

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

State-Level Complaint 2011: 501
Boulder Valley RE-2 School District

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint) was properly filed on 1/7/2011.

The Complaint was filed 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 Complainant 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:

[Parent], parent, [Parent];
[Student], child of [Parent], [Student];
[Student's] age of [Age], [Age];
Boulder Valley RE-2 School District, District;
[Separate School], private facility [Student] formerly attended, [Separate School];
[School], public school [Student] attended in the District between 09/30/2010 and 10/7/2010, [School];
[District Separate School Campus], District separate school campus, [District Separate School Campus];
[Private Behavioral Consultant], private behavioral consultant hired by [Parent], [Private Behavioral Consultant];
[Private Mentor], employee of [Private Business], [Private Mentor];
[Parent's Advocate], [Parent's] advocate, [Parent's Advocate];
[Parent's Attorney], [Parent's] former attorney, [Parent's Attorney];
[Special Education Director], District Special Education Director, [Special Education Director];
[School Principal], [School] Principal, [School Principal];

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.*

[Asst. Director of Special Education], Assistant Director of special education, [Asst. Director of Special Education];
[School Special Education Teacher], [School] special education teacher, [School Special Education Teacher];
[School Psychologist], [School] psychologist, [School Psychologist];
[School Psychologist Intern], [School] psychologist intern, [School Psychologist Intern];
[Paraeducator], [School] paraeducator assigned to [Student], [Paraeducator];
[Private Tutor], private tutoring service, [Private Tutor];
[District Behavioral Specialist], [District] behavioral specialist, [District Behavioral Specialist]; and
[District Legal Counsel], [District] internal legal counsel, [District Legal Counsel].

The Complaint consisted of 8 pages and Exhibits “1” through “7.”

The State Complaints Officer (SCO) determined that the Complaint identified four allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.³ The SCO has jurisdiction to resolve the Complaint pursuant to those regulations. The investigation is limited to alleged violations of the IDEA that occurred between the dates of 1/7/2010 and 1/7/2011.⁴

The SCO identified the overriding issues and, therefore, the scope of the investigation as:

1. Whether the District committed procedural violations of the IDEA or Colorado’s Exceptional Children’s Educational Act (ECEA) in conjunction with [Student’s] change in placement from [Separate School] to [School], implementation of [Student’s] behavioral intervention plan at [School], [Student’s] suspension from [School], and [Student’s] 11/4/2011 IEP.
2. Whether any procedural violations, if found, denied [Student] a free appropriate public education (FAPE) in violation of the IDEA, 20 U.S.C. § 1400, *et seq.* and its implementing regulations at 34 CFR Part 300.

The District’s [Special Education Director] was notified of [Parent’s] allegations in a letter dated 1/11/2011. The letter, which included a complete copy of the Complaint and all supporting documentation, was delivered to the District on 1/12/2011.

On 1/28/2011, the SCO timely received the District’s 6 page Response and Exhibits marked by the SCO as “A” through “G.” A copy of the District’s Response and all supporting documentation was delivered to [Parent] on 1/28/2011.

On 1/31/2011, the SCO received [Parent’s] Motion to Exclude Evidence and Extend Time for Submitting a Reply. [Parent] sent a copy of the Motion to [District’s Legal Counsel].

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).

⁴ The SCO’s jurisdiction to investigate is limited to alleged violations that did not occur more than one year prior to the date the Complaint is received. § 300.153(c).

On 2/1/2011, the SCO issued an Order denying [Parent's] Motion to Exclude Evidence and granting [Parent's] Motion for an Extension. Based on the volume of documents submitted by the District,⁵ [Parent's] time for submitting a Reply was extended by 4 days. The SCO's Order was sent to [Parent] and [District's Legal Counsel] by Electronic and U.S. Mail on 2/1/2011.

On 2/1/2011, the SCO requested that [District's Legal Counsel] provide an index to the documents submitted with the District's Response and affidavits that identified the author and context of documents that were handwritten or contained handwritten notations. On 2/11/2011, the SCO received the information requested. The affidavits were marked as Exhibit "H," pages 1-10. On 2/11/2011, the SCO sent a complete copy of the index and Exhibit H to [Parent] by certified mail.

On 2/11/2011, the SCO timely received [Parent's] Reply and accompanying documentation, marked as Exhibits "8" through "16." On 2/14/2011, the SCO sent the District a complete copy of the Reply and accompanying documentation via US Certified Mail as there was no confirmation the District had received a copy from [Parent]. On 2/16/2010, [District's Legal Counsel] confirmed receipt of the Reply and accompanying documentation.

On 2/17/2011, the SCO interviewed [Special Education Director], [Paraeducator], and [School Principal] by telephone.

[Parent] and [School Special Education Teacher] answered the SCO's interview questions through email and affidavit.

On 2/28/2011, the SCO received additional documentation requested from [Parent]. A copy of this documentation, marked Exhibit 17, was sent to [District's Legal Counsel] by certified US Mail on 2/28/2011.

On 3/2/2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

[Parent's] Complaint contained four allegations, summarized as follows:

- 1) On or around late September 2010, the District implemented a significant change in Student's placement (from [Separate School], a private facility, to [School], a public school placement) without convening an IEP meeting or otherwise revising [Student's] IEP;
- 2) While [Student] attended [School], in late September and early October of 2010, the District did not adhere to or properly implement [Student's] behavior plan;
- 3) The District suspended [Student] from [School] on October 7, 2010 and excluded [Student] from school for over 10 days without making a manifestation determination; and

⁵ The documentation submitted with the District's Response numbered 678 pages.

- 4) The District convened an IEP meeting on November 4, 2010 and developed an IEP for [Student] that placed [Student] in a separate school, and that this meeting and IEP violated the IDEA because:
- a. The District predetermined its decision to write an IEP that placed [Student] in a separate school and wrote the IEP to achieve that end without considering the input of the parents or individuals who were familiar with [Student] and [Student's] needs;
 - b. The District failed to consider or include in the IEP accurate and up-to-date information about [Student's] present levels of performance or [Student's] individual needs and abilities, resulting in an IEP that was not reasonably calculated to allow [Student] to receive educational benefit;
 - c. The District failed to include a general education teacher in the IEP meeting;
 - d. The District made a significant change in [Student's] placement, from a public school setting to a separate school, without consideration of reevaluation; and
 - e. The IEP offered a placement that failed to educate [Student] in the least restrictive environment (LRE).

Proposed Remedy. Parent proposed that the District be required to: 1) conduct a functional behavioral assessment and evaluation to provide up-to-date developmental and behavioral data about [Student]; 2) develop a new IEP, using up-to-date assessment data, to provide [Student] with an educational program reasonably calculated to allow [Student] to receive meaningful educational benefit in the least restrictive environment; 3) provide [Student] with compensatory education sufficient to remedy any educational deficits resulting from [Student's] exclusion from [School]; 4) reimburse [Parent] for private expenses incurred by [Parent] after [Student] was suspended from [School]; and 5) develop a Corrective Action Plan to prevent such violations from recurring.⁶

THE DISTRICT'S RESPONSE

The District's Response is summarized as follows:

Allegation #1. The District denied that it implemented a significant change in [Student's] placement without convening an IEP meeting or otherwise revising [Student's] IEP. The District characterized [Student's] placement at [School] as a "30 day interim placement," not a significant change in placement.⁷

⁶ This list represents a summary of remedies proposed by [Parent] that were consistent with the SCO's jurisdiction.

⁷ The District did not provide any legal support for its position that a decision to place [Student] in an "interim placement" is not a significant change in placement that would require an IEP team meeting or revision of [Student's] IEP. The District then asserted that this interim placement was "memorialized in email communication between [Parent] and [Special Education Director]," yet failed to identify this email communication in the 678 pages submitted in support of the Response. Although the SCO conducts independent legal research and carefully reviews the entire record when investigating a Complaint, the District is not well served by a Response that does not provide legal support for its position and fails to specifically identify evidence the District is citing in support of its position. Response at pages 1- 3.

Allegation #2. The District denied that it failed to implement [Student’s] behavior plan while [Student] attended [School].⁸

Allegation #3. The District denied that it suspended [Student] from [School] for more than 10 days without making a manifestation determination.

Allegation #4. Overall, the District denied that the 11/4/2010 IEP meeting and the IEP developed at this meeting violated the IDEA. The District admitted that it failed to include a general education teacher at the 11/4/2010 meeting. However, the District argued that this failure did not violate the IDEA “because the student’s current LRE is separate school and [Separate School], while present at the meeting, does not have general education teachers on staff.”⁹

PARENTS’ REPLY

[Parent] submitted a 12 page Reply with additional documentation, marked as Exhibits “8” through “16.” The Reply is summarized as follows:¹⁰

Allegation #1: [Parent] reiterated the allegation that [Student’s] “interim” placement at [School] constituted a significant change in placement which was implemented without an IEP team meeting or revision of [Student’s] IEP.

Allegation #2: [Parent] reiterated the allegation that [School] did not properly implement [Student’s] behavioral intervention plan and provided additional documentation in support of the allegation. Additionally, [Parent] alleged that the District did not revise [Student’s] behavioral intervention plan, a plan developed for implementation at [Separate School], to address changes necessary for its implementation in the general educational setting at [School]. [Parent] denied factual assertions made by the District.

Allegation #3: [Parent] reiterated the allegation that the District suspended [Student] from [School] for more than 10 days without a determination that the misconduct was not a manifestation of [Student’s] disability. [Parent] asserted that the meeting on 10/19/2010 was not an IEP team meeting or a manifestation determination meeting.

Allegation #4: [Parent] reiterated the allegation that the District predetermined [Student’s] placement to be in a separate school setting at the 11/4/2010 IEP meeting. [Parent] asserted the District’s own argument, that its failure to include a general education teacher at the 11/4/2010 IEP meeting did not violate the IDEA, supported the conclusion that the District predetermined [Student’s] placement to be a separate school. [Parent] reiterated the allegation that the District failed to consider up-to-date information about [Student’s] present level of performance and individual needs in developing the 11/4/2010 IEP. [Parent]

⁸ The Response did not directly address Allegations 2 -4. Rather, the District directed the SCO to a “narrative account of the circumstances,” making it difficult to determine what the District’s legal arguments and evidentiary support were, if any, in relation to the specific allegations. Response at pages 3-5.

⁹ Response at page 2.

¹⁰ The SCO has not summarized allegations and documentation provided in the Reply that are beyond the scope of the SCO’s jurisdiction to investigate or that are otherwise irrelevant to the investigation of this Complaint.

reiterated the allegation that the District made a significant change in placement without consideration of reevaluation. [Parent] reiterated the allegation that the 11/4/2010 IEP failed to place [Student] in the least restrictive environment. [Parent] denied making a unilateral decision to refuse District's offer to provide temporary educational services pursuant to the 11/4/2010 IEP.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,¹¹ the SCO makes the following FINDINGS:

Factual Background.

1. At all times relevant to the Complaint, [Student] was [age] years of age and eligible for special education and related services on the basis of [disability].
2. At all times relevant to the Complaint, [Student] resided within the District.
3. [Student] has a history of behavioral challenges that includes verbal threats, physical aggression towards staff and other students, destruction of school property, and elopement.¹²

[Student's] Transfer from [Separate School] to [School].

4. During the 2009-2010 academic year, [Student] attended [Separate School], a private out-of-district placement.
5. [Student's] IEP dated 2/22/2010 identified educational placement in the least restrictive environment as a separate school. The IEP team identified [Student's] specific needs and impact of disability as follows:

[Student's] disability affects [Student's] ability to self-regulate, remain calm, and transition between tasks. [Student] requires a very structured and scheduled program based on the scientific principles of ABA (Applied Behavior Analysis). [Student] needs [Student's] work to be presented in a manner that allows [Student] to talk through the whole process; [Student] needs an adult to help guide [Student] through [Student's] day and help [Student] make appropriate decisions. [Student] needs a small class size with no more than 6 students and 1:1 modified curriculum throughout the day.¹³

¹¹ Appendix A, attached and incorporated by reference, details the entire Record.

¹² Response at pages 3-5; Exhibits C, D, F and G.

¹³ Exhibit B at page 12.

The IEP team considered other placement options, but concluded that placement in a separate school had the “small class size” and “structured environment to best meet [Student’s] needs.”¹⁴

6. On 7/14/2010, [Parent] requested an IEP team meeting to discuss concerns that [Student] was not making sufficient progress at [Separate School] and to determine if a separate school placement was the least restrictive environment.¹⁵ [Parent] expressed concerns that [Student] did not have access to academic content or typical peers at [Separate School].¹⁶

7. On 8/23/2010, a meeting was held to discuss [Parent’s] request that [Student] transfer from [Separate School] to [School], a public school within the District.¹⁷ [Special Education Director] characterized this meeting as a “pre-planning meeting for [Student’s] transition from [Separate School] to [School],” not a formal IEP meeting.¹⁸ The meeting was attended by [Parent], [Parent’s Advocate], [Private Behavioral Consultant], [Special Education Director], [Asst. Special Education Director], [School Special Education Teacher], [School Psychologist], [School Psychologist Intern], and [School Principal].¹⁹ The SCO specifically finds that the meeting on 8/23/2010 was not an IEP team meeting.

8. As a result of the meeting on 8/23/2010, [Parent] and the District agreed that [Student] would attend [School] on a “30 day interim placement.”²⁰ On 8/24/2010, [Special Education Director] emailed the 8/23/2010 meeting participants that she would “inform [Separate School] that the [District] will be placing [Student] at [School] for a 30 day interim placement.”²¹

9. On 9/24/2010, [Student] was discharged from [Separate School].²² The discharge summary from [Separate School] stated that [Student] was discharged because “[t]he IEP team decided that [Student] would thrive in an environment [with] more typical peers.”²³ Contrary to [Separate School’s] discharge summary, there is no credible evidence that an IEP team ever met to determine [Student’s] placement at [School] prior to [Student] starting [School] on 9/30/2010.

10. At the time of their mutual agreement concerning [Student’s] placement at [School], both the District and [Parent] characterized the placement as “temporary” and “interim.”²⁴ However, the SCO finds that the agreement between [Parent] and the District to place [Student] at [School] constituted a significant change in placement. The SCO notes that [Separate School] Director had informed [Special Education Director] on 8/10/2010 that placement at [Separate School] was no longer an option, meaning that [Student] could not return to [Separate School] following the

¹⁴ Exhibit B at page 31.

¹⁵ Exhibit C at pages 1-2.

¹⁶ Response at page 2; Exhibit 8 at page 3; and interview with [Special Education Director].

¹⁷ Exhibit C at pages 39-40; Reply at page 3; and interview with [Special Education Director].

¹⁸ Interview with [Special Education Director].

¹⁹ Exhibit C at page 37 (follow-up email sent by [Special Education Director] to meeting participants confirming content of the meeting on 8/23/2010); and interview with [Special Education Director].

²⁰ Exhibit C at page 37.

²¹ *Id.*

²² Exhibit F at page 17.

²³ *Id.*

²⁴ Exhibit C at pages 40, 70, 82, and 85 (email exchanges between [Parent] and various District staff, including [Special Education Director] evidencing both parties understood the placement at [School] was on a 30 day trial basis).

“interim” placement.²⁵ Accordingly, the SCO finds that the mutual agreement to place [Student] at [School] constituted a significant change in placement, a change which occurred when [Special Education Director] informed [Separate School] that the District would be placing [Student] at [School].

11. Although there were many meetings concerning [Student’s] transition from [Separate School] to [School], the District did not convene an IEP team meeting in conjunction with [Student’s] change in placement from [Separate School] to [School].²⁶ In addition to the District’s failure to convene an IEP meeting, the SCO notes that [Parent] had indicated to [Special Education Director] that she would refuse to consent to “another IEP team meeting” concerning [Student’s] transition from [Separate School] to [School].²⁷

12. The IEP dated 2/22/2010 was never revised to reflect the mutual agreement that [Student’s] placement would be changed from [Separate School] to [School].²⁸

13. No reevaluation was conducted in contemplation of [Student’s] change in placement from [Separate School] to [School].²⁹

[School’s] Implementation of [Student’s] Behavioral Intervention Plan.

14. Between 8/27/2010 and 9/30/2010, various email exchanges indicated that there was significant confusion and disagreement between [Parent] and the District regarding [Student’s] transition from [Separate School] to [School], specifically, when [Student] would actually start [School] and what services would need to be in place for [Student] to be successful.³⁰ Both [Parent] and the District expressed concerns, based on [Student’s] history of physical aggression and demonstrated difficulty in managing transitions, that [Student] may engage in potentially dangerous behavior during the transition from [Separate School] to [School].³¹

15. On 9/30/2010, [Student] started attending [School].³² [Student’s] class schedule for [School] included 3 courses in the general education classroom, 2 courses in “independent study,” and 2 “learning labs” in the special education classroom.³³ General education classes at [School] typically have 30 students.³⁴

16. [Student’s] most recent behavioral intervention plan, dated 1/26/2010, was developed by and for implementation at [Separate School].³⁵ [Separate School] has small classrooms and a highly structured learning environment. The student-to-staff ratio at [Separate School] is 4 students to

²⁵ Exhibit C at page 5.

²⁶ Exhibit C, pages 48-61.

²⁷ Exhibit C at pages 53-54.

²⁸ Interview with [Special Education Director].

²⁹ Exhibit G; and interview with [Special Education Director].

³⁰ Exhibit C at pages 48-63.

³¹ Exhibit C at pages 70-75.

³² Interviews with [School Principal] and [Special Education Director].

³³ Exhibit C at page 62.

³⁴ Interview with [School Principal].

³⁵ Exhibit C at pages 13-18.

3.75 staff and the staff are trained in behavior management and intervention.³⁶ [Student's] behavioral intervention plan included very specific strategies designed to reduce the occurrence of targeted behaviors. For example, the plan required that [Student] be:

- “provided with [Student's] own 1:1 area within the classroom that includes all work materials and pillows in a break area;”
- “seated with back to the other students and desk in front of [Student], staff next to [Student]. Area further defined by wall, desk, and shelf;”
- seated away from classroom doors;
- “ provided with a highly structured and predictable visual schedule” that shows “each subject area and staff member [Student] will have during each ½ hour portion of the day;” and
- Provided with a “fixed interval schedule of reinforcement” in the classroom.³⁷

17. On 9/22/2010, [School Principal] emailed the Director of [Separate School] to request a copy of [Student's] IEP and behavior plan.³⁸ Although [School Special Education Teacher] and [District Behavioral Specialist] met to review [Student's] 1/26/2010 behavioral intervention plan, the plan was not revised to address any changes that may be necessary for implementation at [School], an educational setting that was very different from the educational setting at [Separate School].³⁹ Accordingly, the SCO finds that the behavioral intervention plan in place while [Student] was attending [School] was the plan dated 1/26/2010.

18. Although [Student's] 1/26/2010 behavioral intervention plan required that “[a]ll staff working with [Student] need to have read, understand, and be comfortable implementing this BIP,” there was confusion among key [School] staff concerning what even constituted [Student's] behavioral intervention plan.⁴⁰ The SCO bases this finding on the following persuasive evidence:

- [Paraeducator] and [School Principal] identified [Student's] behavior plan as a collection of documents comprised of descriptions of [Student's] level system, the token economy system, and a step-by-step plan to address elopement titled “logistics” which was developed after [Student] tried to run away from [School].⁴¹ The token economy system was used by all students in the special education classroom, but [Student] was rewarded at a higher frequency than other students.⁴² [Paraeducator] used the level system, token

³⁶ Exhibit G, Disc 1, Track 1.

³⁷ Exhibit C at page 15.

³⁸ Exhibit 10 at page 15.

³⁹ Interview with [Special Education Director].

⁴⁰ Exhibit C at page 18; and interviews with [Paraeducator], [School Principal], and [Special Education Director].

⁴¹ The level system was a strategy developed by [Private Behavioral Consultant] and used to address behavioral challenges at home. The token economy system was a reinforcement schedule implemented by [School Special Education Teacher] for all students in her classroom. The pages titled “Logistics” were developed after [Student] attempted to run away. Interviews with [Paraeducator] and [School Principal]; and Exhibit C, pages 93-100.

⁴² Interview with [Paraeducator].

economy system, “logistics” document, and calming techniques he had learned from [Private Behavioral Consultant] and [Private Mentor], to address [Student’s] behavioral needs.⁴³ [School Principal] and [Paraeducator] described [Student’s] behavioral plan as a “work in progress.”⁴⁴ [Paraeducator] had had no previous experience implementing a behavioral intervention plan or otherwise working with students who required intensive behavior management.⁴⁵

- [School Special Education Teacher] identified [Student’s] behavior plan as the level system and the token economy system. [School Special Education Teacher] developed this plan in consultation with [District Behavior Specialist] and [Private Behavior Specialist]. [School Special Education Teacher] taught [Student] the token economy system the morning of [Student’s] first day and taught [Student] the level system the afternoon of [Student’s] first day. The behavior plan was implemented by [School Special Education Teacher] during the short times that [Student] was in her classroom and by [Paraeducator] when [Student] was in the general education classroom.⁴⁶
- Unlike the 1/26/2010 behavioral intervention plan, the token economy and the level system plans used by [School Special Education Teacher] did not identify targeted behaviors or their antecedents (triggers), or provide specific strategies for mitigating known triggers.⁴⁷
- [Special Education Director] identified [Student’s] current behavioral intervention plan as the plan dated 1/26/2010.⁴⁸ However, [Special Education Director] indicated that the plan would only have been implemented at [School] when [Student] was in the special education classroom setting, 2 out of [Student’s] 7 scheduled courses.⁴⁹ [Special Education Director] further indicated that the 1/26/2010 behavioral intervention plan would have been revised to address [Student’s] needs in the traditional school setting, but [Student] was suspended before this could be done.⁵⁰

19. To decrease the likelihood that targeted behavior would occur, [Student’s] behavioral intervention plan indicated that [Student] should be provided with a highly structured and predictable visual schedule.⁵¹ However, [Student’s] schedule had already been changed at least once since [Student] started [School] on 9/30/2010.⁵² Furthermore, [Student] had not received a

⁴³ At [Parent’s] suggestion, the District contracted with [Private Behavioral Consultant] and [Private Mentor] to plan for [Student’s] transition and for assistance in training [School] staff. Interviews with [Special Education Director], [School Principal], and [Paraeducator].

⁴⁴ Interview with [School Principal] and [Paraeducator].

⁴⁵ Interview with [Paraeducator].

⁴⁶ Information provided by Affidavit of [School Special Education Teacher].

⁴⁷ Exhibit C at pages 93-100.

⁴⁸ Interview with [Special Education Director].

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Exhibit C at page 15.

⁵² Interviews with [Paraeducator] and [School Principal]; Exhibit C at pages 94 and 95 (handwritten tally sheet showing changes in class schedule).

visual schedule and had not yet been taught [Student's] class schedule and daily routine by 10/7/2010, the day [Student] was suspended.⁵³

20. Based on the credible evidence detailed above, the SCO finds that [School] did not properly implement [Student's] behavioral intervention plan dated 1/26/2010, nor could the plan have been implemented as written in the general education setting. Even if the SCO were to find that [Student's] behavioral intervention plan while [Student] attended [School] was the token economy and level system documents identified by [School Special Education Teacher] and [Paraeducator], this plan was not sufficiently developed for consistent implementation while [Student] attended [School]. Most importantly, these plans did not identify behavioral triggers or describe strategies that could be used to reduce or negate them.⁵⁴ Essentially, the existing behavioral intervention plan was not implemented at [School] and plans identified by [School Special Education Teacher] and [Paraeducator] did very little to ensure [Student] would be successful in [Student's] new educational environment.

[Student's] Suspension from [School].

21. Relevant to this Complaint, the District's policy on the suspension of a student with a disability provides that:

Students with disabilities may not be suspended or removed to another setting in excess of ten consecutive school days . . . unless a determination has been made by a duly convened IEP or § 504 team that the misconduct constituting grounds for suspension . . . was not a manifestation of the student's disability.⁵⁵

22. Based on the following credible evidence, the SCO finds that [Student] was not suspended for more than 10 consecutive school days:

- In a letter to [Parent] dated 10/8/2010, [School Principal] notified [Parent] that [Student] was suspended for 5 days, from 10/8/2010 through 10/14/2010, for verbal and physical aggression against [School] staff.⁵⁶
- On 10/16/2010, [School Principal] emailed [Parent] that [Student's] suspension was being extended for an additional 5 days.⁵⁷
- There is no documentation that the District extended [Student's] suspension for any additional school days. Therefore, [Student] was no longer suspended as of 10/22/2010.

23. Because [Student] was not suspended for more than 10 school days, the District was not required to convene a manifestation determination meeting for the purpose of determining if the

⁵³ Exhibit D at page 1.

⁵⁴ Exhibit C at pages 93-100.

⁵⁵ Exhibit A at page 37. This policy, last revised on 6/26/2007, was the policy in effect on the date [Student] was suspended. Interview with [School Principal].

⁵⁶ Exhibit D at page 17.

⁵⁷ Exhibit F at page 97.

misconduct giving rise to [Student's] suspension was a manifestation of [Student's] disability. Accordingly, the SCO finds that the District did not violate its own policy or the IDEA by failing to conduct a manifestation determination following [Student's] suspension.

Educational Services Offered to [Student] following Suspension.

24. Rather than allow [Student] to return to [School] on 10/22/2010, the District offered temporary educational services until a different, permanent placement for [Student] could be determined.⁵⁸

25. The SCO finds that the educational services offered by the District between 10/12/2010 and 10/22/2010 constituted a significant change in placement. The SCO bases this finding on the following evidence:

- The SCO previously found that [Student's] placement at the time of suspension was [School], where [Student] was participating in the general education classroom for at least three out of seven courses and had access to typical peers.⁵⁹ (FF #s 10 and 15).
- On or around 10/13/2010, the District offered to provide [Student] 3 hours of tutoring for 5 days a week at [Private Tutor].⁶⁰ [Parent] did not make [Student] available for these services, suggesting that she did not agree to this placement.⁶¹
- On 10/22/2010, the District offered to provide [Student] with 3 hours of educational services provided by a licensed teacher on the campus of [District Separate School] until a permanent placement could be determined.⁶² Although the educational services would be provided on [District Separate School] campus, [Student] would not be educated in a classroom with other [District Separate School] students.⁶³ The District offered to provide these services starting 10/27/2010.⁶⁴ [Parent] refused to make the [Student] available for the offered services, suggesting that [Parent] did not agree with this placement offer.⁶⁵
- The educational services offered between 10/13/2010 and 10/22/2010 included 15 hours of special education services a week.⁶⁶ In contrast, [Student] had been taking 7 classes at [School], accompanied by a one-on-one paraeducator at all times, and [Student's] 2/22/2010 IEP required 29 hours of special education services a week.⁶⁷

⁵⁸ Exhibit F at pages 88-92.

⁵⁹ In an email to [Parent's Attorney] dated 10/27/2010, [District's Legal Counsel] identified [Student's] current placement in LRE as a separate school. Exhibit E at pages 5-6.

⁶⁰ Exhibit F at page 102; Exhibit 12 at page 7.

⁶¹ Exhibit F at pages 116 and 129.

⁶² Response at page 4; Exhibit F at page 104 (email from [District Legal Counsel] to [Parent] and [Parent's Attorney] detailing the services offered).

⁶³ Interview with [Special Education Director].

⁶⁴ Exhibit F at page 104.

⁶⁵ Response at pages 4-5; Exhibit 12 at page 18.

⁶⁶ Exhibit F at pages 102 and 104.

⁶⁷ Exhibit C at pages 93-94; Exhibit B at page 31; and interview with [Special Education Director].

- Because the services offered between 10/12/2010 and 10/22/2010 offered far fewer hours of specialized instruction and were to be provided in an educational environment where [Student] would have no access to typical peers or even to other students on [District Separate School] campus, the SCO finds that the services offered constituted a significant change in placement from [School] where [Student] was being educated in the general education classroom and had access to typical peers.

26. The SCO further finds that the temporary services offered by the District following [Student's] suspension were in a more restrictive educational environment than the separate school placement identified in [Student's] 2/22/2010 IEP.

27. On 10/19/2010, [Parent], [Special Education Director], [School Principal], [District Behavior Specialist], and [District Legal Counsel], and [Parent's Attorney] met to discuss what happened on 10/7/2011 and how to meet [Student's] needs.⁶⁸ This meeting was not a properly convened or noticed IEP team meeting.⁶⁹ There is no evidence that any agreement was reached concerning [Student's] placement at this meeting.

28. [Parent] never agreed to the services offered by the District between 10/13/2010 and 10/22/2010.⁷⁰ [Student] has not received educational services from the District since 10/22/2010, the end of [Student's] suspension.

29. Following [Student's] suspension, the District unilaterally implemented a significant change in placement without timely convening an IEP team or by mutual agreement and amendment of [Student's] IEP.

11/4/2010 IEP Team Meeting.

30. On 11/4/2010, the District convened an IEP team. The Notice of Meeting informed [Parent] that the purpose of this IEP team meeting was "to review needs and *placement* options" for [Student].⁷¹ (emphasis added).

31. Based on the following persuasive evidence, the SCO finds that the District predetermined [Student's] placement at [Separate School] at the 11/4/2010 IEP team meeting:

- Despite [Special Education Director's] knowledge that [Parent] wanted [Student] to have the opportunity to be educated with typical peers and wanted [Student] to return to [School], the District admits that it did not invite a general education teacher to the IEP meeting.⁷²

⁶⁸ See Reply at page 8; Interviews with [Special Education Director] and [School Principal].

⁶⁹ Reply; and interview with [Special Education Director].

⁷⁰ See Complaint at page 5.

⁷¹ Exhibit B at page 34. (Notice of Meeting dated 10/30/2010.)

⁷² Response at page 2; Exhibit B at page 34.

- There was no discussion of [Student’s] annual goals during the IEP meeting.⁷³
- Although there was no discussion of [Student’s] annual goals during the meeting, the IEP team determined [Student’s] placement as a separate school and imported the same goals that were developed at [Separate School] in [Student’s] 2/22/2010 IEP into the 11/4/2010 IEP.⁷⁴
- During the first 15 minutes of the IEP meeting, [Director of Special Education] was having difficulty getting representatives from the separate schools on speaker phone. When [Parent’s Attorney] suggested that the meeting could start without representatives from separate schools because they were not necessary members of the IEP team, [Special Education Director] stated that she was “not willing to proceed with the meeting without out some of [the separate school representatives] represented here because at the end of this meeting I thought that the intention was we would have a new *location*.”⁷⁵
- In response to a concern expressed by [Parent’s Attorney] that placement in a separate school setting would not meet [Student’s] needs, [District’s Legal Counsel] reminded the IEP team that the purpose of the meeting was “basically to identify the *location* where we are going to implement the IEP, so if [Separate School] is not an option, we need to identify the *location* where the IEP is going to be implemented.”⁷⁶ This comment was made approximately one hour after the IEP team meeting started.
- When [Parent] questioned whether the District had to “do procedural things” before making unilateral decisions about placement, [District’s Legal Counsel] and [Special Education Director] responded that the purpose of this meeting was to determine a change in *location*, not placement.⁷⁷
- The District’s repeated reminders to the IEP team that the purpose of the meeting was to determine the location where [Student’s] IEP would be implemented were in conflict with the purpose of the meeting as it was identified on the Notice of Meeting. The conflict between the meeting notice and the reminders issued by the District at the actual meeting strongly support the finding that the District predetermined [Student’s] placement at a separate school.

32. Because the SCO has found that the District predetermined [Student’s] placement at a separate school, the SCO does not need to determine specific allegation concerning failure to include up-to-date information about [Student’s] present levels of performance at the 11/4/2010 IEP meeting or failure to consider less restrictive placement options.

⁷³ There is no discussion of [Student’s] annual goals that can be heard on the recording of the 11/4/2010 IEP meeting. Exhibit G.

⁷⁴ [Special Education Director] clarified that the pages following the 11/4/2010 IEP were [Student’s] annual goals carried over from the 2/22/2010 IEP which could not be imported directly into the 11/4/2010 IEP document due to incompatible software. Interview with [Special Education Director].

⁷⁵ Exhibit G, Disc 1, Track 1.

⁷⁶ Exhibit G, Disc 2, Track 1.

⁷⁷ Exhibit G, Disc 2, Track 2.

33. From 10/22/2010, the date [Student's] suspension ended, to present, [Student] has not received educational services from the District.

34. [Parent] provided receipts for services she has provided to [Student] from 10/2010 through 2/2011.⁷⁸ The documentation provided did not adequately demonstrate how the services were related to the special education services and goals described in [Student's] 2/22/2010 IEP. Accordingly, reimbursement for these expenses will not be ordered.

CONCLUSIONS OF LAW

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

Allegation #1: On or around late September 2010, the District implemented a significant change of [Student's] placement without convening and IEP meeting or otherwise revising [Student's] IEP.

1. ECEA Rules establish specific requirements concerning changes in placement. Pursuant to ECEA Rules, a new placement option that represents a "change in the educational environment categories required for reporting data to the Secretary of the U.S. Department of Education pursuant to Section 618 of the IDEA" represents a significant change in placement. Rule 4.03 (8) (b) (ii) (A) (II). Students who are educated in the general education classroom are in a separate reporting category from students who are educated in separate schools. 20 U.S.C. § 1418 (a). In this case, the District changed [Student's] placement when it notified [Separate School] that it was placing [Student] at [School], where [Student] would be inside the general education classroom for 3 out of [Student's] 7 classes. (FF#s 10 and 15). The change in placement from [Separate School] to [School] represented a substantive change in [Student's] educational setting and constituted a significant change in placement. (FF#s 5, 10, 15 and 16). Therefore, [Student's] change in placement from [Separate School] to [School] represented a significant change in placement.

2. ECEA Rules further require that a significant change in placement be implemented through an IEP team meeting or a revision of the student's IEP. Rule 4.03 (8)(b)(ii)(B) provides as follows:

A significant change in placement shall be made upon consideration of reevaluation. Such change shall be made only by an IEP Team with the addition of those persons conducting such evaluation unless the parent and the administrative unit or state-operated program mutually agree to change the IEP after the annual IEP meeting in a school year consistent with 34 CFR § 300.324 (a)(4).

After a student's annual IEP meeting, a public agency and parent may agree to amend or modify the student's IEP without convening an IEP meeting, and "instead may develop a written document to amend or modify the child's current IEP." § 300.324 (a)(4). Here, the District and [Parent] agreed to change [Student's] placement from [Separate School] to [School] after

⁷⁸ Exhibit 17.

[Student's] annual IEP meeting was held on 2/22/2010. (FF#s 6 - 8). However, the District did not convene an IEP meeting or amend the current IEP to reflect the agreement to change [Student's] placement. (FF#s 9-13).

3. The District argues that [Student's] transfer from [Separate School] to [School] was an "interim placement," an action that did not constitute a change in placement, significant or not. The District argues that despite the agreement to enroll [Student] in [School], [Student's] placement was always, and continued to be, [Separate School].⁷⁹ The SCO disagrees. The current IDEA and ECEA regulations do not define or otherwise carve out different procedural requirements for "interim" or "temporary" placements. Labeling [Student's] placement "temporary" or "interim" did not excuse the District from following state and federal regulations that require significant changes in placement to be made by a properly convened IEP team or by mutual amendment of the IEP. The District's position creates a placement status where [Student] is without the protection of the IDEA's procedural requirements concerning placement decisions and the development of an IEP—a position clearly contrary to the IDEA.

4. Because the District implemented a significant change in [Student's] placement outside of a properly convened IEP team or without otherwise revising [Student's] IEP to reflect the mutual agreement with [Parent] concerning the change in placement, the SCO concludes that the District violated ECEA Rule 4.03 (8)(b)(ii)(B) and IDEA regulation § 300.324(a)(4) when it changed [Student's] placement from [Separate School] to [School] on or around late September 2010.

5. Having found that the District violated procedural requirements of the IDEA and ECEA in changing [Student's] placement from [Separate School] to [School], the SCO must now determine whether the procedural violation denied [Student] a free appropriate public education (FAPE). In *Board of Education v. Rowley*, the United States Supreme Court established a two-pronged analysis for determining whether an IEP has offered a FAPE. 458 U.S. 176 (1982). The first part of the analysis considers whether the IEP development process complied with the IDEA's procedures; the second considers whether the resulting IEP was reasonably calculated to confer some educational benefit upon the child. *Id.* at 207; *see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008).

6. In the first "prong" of *Rowley*, the analysis considers whether the IEP was developed according to the IDEA's procedures. In this case, the SCO has concluded that the District did not follow the required procedures when it changed [Student's] placement from [Separate School] to [School] without either an IEP meeting or revision of the 2/22/2010 IEP to reflect the change in placement.

7. In the second "prong" of *Rowley*, the analysis considers whether the procedural violations in developing the IEP resulted in substantive educational harm to the child, denying the student a FAPE. *E.g., Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). The IEP is the district's determination of FAPE for each student eligible for special education services. *Id.* at 1312. "State school officials develop each IEP through a collaborative process that is a central characteristic of the IDEA framework." *Id.*

⁷⁹ Response at page 3.

8. In this case, the SCO concludes that the District's failure to convene an IEP team or otherwise revise [Student's] 2/22/2010 IEP before changing [Student's] placement resulted in substantive harm to [Student], denying [Student] a FAPE. The changes in the educational setting that [Student] would encounter when [Student] transferred from [Separate School] to [School] would be significant and dramatic for a child with a disability known to impact [Student's] ability to self-regulate and handle transition. (FF#s 5, 14, and 15). In addition, there was substantial confusion and disagreement between [Parent] and the District concerning when [Student] would start school and what supports needed to be in place for [Student] to be successful. (FF #14). Most importantly, the District was well aware that [Student] had significant difficulty coping with change and a history of potentially dangerous behaviors. (FF#s 3, 15 and 18). Yet, despite these obvious challenges to a successful transition from [Separate School] to [School], the District failed to convene the IEP team. (FF# 11). This is precisely the kind of complicated situation where the decision to significantly change [Student's] placement should not have been made by [Parent], but by [Student's] multidisciplinary IEP team through a collaborative process designed to determine what placement would best serve [Student's] unique needs. By making an oral agreement with [Parent], instead of assembling a multidisciplinary IEP team, the District essentially set [Student] up for failure and denied [Student] a FAPE.

Allegation #2: The District did not adhere to or properly administer [Student's] behavior plan while [Student] attended [School].

9. The SCO concludes that the District failed to properly implement [Student's] existing behavior plan while [Student] attended [School]. (FF#s 16- 20). The behavioral intervention plan in place while [Student] attended [School] was the plan dated 1/26/2010 and developed for implementation at [Separate School], an educational setting with a highly structured environment, very small class size, and staff trained in behavioral management and intervention. (FF #s 16 - 19). The plan required that *all staff* working with [Student] need to *understand* and be *comfortable* implementing the plan. (FF# 18). Yet, there was confusion among key [School] staff, including the [Paraeducator] assigned to student as a one-on-one, as to what constituted [Student's] behavioral intervention plan. (FF # 18). Although [Special Education Director] identified [Student's] behavioral intervention plan at [School] as the plan dated 1/26/2010, [School Special Education Teacher] and [Paraeducator] were not implementing this plan. (FF# 18).

10. The SCO further concludes that the District failed to appropriately revise the existing plan for implementation in a different educational setting. [School Special Education Teacher] and [Paraeducator] were implementing a token economy and level system developed by [School Special Education Teacher]. (FF# s 18-20). The token economy and level system plans were not sufficiently developed for consistent implementation as [Student's] behavioral intervention plan. (FF#20). For example, these plans did not identify [Student's] specific behavioral triggers—let alone present strategies for structuring the learning environment to avoid or decrease these triggers. (FF#s 18-20). In addition to the insufficient development of these plans, the [Paraeducator] District assigned to [Student] had no experience implementing a behavioral intervention plan or working with students who required intensive behavioral interventions. (FF # 18).

11. The failure to properly implement a student's behavioral intervention plan can result in denial of FAPE. See *Guntersville City Bd. of Educ.*, 47 IDELR 84 (SEA AL 2006). The failure to

properly develop a behavioral intervention plan may also result in a denial of FAPE. *In re Student with a Disability*, 49 IDELR 147 (SEA IN 2008) (using a point system rather than developing a structured behavioral intervention plan to identify triggers and address problematic behavior denied FAPE). In this case, the District failed to implement [Student's] existing behavioral intervention plan or sufficiently develop a behavioral intervention plan appropriate for the educational environment at [School]. [Student] had a very detailed and rigorous behavioral intervention plan, a plan designed to reduce or prevent potentially dangerous behaviors, such as physical aggression and elopement, by identifying possible triggers and structuring the learning environment to minimize those triggers. (FF#s 3, 16, and 18). The token economy system and level plans implemented by [School Special Education Teacher] and [Paraeducator] did not identify triggers or present strategies to mitigate them. The lack of detail in these plans essentially guaranteed that [Student] would exhibit misconduct.

12. The failure of the District to implement [Student's] existing behavioral intervention plan or sufficiently develop a plan specific to the educational environment at [School] is material. Despite the knowledge that [Student] would likely have significant difficulty transitioning from [Separate School] to [School] and may consequently exhibit dangerous behavior at [School], the District did not properly implement [Student's] existing behavioral intervention plan or revise [Student's] behavioral plan for implementation in a significantly different educational setting. (FF# 20). Although [Special Education Director] noted that the District would have revised [Student's] existing behavior plan had [Student] been there longer, the SCO concludes that the failure to have an appropriate plan in place on the day [Student] started [School] set the [Student] up for failure. (FF#s 18-20). [Student] had not attended [School] for more than 5 days when [Student] was suspended for misconduct. (FF# 22). Accordingly, the SCO concludes that the District's failure to properly implement [Student's] behavioral intervention plan caused [Student] substantial educational harm, denying [Student] a FAPE.

Allegation #3: The District suspended [Student] from [School] and excluded [Student] for more than 10 days without making a manifestation determination.

13. A change of placement occurs when a student is removed from school for disciplinary purposes for more than 10 consecutive school days. § 300.536 (a) (1). When an educational agency, here the District, changes the placement of a child with a disability for violation of a code of student conduct, it must convene a meeting for purposes of making a manifestation determination. § 300.530 (e) (1). In this case, the District was not required to conduct a manifestation determination because [Student] was not suspended for more than 10 days. (FF # 22). Accordingly, the SCO concludes that the District did not violate the IDEA by failing to conduct a manifestation determination in conjunction with [Student's] suspension. (FF # 23).

14. However, the SCO concludes that the District violated ECEA rule 4.03 (8)(b)(ii)(B) and IDEA regulation § 300.324(a)(4) when it offered temporary educational services following [Student's] suspension rather than allow [Student] to return to [School]. The temporary services offered by the District between 10/13/2010 and 10/22/2010 constituted a significant change in placement. The District unilaterally implemented this significant change in placement without convening an IEP team or by mutual agreement and amendment of [Student's] IEP. (FF#s 24-29).

15. From 10/7/2010 to 11/4/2010, [Student] was left in limbo—without any IEP team meeting to determine appropriate placement in the least restrictive environment. (FF#s 24-29). Because [Student] has not received any of the educational services s/he is entitled to, the SCO further concludes that this violation denied [Student] FAPE from 10/22/2010 until 11/4/2010, the date the District finally convened an IEP team to determine [Student’s] placement. (FF#s 29-30).

Allegation #4: The IEP meeting and IEP developed on 11/4/2011 violated the IDEA.

16. The development of a student’s IEP is a collaborative process that “places special emphasis on parental involvement.” *Systema v. Academy School District No. 20*, 538 F.3d 1306, page, (10th Cir. 2008). In the development of IEPs, school districts are required to consider parental suggestions and requests, and to the extent appropriate, incorporate them into the IEP. *O’Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10th Cir. 1998). Although the emphasis on parental involvement does not mean that a parent has veto power over an IEP team decision, meaningful parent participation is prevented when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. *See Ms. S. ex. rel. G. v. Vashon Island School Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (“A district may not enter an IEP meeting with a ‘take it or leave it’ position.”); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9th Cir. 2003).

17. Here, the District predetermined [Student’s] placement to be a separate school at the 11/4/2010 IEP meeting. (FF# 31). Three times during the course of the 11/4/2010 IEP meeting, the District reminded the IEP team that the purpose of the meeting was to determine a separate school location, and not placement in a less restrictive environment. (FF# 31). These reminders were in conflict with the purpose of the meeting as it was identified on the Notice of Meeting. (FF# 31). [Parent] arrived at the meeting expecting the IEP team to determine [Student’s] needs and placement. Soon after the meeting started, [Parent] was informed that the purpose of this meeting was to determine location, not placement. (FF# 31). The conflict between the meeting notice and the reminders issued by the District at the actual meeting strongly support the conclusion that the District had predetermined [Student’s] placement at a separate school. (FF # 31). In addition, the District determined placement without reviewing or determining [Student’s] annual goals and failed to invite a general education teacher to the meeting, even though [Student’s] current placement was at [School] where [Student] was taking 3 general education classes. (FF# 31). Simply put, the District was not prepared or willing to discuss [Student’s] placement anywhere but in a separate school setting.

18. When placement is predetermined without parental participation, the resulting procedural violation denies the student a FAPE. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6th Cir. 2004), *cert denied*, 546 U.S. 936 (2005). Although [Parent] was present and communicated her concerns at the 11/4/2010 IEP meeting, her meaningful participation in the placement decision was prevented by the District’s predetermination that [Student’s] placement was in a separate school. (FF # 31). The SCO concludes that the District prevented [Parent] from participating in the placement of her child, denying [Student] a FAPE from 11/4/2010 to present.

19. Because the SCO has concluded that the 11/4/2010 IEP meeting and IEP violated the IDEA and denied [Student] a FAPE, the specific allegations underlying allegation #4 need not be individually addressed.

REMEDIES

The SCO has concluded that the District violated the following IDEA requirements:

- a) Significant change of placement requirements at ECEA Rule 4.03 (8) (b) (ii) (B).
- b) Amendment of IEPs at 34 CFR § 300.324(a)(4).
- c) Parent participation requirements at 34 CFR § 300.501 (c).

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

- 1) **Conduct a reevaluation of [Student] as soon as possible, but no later than 3/18/2011.**⁸⁰ The reevaluation must be consistent with §§ 300.303-300.305. The District has the right to determine the appropriate evaluations and evaluators. Parent has the right to consent or not consent to the evaluations proposed. However, if [Parent] chooses not to consent to the proposed evaluations, the process cannot move forward.
- 2) **Conduct a functional behavior assessment (FBA) as soon as possible, but no later than 3/18/2011.** Parent has the right to consent or not consent to the FBA proposed. However, if Parent chooses not to consent to the FBA, the process cannot move forward. The SCO is aware that observation of the [Student] in the educational setting is a critical component of an FBA. Because [Student] has not been in an educational setting since 10/7/2010, the FBA must include the following:
 - a) Extensive file review, including behavioral data from [Separate School], [School], and previous public school;
 - b) Interviews with [Parent]; [Separate School] staff who worked with and implemented [Student's] behavioral intervention plan; at least one general education teacher at [School] who had [Student] in class, [School Special Education Teacher], [Private Behavior Consultant], and [Paraeducator];
 - c) Evaluation and analysis of [Student's] educational experience at [School], including any relationship between implementation of behavior plan and misconduct giving rise to [Student's] suspension; and
 - d) Determination as to whether further assessment data, such as observation of [Student] in an educational setting, is necessary to complete a meaningful FBA.

The District shall provide the Department with documentation that it has complied with these requirements no later than 4/1/2011.

⁸⁰ The SCO is aware that the District has sent [Parent] Prior Notice and Consent for Evaluation form to conduct a neuropsychological evaluation by an expert in [disability]. [Parent] is expected to consent to the District's proposed evaluation. If [Parent] does not agree with the evaluation conducted by the District, s/he has the right to request an Independent Educational Evaluation pursuant to § 300.502.

- 3) **Convene an IEP meeting as soon as possible, but no later than 3/18/2010.** The IEP team meeting and the resulting IEP must be consistent with the IDEA and this Decision. In conjunction with this IEP team meeting, the District shall:
- a) Include at least one general education teacher;
 - b) Include a behavioral specialist of the District's choosing that has demonstrated experience in treating behavioral challenges associated with [disability];
 - c) Share and consider the results of the recent reevaluation;
 - d) Share and consider the results of the recent functional behavior assessment;
 - e) Develop [Student's] IEP consistent with § 300.324;
 - f) Determine [Student's] placement in the least restrictive environment consistent with §§ 300.114- 300.116;
 - g) Schedule compensatory educational services identified in paragraph #2 below. All of [Student's] compensatory education services, and any shortages which have continued to occur since 1/7/2011, shall be completed no later than **3/6/2012**. The District shall supply the Department with written documentation (e.g., schedule) of how the District plans to fully comply with this remedy no later than the close of business on **3/31/2011**;
 - h) Supply a complete copy of the resulting IEP, including prior written notice, detailed team meeting notes and verification of items a-g, to the Department by the close of business on 3/31/2011.
- 4) **Compensatory Education Services for Failure to Provide [Student] with a FAPE.** The District shall provide [Student] with the following compensatory education services: 1) 152 hours of specialized instruction 2) 3.5 hours of occupational therapy, and 3) 3.5 hours of speech/language therapy. These compensatory services shall be in addition to any services [Student] currently receives or will receive that are designed to advance [Student] toward IEP goals and objectives. This means that the compensatory services shall be delivered in addition to [Student's] regular school day, such as before or after school, on weekends, and during holidays. The Parties shall cooperate in determining how the compensatory education services will be provided.
- [Parent] must notify the District and the undersigned SCO, in writing and no later than 3/28/2011, whether she accepts or declines the compensatory education ordered.** If [Parent] fails to notify the District and the SCO, the District will be excused from providing the compensatory education.
- 5) While [Student] is receiving compensatory education services, the District shall consult with a professional of the District's choosing who has demonstrated experience in [disability] to monitor [Student's] progress in achieving [Student's] IEP goals. The District shall provide the Department with the name and credentials of the professional consultant the District has chosen no later than 3/31/2011. [Student's] progress on [Student's] IEP goals shall be

evaluated immediately when the District begins the compensatory education services and at least every two weeks thereafter. The District shall send documentation of [Student's] progress and the District's compliance with this provision to the Department by the third calendar day following the last day of school for each two week reporting period.

- 6) The following documentation concerning compensatory education services must be supplied to Department:
 - (1) During the 2011-12 school year (which includes the summer), the District must submit service logs to the CDE by the third calendar day following the last day of school each week. Service logs must include an indication of whether the services were compensatory or services required by the IEP. The name and title of the provider, date and duration of service and brief description of the service must be included in the service log.
 - (2) Provide written documentation that the District is in full compliance with this remedy no later than the close of business on 3/6/2012.
- 7) **By 4/1/2011**, the District must submit to the Department a proposed corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to [Student] and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address each of the cited violations.
 - b) Effective training must be conducted for all District staff working with children with a disability, including each person whom the District uses or intends to use as special education director designee, concerning the policies and procedures to be provided no later than 5/20/2011.
 - c) Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets) and provided to the Department no later 5/25/2011.

The Department will approve or request revisions to the CAP. Subsequent to approval of the CAP, the department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

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

Colorado Department of Education
Exceptional Student Leadership Unit
Attn.: Joyce Thiessen-Barrett, Senior Consultant
1560 Broadway, Suite 1450
Denver, CO 80202-5149

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

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 CFR. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 7th day of March, 2011.

Candace Hawkins

Candace Hawkins, Esq.
State Complaints Officer

Appendix A

2011:501 Record

Complaint, pages 1 through 8;

Exhibit 1: Not relevant and not considered.

Exhibit 2: Not relevant and not considered.

Exhibit 3: Not relevant and not considered.

Exhibit 4: Pages of IEP dated 2/22/2010.

Exhibit 5: IEP dated 11/4/2010.

Exhibit 6: Email exchanges between [Parent] and various [School] personnel.

Exhibit 7: Not relevant and not considered.

Reply, pages 1-4

Exhibit 8: Email exchanges between [Parent] and [Special Education Director].

Exhibit 9: Statement for [Student's] neurologist and information previously submitted.

Exhibit 10: Information previously submitted.

Exhibit 11: [Parent's] annotations on information previously submitted.

Exhibit 12: [Parent's] annotations on information previously submitted.

Exhibit 13: Statement from [Parent] regarding educational services offered and information previously submitted.

Exhibit 14: Not relevant and not considered.

Exhibit 15: Information previously submitted.

Exhibit 16: Not relevant and not considered.

Exhibit 17: Documentation of services [Parent] provided from 10/2010 through 2/2011.

Response, pages. 1-6;

Exhibit A: District policies concerning nondiscrimination, student discipline/suspension/expulsion.

Exhibit B:

IEP dated 2/22/2010, including behavioral intervention plan dated 1/26/2010;

Notice of Meeting dated 10/20/2010;

Prior Notice and Consent for Evaluation dated 10/20/2010; and

IEP dated 11/4/2010.

Exhibit C:

Email exchanges between [Parent] and various [School] and District staff, pages 1-84;

SPED transportation request forms;

Incident Report;

Services Invoice; and

Documents related to [Student's] level system, tally sheet, and class schedule

Exhibit D:

Email exchanges between [Parent] and various [School] and District staff;

Incident report dated 10/7/2010; and

Suspension notice dated 10/8/2010.

Exhibit E: Email exchanges between [Parent's Attorney] and [District's Legal Counsel], and District staff.

Exhibit F:

Email exchanges between [Parent] and [Special Education Director];
Behavior Report;
[Separate School] Documents;
Email Exchanges between [Parent] and various District staff after [Student] was suspended;
Documentation previously submitted; and
Documentation not relevant and not considered.

Exhibit G: CD recording of IEP meeting on 11/4/2010.

District's Supplement to Record:

Exhibit H: Affidavits explaining handwritten notes or notations on documents submitted by the District.

Parent's Supplement to Record:

Exhibit 17: Documentation of services provided to [Student].

Telephone Interviews:

- [General Education Teacher] and on 1/19/2011
- [School Special Education Teacher] on 1/19/2011
- [Parent] on 1/20/2011
- [School Psychologist] on 1/21/2011
- [Special Education Director] on 1/21/2011

[Parent] and [School Special Education Teacher] responded to the SCO's questions by email and affidavit.