.*)⁸⁵
3. The IDEA defines a FAPE to mean *special education and related services that:*

⁸³ *See* Footnote 30, above; Exhibits K, pg. 2 and N, pgs. 4-5, 28-31; Exhibits #7, pg. 7, and #10, pgs. 3-4 and 10.

⁸⁴ *See* Exhibit I: Social Skill goal from January 31, 2011 included; Exhibit J: Reading goal #1 omitted; Exhibit K: Reading goal #1 not changed to “2nd grade”; Exhibit N, pgs. 11-27: Reading goal #1 omitted and new baselines for Reading goal #2 omitted; and Exhibit N, pg. 32: wrong meeting date.

⁸⁵ Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

- (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. In assessing whether a BOCES 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 BOCES 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 services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

Whether the BOCES failed to implement or failed to provide progress reporting on various 2011 IEP goals/objectives.

5. The term “IEP” (i.e., individualized education program) means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324. The IEP must contain mandatory information, including but not limited to:

- (a) General . . . [A] written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include -
 - (1) A statement of the child’s present levels of academic achievement and functional performance . . . ;
 - (2) A statement of measurable annual goals . . . designed to (A) meet the child’s needs . . . to enable the child to be involved in and make progress in the general education curriculum. . . ;
 - (3) A description of (i) how the child’s progress toward meeting the annual goals will be measured; and (ii) when periodic reports on the progress of the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
 - (4) A statement of the special education and related services and supplementary aids and services . . . to be provided to the child, and a statement of the program modifications or supports . . . that will be provided to enable the child – (i) to advance appropriately toward attaining the annual goals; (ii) to be involved in and make progress in the general education curriculum . . . ; and (iii) to be educated and participate with other children . . . in activities described in this section;

- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class . . . ;
- (6) A statement of any individual appropriate accommodations . . . necessary to measure the academic achievement and functional performance of the child on State and district wide assessments . . . ; and
- (7) The projected date for the beginning of the services . . . and the anticipated frequency, location and duration of those services and modifications.

Section 300.320(a)(1)-(7).

6. Parents were to be notified of Student's progress on the IEP goals through four progress reports, parent-teacher conferences, the journal and an annual IEP meeting. The IEP did not specify whether the four progress reports were to be made on a quarterly basis or other time period. Nor did the IEP specify whether the four progress reports were to be in writing or could be delivered orally. (FF #4). This is a violation of § 300.320(a)(3)(ii). *See also* Preamble to the 2006 Part B Regulations, 71 Fed. Reg. pg. 46664 (August 14, 2006) (The Act requires the IEP to include a description of when periodic reports on the child's progress will be provided).

7. Although progress reporting is required on each annual goal, the IDEA does not require that progress reporting be supplied on associated objectives. §300.320(a)(3). However, the IEP form used by the BOCES listed four progress report boxes beneath each of the associated objectives. (FF #4). Therefore, it was reasonable for Parents to expect that they would receive four progress reports on each of the objectives associated with the annual goals.

8. **Reading goal #1- implementation of the sight words objective.** ES Teacher was responsible for implementing Reading goal #1 and the four associated objectives. (FF #5). Parent claimed that the BOCES failed to implement or failed to supply progress reporting on Reading goal #1 and the associated sight words objective: “[Student] will read sight words within the context of a story with 90% accuracy in three consecutive trials.” (FF #6).

9. Reading goal #1 and the four associated objectives, including the sight words objective, were implemented in September 2011 and worked on throughout the 2011-2012 school year. (FF #9). ES Teacher failed to supply one progress report on the sight words objective in conjunction with her October 2011 written report. This constituted a procedural violation of §300.320(a)(3)(ii). However, ES Teacher did supply progress reports on the sight words objective on three occasions (i.e., oral reports in January and April and a written report in May). (FF #s 7-9). Additionally, between October 4, 2011 and May 14, 2012, ES Teacher provided Parents with several progress reports on the sight words objective through journal communications. (FF # 8-10).

10. Between September 2011 and May 2012, Student made measurable progress on Reading goal #1, including the sight words objective. (FF #9).

11. **Reading goal #2 – progress reporting on the three objectives.** Resource Teacher was responsible for implementing Reading goal #2 and the three associated objectives. (FF # 10).

Parent claimed that, between September 2011 and May 2012, the BOCES failed to implement or failed to supply progress reporting on Reading goal #2 and the three objectives. (FF #11).

12. Reading goal #2 and the three objectives were implemented in the fall of 2011 and worked on throughout the school year. (FF # 13). Resource Teacher failed to supply Parents with any progress reports during the fall of 2011. (FF #13). This constituted a procedural violation of §300.320(a)(3)(ii). However, Resource Teacher supplied Parents with oral progress reports on the three objectives during the January 23, 2012 and April 3, 2012 Special Request meetings. He also supplied Parents with written progress reports and supporting data in February and May, 2012. (FF #s 12-13).

13. Over the course of the 2011-2012 school year, Student made measurable progress on Reading goal #2 and the three associated objectives. (FF #13).

14. Applying the two-prong analysis of *Garcia v. Board of Educ.*, 520 F.3d 116 (10th Cir. 2008), even if it is determined that a district committed procedural violations of the IDEA, it is appropriate to also determine whether the services provided to the student through the IEP were reasonably calculated to enable the child to receive educational benefits. During the fall of 2011, ES Teacher failed to supply a sight words progress report and Resource Teacher failed to supply any report on Reading goal #2. Despite these procedural violations, Student made measurable progress on both of the Reading goals over the course of the school year and therefore, received educational benefits. Furthermore, Student's educational benefits were more than de minimis. *Urban ex re. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, at 727 (10th Cir. 1996). Consequently neither of these procedural violations resulted in a denial of FAPE.

15. **Social Skills goal and objectives.** Parent claimed that the BOCES failed to include a Social Skills goal or objectives in the 2011 IEP. (FF #14). However, the credible evidence in the Record revealed that the IEP team discussed the Social Skills goal at the September 12, 2011 IEP meeting. During that meeting Parents indicated that, because [Private Program]'s services included working with Student on social skills, that they did not want a Social Skills goal included in the 2011 IEP. (FF #s 15-17 and 20). Based on Parents request, the IEP team intentionally omitted a Social Skills goal from the 2011 IEP. (FF #16).

16. Furthermore, although Parents were supplied with the finalized IEP the latter part of September 2011, Parent stated that she did not notice that the 2011 IEP contained no Social Skills Goal until sometime in January 2012. (FF #18). During the January 23, 2012 IEP meeting Parent requested that Student's IEP be amended to include a Social Skills goal. (FF # 19). As a result, the IEP team discussed a Social Skills goal and three associated objectives on April 3, 2012 and the 2011 IEP was amended accordingly. (FF #20). By May 15, 2012 Student had made measurable progress on the Social Skills goal and three associated objectives. (FF #20). Given the persuasive evidence in the Record, the SCO concludes that there were no procedural violations associated with the Social Skills claims.

Whether the BOCES failed to modify the grade level curricula to Student's reading level in four general education classes.

17. The 2011 IEP listed several accommodations and modifications, including the adaptation of grade level materials to Student's reading level. (FF # 20).

18. Parent does not believe that, during the 2011-2012 school year, the curriculum was modified to Student's reading level. In support of her claim, Parent supplied two documents which, in her opinion, were "too low" for Student's reading abilities. She also supplied one document found in Student's backpack which, in her opinion, was "too high" for Student's reading abilities. (FF # 20).

19. ES Teacher was responsible for modifying the curriculum in Student's four general education classes (i.e., Reading, Writing, Social Studies and Science). (FF #s 21& 27). In the ES Teacher's absence, two paraprofessionals working under her supervision were responsible for implementing Student's modified reading curriculum in the general education classes. (FF #21).

20. The credible evidence in the Record also indicates that, at the beginning of the school year, Student was reading sight words at a first grade level and, in terms of reading comprehension, at a Kindergarten level. By the end of the school year, Student was reading at a second grade level and comprehended with approximately 80% accuracy at the first grade level. (FF #22).

21. Given the credible evidence in the Record, the SCO concludes that, throughout the 2011-2012 school year, the curriculum was modified to Student's reading level in all of [Student's] general education classes. (FF #s 23-27). Parent's claim is not supported by sufficient evidence to the contrary. (FF #27). The SCO concludes that no procedural violation occurred.

Whether the BOCES failed to use a computer for word processing and a touch screen.

22. The 2011 IEP specified that Student needed assistive technology devices. The devices listed were "computer for word processing [and] other technology to be tried are touch screen and Super Talker." (FF #28). Parent does not believe the BOCES supplied a computer and touch screen to Student during the 2011-2012 school year but offered no evidence in support of her claim. (FF # 29).

23. The credible evidence in the Record does not support Parent's claim. (FF #33). The touch screen was tried in the ES classroom for a period of six weeks at the beginning of the school year. Student did not like the touch screen, preferring to type [Student's] words. As a consequence, use of the touch screen was discontinued. (FF # 30 & 33). The Super Talker was also tried in both the ES classroom and Library class at the beginning of the school year. Although Student has good speech, Parent wanted the BOCES to try the device. Because it was confusing for Student to communicate using the Super Talker rather than just verbalizing, ES Teacher discontinued use of the device. (FF #32 & 33). Throughout the school year, Student used a laptop computer or a desktop computer on a daily basis in the ES classroom. Additionally, Student also used a laptop or an iPad in the general education classrooms. (FF #31 & 33). Parent's claim was not supported by the evidence. (FF #33). With regard to this claim, the SCO concludes that there was no violation of the IDEA.

Whether the BOCES unilaterally changed Student's IEP z-vibe pencil accommodation with addition of the words "as long as effective" in the March 8, 2012 amended IEP.

24. Parent claimed that the BOCES unilaterally changed the language in the IEP concerning the z-vibe pencil accommodation when the words "as long as effective" were added. In support of her claim, Parent alleged that the March 8, 2012 amended IEP that was supplied by the BOCES (i.e., Exhibit 6) included the language "as long as effective." Parent claimed that the addition of this language constituted a unilateral change to the IEP, made by the BOCES without Parents' consent subsequent to the January 23, 2012 IEP meeting. The BOCES denied the claim and supplied conflicting documentation (i.e., Exhibit N, pgs. 11-27. (FF #34). In weighing the conflicting exhibits, the BOCES' Exhibit N, pgs. 11-27 was found to be persuasive while Parent's Exhibit 6 was not found to be persuasive. (FF #40).

25. In conjunction with the January 23, 2012 IEP Special Request meeting, Parent requested that Student's IEP be amended to include a z-vibe pencil. (FF #36) In amending Student's IEP, the BOCES erroneously omitted the accommodation from the January 23, 2012 amended IEP. (FF #36). The BOCES' omission was a violation of §300.320(a)(4).

26. It is true that OT wrote Parent on February 27, 2012, proposing the addition of the language "as long as effective" and that, after a lengthy delay, Parent replied that she objected to the proposed language. (FF #s 36). However, the OT's communication was merely a proposal which did not amend Student's IEP (FF # 40) and, therefore, did not constitute a violation of the IDEA.

27. An amendment of the IEP, based on the January 23, 2012 IEP meeting, was accomplished on March 8, 2012 and supplied to Parent on March 19, 2012. The IEP listed the z-vibe pencil accommodation but did not include the language "as long as effective." (FF #s 37 & 40). On April 3, 2012, the IEP team met and, after discussion, concluded that it was appropriate to add the "as long as effective" language. (FF # 38). After Parents received the amended IEP, they again raised objections to the added language. As a result, the BOCES agreed to remove the language. However, due to a BOCES' oversight, the "as long as effective" language did not get removed from the May 8, 2012 amended IEP and, in fact, was not removed until May 23, 2012, after Parent filed her Complaint. (FF #39-40). The BOCES' failure to supply Parents with accurate IEPs in conjunction with the January 23, 2012 and May 8, 2012 meetings constituted procedural violations of §300.320(a)(4).

28. In her Reply, Parent also claimed for the first time that the BOCES typed Parents' names in the IEP amendment form in order to amend the IEP without convening an IEP meeting. (FF #41). It is unclear whether Parents names were intentionally typed on the form or the IEP program then in use automatically inserted the Parents' names. However, *the amendment form required signatures* in order for the IEP to be amended without an IEP meeting. (FF #42). Parent presented no evidence that the presence of Parents' typed names on the amendment form was done with the intention of amending the IEP without an IEP meeting. The credible evidence is that, absent Parents' signatures, the BOCES had no authority to amend Student's IEP. (FF #s 42-43). Because Parents declined to sign the amendment form, an IEP meeting was convened on

April 3, 2012. During this meeting the IEP team discussed and decided to amend Student's z-vibe accommodation with the added language "as long as effective" (FF #s 42-43). Parent's claim was not supported by the credible evidence. (FF #43) and, therefore, a violation of the IDEA did not occur.

29. The BOCES was responsible for supplying Parents with IEPs which accurately reflected the Student's services based on IEP team decisions. However, in addition to the violations noted in paragraph 27, above, the Record contains multiple inaccurate and incomplete IEPs which the BOCES supplied to Parents between January and May, 2012. Consequently, Parents did not know precisely what special education services and accommodations were actually being supplied to Student. (FF # 44). The BOCES' actions constituted multiple procedural violations of §§ 300.320(a), 300.322(f) and 300.324(a)(4)(ii) which significantly impeded Parents ability to participate in the decision-making process, thereby denying Student a FAPE. However, mindful of the fact that, during the school year, Student made measurable progress on the two Reading goals (FF #s 10 & 13) and had access to the z-vibe pencil until May 2012 (FF # 40) the appropriate remedy is to ensure that School and BOCES staff receive training concerning the relevant IDEA regulations.

REMEDIES

The BOCES has violated the following IDEA requirements:

- Section 300.17;
- Section 300.320;
- Section 300.322; and
- Section 300.324.

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

1) Corrective Action Plan:

No later than August 17, 2012, the BOCES shall submit to the Department a Corrective Action Plan (CAP) that addresses each and every violation noted in this Decision. Furthermore, the CAP must also include specific information on **how BOCES and School level staff hired subsequent to September 28, 2012** will receive the mandatory training described below. The CAP must, at a minimum, provide for the following:

- a. **By August 17, 2012**, submission of the name and title of all proposed trainers and a complete copy of all proposed written training materials consistent with the IDEA and this Decision. (NOTE: CDE stands ready, willing and able to supply technical assistance in the form of trainers and training materials for the mandated training described below.)

- b. **By September 28, 2012**, conduct a training on IEPs which shall include, *at a minimum*, training and discussion consistent with the IDEA and this Decision concerning §§ 300.17, 300.320, 300.322 and 300.324 on:
- The provision of FAPE;
 - The development, review, revision and amendment of IEPs;
 - Parent participation; and
 - The issuance of accurate and complete IEPs to parents.

The BOCES's IEP training *shall include* all of the following staff:

- (i) All BOCES or School staff who are responsible for or may become responsible for the development, revision or implementation of the IEP of a child with a disability attending School, including special education service providers and the Special Education Director and/or Designees; and
- (ii) Any staff at the BOCES or School level responsible for communicating or who may be responsible for communicating with parents of a child with a disability attending School.

- c. **By October 5, 2012**, submission of evidence that such training has occurred (i.e., complete copies of training schedule(s), agenda(s), curriculum/training materials, the name and title of each trainer, and legible attendee sign-in sheets which lists each attendee's printed name and job title).

2) **Written Assurances:**

By August 6, 2012, Special Education Director shall supply written assurances that, until training occurs, on or before September 28, 2012, she or the designee who attended the IEP meeting will personally review and proof all IEPs issued from the date of this Decision for children with a disability who are attending School.

3) **Student's Current IEP:**

By August 20, 2012, supply to the Department a copy of Student's current IEP as well as written assurances that the IEP accurately reflects Student's services based on IEP team decisions.

Please submit the CAP and all other documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Joyce Thiessen-Barrett, Senior Consultant
1560 Broadway, Suite 1175
Denver, CO 80202-5149

NOTE: Failure by the BOCES to meet any of the timelines set forth above will adversely affect the BOCES’s annual determination under the IDEA and subject the BOCES to enforcement action by the Department. The enclosed sample template provides suggested formats for the CAP and includes sections for “improvement activities” and “evidence of implementation of change.”

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 27th day of July, 2012.

Jeanine M. Pow

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A

Parent's Complaint, pages 1 through 6.

- Exhibit 1: Parent's copy of September 12, 2011 IEP.
- Exhibit 2: Progress monitoring October 25, 2011 and January 16, 2012.
- Exhibit 3: January 31, 2011 IEP social and social context goal and two objectives.
- Exhibit 4: Modified reading materials supplied to Student (pgs. 2-6: too low) and (pg. 7: too high).
- Exhibit 5: February, 2011 SLV SWAAAC Evaluation Report.
- Exhibit 6: Additional Meetings of January 23, 2012 and April 3, 2012 and January 25, 2012 IEP amendment.

Parents' June 1, 2012 Reply, pages 1 through 4.

- Exhibit 7: Parent's IEP Meeting notes from January 23, 2012; notes from February 15, 2012 meeting with Superintendent; and notes from February 20, 2012 telephone call from Special Education Director.
- Exhibit 8: January 31, 2011 Draft IEP given to Parent at outset of September 12, 2012; Parent's September 12, 2011 IEP meeting notes; April 3, 2012 meeting.
- Exhibit 9: May 1, 2012 Note to Parent from Case Manager and May 25, 2011 letter from Parent to Special Education Director.
- Exhibit 10: Excerpt from January 23, 2012 IEP and various Parent telephone log notes and emails between November, 2011 to April, 2012.

BOCES's May 24, 2012 Response, pages 1 through 7.

- Exhibit A: September 12, 2011 IEP (2011 IEP).
- Exhibit B: A sheet listing the date and purpose of each IEP meeting held between October 1, 2011 and May 8, 2011.
- Exhibit C: Copy of a partial recording of the May 8, 2012 IEP meeting.
- Exhibit D: Student's attendance records for the 2011-2012 school year.
- Exhibit E: Blank (Student does not receive grade reports).
- Exhibit F(1): Case Manager and OT progress reports.
- Exhibit F(2): Resource Teacher progress reports.
- Exhibit F(3): SLP progress reports.
- Exhibit G: The BOCES 2011-2012 school calendar.
- Exhibit H: Contact information for all BOCES staff having personal knowledge of facts underlying the Complaint allegation and claims.
- Exhibit I: January 23, 2012 IEP from Special Request meeting.
- Exhibit J: Special Education Director's March 30, 2012 meeting notes.
- Exhibit K: April 3, 2012 IEP from meeting.
- Exhibit L: May 8, 2012 IEP from meeting.
- Exhibit M: Copy of Student's "back and forth" journal.
- Exhibit N: Copies of correspondence and emails between Parent and BOCES, August 23, 2011 to March 19, 2012, concerning Student's IEP and IEP revisions made during 2011-2012 school year.
- Exhibit O: Tracking receipt.

Telephone Interviews with:

Parent on May 8, 2012, June 1, 2012 and July 11, 2012;

Special Education Director on June 11, 2012 and July 13, 2012;

OT, Resource Teacher, General Education Teacher and Para on June 19, 2012; and

ES Teacher on July 9, 2012 and July 24, 2012.