

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

State-Level Complaint 2011:505

Adams County School District 50

DECISION

INTRODUCTION

This is a state-level complaint (Complaint) dated March 30, 2011 which was received by the Department on April 1, 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:

- [Father] and [Mother], Parents of [Student] (“Parents,” “Mother” or “Father”);
- [Student], Child of Parents, (“Student”);
- Student’s age of [Age][Age];
- Adams County School District 50 (“District”);
- [Special Education Director], District Special Education Director (“Special Education Director”);
- [Coordinator #1], District Special Education Coordinator (“Coordinator #1”);
- [Coordinator #2], District Special Education Coordinator (“Coordinator #2”);
- [School], former school of attendance (“School”);
- [Principal], [Former School] Principal (“Principal”);
- [School Psychologist], [Former School] School Psychologist (“School Psychologist”);
- [Special Education Teacher], Special Education Teacher (“Special Education Teacher”);
- [SLP], Speech/Language Pathologist (“SLP”);

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.

- [Homebound Teacher], Homebound Special Education Teacher (“Homebound Teacher”);
- [School Psychologist #2], School Psychologist at High School (“School Psychologist #2”);
- [] High School Significant Support Needs Program (“High School SSN program”);
- Laradon Hall, an Out-of-District Placement proposed by Parents (“Laradon Hall”);
- Children’s Hospital Day Treatment program (“CHDT program”);
- [Pediatrician], M.D., Pediatrician at CHDT (“Children’s Hospital Pediatrician”);
- Tennyson Center for Children, an Out-of-District day treatment program (“TCC”);
- Fletcher-Miller program, an out of District program offered by Jefferson County School District (“Fletcher-Miller program”);
- [Parent’s Advocate], Adams County ARC Advocate (“Parent’s Advocate”) and
- [Resources Coordinator], North Metro Community Services Resources Coordinator (“Resources Coordinator”).

The Complaint consisted of three pages and Exhibits “A” through “E.”

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

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

Whether, since December 15, 2010, the District has failed to supply Student with a free appropriate public education (FAPE) in violation of the IDEA and its implementing regulations.

On April 4, 2011, Special Education Director was notified of Parents’ allegations in a cover letter which included a complete copy of the Complaint and Exhibits “A” through “E.” The District was specifically directed to supply the SCO with:

- A. A written response specifically admitting or denying the Complaint allegation;
- B. All documentation supporting the District’s Response to the allegation, including, but not limited to:
 - 1. A complete copy of Student’s current IEP, including a legible sign in sheet listing each and every person who attended any IEP Team meeting held in conjunction with development of the IEP;

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).

2. A complete copy of any meeting notes prepared in conjunction with the current IEP;
3. A complete copy of all service logs for all special education services provided to Student in the 2010-2011 school year in conjunction with the current IEP;
4. A complete copy of the most recent Functional Behavioral Assessment (“FBA”) including the name, title and telephone number of each person who assisted in developing the FBA;
5. A complete copy of the most recent Behavior Intervention Plan (“BIP”) as well as the name, title and telephone number of each person responsible for implementing the BIP;
6. A complete list of all placements that the IEP Team has explored since December 15, 2010 in order to supply Student with special education and related services, including the complete name, address and contact person of each potential placement;
7. Complete copies of all IEPs in effect for the 12 months preceding the current IEP, including a legible sign in sheet listing every person who attended the IEP Team meetings;
8. The complete name, title and contact information of any expert (e.g., neurologist, physician, psychologist, educational evaluator, behavior consultant, etc.) either within or without the District with whom the IEP Team or District has conferred since September 1, 2010 and a copy of all reports and recommendations of each expert;
9. The complete name, title and contact information for each District staff member who has knowledge of the facts underlying the Complaint allegations;
10. A complete copy of Student’s most recent reevaluation consistent with 34 C.F.R. § 300.305, including all data reviewed and the name, title and contact information of all persons who contributed reports or recommendations to the reevaluation;
11. A complete copy of the most recent transportation plan developed for Student including the name, title and contact information of the persons who developed the plan as well as those responsible for implementing the plan;
12. Complete copies of the District’s policies and procedures in effect at the beginning of the 2010-2011 concerning placements when neither a school nor homebound placement is the Least Restrictive Environment (LRE); and
13. A legible copy of the District’s 2010-2011 school calendar.

On April 20, 2011, the District’s two page Response (consisting of a cover page and an email), and Exhibits “1” through “15” were timely received.

On April 22, 2011, the SCO sent Parents⁴ a complete copy of the Response and exhibits by overnight mail.

On May 2, 2011, Parents' Reply, consisting of pgs. 1-6 and Exhibits "F" through "G" were timely received.

On May 4, 2011, the SCO sent Special Education Director a complete copy of Parents' Reply and exhibits by overnight mail.

On May 11, 2011, the SCO interviewed Special Education Director by telephone.

On May 13, 2011, the SCO interviewed the following District staff at High School: Coordinator #2 and Special Education Teacher.

On May 16, 2011, the SCO interviewed the following District staff at High School: Coordinator #1; School Psychologist; Homebound Teacher; and School Psychologist #2.

On May 17, 2011, the SCO interviewed Principal and SLP at High School.

On May 19, 2011, the SCO interviewed Parents at the Department.

On May 20, 2011, the SCO briefly interviewed Coordinator #1 by telephone.

On May 24, 2011, the SCO briefly interviewed Coordinator #1 by telephone.

On May 24, 2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

Parents' Complaint contains one allegation which is summarized below:

The District has failed to supply Student with any special education and related services since December 15, 2010 when homebound services were discontinued.

Summary of Proposed Remedies: The Parents' Complaint proposed that, in order to remedy the allegation, an outside placement for Student be considered.

DISTRICT'S RESPONSE

In an email dated April 20, 2011, the District "vehemently" denied that the District ever discontinued homebound services for Student. "Rather, the parents have unilaterally disallowed access to those services provided by the District. Their big push was to have the District place [Student] into Laradon Hall, which is a day treatment program for students with both cognitive

⁴ Parents are divorced and have lived apart since August 2008 (Interview of Parents). Therefore, complete copies of the District's Response and all Complaint correspondence were supplied to each Parent at their respective addresses.

and behavioral disorders. We've experience [sic] resistance from the parents on any and all options the District offered outside of a Laradon Hall placement decision."⁵

PARENTS' REPLY

Parents denied that they had rejected District placement options. "The IEP team informed us that the only option on the table was homebound services. The IEP team acknowledged that homebound services were unsafe for [Student] due to [Student's] self-injurious behaviors, as well as, to the teachers. In addition, the IEP team also acknowledged that they were not able to address [Student's] behavioral needs. Services were discontinued on December 15, 2010. [Special Education Director] did not attend the IEP staffing on December 15, 2011 [sic] or February 23, 2011. The IEP team was not able to offer services outside of homebound."

FINDINGS OF FACT

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

Factual Background:

1. At the time of the Complaint, Student was [Age] years of age. Student has been identified as a child with multiple disabilities throughout [Student's] entire educational career.
2. During the 2009-2010 school year, Student attended a ½ day program at School, Monday through Friday in the significant support needs (SSN) program.⁷ Throughout [Student's] educational career Student has been transported to and from school by bus.
3. **February 17, 2010 IEP (Annual Review)**.⁸ Student was to receive 15 hours per week of direct services from Special Education Teacher; 30 minutes per week of direct speech language services from SLP; 30 minutes per week of indirect SLP services; and 15 minutes per month of indirect consulting services by an occupational therapist (OT) and physical therapist (PT). Student required special transportation and assistive technologies and was transported to and from school by school bus.⁹ As to present levels of performance, Student has a long and well documented history of self-injurious behaviors associated with transitions and changes in the routine. In the February 17, 2010 IEP, the Special Education Teacher noted "Self injurious behavior is still evident however there has been a significant decrease."¹⁰ To communicate,

⁵ The District's Response included two notebooks of e-mails which the SCO marked as Exhibit 14, pgs. 1-56; and Exhibit 15, pgs. 1-183. The exhibits contained a total of approximately 100 tabs but neither exhibit nor any of the tabbed e-mails were referenced in the District's Response. During the 05/11/2011 interview, Special Education Director explained that the e-mails were included to provide the SCO with "context to the complaint."

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

⁷ Student has been on half-day schedule since 3rd grade because, due to [Student's] behaviors, [Student] is not ready for a full day schedule. Exhibit 7, pg. 10.

⁸ Exhibit 7, pgs. 29-45.

⁹ As to Student's AT needs "A Light Tech free standing limited message output device is required (i.e., Big Mack). A picture symbol schedule is required, Low Tech picture symbol or photo communication boards are required." Exhibit 7, pg. 35.

¹⁰ Id., at 32.

Student uses some “one-two word verbalizations, sign/gestures, picture symbols, and a voice output device.”¹¹

4. Typically, Student’s “self-injurious behaviors” include: biting [Student’s] arms to the point of drawing blood; hitting and banging [Student’s] head against walls, floors, etc. and flailing [Student’s] arms. Student has scarring on [Student’s] arms from self-inflicted bites. Student has also exhibited aggressive behaviors towards others including: pushing, biting, scratching, hitting, grabbing and pushing back the person’s fingers, screaming and crying.¹²

5. **Spring of 2010.** Beginning in April 2010 and continuing until the end of the school year, Student began having difficulties getting on and off of the school bus or out of the family car. Specifically, in conjunction with attempts to transport Student to and from school by either bus or private car, Student’s self-injurious and aggressive behaviors increased significantly. Consequently, during the last two months of the 2009-2010 school year, Student had an increased number of absences from school.¹³ Student would refuse to get on the bus and, at other times, would refuse to get off of the bus or out of Parent’s vehicle. The SCO specifically finds that School and District staff were aware of these problems in April, 2010 but failed to conduct a Functional Behavioral Assessment (FBA) or to consult with a behavioral interventionist to address the behaviors.

6. **ESY Services - Summer of 2010.** Student was entitled to receive extended school year (ESY) services through the District. Student attended the first day of ESY services arriving and departing successfully by school bus. However, on the second day, Student refused to board the bus and began hitting [him/herself], flailing [Student’s] arms, spitting, crying, and screaming. As a result, Student did not attend ESY services that day.¹⁴ Historically, when bus transportation issues arose, the responsibility for getting Student to and from School fell on Parents. Because of their individual work demands, Parents elected to make no further attempts to get Student transported to ESY services during the summer of 2010.¹⁵

The 2010-2011 School Year:

7. On July 30, 2010 Mother e-mailed Special Education Director expressing concerns about the approaching 2010-2011 school year given Student’s recent self abusive and aggressive behaviors associated with transportation to and from School. Mother requested a meeting to address these concerns. In reply, Special Education Director e-mailed [Parent] and suggested that the IEP team, including Coordinator #1, reconvene and that a FBA be conducted. Coordinator #1 and Special Education Teacher were copied on this e-mail.¹⁶

8. The 2010-2011 school year began on August 30, 2010. Neither an FBA nor a Behavior Intervention Plan had been initiated for Student when the school year began.

¹¹ Id., at 33.

¹² Parents’ Reply; Interviews with Special Education Teacher, Homebound Teacher and Parents.

¹³ Parents’ Reply; Interview with Special Education Teacher; Exhibit #1, pg. 14 and Exhibit 7, pg. 10.

¹⁴ Interview with Special Education Teacher, Coordinator #1 and Parents.

¹⁵ Interview with Parents.

¹⁶ Exhibit 15, pgs. 183 and 178.

9. On or about August 30, 2010 Parents, Special Education Teacher and Coordinator #1 met to brainstorm methods to address strategies for getting Student on and off of the school bus. Neither School Psychologist nor District transportation staff was invited to attend this brainstorming session. Nothing was decided as a result of this meeting.¹⁷

10. At the beginning of the 2010-2011 school year, issues immediately resurfaced with getting Student transported to and from school. On one occasion, Student refused to exit Father's vehicle at the school. Numerous school staff tried various methods of coaxing Student from the vehicle. Student would pull the door of the vehicle shut and continuously bang [Student's] head and chest against the interior of the vehicle. After consulting with the Student Resource Officer, School staff finally abandoned their efforts and Father left with Student. On another occasion, Student's babysitter brought Student to School but entered the School immediately after the bell had rung using a door different from the established routine. As a consequence, the School hallway was full of students. In response, Student dropped to the floor, began crying, screaming and hitting [him\herself]. When Special Education Teacher attempted to intervene, Student bit Special Education Teacher on both of her arms, drawing blood. Although Student "de-escalated about three minutes after getting into the classroom," Special Education Teacher had to seek medical treatment. Mother was called and picked up Student at the School.¹⁸

11. Both incidents occurred during the first few days of school. Parents and staff felt Student's behaviors were associated with transportation issues, transition issues, and separation anxiety issues. Once Student reached the classroom, the behaviors stopped and Student appeared to enjoy the classroom activities.¹⁹ Fearing further injury to staff or injury to Student, Parents stopped attempting to transport Student to and from School and requested an IEP meeting to discuss their concerns.²⁰

12. **September 14, 2010 (Special Request) IEP Meeting.** The meeting was attended by: Parents; Coordinator #1 as Special Education Director Designee; Special Education Teacher; Principal; School Psychologist; Homebound Teacher; and a School Psych. Intern. The team discussed "different solutions (bringing Student to School on weekends; starting school at a later time; Parents bringing Student to school and doing school work at the library). The team determined that Homebound tutoring with Homebound Teacher was appropriate. This decision was made with the intention of transitioning [Student] slowly back into [School]. The idea of transitioning [Student] to high school was also brought up as something to work on beginning after the Christmas holiday." Special education and related services to be supplied through homebound services consisted of: Two hours per week of direct services to be supplied by Homebound Teacher; 15 minutes per week of indirect consultation services by SLP; and 15 minutes per month of indirect consultation services by OT and PT.²¹ The IEP made no provision

¹⁷ Interview with Coordinator #1 and Parents.

¹⁸ Interviews with Special Education Teacher and Parents. Special Education Teacher noted that Student "melted down because [student's] routine was messed up" and she remained willing to continue to work with Student.

¹⁹ Interviews with Special Education Teacher, Principal and Parents.

²⁰ Interview with Parents and Exhibit 7, pgs. 18 and 24.

²¹ Exhibit 7, pgs. 21-25.

for a FBA evaluation, any type of transportation desensitization plan or creation of a transition plan back to School. The Record contained no prior written notice concerning the change of placement or change in special education and related services.

13. On September 16, 2010, Homebound Teacher began delivering services to Student at Mother's residence. Contrary to the services listed in the 09/14/2010 IEP, Homebound Teacher elected to provide one additional hour of services each week (i.e., one hour per day, three days per week). During delivery of these services, a private caregiver was present in the home. Homebound Teacher observed that private caregiver found it difficult to manage Student's behaviors. At times, Student was upset when Homebound Teacher arrived at the home. On some occasions Homebound Teacher was able to calm Student and work with [Student]. However, on several occasions Student could not be coaxed from [Student's] bedroom or simply refused to work with Homebound Teacher. Homebound Teacher noted that "there were times when I did not feel that I could leave [the home] due to concerns about [private caregiver's] safety when Student was agitated." On at least one occasion, Student grabbed Homebound Teacher's hand and attempted to bend her fingers backwards.²²

14. On October 6, 2010 Student was working with Homebound Teacher when, "without warning, [Student] became agitated, screaming [and] biting [Student's] arm. Caregiver tried to calm [Student] but [Student] became more agitated and lunged at her trying to hurt her." Homebound Teacher was able to calm Student by placing a favorite blanket around [Student's] shoulders and rubbing [Student's] shoulders. "[Student] relaxed and it seemed safe to leave."²³

15. On October 14, 2010, Student was very agitated and outside the home when Homebound Teacher arrived. "Student was extremely agitated, would not come to table, stayed outside and was thrashing [Student's] arms to keep people away and [was] going to the gate to open it. Caregiver and daughter couldn't get [Student] inside." Homebound Teacher was very concerned that Student would injure the caregiver or run away from the residence and possibly injure [him\herself]. She was unable to calm Student or coax [Student] into the house and, therefore, she telephoned Mother and asked if she should call the police. Mother became upset at this suggestion and directed Homebound Teacher to telephone Father who was called and, approximately 20 minutes later, came and transported Student away in his truck.²⁴ "As a result of these incidents and because safety was an issue further homebound meetings in the home were suspended until a meeting could be arranged."²⁵

16. **November 5, 2010 (Special Request) Meeting.** This meeting appears to have been attended by Parents, Homebound Teacher, School Psychologist and SLP.²⁶ The meeting participants agreed to "change the location of homebound to the [District's] South Annex, a neutral location, where there would be more staff support available in case of escalation and where members of the staffing team could observe and provide feedback and recommen-

²² Interviews with Homebound Teacher and Parents.

²³ Exhibit 3, pg. 2.

²⁴ Interview with Homebound Teacher and Exhibit 3, pg. 3.

²⁵ Exhibit 1, pg. 13.

²⁶ Exhibit 3, pg. 3. (The Record does not contain a Notice of Meeting, list of meeting participants, a sign-in-sheet or meeting notes. Nor does it appear that Special Education Director or a designee attended the meeting.)

dations.”²⁷ “Six sessions were scheduled at the S. Annex with the plan to reconvene on December 15, 2010 to evaluate the effectiveness of supporting [Student] in another location than home.”²⁸

17. There is conflicting information concerning the Annex service delivery days or the length of services. Mother recalls that Student was to receive services two days per week for 45 minutes per session. Homebound Teacher recalls that Student was to receive services one day per week for 90 minutes. Because the Record contains no amended Service Delivery Statement, the SCO concludes that Student continued to be entitled to the services listed in the 09/14/2010 IEP (i.e., two hours per week of special education services to be delivered by Homebound Teacher, as well as indirect services of: 15 minutes per week of SLP services and 15 minutes per month of OT and PT indirect services).²⁹ Parents agreed to transport Student to and from the Annex and to remain on site while services were delivered.³⁰

18. There is no evidence in the Record concerning plans to initiate a FBA or to design a transportation desensitization plan to transition Student back to School. However, as a result of this meeting, the Special Education Director directed School Psychologist to prepare a Behavior Intervention Plan (BIP) for Student.³¹

19. Thereafter, homebound services were delivered at the District’s South Annex as follows:

- November 9, 2010 – “[Mother] called to cancel [homebound services]”
- November 16, 2010 – Father brought Student to the Annex. “Student is very agitated when [Student] arrives [and Father] has to sit in close proximity. [Student] is flailing arms often . . .”
- November 23, 2010 – Thanksgiving break – no services;
- December 6, 2010 – “[Student] arrived agitated but settled down for Mom. . . [Student] became upset when Mom left for a minute and hit [Student’s] head, biting arm, etc. but calmed down when she returned. . .”
- December 13, 2010 – “[Father] called to say he wasn’t bringing [Student] to tutoring because [Student] had seen a school bus and was upset. The homebound teacher asked [Father] to bring [Student] back to the S. Annex to see if [Student] would come in and work. [Father] returned with [Student] but [Student] would not get out of the truck for [Father]. . . Homebound Teacher [or] behaviorist . . . [Student] was very aggressive if someone got close to [Student] or tried to open the door near [Student]. After an hour of attempts, [Father] left with [Student].”³²

²⁷ Exhibit 1, pgs. 12-13 which are retrospective meeting notes dated April 20, 2011.

²⁸ Exhibit 7, pg. 11.

²⁹ Id., pg. 25.

³⁰ Interviews with Homebound Teacher and Parents.

³¹ Interview with School Psychologist.

³² Exhibit 3, pgs. 3-4; and Exhibit 1, pg. 13 (retrospective detailed in April 20, 2011 meeting notes).

20. In conjunction with the three dates on which homebound services were offered or attempted at the Annex, School Psychologist observed Student for purposes of conducting a FBA.³³

21. **December 15, 2010 (Special Request) IEP Meeting.** A meeting was convened to discuss Student's placement.³⁴ The meeting participants included: Parents; Coordinator #1 as Special Education Director Designee; SLP; Homebound Teacher; SLP; School Psychologist; NMCS Resource Coordinator; Parent's Advocate; and a School Psychology Practicum Student.³⁵ The meeting notes indicate "[Student] is currently getting limited/minimal educational services and both parents are worried about somebody or [Student] getting hurt. . . Transportation and entering the educational setting has been the major barrier to [Student] receiving educational services."³⁶

22. Student's current prioritized needs were identified as follows:

- Decrease unsafe behavior;
- Needs access to highly trained staff with physical management capability for [Student] based on [Student's] strength and agility (2 person management);
- Access to a more comprehensive educational program;
- Continue to expand language and communication skills to express [Student's] needs, wants and emotions/feelings;
- Need for a comprehensive behavior management plan to provide the structure and appropriate staff and resources necessary for support across settings; and
- The possibility of a vocationally focused program to capitalize on [Student's] strengths.³⁷

23. Parents noted that they were in the process of attempting to access mental health services through Medicaid for Student and acceptance would also provide Parents with medication monitoring assistance.³⁸

24. The meeting notes indicate that Special Education Director was unable to be present at the meeting and, therefore, Coordinator #1 would "share meeting notes and discussions with [Special Education Director] and schedule a meeting in early January."³⁹ Coordinator #1 led team discussions on the following program placement options related to Student's prioritized needs:

³³ Interview with School Psychologist and Exhibit 5, pg. 1.

³⁴ Exhibit 7, pg. 3.

³⁵ The Record contained no sign-in sheet.

³⁶ Exhibit 7, pg. 11.

³⁷ Id., pg. 12.

³⁸ Exhibit 7, pg. 12.

³⁹ Id., pg. 13. When questioned by SCO about these notes in a subsequent interview, Coordinator #1 advised that a special education director designee cannot authorize an out of district placement. "I am not in a position to initiate or authorize an out of district placement – only [Special Education Director] is authorized to do this. This is a team decision but [Special Education Director] would need to be there . . . I don't have authority to make out of District placements or to hire staff."

- Continue homebound instruction at the S. Annex. The team rejected this option noting that [Student] begins hitting [him\herself] as soon as there is any effort to open the [car] door, hitting [him\herself] in the face and banging [Student's] head repeatedly. Mother noted that [Student] would not tolerate a hat, let alone a helmet on [Student's] head. It was noted that District staff have major concerns about physically removing Student from a car due to [Student's] size, strength and the intensity of [Student's] aggressive outbursts. Parents questioned whether District staff have sufficient skill or training in this area.
- District consult with behavior specialist (having expertise with students exhibiting severe cognitive delays and severe aggressive behavioral needs) to develop a comprehensive behavioral and educational program for Student across educational, community and both home settings. The meeting notes emphasize “The team and family believes [sic] that to date [Student] has not been successful and able to properly access an education and that this is an extremely high priority.”
- Parents requested placement at Laradon Hall where [Student] would receive a full day, comprehensive program with behavioral expertise. Coordinator #1 noted that a major barrier to services is [Student's] severe aggressive behaviors associated with transportation by bus or car.
- Returning Student to the School Significant Support Needs (SNN) placement. Again, the team noted Student's severe aggressive behaviors associated with transportation and also noted that [Student] would be attending there a maximum of five months. Parents [also] disagreed with this placement due to Student's extreme aggressive behaviors.
- Transition Student to the High School SNN program. The team discussed the possibility of transitioning Student to this placement prior to ninth grade, including the fact that it is a very large building with a high number of students. Parents and advocate questioned whether this placement would have the necessary staff and supports to manage Student's behaviors.⁴⁰

25. According to the meeting notes, during the meeting “[Parent’s Advocate] question[ed] whether the current district IEP team has the expertise to support [Student] behaviorally or whether there is a person with these skills currently in the district. [School Psychologist] indicated that he has behavior assessment and intervention training and experience, *but does not feel he has the training and expertise to work specifically with students with cognitive and behavioral needs with the intensity of a child like [Student].*”⁴¹

26. The team also discussed the logistics of using crisis prevention intervention (“CPI”) but School Psychologist stated that “[CPI] would be difficult to use on a child of [Student’s] size, especially when escalated and would require minimally a 2 person team. The current staff working has concerns about physically managing [Student], particularly trying to remove [Student] from the vehicle which may trigger an extreme escalation of behavior.”⁴²

27. The meeting was adjourned with a “tentative meeting date for the first week of

⁴⁰ Exhibit 7, pg. 14.

⁴¹ Id. (emphasis added).

⁴² Id.

January. . . [Coordinator #1] will talk with Special Education Director and send out an invite.”⁴³

28. Given the clear evidence in the Record, the SCO concludes that, when the December 15, 2010 meeting adjourned, Student had no educational placement in as much as the delivery of services in the homebound placement could not be safely offered (i.e., See Findings of Fact (“FF”) #s 13, 15 and 22, above). Nor is there any evidence in the Record to suggest that the IEP team planned to initiate a FBA through a behavioral specialist with expertise to address Student’s self-abusive/ aggressive behaviors or [Student’s] transportation/transition needs so that special education or related services could be delivered at an educational placement in the future. Simply put, the IEP team adjourned without reaching a determination on an educational placement appropriate to serve Student’s unique educational needs. This finding is buttressed by the placement information listed in the December 15, 2010 IEP. The placement before the meeting was “homebound/hospital (ages 6 through 21)” and no placement was listed in the “after meeting” line of the IEP.⁴⁴

29. **February 23, 2011 (Annual Review) IEP Meeting.**⁴⁵ The meeting participants included: Parents; Parent’s Advocate; Coordinator #1; Coordinator #2; SLP; Special Education Teacher; Homebound Teacher; School Psychologist; and School Psychologist #2. Although Coordinator #2 had crossed out the typed name of Special Education Director and signed in as the Special Education Director Designee, during interviews the SCO determined that Coordinator #1 invited Coordinator #2 to the meeting and Coordinator #1 was the Special Education Director Designee.⁴⁶ Coordinator #2 and School Psychologist #2 attended the meeting solely for the purpose of advising the team about what significant support needs were available through the High School SSN program. Neither of these persons attended the entire IEP meeting.⁴⁷ It is unclear why the Special Education Director did not attend the meeting when the meeting notes clearly indicate that the meeting would reconvene “in January, 2011 with a request that [Special Education Director] attend.”⁴⁸

30. During this meeting, School Psychologist reviewed with the team a BIP that he had prepared for Student. The BIP contained a FBA Summary Statement which noted “Due to the extraordinary circumstances of this situation, the completion of a formal FBA was not feasible. The behavioral information presented was collected during a limited numbers [sic] of observations and via anecdotal information provided by staff and parents.”⁴⁹ The BIP contained no Crisis Intervention Plan although the major problem identified was [Student’s] “severe aggression or assault to staff/students that creates imminent bodily harm to self or others.”⁵⁰

⁴³ Id, pg. 15.

⁴⁴ Id., at pg. 8.

⁴⁵ The SCO could not determine why the next IEP meeting did not occur in January 2011 as was the team’s understanding when the December 15, 2010 meeting adjourned.

⁴⁶ Interviews of Coordinator #1 and Coordinator #2.

⁴⁷ Interviews of Coordinator #2 and School Psychologist #2.

⁴⁸ Exhibit 1, pg. 12.

⁴⁹ Exhibit 5, pg. 1.

⁵⁰ Id. at 2. When questioned concerning the December 15, 2010 meeting notes (see FF 25, above) [School Psychologist] reiterated that he did not believe that he has the professional expertise required to address Student’s self abusive and aggressive behaviors or Student’s associated transportation and transition behaviors. Interview of School Psychologist.

The SCO specifically finds that, given the insufficient FBA data and the School Psychologist's lack of expertise, the February 23, 2011 BIP fails to meet Student's needs. As of May 16, 2011, the BIP had not been implemented.⁵¹

31. According to the IEP meeting notes, Parents advised the other IEP team members that they had arranged for [Student] to obtain a comprehensive evaluation at Children's Hospital on March 31, 2011. Consequently, the team agreed to reconvene the annual review on either April 6, 2011 or April 20, 2011 to discuss the results of the evaluation and discuss appropriate services and programming to support [Student's] special education needs.⁵²

Post-Complaint District Actions:

32. **April 20, 2011 (Reconvened Annual Review) IEP Meeting.** The meeting participants included: Mother; Special Education Director; Coordinator #1; Homebound Teacher; School Psychologist; SLP; Special Education Teacher; Homebound Teacher; Parent's Advocate; and NMCS Resource Coordinator.⁵³

33. In advance of the April 20, 2011 meeting, Parent's supplied the team with copies of:

- The March 31, 2011 University of Colorado Interdisciplinary Team Evaluation, pgs. 1-18 (Exhibit F);
- The April 7, 2011 Evaluation of Children's Hospital Pediatrician, pgs. 1-6 (Exhibit G); and
- April 19, 2011 PELE Center Intervention Summary (Exhibit 19).

34. At the conclusion of the meeting, the team agreed to:

- Implement immediately a transportation behavioral plan with the intent to: (a) increase safe bus entry and exit, and (b) decrease aggressive behavior during transport. [Student] cannot access any services until we can safely get [Student] on and off the bus. Therefore, everyone agreed that this is a priority.
- Consider a short-term placement . . . for [Student] the [sic] [CHDT] programs so that personnel can monitor and regulate [Student] medically and offer suggestions for the parents and the District on how best to manage [Student's] behavior in a variety of settings.
- In the meantime: (a) Investigate placement options at the Fletcher-Miller program at JeffCO Schools and at Laradon Hall. We will be convening in early May to

⁵¹ Interview of School Psychologist.

⁵² Id., pg. 25.

⁵³ Per Interview with Parents, Father could not attend but requested to be conference in by telephone but, per Coordinator #1, the District did not have the technology to honor this request. The SCO notes that the unsigned "Participants in Meeting" form (i.e., Exhibit 1, pg. 11), did not list "School Psychologist #2 or High School Life Skills Teacher" and therefore, contrary to the information supplied by the District (i.e., Exhibit 23), the SCO concludes these persons did not attend the meeting. Interview with School Psychologist #2.

discuss [Student's] progress to this point and make a final decision on placement for the 2011-12 SY.⁵⁴

35. On or about April 28, 2011, the District implemented a transportation desensitization plan (Transportation Plan) created by Coordinator #1 and School Psychologist in consultation with the District Transportation Director. The plan lists 11 steps and intermediate goals specifically tailored to safely transporting Student to and from Children's Hospital.⁵⁵ The Transportation Plan requires Homebound Teacher and a paraprofessional to meet a District bus driver at the bus garage at 9:45 a.m., Monday through Friday. The three drive to McDonalds where they pick up a happy meal before driving to Mother's residence. In advance of their arrival, Homebound Teacher telephones Student's caretaker who shows Student a picture of a school bus and a McDonald's symbol. The initial goal was to have Student successfully board the bus. The Transportation Plan has met with mixed results. Student boarded the bus the first day that the plan was implemented and has been safely transported all the way to Children's Hospital. However, on May 13, 2011 Student refused to leave Mother's house and board the bus. Coordinator #1 noted that on alternate weeks when Student stays at Father's house, Father is to bring Student to Mother's house for implementation of the Transportation Plan. However, Father has indicated that, due to work demands, he would only be able to bring Student to Mother's house on Mondays on the alternate weeks when Student stays at Father's house.⁵⁶

36. Presently, Parents are seeking to obtain therapeutic services for Student at [CHDT] program, Aurora, Colorado. This is an acute care, non-educational, psychiatric placement, typically one to four weeks in length. These therapeutic services would be provided in order to stabilize Student's medications, provide expertise for addressing Student's self-abusive and aggressive behaviors in a variety of settings and to educate Parents on how to manage Student's behaviors. Student is at the top of the waiting list for entry into this program.⁵⁷ The District has tentatively offered to supply Student's transportation to and from the hospital as an educational expense with the expectation that Medicaid would pay the therapeutic expenses.⁵⁸

37. **May 9, 2011 (Reconvened Annual Review) IEP Meeting.** As a result of this meeting, the team continues to consider an appropriate placement.⁵⁹ As of May 20, 2011, the District has taken the following specific actions to identify an appropriate placement to meet Student's unique educational needs:

- **Laradon Hall Day Treatment Placement, Denver, Colorado.** This would be a long-term out of district, private placement. Coordinator #1 conferred with

⁵⁴ District's April 20, 2011 Response, pg. 2.

⁵⁵ Exhibit 20.

⁵⁶ Interviews with Coordinator #1 and Parents. Father acknowledged that he had made this statement but, after meeting with the SCO, Father indicated that he understands that unless the Transportation Plan occurs every day, Monday through Friday, that it would likely fail. Father acknowledged the importance of getting Student to Mother's house every single day at the same time and committed to ensuring that this happens.

⁵⁷ Interviews with Parents and Coordinator #1. These services are being sought by Parents as a result of recommendations contained in the March 31, 2011 University of Colorado Interdisciplinary Team Evaluation, Exhibit F, pg. 1.

⁵⁸ Interview with Coordinator #1.

⁵⁹ Interviews with Parents and Coordinator #1.

the Principal of the school and determined that there is currently one slot available for Student's age group beginning in the Fall of 2011. Coordinator #1 has not visited Laradon in conjunction with Student's placement to discuss with staff Student's specific special education and related needs. However, Coordinator #1 acknowledged that, "Laradon would be a viable option given Student's needs and Laradon's offered services."⁶⁰ During the April 20, 2011 meeting, Coordinator #1 supplied Mother with an application for Student to attend Laradon and has been assisting Mother is completing the application.

- **Fletcher-Miller School (long term), Lakewood, Colorado.** The Lighthouse Program is on the Fletcher-Miller campus and offers a dual-diagnosis program. This would be a long-term out of district placement. Special Education Director is communicating with the Jefferson County School District Special Education Director to determine whether Student could attend a program in Jefferson County given the fact that Father resides in Jefferson County. Additionally, Parent's Advocate wishes to visit the school to determine if the program has a therapeutic component that would meet Student's needs.
- **Tennyson Center for Children, Denver, Colorado.** This would be a long-term out-of-district placement. It provides therapeutic treatment and is considered an eligible facility by the Department. This facility is in the process of creating a SSN program for children with dual diagnoses. The facility is an equal distance (about 15 minutes) from the residences of both Mother and Father.

The next IEP meeting is scheduled for June 2, 2011.⁶¹

Summary:

38. In summary, the SCO specifically finds:

- Between April, 2010 and April, 2011 the District had knowledge of Student's self-abusive and aggressive behaviors but failed to adequately address [Student's] behavioral needs;
- Student is entitled to special transportation as a related service;
- Between July 30, 2010 and April 28, 2011, the District failed to supply Student with a Transportation Plan which would address Student's behaviors in order to ensure [Student's] access to special education and related services;
- Although Student's placement was changed to homebound at the beginning of the 2010-2011 school year, no plan has ever been developed to reintegrate [Student] back into the school setting;

⁶¹ Interviews with Coordinator #1 and Parents.

- The District has failed to secure a behavioral specialist with sufficient expertise to conduct a FBA, create and implement a BIP to address Student’s self-abusive and aggressive behaviors or to create a Crisis Intervention Plan;
- The District has failed to supply Student with any sort of educational placement since December 15, 2010;
- Between December 15, 2010 and April 28, 2011, the District failed to supply Student with any special education or related services;
- The April 20, 2011 IEP plan which the District supplied to SCO and identified as Student’s current IEP is nothing more than a rough draft IEP that remains a work in progress;
- Since April 28, 2011, the only special education instruction supplied by the District has been limited to travel training associated with implementation of a Transportation Plan to facilitate Student’s safe bus transport to and from Children’s Hospital;
- None of the IEP Meeting Notices concerning meetings held between September 14, 2010 and April 20, 2011 notified the Parents of District staff who would be in attendance but instead merely notified them of staff who might attend;
- Contrary to the District claims, Parents have not unilaterally disallowed the District access to Student in order to provide special education and related services; and
- Contrary to the District claims, Parents have not been resistant to options offered by the District other than a placement at Laradon.

CONCLUSIONS OF LAW

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

1. Under the IDEA and the corresponding Colorado law, the Exceptional Children’s Educational Act (ECEA), students with disabilities have the right to a free and appropriate public education (FAPE). (20 U.S.C. 1400 *et seq.*; ECEA 1 CCR 301-8, 2220-R-1.00 *et seq.*).⁶²
2. The IDEA defines a FAPE to mean *special education and related services* that:
 - (a) Are provided at public expense, under public supervision and direction, and without charge;
 - (b) Meet the standards of the [Colorado Department of Education];
 - (c) Include an appropriate preschool, elementary school, or secondary school education; and
 - (d) Are provided in conformity with an IEP that meets the requirements of §§ 300.320 through 300.324.

⁶² Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

Section 300.17 (emphasis added).

3. The term “special education” is defined in the IDEA as follows:
 - (a) General. (1) *Special education* means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including-
 - i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - ii) Instruction in physical education.
 - (2) *Special education* includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section –
 - (i) Speech-language pathology services . . . ;
 - (ii) Travel training; and
 - (iii) Vocational education.
 -
 - (b)(4) *Travel training* means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to-
 - (i) Develop an awareness of the environment in which they live; and
 - (ii) Learn the skills necessary to move effectively and safely from place to place within the environment (e.g., in school, in the home, at work, and in the community).

Section 300.39(a) and (b).

4. The terms “placement” and “educational placement” are used throughout the IDEA. Although the term “educational placement” is not specifically defined in the IDEA regulations, the term is discussed in the Preamble. “Educational placement” means the setting along a continuum of alternative placements (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) where the provision of special education services are to be delivered rather than the specific place, such as a specific classroom or specific school. See Preamble, Vol. 71, No. 156, August 14, 2006, pg. 46687.
5. The District had notice of Student’s transportation issues as well as [Student’s] self-abusive and aggressive behaviors beginning in April, 2010. (FF#s 5 & 38). When the 2010-2011 school year began, Student’s inability to tolerate transport to and from school by bus or private vehicle continued. (FF#s 10 & 11). Student’s self-abusive and aggressive behaviors also continued, particularly in conjunction with transportation attempts. In response, the IEP team elected to change Student’s placement to homebound. (FF# 12).
6. Parents were not supplied with prior written notice when Student’s educational placement and special education services were changed in September, 2010. (FF# 12). This is a violation of the IDEA’s prior written notice regulation which requires written notice

before a district proposes to change the educational placement of the child or the provision of FAPE to the child. § 300.503.

7. Homebound services were initially supplied in Mother's home but, due to safety concerns, the services were then offered at the District's Annex. This arrangement required Student's transport which again resulted in extreme self-abusive and aggressive behaviors. (FF#'s 13-17 & 19).
8. During November and December, 2010, School Psychologist attempted to conduct a FBA. However, due in part to his lack of training and experience, the FBA was not completed. (FF# 20). At the February 23, 2011 meeting School Psychologist communicated to the IEP team his lack of expertise to properly address Student's behavioral needs. The IDEA requires that evaluations be administered by trained and knowledgeable personnel. 34 CFR § 300.304(c)(1)(iv).
9. The District's continued failure to properly evaluate and develop plans to address Student's chronic self-abusive and aggressive behaviors and transportation issues violated the IDEA. A district must ensure that a reevaluation conducted in accordance with §§ 300.304 through 300.311 occurs if the district determines that the educational or related services needs (i.e., transportation services) *including functional performance needs of the child* warrant a reevaluation. § 300.303(a)(1) (emphasis added). A district's failure to conduct a FBA or to implement a BIP and transportation plan in order to ensure that a student can access educational services is a violation of FAPE. See *Chavez v. Bd. Of Educ. Of Tularosa Mun. Sch.*, 614 F. Supp. 2d 1184, 1194 (D. N.M. 2008) (school district denied student a FAPE during the 2003-04 and 2004-05 school years because it failed to amend [Student's] IEP to address [Student's] refusal to attend school).
10. In December, 2010 when Student's self-abusive and aggressive behaviors had escalated to the point that homebound instruction was unsafe for staff and Student in the District's Annex, an IEP meeting was convened to discuss Student's placement. (FF# 21). At the conclusion of the December 15, 2010 meeting, the IEP team failed to determine an educational placement where special education and related services would be delivered. (FF # 28 & 38). Although the IEP team reconvened on February 23, 2011 (FF#'s 29-31), April 20, 2011 (FF#'s 32-36) and May 9, 2011 (FF# 37), Student has had no educational placement since December 15, 2010. (FF# 38). Student had no special education or related services between December 15, 2010 and April 28, 2011. (FF# 38). Since April 28, 2011, Student's services have been limited to the District's implementation of a Transportation Plan to provide Student with travel training to permit Student's safe transport by bus to educational facilities. (FF# 38). It follows that Student has been denied a FAPE since December 15, 2010. Furthermore, the denial of FAPE is ongoing until such time as an educational placement is made and Student begins receiving all of the special education and related services to which [Student] is entitled given [Student's] unique needs.
11. Coordinator #1 was the Special Education Director Designee at IEP meetings held on September 14, 2010; December 15, 2010 and February 23, 2011. (FF#'s 12, 21 & 29).

However, Coordinator #1 had no authority to commit District resources during those meetings. (FF# 24). This is a violation of ECEA which *requires that IEP meetings be attended by a special education director or designee who is knowledgeable about the availability of district resources and who has authority to commit those resources.* Rule 4.03(5)(a) (emphasis added). Clearly, if a person with authority to commit District resources is not in attendance at IEP meetings then final determinations concerning reevaluations, placement, special education and related services are unnecessarily delayed or denied. The SCO concludes that this is precisely what happened to Student in this case.

12. Finally, the SCO notes that the Meeting Notices used by the District concerning each of the scheduled IEP meetings failed to comply with the IDEA. The District's Meeting Notices advised the Parents who "may be in attendance at the meeting." (FF# 38). Under the IDEA, the Meeting Notice must notify parents of *who will be in attendance.* § 300.322(b)(i). Furthermore, when Father requested that he be allowed to attend the April 20, 2011 meeting by telephone (FF# 32), it was a violation of the IDEA for the District to fail to provide telephone conferencing technology to ensure his ability to attend the meeting. § 300.322(c).

REMEDIES

The SCO has concluded that the District violated the following IDEA requirements concerning provision to Student of a FAPE:

- a) The provisions of § 300.321(a)(4) and ECEA 4.03(5)(a);
- b) The evaluation procedures of §§ 300.303(a) and 300.304(c)(1)(iv);
- c) The prior written notice requirements of § 300.503; and
- d) The Notice of Meeting requirements of 300.322(b)(i) and (c).

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

- 1) On or before **June 2, 2011**, the District shall communicate with Parents and the contact person at [CHDT] program concerning Student's admission into that program. If Student is admitted into the program and the contact person at [CHDT] program determines that it is appropriate, the District shall transport Student to and from the hospital for these services at District expense. Alternatively, if the [CHDT] program contact person determines that Student should be transported by another means, said transportation services shall continue to be at the District expense.
- 2) No later than **June 2, 2011**, the IEP team shall reconvene and determine: exactly what ESY services Student shall receive over the summer; the dates and frequency of the ESY services; and the location where the services shall be delivered. The ESY services shall, at a minimum, include weekly direct speech-language services and ongoing implementation of a Transportation Plan to ensure that Student continues to retain skills sufficient to travel by bus to and from educational placements. The ESY services shall be set forth in a properly developed IEP.

- 3) No later than **June 30, 2011**, submit to the Department documentation confirming that the remedies detailed in paragraphs 1 and 2, above, have occurred, including: copies of the meeting notice(s), prior written notice(s), meeting notes and the resulting decisions concerning Student's status pertaining to [CHDT] program, including transportation to and from; and the team's determinations concerning ESY services. This documentation must be fully compliant with the IDEA and this Decision.
- 4) No later than **June 30, 2011** the IEP team shall:
 - Contract with a private behavioral specialist outside the District, having expertise with students who have i) severe cognitive delays and ii) severe, aggressive behavioral needs. (No later than **August 15, 2011**, the District shall supply the Department with a complete copy of the contract described in this paragraph 4.)
 - The contract shall be in effect between June 30, 2011 and May 31, 2012, during which time the behavioral specialist shall supply the IEP team, including Parents with: written recommendations, consulting and training sufficient to address Student's behavioral, functional and academic needs across educational, community and both home settings.
- 5) No later than **August 1, 2011**, in consultation with the private behavioral specialist, the IEP team shall reconvene with all required members, including the private behavioral specialist, and either the Special Education Director or a designee with knowledge and authority, consistent with Rule 4.03(5)(a), to commit District resources. The IEP team shall:
 - Develop an IEP which provides special education and related services appropriate to Student's unique educational needs.
 - Ensure that the IEP is reasonably calculated to provide Student with special education services, consistent with §300.39, in order to ultimately allow [Student] to attend school *on a full time basis* in the least restrictive setting.
 - Ensure that a comprehensive behavior management plan is implemented for Student which shall, at a minimum, include:
 - a) A FBA concerning Student's self-abusive and aggressive behaviors;
 - b) A BIP;
 - c) A CIP; and
 - d) A Transportation Plan to address Student's ongoing transportation training.
 - No later than the **first day of the regular 2011-2012 school year or admission date** of the school/program Student attends, submit to the Department complete copies of all documentation detailed in this paragraph 5 as well as copies of the meeting notice(s), prior written notice(s) and meeting notes. This documentation must be fully compliant with the IDEA and this Decision.

- 6) No later than the **first day of the regular 2011-2012 school year** of the school/program Student will attend, the District must implement all special education and related services, including all of the items enumerated in paragraph 5, above.
- 7) **Corrective Action Plan.** To ensure that violations do not recur, no later than **07/15/2011**, the District shall submit to the Department a corrective action plan (CAP) that addresses each and every violation noted in this Decision.
- a) **District Policies and Procedures:** The CAP must, at a minimum, include all of the District's revised written policies, procedures, forms, notices and website information consistent with the IDEA and this Decision:
- District policies concerning the requirements of ECEA 4.03(5)(a) (i.e., that a mandatory IEP meeting participant includes either the Director or a designee knowledgeable about the availability of resources *and having authority to commit those resources*);
 - District policies and procedures that evaluations are sufficiently comprehensive to address the child's educational or related services needs, including improved academic achievement and functional performance;
 - District policies and procedures to ensure that evaluations are administered by trained and knowledgeable personnel;
 - District policies and procedures concerning the issuance of prior written notices consistent with § 300.503; and
 - District policies and procedures to ensure Notice of Meetings are consistent with § 300.322(b).
- b) **District Wide Training:**
- By **09/02/2011**, submission of the name and title of all proposed trainers and a complete copy of all proposed training materials consistent with the IDEA and this Decision;
 - By **10/31/2011**, the District shall conduct District wide training of the IEP processes and District policies and procedures consistent with the IDEA and this Decision. The District's training shall include the following staff:
 - i) All special education teachers, at every school within the District;
 - ii) All District level special education administrators (i.e., directors, assistant directors, coordinators, facilitators, etc.); and
 - iii) All other individuals who are or may be responsible for A) implementing the District's IEP policies or procedures concerning students exhibiting significant support needs; and B) determining the Least Restrictive Environment given the student's unique needs.
 - **By 11/11/2011**, submission of evidence that such training has been completed including, but not limited to: complete copies of training schedule(s); agenda(s); curriculum/training materials; the name and title of each trainer; and legible attendee sign-in sheets which include each attendee's job title and school.

Please submit the CAP and all 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 1175
Denver, CO 80202-5149

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

The enclosed sample template provides suggested formats for the CAP and includes sections for "improvement activities" and "evidence of implementation of change."

CONCLUSION

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

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

Dated this 26th day of May, 2011.

Jeanine M. Pow

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A
2011:505 Record

[Parent's] Complaint, pgs. 1 through 3;

Exhibit A 09/14/2010 IEP, pgs. 1-5;

Exhibit B 12/15/2011 "Draft" IEP, pgs. 1-10;

Exhibit C 12/15/2010 "Draft Meeting Notes", pgs. 11-16;

Exhibit D 02/23/2011 IEP pgs. 1-11; and

Exhibit E 02/23/2011 Behavior Intervention Plan

DISTRICT's Response, pgs. 1-2;

Exhibit 1 "Current IEP" consisting of: various Meeting Notices, 04/04/2011 Prior Written Notice, 02/23/2011 sign in sheet, and 04/20/2011 "Draft" IEP, pgs. 1-29;

Exhibit 2 "Current IEP Notes" consisting of a cut and paste from pg. 12 of the 04/20/2011 "Draft" IEP

Exhibit 3 "Service Logs" consisting of Homebound Teacher's 2010-2011 Service Log;

Exhibit 4 "Functional Behavioral Assessment" which notes "The . . . FBA outcomes is [sic] embedded within the Behavioral Intervention Plan (see Section 5)";

Exhibit 5 "Behavior Intervention Plan" dated 02/23/2011;

Exhibit 6 "Placements the team has explored"

Exhibit 7 "Previous IEPs for last 12 months" consisting of: 12/15/2010 IEP; 09/14/2010 IEP; and 02/17/2010 IEP;

Exhibit 8 "Experts conferred with"

Exhibit 9 "District Staff" [with knowledge of facts underlying Complaint];

Exhibit 10 "Recent Student Evaluations" [dated 02/26/2009], pgs. 1-43;

Exhibit 11 "Transportation Plan"

Exhibit 12 "District Policies for LRE"

Exhibit 13 "District School Calendar"

Exhibit 14** Multiple e-mails, pgs. 1-55; and

Exhibit 15** Multiple e-mails, pgs. 1-183.

[Parent's] Reply, pgs. 1 through 6;

Exhibit F 03/31/2011 University of Colorado Interdisciplinary Team Evaluation, pgs. 1-18;

Exhibit G 04/07/2011 Evaluation of CH Pediatrician, pgs. 1-6.

Additional Documentation:

Exhibit 16 01/08/2008 Behavior Intervention Plan;

Exhibit 17 02/23/2011 IEP Meeting Notes of Coordinator #1;

Exhibit 18 Meeting Notes of School Psychologist for 11/05/2010; 12/15/2010 and 02/23/2011 IEP meetings;

Exhibit 19 PELE Center 04/19/2011 Intervention Summary;

Exhibit 20 District's Eleven Step "Transportation Desensitization Plan," implemented 04/28/2011;

Exhibit 21 Student's Attendance Records for 2009-2010 and 2010-2011 [dated 09/01/2010 through 11/11/2010];

Exhibit 22 SLP Service Records, 2009-2011; and

Exhibit 23 List of meeting participants at the IEP meetings of 12/15/2010 and 04/20/2011.

Interviews of: Parents; Special Education Director; Coordinator #1; Coordinator #2; School Psychologist; Special Education Teacher; Homebound Teacher; Principal; and School Psychologist #2.

** During the Complaint investigation, the SCO only considered those e-mails specifically referenced in the Response, Reply or interviews.