

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

State-Level Complaint 2011: 503

Pikes Peak BOCES

DECISION

INTRODUCTION

This is a state-level complaint (Complaint) dated 01/27/2011 which was received by the Department on 01/31/2011. The Complaint was filed by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

In order to comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA)) and the IDEA² and to protect the anonymity of the parents and parents' child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be abbreviated as follows and redacted prior to publication:

- [Parents], Complainants (“Parents”)
- [Mother], Mother (“Mother”)
- [Student], Parents’ child (“Student”)
- Pikes Peak BOCES, a Board of Cooperative Education Services and the special education administrative unit serving the [School District] (“BOCES”)
- [School District], a Colorado school district that is a member of the BOCES (“School District”)
- [Elementary School] (“Elementary School”)
- [Special Education Director], BOCES Director of Exceptional Students (“Special Education Director”)
- [SSN Teacher], BOCES special education teacher for Student’s autism program (“SSN Teacher”)
- [Private Facility], Student’s private preschool facility (“Private Facility”);
- [Autism Specialist], autism specialist contracted by the BOCES to support Student’s program (“Autism Specialist”)
- [Private BCBA], BCBA working with Autism Specialist (“Private BCBA”)

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.*

The Complaint consisted of six pages and Exhibits “A” through “K.”

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

The overriding issue and, therefore, the scope of the investigation identified by the SCO, between the dates of 10/05/2010 and 01/31/2011 is:

Whether the BOCES committed procedural violations of the IDEA and, if so, whether the procedural violations 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.

On 02/02/2011, the BOCES’ Special Education Director was notified of Parents’ allegations in a letter which included a complete copy of the Complaint and Exhibits A through K. The BOCES was specifically directed to supply the SCO with:

- A. A written response that specifically admits or denies each Complaint allegation; and
- B. All documentation supporting the BOCES’s Response to each allegation, including, but not limited to:
 - 1. A complete copy of the 10/05/2010 IEP;
 - 2. A complete copy of all progress reporting supplied to Parents concerning the goals listed in the 10/05/2010 IEP;
 - 3. A complete description of any sensory diet accommodations implemented in conjunction with the 10/05/2010 IEP, including all staff responsible for its implementation;
 - 4. A complete copy of the 12/14/2010 IEP;
 - 5. A complete copy of all progress reporting supplied to Parents concerning the goals listed in the 12/14/2010 IEP;
 - 6. A complete description of any sensory diet accommodations implemented in conjunction with the 12/14/2010 IEP, including all staff responsible for its implementation;
 - 7. A complete copy of all self-contained classroom service logs between 01/03/2011 and the present, including the name of each service provider and the total number of service hours supplied in a self-contained classroom setting each week;
 - 8. A complete copy of all prior written notices consistent with § 300.503 which were supplied to Parents between 12/14/2010 and 01/31/2011 concerning Student’s placement or change in placement;

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).

9. The name and contact information for the autism specialist/BCBA staff member who provided training to BOCES staff in the areas of pairing, reinforcement, manding, effortless learning, prompting, fading, compliance, error correction, natural environment teaching and shaping;
10. The date and time of the training, including a complete list of all service providers (including their job title) who attended the BCBA's training as well as copies of all materials and documentation supplied in conjunction with the training;
11. The BCBA's weekly service logs between 12/14/2010 and 01/31/2011;
12. Complete copies of the BOCES' policies and procedures in effect between 01/01/2011 and 01/31/2011 regarding procedures implemented when a parent requests that a private evaluator observe a student in the classroom setting;
13. The complete name, title and contact information for each BOCES' staff member who has knowledge of the facts underlying the Complaint allegations; and
14. Any other written communications between the BOCES' staff or BOCES' staff and either Parent regarding the allegations.

On 02/18/2011, the BOCES' Response (pages 1-9), and Exhibits (1 through 12) were timely received. Exhibit 2 is a compact disc containing the audio recording of an IEP meeting convened on December 14, 2010.⁴

On 02/18/2011 the SCO sent Parents a complete copy of the Response by overnight mail.

On 02/28/2011, the Parents' Reply (pages 1-9) and Exhibits (AA through GG) were timely received.

On 03/01/2011 the SCO sent BOCES's Legal Counsel a complete copy of the Reply and exhibits by U.S. mail.

On 03/11/2011, the SCO obtained a copy of the District's calendar for the 2010-2011 school year from the District's website and added it to the Record as Exhibit 13.

On 3/16/2011, the SCO obtained the curriculum vitas of Autism Specialist and Private BCBA from the record of State Complaint Case No. 2010:517, and added them to the Record as Exhibit 14.

On 03/17/2011, the SCO interviewed Private BCBA.

On 03/25/2011, the SCO downloaded the BOCES' Special Education Handbook, Section II (D) ("IEP Process"), at pages 44-53, from the BOCES' website, and added it to the Record as Exhibit 15.

On 03/29/2011, the SCO interviewed Autism Specialist and Special Education Director.

⁴ References to the IEP meeting recordings will be cited as follows: "Ex. 2, Part 2 at [hour]:[minute]:[second]."

On 03/30/2011, the SCO interviewed SSN Teacher via written questions.

On 03/30/2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

Parents' Complaint contains three allegations which are summarized below:

Allegation 1: The BOCES failed to properly implement the 10/05/2010 IEP. Specifically, the BOCES:

- Failed to provide Parents with written quarterly progress reports concerning the IEP goals;
- Failed to ensure that a Board Certified Behavior Analyst (BCBA) provided a minimum of two hours of service per week; and
- Failed to provide Student with sensory diet accommodations.

Allegation 2: The BOCES failed to properly implement the 12/14/2010 IEP. Specifically, the BOCES:

- Unilaterally changed Student's placement on or after 01/03/2011 (i.e., from 31 hours per week in a self-contained classroom to a half-day in the general education preschool and a half-day in a self-contained classroom);
- Failed to supply proper prior written notice (PWN) of the 01/03/2011 change of placement;
- Failed to ensure that all of Student's service providers received training from an autism specialist/BCBA in the areas of pairing, reinforcement, manding, effortless learning, prompting, fading, compliance, error correction, natural environment teaching and shaping;
- Failed to ensure that a BCBA provided a minimum of two hours of service per week;
- Failed to provide Parents with written quarterly progress reports concerning the IEP goals; and
- Failed to provide Student with sensory diet accommodations.

Allegation 3: Since 01/13/2011, the BOCES has improperly refused to allow Parent's independent evaluator (i.e., Private Facility staff) to observe Student in the current placement.

Summary of Proposed Remedies:

- 1) Reimbursement for two hours per week for BCBA services supplied by Christina Nulk between 12/13/2010 and 01/03/2011 at \$125 per hour;
- 2) Reimbursement for 15 hours of 1:1 center-based programming through PlayDate from 01/03/2011 to present at \$750 per week;
- 3) Allow Parents the opportunity to inspect and review Student's complete educational file, including documents listed in Exhibit K;
- 4) Direct the BOCES to comply with Parents' request to have independent observer observe Student in the classroom; and
- 5) Direct the BOCES to implement all portions of the Student's IEP, including documentation concerning the training and competency of BOCES' staff.

THE BOCES' RESPONSE

The BOCES's Response is summarized below:

Allegation 1: The BOCES submits that as to the provision of written quarterly progress reports for Student, no progress reports were required because from October 5 through 14, 2010, Student did not attend school in the District, such that there was nothing to report. During the second quarter, which ran from October 15 through December 16, 2010, Student attended school in the District infrequently and sporadically, for a total of only 9 ½ days, such that there was no way a meaningful progress report could have been produced. The BOCES also states that Parents never contacted the District to inquire about Student's progress or to request information regarding Student's progress.

As to ensuring that a BCBA provide Student with a minimum of 2 hours of services per week, the BOCES states that Student did not attend school after the October 5, 2010 IEP meeting, such that there was no basis for the BOCES to incur the expense of hiring and retaining a BCBA.

Similarly, the BOCES contends that where Student did not attend school for the bulk of the time between the October 5 IEP meeting and December 14, 2010, when another IEP meeting was held, such that it could not implement the IEP's requirements relating to Student's sensory diet. The BOCES also contends that Student was provided with occupational therapy services on October 19, one of the few days during the relevant time period that Student attended school in the District.

Allegation 2: The BOCES submits that the change of placement on or after 01/03/2011 (*i.e.*, from 31 hours per week in a self-contained classroom to a half-day in the general education preschool and a half-day in a self-contained classroom) was not unilateral. At the 12/14/2011 IEP meeting, in response to the Parents' concerns related to Student's lack of interaction with peers, the District suggested a trial period in which Student would split [Student's] time between the general education preschool and the self-contained classroom, and the parent did not object. Regarding the BOCES' failure to supply proper PWN relating to the 01/03/2011 change of

placement, the BOCES contends that Mother was “notified personally” of the change and “was agreeable to it.”

Regarding the training provided to Student’s service providers and the requirement to provide 2 hours of service per week by a BCBA, the BOCES states that its autism expert and a BCBA have in fact been out to the District since October 12, 2010 through the present, to conduct needs assessments for identified students, review records and IEPs, observe and assess Student, implement a new curriculum, and train staff.

Regarding quarterly progress reports following the December 14 IEP meeting, the BOCES notes that the current quarter does not end until March 10, 2011, but that Parents were provided with progress reports on February 10, 2011.

Allegation 3: The BOCES contends that there is nothing in the IDEA that requires a school district to permit parents or their private evaluator to observe their child in the classroom or proposed educational placement.

PARENTS’ REPLY

The relevant portions of Parents’ Reply are summarized below:

Allegation 1: The Parents reiterate their allegation that the October 5, 2010 IEP required the BOCES to ensure that a BCBA provide training to BOCES staff in certain instructional techniques required to educate Student appropriately, and that such training did not commence until over a month after the October 5 IEP meeting. As to the BOCES’ assertion that it was not required to provide BCBA services for Student when [Student] was not in school, Parents note that even after Student returned to school in the District on December 6, 2010, the BOCES failed to provide the services required in the IEP.

Regarding Student’s sensory diet, Parents contend that even on the dates when the BOCES contends that Student received occupational therapy services (including sensory diet), the BOCES’ list of dates when OT was provided does not say anything about sensory interventions. The Parents also notes that, according to the OT’s own statement, SSN Teacher provided the majority of sensory interventions. The Parents assert that there is no evidence or schedule of sensory interventions.

Allegation 2: The Parents reiterate their statements that the December 14 IEP required that Student be placed in “a separate class, self-contained center-based classroom.” Parents contend that in response to a choice between the self-contained elementary classroom and half-day in the self contained elementary school and half-day in the preschool – both of which the Parents contend deny a FAPE - Parents only “agreed” to the latter because it represented the lesser of two evils, but that they felt they had no viable options. The Parents also point out that in a follow-up letter, they notified the BOCES that they still were of the opinion that the BOCES was “unable to fulfill the current IEP.” The Parents also assert that after 11 weeks in the general education preschool, Student has shown no progress.

Parents reiterate their assertion that the BOCES did not provide prior written notice of the 1/3/11 change of placement, and that the BOCES has failed to provide training to staff as required by the IEP.

FINDINGS OF FACT

This is the second State Complaint submitted by Parents alleging violations of IDEA against the BOCES. State Complaint No. 2010:517 alleged violations through and including December 13, 2010, including violations relating to one of the same IEPs at issue in the instant state complaint. Accordingly, the SCO's Findings of Fact and Conclusions of Law in Case No. 2010:517 are incorporated herein by reference.

After thorough and careful analysis of the entire Record,⁵ the SCO makes the following FINDINGS:

Factual Background:

1. Student is a preschool student (under the age of 5) who is a resident of District served by the BOCES. Student is identified and served as an eligible student with a disability, entitled to special education and related services under the IDEA. Student's identified disability is autism.

The October 5 IEP Meeting

2. On October 5, 2010, Student's IEP team developed an IEP for [Student].⁶ The IEP provides that the District's BCBA "will ensure that all of [Student's] providers demonstrate competency in the areas of effective teaching strategies (pairing, reinforcement, manding, errorless learning, prompting, fading, compliance, error correction, natural environment teaching, discrete trial training and shaping)."⁷ The October 5 IEP also provided that the BCBA would provide direct support to Student's program and that Parents would receive quarterly progress reports regarding student's progress on annual goals and objectives.⁸ The October 5 IEP also provided that Student would receive a "sensory diet" as an accommodation.⁹
3. At the end of the October 5 IEP meeting, Parents rejected the placement offered by the BOCES and notified the BOCES that Student would continue receiving services at Private Facility.¹⁰

⁵ The Appendix to this Decision, attached and incorporated by reference, details the entire Record.

⁶ Ex. A.

⁷ Ex. A, p. 20.

⁸ Ex. A, pp. 20, 8.

⁹ Ex. A., p. 17.

¹⁰ Colorado State Complaint Decision 2010:517 (hereinafter "2010:517 Decision"), <http://www.cde.state.co.us/spedlaw/download/SC2010-517.pdf>, at FF # 74.

4. Student did not attend school in the BOCES from October 5, 2010 through December 6, 2010, except for 4 days in mid-October when Student was evaluated.¹¹ Accordingly, during that time, [Student] was not available to receive BCBA services or sensory diet accommodations.
5. The first quarter of the 2010-2011 school year ended October 14, 2010.¹² The BOCES does not dispute that it did not provide Parents with a quarterly progress report for the first quarter.¹³
6. With regard to Parents' allegations that the BOCES failed to implement the October 5 IEP by failing to provide the services of a BCBA for 2 hours per week, the SCO notes that in State Complaint Decision 2010:517, the SCO found that the BOCES denied Student a FAPE through December 13, 2010.¹⁴ The basis for that decision included, *inter alia*, the BOCES' failure to provide staff training and program development by a BCBA.¹⁵ SCO has already awarded the Parents all relief to which they are entitled for the failure by the BOCES to offer a FAPE through December 13, 2010, including private tuition reimbursement, compensatory education and corrective action.¹⁶
7. On the few days that Student attended school in the BOCES during the time period that the October 5 IEP was in effect, Student received sensory diet accommodations.¹⁷

Student's Return to the BOCES on December 6, 2010

8. Student returned to school in the BOCES on December 6, 2010. From December 6, 2010 through December 16, 2010 (the last day of school before the start of a 2 week winter break), Student attended school for a total of 6 days.¹⁸
9. The second quarter of the 2010-2011 year ended on December 16, 2010.¹⁹ The BOCES does not dispute that it did not provide Parents with a quarterly progress report for the second quarter, contending that "it is difficult to perceive how any meaningful 'progress reports' could have been produced when [Student] attended school so infrequently and sporadically and was spending the majority of [Student's] time attending a private facility outside the District."²⁰

¹¹ *Id.*, FF # 78.

¹² Ex. 13.

¹³ BOCES Reply, p. 4.

¹⁴ Decision 2010:517.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Interview with SSN Teacher; *see* more detailed finding relating to sensory diet accommodations *infra* at Finding No. 36.

¹⁸ BOCES Reply, p. 4.

¹⁹ Ex. 13.

²⁰ BOCES Reply, p. 4.

- **The December 14 IEP Meeting**

10. On December 14, 2010, the BOCES convened an IEP meeting to review Student's IEP.²¹ The Parents received advance notice of the meeting.²² Mother attended and participated in the meeting.²³
11. At the time of the December 14 IEP meeting, Student spent [Student's] entire school day and received all special education instruction in a Significant Support Needs ("SSN") classroom.²⁴ [Student] received services from SSN Teacher and paraprofessionals supervised by SSN Teacher.²⁵
12. Much of the December 14 IEP meeting involved some minor modification to language in the IEP, which modifications did not alter the overall substance or requirements of the IEP.²⁶
13. During the meeting, Mother raised concerns about Student's opportunities to generalize skills learned in the SSN classroom, and noted that some of the IEP goals that relate to Student's participation in a group of peers or interact with peers cannot be implemented because Student has no access to age-appropriate peers in the SSN classroom. Mother stated that she felt that having Student in the SSN classroom all day was too restrictive.²⁷ The SCO also notes that by December 14, the IEP team had been provided with at least 2 evaluations, one by Student's private autism teacher from Private Facility, and one by independent evaluators, raising the issue of Student's lack of access to age-appropriate peers, including typically developing peers; both evaluations recommended that Student have greater opportunities for interacting with age-appropriate peers.²⁸
14. In response to Mother's concerns, Special Education Director and SSN Teacher proposed a trial period in which Student would spend mornings in the general preschool classroom at Elementary School, and then afternoons in the SSN classroom.²⁹
15. The IEP team's discussion of the possible transition to a more "mainstreamed" educational placement was careful and thoughtful, with appropriate and respectful give-and-take among all the participants. The team considered how such a change might be implemented, how Student's day would be structured, what sorts of support from SSN Teacher and paraprofessionals would be appropriate to facilitate Student's participation in and benefit from the classroom, and how Student's instruction in both settings could be coordinated to foster [Student's] progress in the classroom and on [Student's] IEP goals.³⁰ Following this

²¹ Ex. 2 (audio recording of 12/14/10 IEP meeting); Ex. 5.

²² Ex. 9, p. 4.

²³ Ex. 2; Ex. 5.

²⁴ Decision 2010:517.

²⁵ *Id.*

²⁶ Ex. 2, part 2.

²⁷ Ex. 2, part 2 at 00:41:00 through 00:45:00; *see also* Ex. 4, pp. 10 and 15.

²⁸ 2010:517 Decision, FF # 71-73 and 84-86.

²⁹ Ex. 2, part 2 at 00:48:00 through 00:50:00, and 00:58:00 through 01:00:00.

³⁰ Ex. 2, part 2 at 00:41:00 through 01:00:00.

discussion, SSN Teacher asked Mother if having Student spend mornings in the preschool classroom and afternoons in the SSN classroom was “something [the BOCES] could try.”³¹ After some additional discussion, Mother responded that she was willing to give the arrangement a try.³²

16. The IEP team then discussed when the new arrangement (hereinafter, “the Trial Placement”) would start and determined that Student would start spending [Student’s] mornings in the general preschool classroom on January 3, 2011, after the winter break.³³ Mother proposed, and the rest of the IEP team agreed, that the Trial Placement would be attempted for a number of weeks (until late January or early February), and then the IEP team would reconvene to see how Student was doing and whether [Student] was making progress in the Trial Placement.³⁴
17. At the end of the December 14 meeting, SSN Teacher asked whether the Trial Placement proposed by the IEP team needed to be recorded in the IEP itself.³⁵ Mother stated that she preferred not to change the IEP, and proposed that the Trial Placement be referred to as an “assessment period” after which the IEP team would “come back to the table.”³⁶ SSN Teacher stated, “I just want to make sure, we’ll leave it as it is, but we’re still OK with starting January 3rd, [Student] spending half the day in the preschool.”³⁷ Mother responded, “yes, that’s fine.”³⁸
18. Consistent with Mother’s request to leave the IEP “as is” and not change the service delivery statement to reflect that Student would be spending half of [Student’s] days in a general preschool classroom, the December 14 IEP does not reflect the Trial Placement.³⁹ Further, the BOCES did not prepare a Prior Written Notice reflecting the Trial Placement.
19. On December 26, 2010, Parents sent a letter to the BOCES confirming the outcome of the December 14 IEP meeting, including their acquiescence to the plan to educate Student in the mornings in the general preschool classroom as part of an “evaluation period.”⁴⁰
20. Notwithstanding the BOCES’ failure to document the Trial Placement either in the IEP or in a PWN, the SCO finds, based upon the audio recording of the IEP meeting, as well as Parents’ subsequent correspondence to the BOCES on December 26, 2010, that the Parents were aware of and understood the parameters of the Trial Placement well in advance of its implementation.⁴¹

³¹ Ex. 2, part 2 at 01:00:45.

³² Ex. 2, part 2 at 01:04:30.

³³ Ex. 2, part 2 at 01:06:00.

³⁴ Ex. 2, part 2 at 01:07:30.

³⁵ Ex. 2, part 2 at 01:08:00.

³⁶ Ex. 2, part 2 at 01:08:35.

³⁷ Ex. 2, part 2 at 01:08:50.

³⁸ Ex. 2, part 2 at 01:08:55.

³⁹ Ex. 5.

⁴⁰ Ex. C, p. 2

⁴¹ *Id.*

- **Student's Placement and Services Since the December 14 IEP Meeting**

21. On January 3, 2010, the BOCES implemented the Trial Placement; Student began spending half-days in the general preschool classroom and half-days in the SSN classroom.⁴² Student's services and instruction in the general preschool setting have been tailored to allow Student to work toward [Student's] IEP goals, including working on attending during circle time, peer interactions, spontaneous and imitative expressive language, toileting, and functional routines to allow Student to become more independent within the classroom structure.⁴³ Student has made progress in the general preschool setting and on [Student's] IEP goals.⁴⁴

- **Staff Training**

22. Parents allege that after December 14, 2010, the BOCES failed to ensure that all of Student's service providers received training from an autism specialist/BCBA in the areas of pairing, reinforcement, manding, effortless learning, prompting, fading, compliance, error correction, natural environment teaching and shaping. The SCO disagrees. During the December 14 IEP meeting, the IEP team discussed the fact that the paraprofessionals working with Student had started receiving training.⁴⁵ The paraprofessionals attended a full-day autism workshop provided by Autism Specialist on November 12, 2010, and started receiving hands-on training in the ABA instructional techniques on December 13, 2010.⁴⁶ Since December 14, 2010, additional training for the paraprofessionals was provided on January 25, February 7, February 21 and March 14.⁴⁷ Furthermore, in providing program support to the BOCES, Autism Specialist provides feedback and instruction to the paraprofessionals on an ongoing basis.⁴⁸ The paraprofessionals also receive daily supervision and training in ABA instructional techniques from SSN Teacher herself.⁴⁹

23. Private BCBA, who has personally provided training to Student's service providers, stated that based upon her interaction with and observation of Student's program, the paraprofessionals working with Student exhibit a level of competency in the teaching strategies required by the IEP, sufficient to provide appropriate educational services to Student.⁵⁰ Similarly, Autism Specialist, who has trained, observed and provided feedback to the paraprofessionals, stated that the paraprofessionals are doing very well at learning the techniques and that they are demonstrating proficiency sufficient to implement Student's

⁴² Complaint, pp. 5-6.

⁴³ Interview with SSN Teacher.

⁴⁴ *Id.*

⁴⁵ Ex. 2, part 2 at 00:43:50.

⁴⁶ Ex. 11

⁴⁷ *Id.*

⁴⁸ Interview with Autism Specialist.

⁴⁹ Interview with SSN Teacher.

⁵⁰ Interview with Private BCBA.

IEP.⁵¹ The opinions of Private BCBA and Autism Specialist are consistent with that of SSN Teacher.⁵²

24. Accordingly, the SCO finds that the BOCES complied with the IEP's requirement that Student's service providers receive training in ABA instructional techniques.

o **BCBA Services**

25. The Parents allege that after December 14, 2010, the BOCES failed to ensure that a BCBA provided Student with a minimum of two hours of service per week.
26. The December 14 IEP provides that "[a] BCBA will oversee [Student's] programming, interpretation/evaluation of data collection and ongoing staff training. The BCBA will ensure that all of [Student's] providers demonstrate competency in the areas of effective teaching strategies (pairing, reinforcement, manding, errorless learning, prompting, fading, compliance, error correction, natural environment teaching and shaping). The district BCBA will provide a minimum of 2 hours of services per week."⁵³
27. The SCO notes that the IEP does not require a BCBA to provide Student with 2 hours of direct instruction or direct intervention per week.⁵⁴ Rather, the 2 hours of services encompass the program oversight, data interpretation and evaluation, and training.⁵⁵
28. In October 2010, the BOCES contracted with Autism Specialist to provide programming oversight and curriculum development related to Student's educational program. Autism Specialist holds a doctorate degree in educational psychology and has worked with school districts in the area of program consultation for students with autism since 1981.⁵⁶ Though Autism Specialist is not technically a BCBA in that she does not hold particular certification in behavior analysis, her education, experience and training in educational interventions for students with autism and behavioral analysis and interventions, including ABA, render her capable and qualified to support Student's educational program consistent with the IEP's requirements.⁵⁷
29. Because the IEP specifically required the services of a BCBA, Autism Specialist consulted with Private BCBA, a long-standing colleague, to fulfill the requirements of the IEP. Autism Specialist explained that Private BCBA would be able to cover for her in the event scheduling conflicts prevented her from being able to support Student's program.⁵⁸ Further,

⁵¹ Interview with Autism Specialist.

⁵² Interview with SSN Teacher.

⁵³ Ex. 5, p. 24.

⁵⁴ *Id.*

⁵⁵ *Id.*; Interview with Private BCBA; Interview with Autism Specialist; Interview with Special Education Director; Interview with SSN Teacher.

⁵⁶ Ex. 14.

⁵⁷ Interview with Private BCBA; Ex. FF, at 01:05:00.

⁵⁸ Ex. FF, audio recording of 02/21/11 IEP mtg., at 01:04:15.

Private BCBA holds BCBA certification and has training and experience working with families and school districts in the area of autism interventions, including ABA.⁵⁹

30. Both Autism Specialist and Private BCBA have the requisite expertise, experience, knowledge and training to fulfill the obligations of BCBA services as set out in the IEP, *i.e.*, “[oversight of Student’s] programming, interpretation/evaluation of data collection and ongoing staff training.”⁶⁰ Accordingly, such services by either Autism Specialist or Private BCBA are consistent with the IEP’s requirements.
31. Further, the services provided by Autism Specialist and Private BCBA are not only provided on-site, *i.e.*, at school. For example, Autism Specialist provides services by conducting data collection and evaluation off-site (*i.e.*, in her office).⁶¹ Moreover, following observations/training sessions in the school setting, Private BCBA spends 1 ½ hours preparing written observation notes and recommendations and discussing those recommendations with Autism Specialist.⁶² This time is in furtherance of the BCBA services required by the IEP and should be counted as such.
32. Additionally, email communications reveal that Autism Specialist and Private BCBA have provided program oversight and consultation via email and have been and continue to be available to respond to questions or concerns raised by the BOCES staff.⁶³
33. From December 14, 2010, through February 7, 2011, Autism Specialist and Private BCBA provided 12 ½ hours of service in the school setting.⁶⁴ Subsequent to that date, both Autism Specialist and Private BCBA attended an IEP meeting for Student on February 21, 2011, and Private BCBA also provided 3 hours of service in the school setting on March 14, 2011.⁶⁵ In addition, Autism Specialist provided approximately 5.5 hours of service on March 7, 2011, 1 hour on March 8, and approximately 4 hours per week during the weeks of March 14 and March 21, 2011, as well as a 6.5 hour training on March 28, 2011.⁶⁶
34. Thus, some weeks Autism Specialist and BCBA have not expended 2 hours each week providing support to Student’s program, but other weeks they have provided well in excess of 2 hours of service, particularly taking into account their off-site work supporting Student’s program and their general availability to and openness with the BOCES staff. Thus, on average, the Autism Specialist and BCBA have provided at least 2 hours per week of the BCBA services required by the IEP. Accordingly, the SCO finds that the BOCES has complied with Student’s IEP with respect to the requirement that a BCBA provide 2 hours per week of service.

⁵⁹ Ex. 14.

⁶⁰ Ex. 5, p. 24.

⁶¹ Interview with Autism Specialist.

⁶² Interview with Private BCBA; Interview with Autism Specialist.

⁶³ Ex. 12; Interview with Private BCBA; Interview with Autism Specialist; Interview with SSN Teacher.

⁶⁴ Ex. 11.

⁶⁵ Interview with Private BCBA.

⁶⁶ Interview with Autism Specialist.

○ **Quarterly Progress Reports**

35. At the time this Complaint was filed, the third quarter of the school year, which ended on March 10, 2011, had not concluded.⁶⁷ Thus, at that point, no progress report for the third quarter was yet due. The BOCES did, however, provide progress report to Parents at a parent-teacher conference on February 10, 2010.⁶⁸ Then, on March 10, 2011, the BOCES provided Parents with Student's quarterly progress report for the third quarter. Further, SSN Teacher is in regular contact with Parents, including frequent email communication and reports home multiple times per week regarding Student's progress and daily routine.⁶⁹

○ **Sensory Diet Accommodations**

36. Student's IEP includes "sensory diet" as an accommodation "necessary for the student to access the general curriculum and/or appropriate activities to make effective progress."⁷⁰ A written statement by Occupational Therapist describes Student's sensory needs and states that the majority of Student's sensory accommodations are provided in the classroom by SSN Teacher, and that SSN Teacher "has been observed to utilize appropriate sensory strategies with [Student] throughout the day."⁷¹

37. The SCO finds that at all times relevant to this Complaint, Student has received the sensory diet accommodations required by the IEP.⁷² The sensory diet accommodations have been provided to Student by SSN Teacher and the paraprofessional working with Student, and are provided to Student daily, throughout the school day.⁷³ In fact, during the February 21, 2011 IEP meeting, SSN Teacher stated that she provided sensory input to Student throughout the course of the day, and Mother acknowledged that she understood that that was the case.⁷⁴

● **Observation of Student's Placement by Parent's Independent Evaluator**

38. On or around January 13, 2011, Parents requested that the BOCES permit staff from Private Facility to evaluate Student in Student's placement in the BOCES (*i.e.*, in school).⁷⁵

39. The BOCES refused Parents' request.⁷⁶

⁶⁷ Ex. 13.

⁶⁸ Interview with SSN Teacher.

⁶⁹ Interview with SSN Teacher.

⁷⁰ Ex. 5, p. 17.

⁷¹ Ex. 7.

⁷² Interview with SSN Teacher.

⁷³ Interview with SSN Teacher.

⁷⁴ Ex. FF, at 01:35:55.

⁷⁵ Exs. H and I.

⁷⁶ Ex. H.

CONCLUSIONS OF LAW

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

Allegation 1: The BOCES failed to properly implement the 10/05/2010 IEP.

1. Under the IDEA, local education agencies (such as the BOCES) are required to provide eligible students with disabilities with a free appropriate public education, by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19.
2. Clearly, where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. *Id.* However, not every deviation from an IEP's requirements results in a violation of the IDEA's requirements or mandates an award of relief to the parents of a disabled child. *E.g., L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005)(minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program and did not amount to a "clear failure" of the IEP); *Van Duyn v. Baker Sch. Dist. 5J*, 481 F.3d 770 (9th Cir. 2007)(failure to implement IEP must be material to incur liability under IDEA, and minor discrepancies between the services provided and the services called for do not give rise to an IDEA violation); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003)(failure to implement "essential" element of IEP denies FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000)(*de minimis* failure to implement IEP does not deny FAPE).
3. Parents allege that the BOCES failed to implement the October 5 IEP and thereby violated Student's rights under the IDEA by failing to provide Student with written quarterly progress reports, failing to provide Student with the services of a BCBA, and failing to provide Student with a sensory diet.
4. The BOCES does not dispute that it did not provide Parents with a written quarterly progress report for the first quarter of the 2010-2011 school year, which quarter ended on October 14, 2010. (FF # 5.) As noted by the BOCES, after the October 5 IEP meeting, Student did not attend school through and including October 14, 2010. (FF # 4.)
5. In order for a school district to be able to report on a student's progress, the student must attend school – otherwise, there is nothing to report. In this case, where Student did not attend school between October 5 and October 14, there could be no progress on which the BOCES could have reported – any report generated on October 14 would have been devoid of information and meaningless. Accordingly, the SCO finds no violation of IDEA in the BOCES failure to provide Parents with a progress report on October 14, 2010.

6. With regard to the period from October 15 through December 16, 2011, Student attended school a total of 6 days. (FF # 8.) The BOCES did not provide Parents with a quarterly progress report for the second quarter, claiming that a progress report covering such infrequent and sporadic attendance would have been meaningless. (FF # 8-9.) The SCO agrees and finds no violation of the IDEA. Though the IEP technically required the BOCES to provide Parents with quarterly progress reports, in this case, a progress report for the second quarter would have been devoid of meaningful information because of Student's limited attendance. Further, the technical IEP violation was not a material failure to implement the IEP, and thus not a denial of a FAPE. *K.C. v. Utah State Bd. of Educ., supra, and related cases cited supra.*
7. When Student did attend school in the BOCES, including during the time period that the October 5 IEP was in effect, [Student] received sensory input (*i.e.*, sensory diet accommodations) from SSN Teacher. (FF# 7, 36.) Accordingly, the SCO concludes that the BOCES did not fail to implement the October 5 IEP with respect to the provision of the sensory diet accommodation.
8. Regarding the Parents' remaining allegations that the BOCES failed to implement the October 5 IEP (*i.e.*, by failing to ensure that a BCBA provided a minimum of two hours of service per week after the October 5 IEP meeting and by failing to provide a progress report for the second quarter of the school year, of which Student attended 6 days), the SCO notes that October 5 IEP/offer of placement was the subject of Parent's allegations in State Complaint 2010:517. In the 2010:517 Decision, the SCO has already found that in developing and attempting to offer a placement to implement the October 5 IEP, the BOCES denied Student a FAPE through and including December 13, 2010 – which is as long as the October 5 IEP was in effect (it was replaced by the December 14 IEP). Consistent with that finding, the SCO awarded Parents reimbursement for the tuition and costs associated with educating Student in Private Facility. There is thus no need for further examination into the BOCES' implementation *vel non* of the October 5 IEP, as Parents have already received all the relief to which they would be entitled with respect to that IEP and that time period.

Allegation 2: Failure to implement the December 14 IEP

- **Unilateral change of placement after 1/03/2011**
 - **Failure to provide PWN relating to the 1/03/2011 change of placement**
9. Parents allege that the BOCES “unilaterally changed Student's placement” and violated the requirements of the December 14 IEP (which states that Student will be educated full time, *i.e.*, 31 hours per week, in a separate classroom) when it placed Student in the general preschool classroom for half days, with the remainder of the school day spent in the SSN classroom. (FF # 21.) The Parents also complain of the BOCES failure to provide a Prior Written Notice reflecting the change of placement. (FF # 18.)
 10. The SCO disagrees with this characterization. Based upon careful and repeated listening to the audio recording of the December 14 IEP meeting, the SCO finds that Student's change of

placement, from a full time separate class to half days in the general preschool/half days in the separate classroom, was made in the IEP meeting with the full participation, cooperation and (apparent) agreement of Mother. (FF # 13-17.) At Mother's request, the change of placement was not reflected in the IEP, but rather was characterized by the IEP team as a temporary placement effected for purposes of assessment. (FF # 17-18.)

11. The question, therefore, is whether the BOCES violated the IDEA in failing to reflect that change of placement in the December 14 IEP, or in failing to provide PWN prior to the implementation of the Trial Placement. (FF # 17.)
12. The IEP document is the essential cornerstone of the right to FAPE; indeed, the statute and regulations define FAPE as special education and related services provided, *inter alia*, "in conformity with an individualized education program..." 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17(d); ECEA Rule 2.19(4). One required element of an IEP is "a statement of the special education and related services ... to be provided to the child" and "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in [his or her special education program]." 34 C.F.R. § 300.320(4) and (5). Thus, it is beyond question that the IEP must reflect what a student's placement is; any changes to a student's placement must be reflected in the IEP document. *Id.*; *see also* ECEA Rule 4.03(8)(b)(changes of placement must be reflected by changes to the IEP). Indeed, this requirement is reflected in the BOCES' own policies and procedures. (*See*, Ex. 15 at p. 49, requiring IEPs to identify the special education and related support services required to meet the needs of the disabled student.)
13. In this case, SSN Teacher raised the question of whether Student's IEP document should be changed to reflect the Trial Placement, but acceded to Mother's wishes to leave the IEP "as is," under the rationale that the Trial Placement could be deemed an "assessment period." (FF # 17-18.) SSN Teacher should have followed her initial instincts; neither the IDEA nor the ECEA define or otherwise carve out different categories of placement (*i.e.*, some which must be reflected in an IEP, and others which may not be). Whether a new placement is deemed "temporary," "diagnostic" or an "assessment period," under the law it must be reflected in the IEP. (*Id.*; *see also*, CDE State Complaint Decision 2011:501, p. 16, Conclusion of Law # 3.) Accordingly, the BOCES violated the IDEA's procedural requirements when it failed to change Student's December 14 IEP to reflect the new placement.
14. Further, the IDEA requires that a public agency provide prior written notice ("PWN") to the parents of a child with a disability a reasonable time before the public agency proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a)(1)-(2). The notice must include:
 - 1) A description of the action proposed or refused by the agency;
 - 2) An explanation of why the agency proposes or refuses to take the action;

- 3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- 4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part ...;
- 5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- 6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- 7) A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. § 300.503(b).

15. The December 14 IEP team's decision to change Student's placement from full days in a separate classroom to half days in the general education preschool/half days in the separate classroom was a proposal to change Student's educational placement, and thus constituted an event triggering the PWN requirements. The BOCES' argument that Mother was aware of the change and was "notified personally of the ½ day – ½ day trial period at the December 14th IEP meeting and was agreeable to it" is of no legal consequence. The PWN requirement is unequivocal and recognizes no exceptions for "personally" notifying parents of the proposed change. *Id.* Accordingly, the BOCES violated the IDEA by failing to provide Parents with PWN when it changed Student's educational placement on December 14, 2010.
16. The finding that the BOCES violated the IDEA's procedures by failing to modify Student's IEP to reflect the Trial Placement does not end the inquiry or necessarily result in a finding that Parents are entitled to the relief they seek. It is well-settled that procedural violations of the IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E)(ii); 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).
17. It bears noting that in their Complaint and supporting exhibits, Parents do not argue or provide evidence that the change in Student's placement on December 14 was substantively inappropriate, *i.e.*, was not reasonably calculated to confer some educational benefit upon Student. Rather, Parents allege that the change was made because "[the BOCES] did not have an appropriate center-based program to fulfill the IEP as written on October 5, 2010 and December 14, 2010." (Complaint, p. 1.)⁷⁷
18. The SCO disagrees with this characterization. Indeed, as reflected in the discussion at the December 14 meeting, Student's ability to generalize skills and to have interaction with age-

⁷⁷ Parents do not take issue with the IEP's goals and objectives, statement of accommodations, or any other aspect of the IEP except placement, *i.e.*, where the services in the IEP are to be delivered. In their Reply, Parents stipulate that "the IEP is designed to provide a FAPE." (Reply, p. 2.) Accordingly, the SCO will not examine the appropriateness of any aspect of the IEP except the placement/service delivery issue.

appropriate peers was a legitimate concern that the December 14 IEP team needed to address. (FF # 13.) By the time of the December 14 meeting, at least 2 evaluations, by Student's private autism teacher and by independent evaluators, had raised the issue of Student's lack of interaction with age-appropriate peers (both disabled and non-disabled), and Mother herself raised generalization and access to typically-developing peers as a concern. (*Id.*) Moreover, as argued by Parents and found by the SCO in Decision 2010:517, Student's IEP contained goals requiring Student to have access to age-appropriate peers, but could not be implemented in the full-time placement in the SSN classroom because there were no age-appropriate peers in that classroom. (Decision 2010:517, Concl. 27, p. 34.)

19. The December 14 IEP team's discussion regarding a possible transition to a lesser restrictive setting to provide [Student] with greater access to age-appropriate peers – an end that all involved agreed was appropriate – was extensive and appropriately took into account the issues and concerns raised by the various members of the IEP team (including Mother) relating to the proposed change. (FF # 15.) There is no evidence that the BOCES staff who participated in the December 14 IEP meeting made the placement decision based upon anything but what the team members legitimately believed, in their professional judgment, was appropriate for Student.
20. As such, the SCO has no basis for disturbing the substantive determination by the December 14 IEP team that Student should receive a portion of [Student's] educational services in the general education preschool classroom. Accordingly, the SCO concludes that the change of placement proposed by the December 14 IEP team was reasonably calculated to allow Student to confer some educational benefit upon Student. Regardless of the BOCES' procedural violation in failing to change Student's IEP to reflect the IEP team's decision to change Student's educational placement, that procedural violation did not impede Student's right to a FAPE.
21. Further, the BOCES' procedural violation did not impede Parents' opportunity to participate in the decision-making process regarding the provision of FAPE. The procedural violation committed by the BOCES – the failure to maintain an IEP that accurately reflects the educational services provided to Student – is a serious violation of IDEA, to be sure. A student's IEP essentially defines what FAPE is for a student with a disability, and provides the basis for both service providers and parents to understand and implement a student's program of special education and related services uniquely tailored to that student's needs. In this situation, however, Mother was an active participant in the December 14 IEP meeting, and her concerns and wishes were addressed, usually resulting in her receiving what she sought. The change of placement was at least partly the result of Mother's articulated concerns relating to Student's need for opportunities to generalize skills and interact with age-appropriate peers. (FF # 13.) Moreover, it must be remembered the BOCES' failure to change Student's IEP to reflect the IEP team's decision to change Student's educational placement was *at Mother's request*. (FF # 17-18.) Parents should not now be able to claim relief based upon a procedural violation that they themselves sought and encouraged.

22. Parents argue that they did not actually agree with the change of placement, but rather were “agreeable due to having no other options,” and that in any event, they put the BOCES on notice of their disagreement with the change of placement with their correspondence of December 26, 2010. (Reply, p. 6, *citing* Ex. C.) The SCO rejects this argument for two reasons. First, as a factual matter, the SCO does not read the December 26 letter to articulate the Parents’ disagreement with or rejection of the proposed change of placement; to the contrary, the letter very clearly states that Parents “acquiesced” to the new placement. (Ex. C, p. 2.) Second, as a legal matter, the IDEA does not require parental consent or agreement as a prerequisite to changing a student’s placement.⁷⁸ So long as Parents were afforded their rights to participate in the IEP process – which they were in this case – the IEP team was entitled to change Student’s placement over the Parents’ objection.
23. For the same reasons as stated above, the SCO concludes that though the BOCES violated the IDEA after the December 14 IEP meeting by failing to provide Parents with PWN relating to the proposed change of placement, that violation does not entitle Parents to the relief they seek. The procedural violation did not impede Student’s right to a FAPE and did not impede Parents’ opportunity to participate in the IEP process.
- **Failure to ensure staff received training in ABA instructional techniques**
 - **Failure to ensure two hours per week of BCBA services**
24. The SCO has found that the BOCES complied with the December 14 IEP’s requirements that Student’s service providers receive training in ABA instructional techniques (pairing, reinforcement, manding, effortless learning, prompting, fading, compliance, error correction, natural environment teaching and shaping). (FF # 22-24.) According, the SCO concludes that there has been no failure to implement Student’s IEP with respect to this requirement.
25. Similarly, the BOCES has complied with the December 14 IEP’s requirement to provide Student with two hours per week of BCBA services. Taking into account the services provided by both Autism Specialist and Private BCBA, including services and consultation provided off-site, the SCO concludes that the BOCES has substantially complied with its obligation to provide Student with two hours per week of BCBA services, as required by the December 14 IEP. (FF # 25-34.)
- **Failure to provide sensory diet accommodations**
26. The SCO concludes that the BOCES did not fail to provide the sensory diet accommodation required by the December 14 IEP. Parents allege that there is insufficient documentation of the provision of sensory interventions, including “which equipment was used, or [Student’s] response to those interventions.” (Reply, p. 5.) “The ECSE teacher has also failed to document an intervention plan or interventions delivered.” (*Id.*) The IEP, however, does not require such documentation to be maintained, nor does such a requirement exist in the law.

⁷⁸ For placement decisions, parental consent is required only prior to a student’s initial placement, but not for subsequent amendments to the student’s IEP. 34 C.F.R. § 300.300(b).

The evidence shows that Student has and continues to receive the sensory diet accommodation required by [Student's] IEP. (FF # 7, 36.)

Allegation 3: Refusal to allow independent evaluator to observe Student in the current placement

27. The SCO concludes that the BOCES did not violate the IDEA by refusing to allow Parents' chosen evaluator to observe Student in Student's placement in the BOCES. Neither the IDEA nor Colorado's ECEA Rules "provide a general entitlement for parents of children with disabilities, or their professional representatives, to observe children in their current classroom or proposed educational placement." *Letter to Mamas*, 42 IDELR 10 (OSEP 2004). Though such observations may be required to complete an independent educational evaluation (IEE) at public expense pursuant to 34 C.F.R. § 300.502, *see, Letter to Mamas, supra*, the observation sought by Parents in this instance is not in the context of an IEE.

REMEDIES

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

- 1) Maintaining IEP documents that reflect the special education service delivery recommended by the IEP team and provided to the child (34 C.F.R. § 300.320(4) and (5)); and
- 2) Prior Written Notice (34 C.F.R. § 300.503).

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

- 1) By **April 18, 2011**, revise Student's IEP to reflect the actual placement proposed by the IEP team and offered to Student, and provide the Department with written evidence of same by **April 21, 2011**;
- 2) Continue compliance with the corrective action ordered by the SCO in Decision 2010:517 (related to compliance with the requirements of Prior Written Notice).

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

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

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See*, 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 31st day of March, 2011.

Wendy Armstrong, Esq.
State Complaints Officer

Appendix A **2011:503 Record**

Parents' Complaint, pgs. 1-6;

Exhibit A

- 10/05/2010 IEP, pgs. 1-22;
- 10/17/2010 Letter from Parents to Special Education Director] pgs. 23-25;
- 10/20/2010 Letter from Parents to Special Education Director, pg. 26;
- 12/14/2010 IEP, pgs. 27-48; and
- Present Level of Academic Achievement and Functional Performance of Student, pgs. 49-53.

Exhibit B 01/06/2011 Partial Letter from BOCES Legal Counsel to SCO;

Exhibit C 12/26/2010 Letter from Parents to Special Education Director;

Exhibit D 11/12/2010 Autism Training Agenda;

Exhibit E List of Service Providers working with Student; and
Parent/Teacher Conference notice;

Exhibit F 11/12/2010 Letter Special Education Director to Parents'

Exhibit G Student's Daily Schedule;

Exhibit H 01/13/2011 Email from Special Education Director to Parents;

Exhibit I 01/27/2011 Letter from Parents to Special Education Director;

Exhibit J 08/10/2010 Letter from Parents to Special Education Director;

Exhibit K 01/27/2011 Letter from Parents to Assistant Principal;

BOCES's Response, pgs. 1-9;

Exhibit 1 List of OT Times for Student;

Exhibit 2 Recording of 12/14/2011 IEP meeting (Parts 1 and 2);

Exhibit 3 02/15/2011 Dates of service to Student by Autism Specialist;

Exhibit 4 10/05/2010 IEP;
Exhibit 5 12/14/2010 IEP;
Exhibit 6 Written draft of 12/14/2010 IEP;
Exhibit 7 Statement by OT;
Exhibit 8 Therapy notes;
Exhibit 9 Notices of Meeting (8/30/2010); Consent for Evaluation (9/01/2010); Notice of Meeting (9/17/2010); Notice of Meeting (12/6/2010); Consent for Evaluation (1/12/2011); Consent for Evaluation (1/13/2011); Letter from Parents to SSN Teacher (1/12/2010);
Exhibit 10 Sign-in sheet for Professional Development; Autism training power-point;
Exhibit 11 BCBA Weekly service logs;
Exhibit 12 Selected emails between BOCES staff, Autism Specialist, SSN Teacher, Parents.

Parents' Reply, pgs. 1-9

Exhibit AA Selected pages from State Complaint Decision 2010:517;
Exhibit BB 10/01/2010 Email from Special Education Director to Autism Specialist;
Exhibit CC 12/01/2010 Letter from Parents to Special Education Director;
Exhibit DD 10/14/2010 Letter From Parents to Special Education Director;
Exhibit EE 10/04/2010 Letter from Parents to Special Education Director;
Exhibit FF Recording of 02/21/2011 IEP meeting;
Exhibit GG Private Facility Invoice and Tuition Policy.

Addition Exhibits:

Exhibit 13 District's calendar for 2010-2011 school year;
Exhibit 14 Curriculum vitae of Autism Specialist and Private BCBA;
Exhibit 15 BOCES Special Education Handbook, Section II (D) (pp. 44-53).