

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

---

**State-Level Complaint 2010: 504**

**Mountain BOCES**

**DECISION**

**INTRODUCTION**

This pro-se, state-level complaint (Complaint), dated 02/23/2010, was properly filed on 03/05/2010.

The Complainant, is the mother of a child with a disability. In order to comply with the federal regulations (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))<sup>1</sup> and to protect the anonymity of Complainant and her 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:

- [Parent], Complainant [Parent];
- [Student], Child of Parent, [Student];
- [Student's] age of [Age] [Age];
- [Current Advocate], Advocate, [Current Advocate];
- [Former Advocate], Advocate, [Former Advocate];
- Mountain BOCES [BOCES];
- Eagle County School District [District];
- [BOCES Special Education Director], BOCES Special Education Director [BOCES Special Education Director];
- [District Special Education Director], District Special Education Director [District Special Education Director];
- [District Coordinator], Special Education and Gifted District Coordinator [District Coordinator];
- [Former High School], school [Student] previously attended in 2008-2009, [Former High School];
- [Former Case Manager], 2008-2009 Case Manager at [Former High School], [Former Case Manager];
- [Current High School], school [Student] has attended since spring, 2009, [Current High School];

---

<sup>1</sup> FERPA, codified at 20 U.S.C. 1232, 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 C.F.R. § 300.300, *et seq.*

- [Fall Case Manager], fall, 2009 Case Manager at [Current High School], [Fall Case Manager];
- [Current Case Manager], Case Manager, winter, 2010 to present, at [Current High School], [Current Case Manager];
- [Principal], Current High School Principal, [Principal];
- [School Psychologist], School Psychologist [School Psychologist];
- [School Counselor], School Counselor [School Counselor];
- [Former Autism Specialist], former Autism Specialist [Former Autism Specialist];
- [College], [[College]];
- [College Disability Coordinator], [College] Disability Coordinator [[College] Disability Coordinator]; and
- [College] algebra class [Student] took in spring, 2009 and repeated in the fall, 2009 [college class].

The State Complaints Officer (SCO) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaints process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO, between the dates of 08/24/2009 and 12/11/2009, is:

Whether the BOCES denied [Student] a free appropriate public education (FAPE) by failing to implement the 06/01/2009 IEP (IEP) in conjunction with [Student's] dual enrollment [college class] at [College], during the fall, 2009 semester.

[BOCES Special Education Director] was notified of [Parent's] allegation in a letter dated 03/08/2010. The letter included a complete copy of the Complaint and all supporting documentation. In conjunction with the Response, the BOCES was specifically directed to supply the SCO with all supporting documentation substantiating the BOCES' Response including:

- Complete copies of all IEPs and transition plans in effect for [Student] during the preceding 12 months; and
- Any other information the [BOCES] believed would be helpful in resolving the Complaint.

The BOCES' Response, submitted by [BOCES Special Education Director], consisted of a three page cover letter and supporting documentation and was timely received on 03/23/2010.

In a letter dated 03/24/2010, [Parent] was supplied with a complete copy of the BOCES' Response and supporting documentation and was advised that any reply (Reply) was due no later than 5:00 p.m. on 04/05/2010. [Parent's] Reply, consisting of a two page letter, was timely

---

<sup>2</sup> Hereafter IDEA regulations will be referred to by regulation number, e.g., § 300.000.

received on 04/05/2010. The SCO sent [BOCES Special Education Director] a copy of the Reply by certified U.S. mail on 04/05/2010.

On 03/30/2010, the SCO requested that [Parent] supply additional documentation which was timely received by U.S. mail on 04/05/2010.

In a letter dated 03/30/2010, the SCO requested that the BOCES supply additional information and documentation no later than 5:00 p.m. on 04/13/2010. The requested information was timely received.

On 04/20/2010, the SCO conducted telephone interviews with the following persons: [BOCES Special Education Director]; [Fall Case Manager]; [District Coordinator]; and [District Special Education Director]. As a result of the telephone interviews, SCO requested additional BOCES documentation.

On 04/22/2010, the SCO conducted a telephone interview with [Parent]. As a result of that telephone interview, the SCO requested that [Parent] supply a complete copy of her meeting notes from the 06/01/2009 IEP meeting since the notes previously supplied were from an earlier (i.e., 02/26/2009 IEP meeting). On 04/22/2010, [Parent] e-mailed the SCO and reported that she had no notes for the 06/01/2010 IEP meeting but that she was checking with [Former Advocate] who attended the meeting. The requested meeting notes were never supplied.

On 04/23/2010, the BOCES supplied additional information requested as a result of the 04/20/2010 interviews.

On 04/26/2010, the SCO conducted a telephone conference with [BOCES Special Education Director] and requested additional information which was supplied to SCO on 04/26/2010. The information was timely received on 04/29/2010.

On 05/03/2010, the SCO conducted a telephone interview of [Principal].

On 05/03/2010, subsequent to interview of [Principal] the SCO closed the record.

### **THE PARENT'S COMPLAINT ALLEGATIONS**

[Parent's] Complaint, makes one allegation that is summarized below:

Between the dates of 08/24/2009 and 12/11/2009, the BOCES failed to implement [Student's] IEP. Specifically, [Fall Case Manager]<sup>3</sup> failed to properly implement a transition plan for [Student] at [College] concerning communication and support in conjunction with [Student's]

---

<sup>3</sup> In her Complaint, [Parent] identified [District Special Education Director] as [Student's] case manager. In fact, [Fall Case Manger] was directly responsible for [Student's] case management, including primary responsibility for the IEP implementation between 08/31/2009 and the beginning of 01/2010. [Student's] [Current Case Manager] has served since the beginning of 01/2010 and has no involvement in [Parent's] Complaint. Ultimately, the [BOCES Special Education Director] is responsible for implementation of an IEP in conformance with IDEA.

dual enrollment in [college class] at [College]. Because [Fall Case Manager] never communicated with [College] regarding [Student's] needs and did not do anything to transition or support [Student] at [College], student failed the [college class].

Proposed remedy: [Fall Case Manager] and BOCES should receive additional training in transition planning and should be held accountable for [Student's] failure.

### **THE BOCES' RESPONSE**

The BOCES' Response is summarized as follows: the BOCES denies any wrongdoing in implementation of [Student's] IEP transition plan.

### **THE PARENT'S REPLY**

In reply to the BOCES' Response, [Parent] restates that the BOCES did not appropriately support [Student] through implementation of [Student's] IEP at [College] and this caused [Student] to fail the [college class].

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>4</sup> the SCO makes the following FINDINGS:

**Allegation: Failure to Properly Implement Transition Plan Contained in IEP at [College] Caused [Student] to Fail [college class].**

#### **Background Information:**

1. [Student] is [Age] years of age and is eligible for special education and related services on the basis of an autism disability. [Student] does not believe that [Student] is a child with an autism disability. (Telephone interview with [Parent] and Exhibit 5).
2. Initially, during the 2008-2009 school year, [Student] was enrolled in and attending [Former High School].
3. [Parent] took [Student] to class every day. During the second semester, 2009, [Student] began to refuse to attend school and ultimately refused to get out of bed. [Student] also refused to attend a martial arts class or to ski. [Student] was content to remain at home where [Student] watched television and read books. [Parent] attributed [Student's] refusal to attend school to a combination of factors: a bullying incident which [Student] had experienced at [Former High

---

<sup>4</sup> Appendix A, attached and incorporated by reference, details the entire record.

School]; failure of [Former High School] staff to provide support and accommodations; [Student's] difficulty having a twin who is very successful; and adolescence. (Telephone interview with [Parent] and Exhibit 5).

4. During this time period (i.e., second semester, 2009), in addition to taking traditional high school courses, [Student] was dually enrolled at [COLLEGE] in a [college class] taught by [COLLEGE] staff at [Former High School]. Because [Student] refused to attend any classes, including the [COLLEGE] class, [Student] received a grade of "F" for the [college class].

5. As a result of [Student's] refusal to attend school, [Parent] took [Student] to a private [unidentified] counselor. [Parent] also had an informal meeting with the [unidentified] BOCES Autism Specialist and [Former Case Manager]. The BOCES Autism Specialist felt that [Student's] refusal to attend school was beyond her expertise. [Parent] also attempted to get [Student] to confer with [Former Autism Specialist], who had previously worked with [Student]. However, [Student] refused to see this specialist.

6. An IEP meeting was conducted 02/26/2009 in an attempt to get [Student] to return to school. This meeting was attended by [Parent]; [Former Advocate]; [Former Case Manager], numerous [Former High School] providers and staff; [District Special Education Director]; and [BOCES Special Education Director]. (Exhibit 5, pg. 7). [Student] refused to attend this meeting.

7. As a result of the 02/26/2009 IEP meeting, [Student] was eventually persuaded to return to school and was enrolled in [Current High School] where [Student] completed the 2008-2009 school year.

#### **June 1, 2009 IEP Meeting and IEP:**

8. In the 05/27/2009 Notice of Meeting to [Parent], prepared and mailed to [Parent] by [Former Case Manager], [Parent] was notified that the purpose of the IEP meeting was for an annual review. The box on the form concerning transition services was not marked although there is no dispute that [Student's] transition plan was discussed during the meeting. The Notice of Meeting form also notified [Parent] that "You may invite other people that you believe will be helpful to you." (Exhibit I).

9. An IEP meeting was conducted on 06/01/2009 which was attended by: [Student]; [Parent]; [District Special Education Director]; [General Education Teacher]; and [Former Case Manager].<sup>5</sup> None of the persons who attended the 06/01/2009 IEP meeting that were interviewed by SCO took meeting notes.

10. Neither [Parent] nor the [BOCES] invited the [[COLLEGE] Disability Coordinator] or other [COLLEGE] staff to the IEP meeting. The BOCES had no duty to invite a [COLLEGE]

---

<sup>5</sup> Subsequent to the 06/01/2009 IEP meeting and prior to the start of the 2009-2010 school year, [Former Case Manager] married and moved out of the state. Consequently, the SCO was unable to interview [Former Case Manager].

representative to attend the IEP meeting since [COLLEGE] was not responsible for providing or paying for [Student's] transition services. 34 C.F.R. § 300.324(c).

11. During the IEP meeting, [Student] expressed an interest in taking [college class] through [COLLEGE] during the fall, 2009 school semester since the math classes offered at [Current High School] did not meet [Student's] needs. However, neither [Parent] nor [Student] mentioned the fact that [Student] had taken and failed the same [COLLEGE] [college class] while [Student] was attending [Former High School] in the spring, 2009.

12. There is conflicting information concerning [Student's] needs and the relevant courses offered at [Current High School]. According to [Parent], the relevant courses offered at [Current High School] did not meet [Student's] needs because all of the courses were entry level classes and [Student] was above the level of the classes. (04/22/2010 Interview with [Parent]). However, according to the BOCES, during the first trimester of 2009, [Student] could have taken a Core Two class at [Current High School] in order to partially satisfy [Student's] graduation requirements.<sup>6</sup> (05/03/2010 Interview with [Principal]). The SCO concludes that the credible evidence in the record is that there were classes available at [Current High School] for [Student] to take in the fall of 2009 and also in subsequent trimesters to satisfy [Student's] core credits to graduate.

13. The portions of the finalized IEP that are relevant to the Complaint are as follows:

Section 6: Present Levels of Academic Achievement and Functional Performance  
Including Input from Parent & Student:

...

- Student Needs and Impact of Disability . . .
- [Student's] disability requires that [Student] have extended time on assignments, assignments broken down into steps, frequent checks for understanding, and concrete writing topics. [Student] may need the amount of work assigned reduced so [Student] does not become overwhelmed. It is best for [Student] to focus on one assignment at a time in each class. [Student] is encouraged to type assignments when possible, as [Student's] handwriting is difficult to read. [Student] may also require support with extended writing assignments, especially (sic) planning and organizing.

...

Section 8: Post-School Considerations . . .

- Post-Secondary Education/Training Goal: [Student] will take Dual Enrollment courses through [COLLEGE] to prepare for college.
- Planned Course of Study: Curriculum as prescribed by [District] taking into account [Student's] interest in math, science, and computers.
- Transition Services and Activities: Extended time support; class and credit monitoring; and college exploration.

---

<sup>6</sup> Additionally, second trimester, [Current High School] offered Core Two and an Intensive course and third trimester, offered Core Two and Finance. [Student] took and passed the Intensive course during the second trimester. During the third (current) trimester, [Student] is successfully taking Core Two and Finance. These three courses satisfy the final core subject matter requirements and [Student] is on track to graduate in one month.

- Career Employment Goal: [Student] will attend college classes in order to work in the computer science field.
- Planned Course of Study: Curriculum as prescribed by [Current High School] taking into account [Student's] interests in math, science, and computers.
- Transition Services and Activities: Career Counts class and Jump Start class at [Current High School].

...

#### Section 9: Annual Measurable Goals

...

[Student] will improve [Student's] record of independently completing and turning in homework, on time, from 70% to 90% of the time by 06/01/2010. Baseline: 70%  
Area of need: Organization. Related Standard: Demonstrate time management skills.

[Student] will find a system to increase [Student's] ability to prioritize [Student's] study schedule to 80% of the time by 06/01/2010. Baseline: Under 50%, does not have a system that works yet. Related Standard: Demonstrate time management skills.

...

#### Section 10: Accommodations & Modifications

##### Accommodations:

- Extended time when needed;
- Reminders for deadlines and due dates;
- Frequent checks for understanding/focus;
- Concrete writing topics;
- Assistance with extended writing-planning, organizing, editing, revising;
- Break assignments into steps;
- Provide notes for lectures when needed;
- Use of computer; and
- Scribe if needed.

Modifications: What standards, if any, need to be modified, expanded, and/or prioritized for student to access the general curriculum and/or appropriate activities to make effective progress? None

...

#### Section 13: Service Delivery Statement [06/01/2009 to 06/01/2010]

##### Special Education and Related Services in the Least Restrictive Environment

- Academics by Resource Teacher<sup>7</sup> 1.00 hours per month of indirect services;

---

<sup>7</sup> Although the provider is identified in the IEP as "resource teacher," during the fall, 2009 trimester, [Fall Case Manager] was responsible for supplying [Student] with case management and indirect academic services. Since 01/2010, the indirect academic services and case management responsibilities have been supplied by [Current Case Manager].

- Speech by Speech Language Pathologist 0.50 hours per month of indirect services; and
- OT by Occupational Therapist 0.50 per month of indirect services.

...

#### Section 15: IEP Prior Written Notice

The IEP includes services to be provided to assist your child to make progress. The Present Level of Academic Achievement and Functional Performance in Section 6 includes information about the data used as a basis for the decisions recorded in the IEP. Other options considered: [Student] would have services at [Former High School] [and] discontinue speech and [occupational therapy]. Why those options were rejected: [Student] is working at [Current High School] and has experienced success. [Student] will have consult services with speech and [occupational therapy].

Exhibit I.

#### **Fall Trimester, 2009:**

14. In the fall of 2009, [Student] enrolled at [Current High School] and took several high school classes. [Student] also enrolled in one college class at [COLLEGE] under the dual enrollment program. This was the same [college class] that [Student] had taken and failed in the spring of 2009.

15. Dually enrolled students taking and passing college classes receive both college and high school credit for college classes which they successfully complete. (Interview with [Fall Case Manager]).

16. In order to enroll in the [college class], [Student] and [Parent] were required to complete a Concurrent Enrollment form, including obtaining approval of the [Current High School] [Principal] or [School Counselor].

17. Relevant portions of the Concurrent Enrollment form which [Student], [Parent] and [School Counselor] signed in conjunction with [Student's] enrollment in the [college class] provides:

You have indicated that you are interested in enrolling in a college course while a high school student. The State of Colorado provides several options for high school students who meet high school standards to begin college early. The purpose of these options include promoting content standards[and] providing academic challenges . . .

Persons under twenty-one years of age, enrolled in the . . . 12<sup>th</sup> grade in a school district, who demonstrate academic preparedness, are eligible for concurrent enrollment programs . . . To enroll at a Community College a student must have completed the minimum course prerequisites and all required assessments.

...



. . . [I]f the student receives a grade of “C-,” “D” or “F” . . . the student and parent may be responsible to the sponsoring School District for payment for the respective class . . .

Deliver this form to your high school counselor. Section B will indicate which options are available to you. This contract is student and college specific . . .

. . .  
Section B: Student Eligibility: To be completed by High School counselor/principal. Check all that apply. [The following four boxes were checked or marked]: This student is under 21 years of age. *This student is eligible to participate and has the maturity to enroll in a college level course and complete the assignments for the course.* The school district agrees to pay the tuition for 1 course this term. This student is enrolled in 12<sup>th</sup> grade.

. . .  
Section C: To be signed by student and student’s parent/guardian: I understand that *this agreement entitles me/my child to enroll in college courses if academically and socially ready. I understand the following: I will meet the same course requirements as college students; . . . The course satisfies college graduation . . . requirements . . .* Transfer course credits will only transfer if I earn a C or better in the course. *The grade received in this course will appear on my official college transcript.*

Exhibit 2 (emphasis added). Consistent with the Concurrent Enrollment form, tuition for the [college class] was paid for in full by the [District]. (Exhibit A, pg. 6).

18. The record reveals that between 08/24/2009 and 12/11/2009 [Fall Case Manager] delivered the following indirect academic special education services to [Student]:

- On 09/28/2010, Fall Case Manager drafted and distributed a Fact Sheet to all of [Student’s] [Current High School] teachers and providers. The Fact Sheet detailed [Student’s] disability, annual measurable goals, strengths, needs and accommodations (Exhibit L, pg. 27);
- Conducted one progress monitoring (Exhibit L, pgs. 19-21);
- Met with [Student] periodically in order to: determine [Student’s] current status, to assist [Student] with study skills and promote self advocacy;
- Followed up with [Student] and [Current High School] teachers concerning [Student’s] assignment completion;
- At [Parent’s] request, met with [Parent] on a weekly basis between 09/09/09 and 10/14/2009 in order to keep [Parent] apprised of [Student’s] status (Exhibit B, pgs. 1-3);
- Exchanged written communications with [Parent] (Exhibits B, pg.3; L, pg.6); and
- Attended monthly intervention meetings with [Current High School] teachers and providers to discuss [Student’s] progress and IEP implementation.

19. In addition to her duties at [Current High School], [Fall Case Manager] was also employed by [COLLEGE] as a Teaching Assistant (TA) at [COLLEGE] in the [college class]. In conjunction with her TA duties, each week [Fall Case Manager] taught one hour of the [college class] to all of the students, including [Student]. [Fall Case Manager’s] portion of the class was devoted to teaching study skill strategies, reviewing homework questions and some

grading. In conjunction with the [college class], [Fall Case Manager] had frequent discussions with [Student] about the need to turn in assignments on time. Nevertheless, [Student] failed to complete assignments and failed to complete a take home test. (Interview with [Fall Case Manager]).

20. The weekly meetings between [Fall Case Manager] and [Parent] (noted in Finding of Fact 18, above), were scheduled at [Parent's] request. The credible evidence in the record reveals that [Parent] failed to appear at three of the scheduled meetings. On another occasion, [Fall Case Manager] failed to appear at a scheduled meeting. (Exhibit K, pgs. 9-10). On 10/13/2009 at 8:37 p.m., [Parent] e-mailed [Fall Case Manager] to advise that she would not attend the meeting scheduled for the following morning and was unilaterally terminating further meetings. [Parent] explained:

I do not feel that our meetings have been productive in helping [Student]. I am saddened that almost 2 months into the semester and *as of last Wednesday [Student] had only finished 1 assignment for [Student's] [COLLEGE] class. How come I was never notified?* I honestly thought that you being [Student's] [Current High School] contact and [Student's] TA at [COLLEGE] this would not happen . . .

Exhibit K, pg. 11 (emphasis added).

21. Between 11/04/2009 and 01/2010 [Principal] also met with [Student] and [Parent], conferred with [Student's] [Current High School] teachers and had detailed communications with [Parent]. (Exhibit L, pgs. 6-9). On 11/04/2009, it was initially agreed between [Parent] and [Principal] that [Principal] would meet [Student] on a weekly basis and take [Student] to each of [Student's] teachers in order to determine if [Student] was completing assignments. [Principal] was to encourage [Student] to build [Student's] self advocacy skills. However, [Student] was very resistant to this arrangement, desiring to take individual responsibility for [Student's] assignment completion. (Exhibit L, pgs. 7-8). On 11/05/2009, [Principal] discussed with [Student] what class assignments [Student] needed to finish. [Student] assured [Principal] that [Student] would get the work done on time. (Exhibit L, pgs. 6-7). Because of [Student's] resistance, [Principal] offered [Parent] the plan to continue to meet with [Student] weekly and to also meet surreptitiously with the teachers to determine if [Student] was completing assignments. [Principal] would then report [Student's] progress to [Parent] by email.

22. After [Student] enrolled in [COLLEGE], [Parent] attempted to communicate with various [COLLEGE] staff concerning [Student's] IEP and needs. [COLLEGE] staff refused to communicate with [Parent] due to [COLLEGE]'s policy concerning student confidentiality. When [Parent] voiced with BOCES staff her frustrations concerning [COLLEGE]'s refusal to communicate directly with [Parent], various BOCES staff made numerous efforts to assist [Parent]:

- [Fall Case Manager] notified [[COLLEGE] Disabilities Coordinator] that [Student] had an IEP (Exhibit C, pgs. 1-2.);
- In the early part of 11/2009, [Principal] instructed [Fall Case Manager] to supply [Student] with the [[COLLEGE] Disability Coordinator's] telephone number, encourage

[Student] to call and encourage [Student] to supply [COLLEGE] with a copy of [Student's] IEP (Exhibit L, pg. 10);

- At [Parent's] request, [District Special Education Director] attempted to ensure that [Parent] received copies of old reports that [COLLEGE] had requested but that [Parent] could not locate in her personal papers (Exhibit E, pg. 1);
- At [Parent's] request, letter of 01/14/2010 from [School Psychologist] to [COLLEGE] (Exhibit F, pgs. 5-6) was prepared; and
- At [Parent's] request, [Fall Case Manager] prepared a Summary of Performance<sup>8</sup> form, which provided [COLLEGE] with detailed information concerning [Student's] abilities and needs ([Fall Case Manager] interview and Exhibit F, pgs. 1-4).

23. There are five measurable goals in [Student's] IEP. According to the 12/2/2009 progress notes, [Student] made progress on three of the goals. The two of the measurable goals noted in Finding of Fact 13, above, are directly relevant to the recognition of [Student's] difficulty and needs concerning completion of assignments. As to these two goals, the 12/2/2009 progress notes indicate that [Student] had made insufficient progress to meet the goals by 06/01/2010. (Exhibit L, pg. 20).

24. In summary, [Student] had made progress on three of [Student's] five measurable goals. However, despite the concerted efforts of both [Fall Case Manager] and [Principal], [Student] remained resistant to efforts to ensure that [Student's] school assignments at [Current High School] and [COLLEGE] were completed on time.

25. The goal listed in [Student's] transition plan was to take dual enrollment courses through [COLLEGE] to prepare for college. The planned course of study was to take into account [Student's] interests in math, science and computers. The transitional goal was met by [Student's] enrollment in the [college class].<sup>9</sup>

26. [Student] failed the fall 2009 [college class], receiving a grade of "F." (Exhibit 4). During the first trimester, [Student] received the following grades for classes taken at [Current High School]: English (i.e., Jump Start) – "B"; Government – "B"; P.E. – "B"; English A – "B+"; Social Studies I – "A"; and Novels B – "A." (05/03/2010 Interview with [Principal]). Although [Student] could have been required to reimburse the District for the cost of the [college class] under the terms of the Concurrent Enrollment contract (Exhibit 2), [Student] was not asked to make reimbursement.

27. [Parent] does not allege that [Student's] IEP was improperly implemented at [Current High School] during the fall of 2009. [Parent's] allegation that the [Fall Case Manager] failed to properly implement the [Student's] IEP and transition plan causing [Student] to fail the [college class] is unsupported by the record. Given the overwhelming evidence in the record, the SCO concludes that during the fall of 2009:

---

<sup>8</sup> Typically, the Summary of Performance form is not prepared until such time as a student graduates. C.F.R. § 300.305(e)(3).

<sup>9</sup> Consistent with the Transition Services and Activities listed in the IEP, [Student] has also completed the Jump Start class and, as of the current trimester, is currently enrolled in Career Counts class.

- The [Fall Case Manager] properly implemented the IEP, including the transition plan;
- While attending [Current High School], [Student] received all of the special education services, including the transition services, to which [Student] was entitled;
- [Student], with [Parent's] full knowledge, enrolled in the [college course] (Exhibit 2);
- When taking the [college course], consistent with the Concurrent Enrollment contract, [Student] was treated as a college student by [COLLEGE] (Exhibit 2);
- [Parent], as evidenced by her signing of the Concurrent Enrollment contract, had notice that [Student] would be held to [COLLEGE] college standards in conjunction with the [college class] (Exhibit 2);
- On 10/14/2009 when [Parent] unilaterally stopped meeting with [Fall Case Manager], [Parent] knew that [Student] was not completing [Student's] [college class] assignments (Reply);
- It would be inappropriate for the BOCES to guarantee that [Student] would pass the [college class]. Consistent with Section 8 of the IEP transition plan, [Student] took a college level class. By enrolling in the [college class], the postsecondary educational goal was satisfied;
- Neither the BOCES nor [Fall Case Manager] had any authority to communicate with [COLLEGE] to ensure that [Student] received special education services under [Student's] IEP in conjunction with the [college class]; and
- It was [Student's] responsibility to self advocate with [COLLEGE], specifically [[COLLEGE] Disability Coordinator], concerning [Student's] educational needs relevant to the [college class].

28. Because [COLLEGE] is a postsecondary school, [Student] was not entitled to a FAPE in conjunction with the [college class]. 34 C.F.R. § 300.17(c).

### CONCLUSIONS OF LAW:

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

1. Under IDEA and the corresponding Colorado law, the Exceptional Children's Educational Act (ECEA), students with disabilities have the right to a free and appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA Rule 2220-R-1.00 *et seq.*)<sup>10</sup>
2. The relevant IDEA regulation 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;

---

<sup>10</sup> Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

- (c) *Include an appropriate preschool, elementary school, or secondary school education; and*
- (d) *Are provided in conformity with the student's IEP.*

34 CFR § 300.17 (emphasis added). The regulation makes no mention of the provision of a FAPE in a postsecondary school such as [COLLEGE].

3. In order to provide FAPE, the BOCES is charged with ensuring that the [Student's] IEP, including services and measurable goals, is implemented for classes and activities over which the BOCES has control. The BOCES has authority and responsibility for [Student's] secondary school education classes and activities at [Current High School]. The parties do not dispute, and the record clearly establishes, that as to coursework [Student] took at [Current High School] between 08/24/2009 and 12/11/2009, [Student] received a FAPE. (Findings of Fact 18-21 and 23-26).
4. As to the [college class] that [Student] took at [COLLEGE] in the fall of 2009, [Student] had no right to a FAPE under IDEA. This is particularly so given the plain language of 34 C.F.R. § 300.17(c). Simply put, the BOCES had no authority or responsibility under IDEA to either communicate with or to direct [COLLEGE] to implement [Student's] IEP. This is because [COLLEGE] is a separate postsecondary school outside the control of the BOCES or ambit of IDEA. *Id.* Because the IDEA is inapplicable to [COLLEGE], [Student's] IEP had no application to [Student's] [college course] at [COLLEGE].
5. It would make no difference whether the [college course] was taught at [Current High School] or at the [COLLEGE] college campus. When [Student] enrolled in the fall 2009 [college class], [Student] agreed that [Student's] academic performance would be held to [COLLEGE]'s standards, not [Current High School] standards. (Findings of Fact 15-17 and 25-27). Because the IEP, including the transition plan, were properly implemented in conjunction with [Student's] [Current High School] classes and activities, there was no denial of FAPE.
6. There being no violation of IDEA, no Remedy is Ordered.

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. 46607 (August 14, 2006).

### **CONCLUSION**

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 3rd day of May, 2010.

---

Jeanine M. Pow, Esq.  
State Complaints Officer

**Appendix A**  
**2010:504 Record**

**Complaint, pgs. 1-2;**

Exhibit 1 Emails of 12/09/2009; 01/19/2010 and 02/23/2010 as well as five undated emails between Parent, various BOCES and the [COLLEGE] Disability Coordinator.

**Complainant Supplement to Record received 03/05/2010:**

Exhibit 2 Concurrent Enrollment Student and Parent Agreement Fall, 2009.

Exhibit 3 6/01/2009 Individualized Education Program (IEP).

**Complainant Supplement to Record received 03/08/2010:**

Exhibit 4 Colorado Mountain College Official Transcript.

**Complainant's Supplement to Record received 04/05/2010:**

Exhibit 5 Parent's 02/26/2010 IEP Meeting Notes and Sign In Sheet.

**Reply, pgs. 1-2;**

**Response, pgs. 1-3;**

Exhibit A Dual Enrollment Course Agreement between [COLLEGE] & [DISTRICT]; and Payment Voucher.

Exhibit B [Fall Case Manager] calendar and 10/13/2009 e-mail from [Parent] to [Fall Case Manager].

Exhibit C Emails of 10/20/09 and 10/21//09 between [Fall Case Manager] and [[COLLEGE] Disability Coordinator].

Exhibit D Emails of 11/06/09 from [Principal] to [Parent].

Exhibit E Emails of 12/09/09 to 01/05/10 between [Parent], [District Special Education Director] and [[COLLEGE] Student Affairs Officer].

Exhibit F Email of 01/15/10 to [Parent] from [Fall Case Manager]; Summary of Performance; and 01/14/2010 letter to [COLLEGE] Disability Coordinator] from School Psychologist.

Exhibit G 03/11/2010 Letter from District Special Education Director to BOCES Special Education Director.

Exhibit H Tips for Meeting Indicator 13 Requirements (from CDE Website).

Exhibit I IEP of 06/01/09 and offered amendments of 01/08/10 and 02/11/10.

**BOCES' Supplement to Record received 04/13/2010:**

Exhibit J Letter of 04/12/10 from [BOCES Special Education Director] to SCO.

Exhibit K Letter of 03/11/10, including all attachments, from [District Special Education Director] to [BOCES Special Education Director].

**BOCES' Supplement to Record received 04/22/2010:**

Exhibit L Letter of 04/23/10 from [BOCES Special Education Director] to SCO.

Telephone interviews on 04/20/2010 with the following persons: [BOCES Special Education Director]; [Fall Case Manager]; [District Coordinator]; and [District Special Education Director]. As a result of the telephone interviews, SCO requested additional BOCES documentation.

Telephone interview of 04/22/2010 with [Parent].

Telephone interview of 04/26/2010 with [BOCES Special Education Director].

Telephone interview of 05/03/2010 with [Principal].