

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

State-Level Complaint 2022:503
San Juan BOCES

DECISION

INTRODUCTION

On January 5, 2022, the (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against a member district (“District”) of the San Juan BOCES (“BOCES”).¹ The State Complaints Officer (“SCO”) determined that the Complaint identified four (4) allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 5, 2021, through January 5, 2022 for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether BOCES denied Student a Free Appropriate Public Education (“FAPE”) because BOCES:

1. Deprived Parents of meaningful participation in the development, review, and revision of Student’s IEP in the IEP Team meetings held on or about March 2, 2021, and May 11, 2021, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

2. Failed to properly implement Student's IEP from May 2021 through August 2021, specifically by failing to provide the required extended school year ("ESY") services, in violation of 34 C.F.R. § 300.323.
3. Failed to educate Student in the Least Restrictive Environment (LRE) from August 2021 to the present by repeatedly removing him from meals with his peers, in violation of 34 C.F.R. §§ 300.107, 300.114, 300.117 and 300.320(a)(5).
4. Failed to review and, as appropriate, revise Student's IEP from June 2021 to the present to address Student's speech-language and behavioral needs, in violation of 34 C.F.R. § 300.324(b).

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS:

A. Background

1. Student is fifteen years old and currently attends a District high school ("School"). *Interview with Parents; Exhibit A*, p. 105. District is a member of the BOCES. *Exhibit A*, p. 85. The BOCES is responsible for providing FAPE to all IDEA-eligible children with disabilities attending a school in its member districts. ECEA Rule 2.02.
2. Student qualifies for special education and related services under the Multiple Disabilities category. *Exhibit A*, p. 105. Student requires support in math, writing, and reading. *Exhibit C*, p. 17; *Exhibit D*, pp. 1-11. Due to his disability, Student struggles with functional and expressive communication, which leads to behavioral challenges. *Interviews with Speech Language Pathologist ("SLP"), Case Manager, and Parent*.
3. During the 2020-2021 academic year, Student received services under a March 13, 2020 IEP ("2020 IEP"). *Exhibit A*, pp. 32-58. The 2020 IEP contained a Behavior Intervention Plan ("2020 BIP") designed to address maladaptive behavior in the classroom setting. *See Exhibit A*, pp. 59-63. On occasions when behavior required an intervention, Case Manager or another staff member would implement the 2020 BIP. *Interview with Case Manager*.
4. During the 2020-2021 academic year, Student's LRE was the general education classroom less than 40% of the time, and he did not attend any general education classes. *Interview with Case Manager*.

² The appendix, attached and incorporated by reference, details the entire record.

5. Although there were frequent occasions when Student exhibited behavior that required an intervention, Parents and Case Manager agree that Student’s behavior was successfully managed during the 2020-2021 academic year. *Interviews with Parent and Case Manager*.
6. On March 9, 2021, an IEP Team met to review and revise the 2020 IEP and the 2020 BIP. *Interviews with Case Manager and Parent; Exhibit A*, pp. 59-84. The revised IEP (“2021 IEP”) indicates the meeting was held on March 2, 2021, but emails and service logs demonstrate it was held on March 9. *See Exhibit A*, p. 59; *Exhibit 8*, pp. 4-5; *Exhibit 4*, p. 1; *Exhibit C*, p. 5.

B. The 2021 IEP

7. Parent, Case Manager, Student’s former speech language pathologist, and Occupational Therapist (“OT”) attended the March 9, 2021 IEP meeting. *Exhibit A*, p. 65; *Interviews with Parent and Case Manager; Exhibit C*, p. 5. OT signed the 2021 IEP as the special education director designee, and Case Manager, who is dual certified, signed as both the general education teacher and special education teacher. *Exhibit A*, p. 65; *Interview with Case Manager*. The 2021 IEP indicates that since Student was in the “Life Skills” class full time, a general education teacher’s attendance was not necessary. *Exhibit A*, p. 65
8. “Life Skills” is a special education only class, which Student attended every day during the 2020-2021 academic year. *Interview with Case Manager*. Although Student was in “Life Skills” full time, there was a possibility he would participate in the general education environment when students returned to in-person instruction, as shown by his inclusion in general education classes in the fall of 2021. *Interviews with Case Manager and Parent*. Despite this, no general education teacher attended the meeting. *See Exhibit A*, p. 65. BOCES policy and procedure does not permit the excusal of a general education teacher from IEP meetings, and Case Manager has been instructed against that practice in the future. *Interview with Director of Special Education; see Exhibit I*, p. 30.
9. The 2021 IEP reviews Student’s present levels of performance, documenting results of his last reevaluation, his progress toward annual goals, results on State assessments, and observations obtained from his service providers. *Exhibit A*, pp. 66-68.
10. The 2021 IEP indicates Student has deficits in writing and math due to his intellectual disability, and he struggles with life skills (such as money and time skills) and applied academics. *Id.* at p. 67. Due to his disability, Student has limited expressive and receptive language which increases learning difficulties when he accesses classroom materials. *Id.* at p. 68. The same limited speech and language also impacts Student socially, and leads to difficulty reading social cues, limited stamina, and unexpected behavior. *Id.* at pp. 68-69.
11. The Parent/Student Input section of the 2021 IEP provides: “Mom wants [Student] to have every opportunity possible at the high school.” *Id.* at p. 69. Director of Special Education

concedes that, in light of the brevity of this section, Parents' concerns should have been documented in either this section or in the section addressing Student's present levels of academic achievement and functional performance. *Interview with Director of Special.*

12. The 2021 IEP contains annual goals in math, writing, access skills (communication/self-advocacy), and behavior. *Id.* at pp. 73-76.
13. The 2021 IEP contains accommodations to help Student access the general education curriculum. *Id.* at p. 77. The accommodations include that Student be given frequent movement breaks; visual supports; a token economy reward system (for behavior); and access to a quiet, low activity work environment, when possible. *Id.*
14. The Service Delivery section provides for 30 hours per week of direct support in academics, access skills, and behavior from a special education teacher or paraprofessional under the supervision of a certified teacher. *Id.* at p. 79. The 2021 IEP also provides for one hour of indirect speech/language support from a speech language pathologist to assist teachers in understanding and supporting language/communication needs in the classroom setting. *Id.* It further provides for one hour each month of indirect consultative occupational therapy services to support educational access and development of functional skills. *Id.*
15. The IEP Team determined it was appropriate for Student to be in the general education class less than 40 percent of the time. *Id.* at pp. 12-13.
16. The Prior Written Notice ("PWN") section does not contain any information about other options or actions that were considered by the IEP Team. *Id.* at p. 81.

C. The 2021 BIP

17. The 2021 IEP includes a Behavior Intervention Plan ("2021 BIP"). *Id.* p. 59.
18. The strength-based profile section documents identified reinforcers as social interaction in games and activities, extra snacks, game time on a Chromebook, and music. *Id.* at p. 59.
19. The 2021 BIP identifies target behaviors as escape/avoidance, attention/access to items, and sensory stimulation. *Id.*
20. The 2021 BIP identifies four different categories of behaviors: "blue" (refusing to follow directions, "sloppy work" when Student is intentionally not performing at a level he is capable of, being "off task"), "green" (polite interactions, "whole body listening," following schedule), "yellow" (Student gets too close to another student, "unexpected talk" that makes another student uncomfortable such as "cussing" or "growling", play in class), and

“red” (Student “explodes” and gets angry but does not hurt others, Student hits or kicks another person, unwanted physical contact with another student). *Id.* at pp. 59-63.

21. The 2021 BIP includes “proactive procedures” such as a setting with a visual schedule to guide Student, token economies to reinforce positive behaviors (Student gets a “token” for positive behavior and can earn a reward), and errorless learning so Student has an opportunity to learn without being embarrassed by mistakes. *Id.* at p. 59. Antecedent strategies include providing a high level of consistency, use of visuals to help with understanding, and calm tone of voice delivery. *Id.*
22. Behavior teaching strategies include the use of blocking to keep Student from gaining a desired sensory stimulus, as well as teaching Student to use the set of “tools” specific to each category of behavior (i.e., “red” or “blue”). *Id.* at 60. The 2021 BIP identifies “tools” for Student to use when he is in a corresponding category of behavior (e.g., taking a break for “red” behaviors). *Id.* The desired alternative behaviors include producing work at Student’s ability level, polite social interactions, and following directions. *Id.* at p. 62.
23. Reinforcement strategies include the use of a token economy, wherein Student receives a “token” for “green” behaviors and for successfully using a “tool” when he exhibits “red,” “blue,” or “yellow” behaviors (e.g., if he is exhibiting “red” behaviors and asks for a break, he earns a “token” which can be exchanged for rewards). *Id.* at p. 61.
24. The 2021 BIP does not contain a crisis intervention plan because Student was not observed to exhibit aggression and elopement in the school setting. *Interview with Case Manager.*
25. Case Manager was responsible for ensuring classroom teachers, paraprofessionals, teacher aides, specials teachers, and substitute teachers were aware of the 2021 BIP. *Id.* Parent and Case Manager agree that during the 2020-2021 academic year, although there were frequent behavioral incidents that required an intervention, Student’s behavior was largely manageable leading up to the summer. *Interviews with Case Manager and Parent.*
26. The 2021 IEP and 2021 BIP were implemented starting in March of 2021, but the IEP Team held another meeting on May 11, 2021 to discuss ESY services. *Id.* at pp. 85-104.

D. ESY Services

27. Parent, Case Manager, and OT attended the May 11, 2021 IEP meeting. *Interviews with Parent and Case Manager.* Case Manager attended as both the general education teacher and special education teacher because Student was in the “Life Skills” class full time. *Id.*
28. At the meeting, the IEP Team found Student qualified for ESY services. *Id.* The IEP Team determined Student was entitled to 12 hours per week of direct instruction for a six-week

period over the summer from June 21 to July 28, 2021. *Id.* at p. 87. The 12 hours were to consist of four hours of instruction in access skills, math, and writing. *Id.* at p. 101. The IEP Team also developed three goals for Student to work on during ESY that centered around writing skills, counting money, and telling time. *Id.* at p. 99. Although Student qualified for ESY, he achieved a grade of “A+” in every class during the spring of 2021. *Exhibit B*, p. 3.

29. ESY services did not include any related services such as occupational therapy or speech/language. *Id.* at p. 87. Case Manager explains that Student was not receiving any direct occupational therapy or speech/language at the time (although Student was receiving an hour each month of indirect speech/language support from the speech language pathologist), and the data did not show he needed those services to prevent regression or loss of skills. *Interview with Case Manager*. Reports from OT and Student’s former speech language pathologist contained in the 2021 IEP confirm that Student was making progress in those areas. *Exhibit A*, pp. 54, 67-68, 79.

E. Parent Participation (March and May 2021 IEP Meetings)

30. Parents allege they were denied meaningful participation at the March and May 2021 IEP meetings. *Interview with Parent*. Parent indicates she raised concerns about services that were not acknowledged or given meaningful consideration by BOCES. *Interview with Parent*.

The March 9, 2021 IEP Meeting

31. At the March 9, 2021 IEP meeting, Parent raised several concerns: (1) Parents wanted Student’s annual goals revised to be more appropriate for high school; (2) Parents wanted Student to be around peers more often in general education because he reported feeling isolated in “Life Skills” class; and (3) Parents asked for direct speech/language services in addition to indirect services. *Id.* Parent also indicated OT was only at the meeting for a short time, and that Case Manager spent most of the meeting reading the draft IEP without acknowledging these concerns. *Id.*
32. BOCES’ position is that Parent was afforded an opportunity to participate at the meeting, and that her input was considered and given significant weight. *Response*, p. 5. Case Manager indicates Parent did not raise any concerns at the March IEP meeting and seemed in agreement with the contents of the 2021 IEP. *Interview with Case Manager*.
33. Parent’s handwritten notes from the meeting include comments such as “HS goal – revise to reflect academic goals,” “more speech,” and “[c]oncerns. . .isolation. . .no team approach.” *Exhibit 4*, p. 4. Unlike the 2021 IEP, Parent’s handwritten notes have the correct date of the IEP meeting, and they largely match the concerns Parent indicates she expressed at the meeting. *See Exhibit 4*, p. 4; *Exhibit A*, p. 64; *see Exhibit 8*, pp. 4-5; *Interview with Parent*.

34. OT's notes from the meeting indicate Parent "reports concern regarding isolation at school and emphasizes need for exposure" and that Parent "reports frustration associated with an experience of inadequate speech services." *Exhibit C*, p. 5. Case Manager did not take notes. *Interview with Case Manager*.
35. Although Parent expressed concerns about LRE, a general education teacher did not attend the meeting. *Interviews with Parent and Case Manager*. The 2020 IEP's LRE and speech/language services were not revised, and there is nothing in the PWN or Parent Input sections of the 2021 IEP documenting Parents' concerns, discussions about those concerns, or other options considered by the IEP Team. *Exhibit A*, pp. 55, 69, 79, 81.
36. The SCO finds—based on the level of detail in Parent's account, corroboration of notes from Parent and OT, lack of inclusion of Parents' concerns and/or requests in the 2021 IEP, the failure to include a general education teacher at the meeting, and the contradiction between OT's notes and Case Manager's account—that BOCES failed to afford Parent's meaningful participation in the meeting.

The May 11, 2021 IEP Meeting

37. At the May 11, 2021 IEP meeting, Parent asked for direct instruction and speech/language services to be included in Student's ESY programming. *Interview with Parent*.
38. BOCES' position is that Parent was afforded an opportunity to participate at the meeting, and her input was considered and given significant weight, even if all of those concerns were not incorporated into the ESY programming. *Response*, p. 5.
39. Case Manager indicates Parent agreed with the ESY services at the May 11 meeting. *Interview with Case Manager*. Student was not receiving any direct speech services at the time and the speech language pathologist reported Student was showing progress in speech/language (speech language pathologist observed Student in class as part of Student's indirect speech/language services), so there was no data to indicate these services were necessary for ESY. *Interview with Case Manager; Exhibit A*, pp. 67-68.
40. Parent's handwritten notes from the May 11, 2021 IEP meeting include comments such as "ESY Goals - \$/time" and "Articulation by BOCES." *Exhibit 5*, p. 1. Though articulation services were not provided as part of ESY, two of the ESY goals developed for Student centered around money and time skills. *Exhibit A*, p. 99.
41. Case Manager did not take notes at the May 11, 2021 IEP meeting, and OT's notes merely state "ESY IEP – [Case Manager] describe[d] – [Parent] opts for transport". *Exhibit C*, p. 6.

42. The SCO finds—based on the similarities between Parent’s notes and the ESY services developed for Student over the summer, combined with Case Manager’s explanation regarding the speech/language services (which is supported by the speech language pathologist’s report in the 2021 IEP)—that Parents’ input was incorporated into Student’s ESY programming, and they were afforded meaningful participation in the meeting.

F. Implementation of the 2021 IEP (June 21 to July 28)

43. Parents allege BOCES failed to implement the 2021 IEP by not providing ESY services from June 21 through July 28, 2021. *Complaint*, pp. 1-10. Specifically, Parents allege Student was not receiving instruction, and instead spent time doing age-inappropriate activities such as riding tricycles and running in the sprinklers. *Interview with Parent*. Parents also allege Student did not receive any speech/language services during ESY. *Id.*; *Complaint*, pp. 1-10.

IEP Accessibility to Student’s Teachers

44. Case Manager runs the ESY program, with support from another special education teacher and paraprofessionals. *Interview with Case Manager*. She is responsible for ensuring that staff working with Student are aware of their responsibilities under the 2021 IEP, and she held meetings and trainings with those staff to discuss the 2021 IEP before ESY started. *Id.*

45. Case Manager provided staff with snapshots from the 2021 IEP and the 2021 BIP. *Id.* She and the other ESY special education teacher were primarily responsible for behavioral interventions over the summer, and Case Manager was available as a resource if staff had questions about their responsibilities under the 2021 IEP and 2021 BIP. *Id.*

ESY Services

46. Starting in June of 2021, Student attended ESY four days a week, Monday through Thursday, for a minimum of three hours each day. *Interviews with Parent and Case Manager; see Exhibit A*, p. 101.

47. As an initial matter, the SCO finds speech/language services were not required as part of the ESY under the 2021 IEP. *See Exhibit A*, p. 87. The SCO now turns to Parents’ concern regarding instruction.

48. Case Manager indicates Student was receiving the instruction he was entitled to under the 2021 IEP during ESY, and that he also received “extension activities” in addition to direct services. *Interview with Case Manager*. “Extension activities” refer to extra activities over the summer that are above and beyond the programming required by IEPs to keep students engaged by breaking up the instruction with fun. *Id.*

49. Case Manager and the other ESY special education teacher worked with the support professionals to create activities that would be helpful for most of the students (e.g., activities designed to work on social skills) and during the summer they included activities like riding bikes and playing games. *Id.*
50. The ESY program contained a large group of students of various ages, and they typically began each day with warmup activities. *Id.* Student typically began the day with work associated with his goals around money and time, then worked on reading/writing activities in accordance with the ESY goals contained in the 2021 IEP. *Id.* “Extension activities” occurred between instructional activities and at the end of instruction, but Student received the full amount of instruction he was entitled to under the 2021 IEP each day. *Id.*
51. In the beginning of summer, Student started to exhibit new behaviors, such as aggression. *Id.* Case Manager and the other special education teacher provided behavioral interventions by implementing the 2021 BIP, and although the beginning of the summer was difficult, his aggression started to improve toward the end of the summer. *Id.*
52. Student attended ESY until approximately two weeks before the end of summer, at which time Parents pulled him due to disagreements with Case Manager. *Interviews with Case Manager and Parent.* Both Case Manager and Parent report a breakdown in communication at the end of the 2020-2021 academic year made it difficult to exchange information about Student’s needs. *Interviews with Parent and Case Manager.*
53. The SCO finds—based on Case Manager’s detailed description of the ESY program and the services and behavioral interventions Student received—that BOCES fully implemented the 2021 IEP from June 21 to July 28, 2021.
54. The SCO now turns to Parents’ concerns regarding the fall of 2021. When classes started at School in the fall of 2021, the 2021 IEP and 2021 BIP were in effect. *Exhibit A*, p. 64.

G. Meals in the Fall of 2021

55. Parents allege BOCES repeatedly removed Student from meals with peers to eat secluded in the special education room (“ESS Room”). *Complaint*, pp. 1-10; *Interview with Parent.*
56. Parents indicate that, during the beginning of the 2021-2022 academic year, Case Manager had Student eat breakfast in the ESS Room on occasions when his bus arrived late to School instead of allowing him to eat in the cafeteria with his friends. *Id.* In response, Parents began having one of their employees take Student to School in the mornings so he can eat breakfast in the cafeteria with friends in “defiance” of Case Manager’s wishes. *Id.*

57. Case Manager explains that Parents' concerns are a result of a misunderstanding. *Interview with Case Manager*. Prior to one of Parent's employees taking Student to School each day, Student rode a bus with other IDEA-eligible students. *Id.* On occasions when the bus was late, these IDEA-eligible students on the bus would not get breakfast because the cafeteria was closed (no students are typically allowed to eat in classes). *Id.*
58. To ensure students on the bus would get a chance to eat on occasions when the bus was late, special education staff would go to the cafeteria to get breakfast and allow these students to eat in the ESS Room. *Id.* Student is always allowed to eat with his friends and Case Manager attributes the misunderstanding to the breakdown in communication with Parent. *Id.* The SCO finds, based on Case Manager's reasonable explanation regarding occasions when the bus arrived late, that there is no evidence Student was repeatedly forced to eat breakfast secluded in the ESS Room instead of the cafeteria with his friends.

H. Review and Revision of the 2021 IEP

59. Parents allege BOCES failed to review and, as appropriate, revise the 2021 IEP during the fall of 2021 to address Student's needs in communication and behavior. *Complaint*, pp. 1-10.
60. Prior to the start of classes, Case Manager met with SLP to discuss concerns Parents raised over the summer (although Case Manager does not remember Parents expressing concerns about annual goals, LRE, or communication at the March IEP meeting, she became aware of those concerns through communications with Parent over the summer of 2021 and before the start of the 2021-2022 academic year). *Interviews with Case Manager and SLP*.
61. Case Manager informed SLP that Parents were interested in direct speech/language services, so when classes started in August, SLP conducted informal observations of Student, spoke with his teachers, and conducted an extensive records review to familiarize herself with his needs and better understand Parents' concerns. *Interview with SLP*.

Escalation in Behavior

62. When classes began on August 16, 2021, Student's behavior began to escalate, and staff began observing new behaviors such as aggression and elopement. *CDE Exhibit 1*, p. 1; *Interviews with Case Manager and Parent*. Although staff attempted interventions under the 2021 BIP, the strategies that were successful the previous year were not effective. *Interview with Case Manager*.
63. Parents and Case Manager agree the change in behavior was likely due, at least in part, to the change in the learning environment. *Interviews with Case Manager and Parent*. Unlike the previous year when Student did not have any general education classes with other peers, he was attending general education classes like weightlifting, and there were more

unstructured and unsupervised times throughout the day, such as in the locker room. *Id.* During the first few weeks of class, Student exhibited frequent behaviors requiring interventions, to include elopement, damaging property, violence toward others, and inappropriate unwanted romantic advances toward peers. *Interviews with Case Manager, SLP, and Parent; Exhibit C, pp. 6-12.*

64. Case Manager explains that some of the strategies under the 2021 BIP, such as the token economy and use of visuals, also became ineffective because Student felt embarrassed using those supports in front of peers because they might be perceived as “childish.” *Interview with Case Manager.*
65. On September 10, 2021, SLP met with Parent to discuss her request for direct speech/language services and concerns about behavior. *Exhibit C, p. 16; Interviews with SLP and Parent.* SLP told Parent she was developing a peer and teacher social vocabulary to be used by teachers and peers to help Student with social cues. *Exhibit C, p. 16; Interviews with SLP and Parent.* SLP also indicated she would conduct observations to determine Student’s need for direct speech/language services, and that she and OT would provide additional support through the “Guy’s Group.” *Interview with SLP.*
66. “Guy’s Group” is a small group for male students who qualify for special education and related services that provides a safe place to discuss healthy relationships, to include romantic relationships and friendships, with a male facilitator. *Id.* Student was enrolled in “Guy’s Group” which started meeting regularly beginning in December of 2021. *Id.*
67. On September 13, 2021, Case Manager met with Student’s teachers to discuss creation of new behavioral supports. *Exhibit C, p. 13; Interview with Case Manager.* Social interactions are very important to Student, so peers were designated to act as guides to help model appropriate behaviors in each class. *Exhibit C, p. 13; Interview with Case Manager.*
68. On September 16, 2021, SLP and OT came up with a peer and teacher vocabulary that was shared with teachers and peer guides to help Student with communication and behavior. *Exhibit C, p. 16.* The vocabulary was specific to certain behaviors, like invading personal space or being off task, and they provided a cue or phrase to be used to redirect Student. *Id.* SLP also conducted observations to determine a need for direct speech/language services. *Interview with SLP; Exhibit C, pp. 16-20.* On September 21, a communication log was created to promote information sharing and collaboration with Parents. *See Exhibit J, p. 231.*
69. Despite the additional behavioral supports, Student’s behavior remained unmanageable, and in October of 2021, Parent contacted Director of Special Education. *Interviews with Parent and Director of Special Education.* Parent reached out directly to BOCES because of the breakdown in communication with Case Manager. *Interview with Parent.* The parties agreed to a CDE-facilitated IEP meeting which was scheduled for November 2, 2021. *Id.*

70. On October 22, 2021, Director of Special Education contacted Parents to discuss concerns in advance of the meeting, as well explore the possibility of consulting an outside behavioral specialist for staff training and to support the development of a new behavior plan. *Exhibit J*, p. 297. With Parents' consent, Director of Special Education arranged for an outside behavioral specialist to observe Student and provide recommendations for new behavioral supports. *Interviews with Parent, Case Manager, and Director of Special Education*.

The November 2, 2021 IEP Meeting

71. On November 2, 2021, a properly constituted IEP Team met to discuss Student's behavior, an update to his annual goals, and Parents' request for direct speech/language services. *Interviews with Parents, Case Manager, Director of Special Education and SLP; Exhibit H*, p. 5; *Exhibit A*, p. 106. All required IEP Team participants, to include a special education teacher and a general education teacher, attended. *Exhibit A*, p. 106. A CDE representative facilitated the meeting to ensure all participants had an opportunity to provide input. *Interview with Director of Special Education*.

72. The IEP Team addressed Parents' concerns and determined changes to the 2021 IEP were necessary to meet Student's needs, based in part on reports from SLP's observations. *Interview with Parent, Case Manager, SLP, and Director of Special Education*. The IEP Team amended some annual goals to have Student work on academic skills suited to the high school environment and updated the service delivery section to include an additional 60 minutes of direct speech/language services and 30 minutes of direct occupational therapy services. See *Exhibit A*, pp. 114-118, 121. Student's LRE was also changed to the general education classroom 40 to 79 percent of the time. *Id.* at p. 122.

73. BOCES also agreed to arrange bimonthly standing meetings with Parent, BOCES staff, and the behavioral specialist to discuss the development of a new behavior plan for Student and ensure continued regular communication with Parents. *Interview with Director of Special Education*. A follow up IEP meeting was scheduled for January 19, 2022 to discuss the behavioral specialist's observations and develop a new behavior plan. *Exhibit A*, p. 125.

Updated Behavior Intervention Plan

74. After the November 2, 2021 IEP meeting, the behavioral specialist conducted observations of Student, and based on her recommendations, the IEP Team developed a new behavior intervention plan ("2022 BIP"). *Interviews with Case Manager, Director of Special Education, SLP, and Parents*. The 2022 BIP has been in effect since February of 2022. *Id.*

75. Case Manager indicates Student is still exhibiting behaviors that are not successfully managed, but that it is normal to see an escalation in behavior immediately following the

implementation of a new plan, especially one that has only been in place for a couple weeks. *Interview with Case Manager.*

76. SLP indicates Student’s communication is improving, and his baseline of intelligibility has improved since she started working with him. *Interview with SLP.* She engages in direct communication with Parents at least once a month about Student’s progress. *Id.* Student received a grade of a “B” or higher in all his classes during the fall of 2021, and currently making progress toward his annual goals. *Exhibit B, p. 1; Interview with Case Manager.*

77. Director of Special Education is still involved in meetings with Parents and indicates the meetings have been productive. *Interview with Director of Special Education.* Parent agrees that, overall, there has been a lot of progress, and Student’s behavior seems to be headed “in a positive direction.” *Interview with Parent.* Parent adds that once Director of Special Education got involved, “things went more smoothly.” *Id.*

I. BOCES’ Policies and Procedures

78. The SCO reviewed BOCES’ written policies and procedures relevant to the allegations accepted for investigation—parent participation, implementation, LRE, and review and revision of IEPs—and finds them to be consistent with IDEA. *See Exhibit I, pp. 1-51.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: BOCES deprived Parents of a meaningful opportunity to participate in the development of the 2021 IEP at the IEP meeting in March of 2021, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii). BOCES also failed to ensure all required IEP Team members attended the IEP meetings in March and May of 2021 in violation of 34 C.F.R. § 300.321(a)(2). Neither of these violations resulted in a denial of FAPE.

Parents’ first allegation is that BOCES deprived them of a meaningful opportunity to participate in the development of the 2021 IEP at the March 9, 2021 and May 11, 2021 IEP meetings.

The IDEA's procedural requirements for developing a child’s IEP are designed to provide a collaborative process that “places special emphasis on parental involvement.” *Systema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering a parent’s concerns for enhancing the education of his or her child in the development of the child’s IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and

discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than “mere form.” *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.* Evidence that a district “was receptive and responsive at all stages” to the parents’ position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

i. Required Members of the IEP Team

As an initial matter, the SCO must address BOCES’ failure to include a general education teacher at the March and May 2021 IEP meetings.

The IEP Team for each child with a disability must include not less than one regular education teacher of the child if the child is, or may be, participating the general education environment. 34 C.F.R. § 300.321(a)(2). The Part B regulations contemplate that a single person may serve more than one role on an IEP team. See 34 C.F.R § 300.321(a)(5) (noting that a general education teacher, a special education teacher or provider, a district representative, or another individual with knowledge or special expertise about the child may also be an individual who can interpret the instructional implications of evaluation results); 34 C.F.R § 300.321(d) (noting that the district may designate another district member of the IEP team to serve as the district representative, so long as that individual satisfies all of the criteria set forth at 34 C.F.R. § 300.321(a)(4)). However, there is nothing in IDEA that permits an individual to act as both the general education teacher and special education teacher at an IEP meeting if the student is, or may be, participating in the general education environment. See 34 C.F.R. § 300.321.

In this case, at the March and May 2021 IEP meetings, Case Manager acted as both the general education teacher and special education teacher because Student was in the “Life Skills” class full time. (FF #s 7, 27). Although Student was in the “Life Skills” class full time, he began participating in general education classes at the beginning of the 2021-2022 academic. (FF # 62). Thus, there was a chance Student would be participating in the general education environment, and a general education teacher was a required member of Student’s IEP Team. While Case Manager is dual certified as a general education teacher and a special education teacher, this does not mean Case Manager could fill both roles at the IEP meeting. (FF # 7).

For these reasons, the SCO finds and concludes that BOCES’ failure to include a required member of the IEP Team—a general education teacher—at the March and May 2021 IEP meetings results in a procedural violation of 34 C.F.R. § 300.321(a)(2).

ii. The March 9, 2021 IEP Meeting

At the March 9, 2021 meeting, Parents allege their concerns regarding annual goals, LRE, and speech/language services were not afforded meaningful consideration. (FF # 31). BOCES' position is that Parents were afforded the opportunity to participate, and that their input was considered and given significant weight. (FF # 32). Case Manager indicates Parent raised no concerns during the March 2021 meeting and Parents agreed with the 2021 IEP. (*Id.*).

However, for the following reasons, the SCO finds and concludes that Parents were not provided meaningful participation at the March 9, 2021 IEP meeting.

First, despite Case Manager's recollection to the contrary, there is strong evidence that Parents raised their concerns at the March meeting. Parent's handwritten notes from the meeting reference the specific concerns Parent indicates she raised verbally during the meeting, and OT's March 9, 2021 notes likewise reference these concerns cited by Parents. (FF #s 33-34).

Second, despite Parents raising these concerns at the meeting, there is no documentation of the concerns or of discussions around those concerns in the 2021 IEP. The Parent Input section of the 2021 IEP merely states: "Mom wants [Student] to have every opportunity possible at the high school." (FF # 11). The present levels of performance and PWN sections of the 2021 IEP likewise contain no information about Parents' concerns, or other options considered by the IEP Team. *See* (FF #s 9, 16). Director of Special Education concedes that parent input should be documented in greater detail somewhere on the IEP. (FF # 11). While the IDEA is silent on how input must be documented in an IEP, the complete lack of parent input in the 2021 IEP here weighs against finding that Parents were afforded meaningful participation at the IEP meeting and suggests the input that was provided to Parents was "mere form."

Finally, despite Parents concerns about LRE, BOCES failed to include a general education teacher on the IEP Team. (FF # 7). And again, two months later, after Parent raised specific concerns about Student's LRE at the March IEP meeting, BOCES failed to include a general education teacher at the May 11, 2021 meeting. (FF # 27). This demonstrates BOCES was not receptive or responsive to Parents' concerns.

For these reasons, the SCO finds and concludes that Parents were deprived of meaningful participation at the March 9, 2021 IEP meeting, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

iii. The May 11, 2021 IEP Meeting

At the May 11, 2021 meeting, Parents allege their requests for direct instruction and speech/language services were not meaningfully considered. (FF # 36). Case Manager indicates that Parent agreed with the ESY services Student was to receive. (FF # 38).

For the following reasons, the SCO finds and concludes that Parents were afforded meaningful participation at the May 11, 2021 IEP meeting.

First, Parent's input was incorporated into Student's ESY services. Parent's notes from the meeting reference ESY goals around money and time, as well as speech/language services. (FF # 39). Although speech/language services were not part of Student's ESY, two of the ESY goals related to money and time skills. (FF #s 28, 39).

Second, although Parents requested speech/language services, Case Manager provided a reasonable explanation for why the IEP Team ultimately decided speech/language services were unnecessary to address Student's needs. (FF # 29). Speech/language services not part of Student's ESY because Student was not receiving any direct speech/language services at the time. (*Id.*). Although Student was receiving one hour each month of indirect speech/language support, the speech language pathologist who provided those indirect services reported Student was making progress and thus the data did not indicate a need for direct services for ESY to prevent regression or a loss of skills. (*Id.*). This is documented in the 2021 IEP. (*Id.*).

Finally, there is no evidence of concerns raised by Parents that were not addressed or considered by the IEP Team. Notes from Parent and OT merely reflect that Case Manager described ESY services, and do not contain any information to suggest there were additional concerns raised by Parents that were not addressed by the IEP Team. *See* (FF #s 39-40). Although the IEP Team was not properly constituted due to the absence of a general education teacher, the discussion at the meeting was about ESY services. (FF # 27). Under the circumstances, there is no evidence to suggest the absence of a general education teacher frustrated Parents' ability to meaningfully participate in discussions about ESY services or otherwise impact development of the ESY services since they do not involve general education classes. (FF # 7).

For these reasons, the SCO find and concludes that Parents' input was meaningfully considered at the May 11, 2021 IEP meeting, consistent with 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

iv. Substantive Violation

Procedural violations of 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. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, BOCES failed to include a required member of the IEP Team—a general education teacher—at the March and May 2021 IEP meetings in violation of 34 C.F.R. § 300.321(a)(2).

BOCES also deprived Parents of meaningful participation at the March 9, 2021 IEP meeting, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).

As a result of BOCES' failure to include a required member of the IEP Team and afford Parents meaningful participation at the March 9, 2021 IEP meeting, Parents' concerns regarding Student's annual goals, LRE, and speech/language services were not fully addressed until the IEP meeting on November 2, 2021. (FF #s 71-72). At that meeting, when Parents were finally given the opportunity to present those concerns to a properly constituted IEP Team, changes were made to the 2021 IEP, in part based on concerns raised by Parents, demonstrating that those concerns about Student's programming were valid. (FF # 72). Because of BOCES' failure to acknowledge Parents' concerns at the March 9, 2021 IEP meeting, however, Parents had to wait eight months for their concerns to be addressed by the IEP Team. (*Id.*).

The SCO accordingly finds that BOCES significantly impeded Parents' ability to participate in the decision-making process for Student, resulting in a substantive denial of FAPE.

v. Remedial Action Taken by BOCES

While BOCES significantly impeded Parents' ability to meaningfully participate in the decision-making process for Student, BOCES nevertheless took remedial actions to address Parents' concerns prior in the fall of 2021.

When the 2021-2022 academic year began, SLP reached out to Parents to discuss concerns about Student's speech/language services, and Parents' request for direct speech/language services. (FF # 65). As a result of Parents' request for direct speech/language services, SLP began observing Student to better understand Parents' concerns and Student's speech/language needs. (FF #s 61, 65). A communication log was created to facilitate regular communication and collaboration between BOCES and Parents, and BOCES agreed to a CDE-facilitated IEP meeting on November 2, 2021. (FF # 71).

On November 2, a properly constituted IEP Team met to discuss concerns and data obtained from SLP's observations of Student. (*Id.*). As a result of those discussions, the IEP Team made several revisions to the 2021 IEP, to include adjustments to Student's annual goals, changes to Student's LRE to increase his time in the general education environment, and the addition of direct speech/language services in addition to indirect speech/language services. (FF # 72). Standing meetings were also set up between Parent and BOCES to facilitate continued regular communication and collaboration about Student's behavioral needs. (FF #s 68, 73).

Although it took BOCES almost eight months to meet with Parents and discuss possible changes to Student's programming based on Parents' concerns, there is no evidence of educational harm. Student achieved good grades during both the spring and fall of 2021 and he is making progress toward his annual goals. (FF # 76). SLP also indicates Student's speech/language skills

have been showing improvement since the introduction of direct speech/language services. (*Id.*).

For these reasons, the SCO find and concludes that, due to BOCES' subsequent remedial actions to address Parents' concerns and afford them meaningful participation in the decision-making process for Student, no further corrective action is necessary.

Conclusion to Allegation No. 2: BOCES properly implemented the 2021 IEP from June 21 to July 28, consistent with 34 C.F.R. § 300.323.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d).

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

A. Implementation of the 2021 IEP (June 21 to July 28)

Parents' Concerns

From June 21 to July 28, the 2021 IEP was in effect. (FF #s 26). Parents allege Student was not provided with the ESY services (speech/language services or direct instruction) under the 2021 IEP, and instead spent his days on non-instructional activities like riding tricycles and running through sprinklers. (FF # 42).

Accessibility to Student's Teachers

The SCO must determine whether BOCES satisfied its obligation under 34 C.F.R. § 300.323(d).

Here, Case Manager runs the BOCES ESY program, along with another special education teacher and support paraprofessionals. (FF # 43). She is responsible for ensuring staff are aware of their responsibilities under the 2021 IEP, and thus, held meetings and training with staff before the start of ESY. (*Id.*). She provided staff with snapshots of the 2021 IEP before ESY started, and she was available as a resource when staff had questions about the 2021 IEP or 2021 BIP. (FF # 44).

For these reasons, the SCO finds and concludes that BOCES ensured teachers and service providers working with Student over the summer were informed of their responsibilities under the 2021 IEP, consistent with 34 C.F.R. § 300.323(d).

ESY Services

The 2021 IEP provided for 12 hours per week of direct instruction over the summer of 2021. (FF # 28). The 12 hours was to consist of 4 hours of instruction in access skills, math, and writing. (*Id.*). Contrary to Parents' claim, speech/language and occupational therapy services were not included in the ESY services. (FF # 29).

Case Manager indicates Student attended ESY from June 21 through approximately two weeks before the end of the ESY, for a minimum of three hours four days each week. (FF #s 47, 51). During this time, Student received his required instructional minutes. (FF # 47). In addition, Student also received additional "extension activities" which consisted of activities like dancing and games designed in collaboration with support staff to help students with social skills, as well as to provide a break from instruction. (FF #s 47-48).

Student would typically begin the day with warmup activities with other students, then work on his ESY goals related to money and time, followed by reading/writing activities. (FF # 49). Although Student participated in "extension activities," these were in addition to his service minutes, and he received at least 12 hours of direct instruction each week, until Parents stopped having Student attend. (FF #s 49, 51). Behavior became an issue over the summer, but

Case Manager and the other ESY special education teacher provided behavioral interventions under the 2021 BIP, and Student's behavior improved over the course of the summer. (FF # 50).

For these reasons, the SCO finds and concludes that BOCES fully implemented the 2021 IEP in this respect, consistent with 34 C.F.R. § 300.323.

Conclusion to Allegation No. 3: BOCES did not fail to educate Student in the LRE by repeatedly removing him from meals with peers, consistent with 34 C.F.R. §§ 300.114(a) and 300.320(a)(5).

An IEP must include, among other things, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004).

Thus, IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116. This requirement extends outside of the classroom as school districts must ensure that each child with a disability participates with nondisabled children in meals and recess periods to the maximum extent appropriate to the needs of that child. 34 C.F.R. § 300.117.

In this case, Student's LRE under the 2021 IEP was the general education classroom less than 40 percent of the time. (FF # 15). Parents allege BOCES failed to educate Student in his LRE by placing him in the ESS room to eat breakfast rather than allowing him to eat in the cafeteria in the morning with friends. (FF # 55).

Case Manager indicates BOCES only had students eat breakfast in the ESS Room on occasions when the bus was late. (FF #56). The cafeteria at School closes when classes start, and no students are typically allowed to eat in classes. (*Id.*). As a result, so that Student would not miss breakfast on occasions when the bus was late, special education staff would get breakfast from the cafeteria and bring it to the ESS room so he had an opportunity to eat. (FF # 57).

Although the breakfast plan occasionally impacted Student's exposure to general education peers, the plan was used only in instances when the bus was late to ensure Student had a chance to eat. (FF # 56). For these reasons, the SCO finds and concludes the breakfast plan at School was not inconsistent with the LRE statement in the 2021 IEP.

Conclusion to Allegation No. 4: BOCES did not fail to review and, as appropriate, revise Student’s IEP from June 2021 to the present to address speech-language and behavioral needs, consistent with 34 C.F.R. § 300.324(b).

Parents final allegation is that BOCES failed to review and, as appropriate, revise the 2021 IEP from June 2021 to the present to address Student’s speech/language and behavioral needs.

In the beginning of every year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. 34 C.F.R. § 300.323(a). Each public agency must further ensure that the IEP Team reviews the IEP periodically, but not less than annually, to determine if the annual goals for the child are being achieved, and revises the IEP, as appropriate, to address any lack of expected progress toward annual goals and the general education curriculum, the results of any reevaluation, information about the child provided to or by the parent, the child’s anticipated needs, or other matters. *Id.* at § 300.324(b).

In this case, the 2021 IEP and 2021 BIP were developed in March of 2021. (FF # 6). Parents’ concern’s regarding Student’s annual goals, LRE, and speech/language services were not meaningfully considered at the March IEP meeting when the 2021 IEP and 2021 BIP were developed, so when the 2021-2022 academic year began, Parents again raised their concerns with the 2021 IEP. (FF # 59). Parents also raised new concerns about escalating behaviors, such as elopement and physical aggression. (FF # 61).

In response, BOCES took swift action starting in September of 2021. (FF # 64). SLP met with Parents, conducted observations, and implemented new behavioral strategies in collaboration with Student’s teachers and support professionals. (FF #s 64-67). BOCES also consulted with an outside behavioral specialist to inform development of a new BIP and agreed to a facilitated IEP meeting to review and revise the 2021 IEP. (FF # 71).

At the meeting, BOCES revised the 2021 IEP to adjust Student’s annual goals, Student’s LRE, and speech/language services. (*Id.*). A communication log and standing bimonthly meetings were set up for collaboration and communication with Parents, and a new behavior plan for Student was developed based on recommendations provided by the behavioral specialist and implemented starting in February of 2022. (FF #s 72, 76).

For these reasons, the SCO finds and concludes, upon consultation with CDE Content Specialist 1, that BOCES reviewed and, as appropriate, revised the 2021 IEP to address Student’s speech/language and behavior needs during the fall of 2021 consistent with 34 C.F.R. § 300.324(b).

Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities in BOCES if not corrected.

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in BOCES. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are “critical” to the SEA’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, there is no evidence that the violations are systemic. BOCES’ written policies and procedures with respect to parent participation, implementation, LRE, and review and revision of IEPs, are consistent with IDEA. (FF # 78). While there were violations here related to parental participation and required meeting participants for IEP meetings, Director of Special Education indicates the violations were isolated and not in line with BOCES policy and procedure. (FF #s 8, 11). She has reviewed the issues with Case Manager to ensure they do not occur again. (FF # 8).

The record further demonstrates that once Director of Special Education became involved, Parents concerns and Student’s escalating behavior were quickly addressed (and Parents agree that things went “smoothly” once there was involvement at the BOCES level). (FF # 76). For these reasons, the SCO finds and concludes that the violations here are not systemic in nature.

REMEDIES

The SCO finds and concludes that BOCES has violated the following IDEA requirements:

1. Depriving Parents of meaningful participation in the development of the 2021 IEP at the IEP meeting on March 9, 2021, in violation of 34 C.F.R. § 300.324(a)(1)(ii).
2. Failing to include a required members of the IEP Team at the IEP meetings on March 9, 2021 and May 11, 2021 IEP, violation of 34 C.F.R. § 300.321(a)(2).

To remedy this violation, BOCES is ORDERED to take the following actions:

1. Corrective Action Plan
 - a. By **Friday, April 8, 2022**, BOCES shall submit to CDE a corrective action plan (“CAP”) that adequately addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom BOCES is responsible. The CAP must, at a minimum, provide for the following:

- i. Attendance and completion of training provided by CDE on required IEP Team members and parental participation. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.321 and 300.324, and the related concerns noted in this decision. Director of Special Education and CDE Special Education Monitoring and Technical Assistant Consultant, Rebecca O'Malley, will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Case Manager. Such training shall be completed no later than **Monday, May 30, 2022.**
 - ii. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, June 10, 2022.**
- b. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm BOCES' timely correction of the areas of noncompliance.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Becky O'Malley
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the BOCES to meet any of the timelines set forth above may adversely affect BOCES' annual determination under the IDEA and subject BOCES to enforcement action by the Department. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with BOCES to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See 34

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

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

Dated this 6th day of March, 2022.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-10

- Exhibit 1: BIP
- Exhibit 2: Correspondence re ESY
- Exhibit 3: Correspondence re November IEP Meeting

Response, pages 1-11

- Exhibit A: IEPs/BIPs
- Exhibit B: Progress Monitoring/Grades
- Exhibit C: Service Logs
- Exhibit D: Evaluations/Assessments
- Exhibit E: Discipline Records
- Exhibit F: none
- Exhibit G: Consent
- Exhibit H: Notice of Meetings
- Exhibit I: Policies and Procedures
- Exhibit J: Correspondence
- Exhibit K: none
- Exhibit L: Verification of Delivery to Parents

Reply, pages 1-1

- Exhibit 4: March 9, 2021 Notes
- Exhibit 5: May 11, 2021 Notes
- Exhibit 6: Middle School BIP
- Exhibit 7: Timeline Notes for Fall 2021
- Exhibit 8: Additional Correspondence

Telephonic Interviews:

- Case Manager: February 17, 2022
- Director of Special Education: February 18, 2022
- Parent: February 16, 2022
- SLP: February 18, 2022

CDE Exhibits:

- CDE Exhibit 1: School Calendar 2021