

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

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**State-Level Complaint 2009: 504**

Northwest Colorado BOCES

**Decision**

**A. INTRODUCTION**

This state-level complaint (Complaint), dated 04/13/2009, was properly filed on 04/28/2009.

The Complainants are the parents of a child with a disability. Hereafter, the Complainants are referred to as “Parents” and the child is referred to as “Student.”

The State Complaints Officer (SCO) determined that the Complaint identified five (5) issues subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA). The SCO notified the Northwest Colorado BOCES (BOCES) and the Parents of that determination in a letter dated 04/29/2009. The letter to the BOCES included a copy of the Complaint and supporting documentation.

The five issues, and therefore, the scope of the investigation identified by the SCO are as follows:

- I. Whether the 10/16/2008 Individualized Education Program (IEP) was properly implemented;
- II. Whether the accommodations, modifications, assistive technology devices and services listed in the IEP were properly implemented;
- III. Whether Parents were timely supplied with a copy of the Student’s IEP;
- IV. Whether the Parents were supplied with reports on the Student’s progress as detailed in the IEP; and
- V. Whether the IEP describes, with sufficient detail, the frequency (i.e., per week or per month) and duration (i.e., number of hours or minutes) that the Student is to receive speech therapy from the speech language pathologist.

The BOCES’ response (Response) was timely received on 05/14/2009. In a letter dated 05/14/2009, the Parents were supplied with a copy of the Response and supporting documentation and advised that any reply (Reply) was due within 10 days of receipt of the Response. The Parents received this letter on 05/15/2009 and, therefore, their Reply was due on

05/26/2009 since 05/25/2009 was a holiday (Memorial Day). The Reply to the BOCES' Response was received on 05/27/2009, one day after it was due, and contained no explanation concerning the lateness. The Parents did not contact the SCO to request an extension of time prior to the Reply due date. Consequently, the Parent's Reply was untimely and not considered by the SCO.

On 05/28/2009, the SCO sent the Special Education Director an email concerning the persons to be interviewed in a recorded telephone conference on 06/04/2009. The Special Education Director was also supplied with a list of questions to be addressed during the interviews.

On 06/02/2009, at the SCO's request, the BOCES supplied a copy of the 2008-2009 school calendar.

On 06/03/2009, at the SCO's request, the BOCES supplied copies of the speech language pathologist's (SLP's) 09/04/2009 IEP meeting notes, the School Psychologist's 09/04/2009 IEP meeting notes and the "red day and white day" calendar for 09/2008 through 06/2009.

On 06/04/2009, the SCO conducted a recorded telephone interview with BOCES staff: [Special Education Director] was interviewed individually; the [SLP] and [School Psychologist] were interviewed in the presence of [Special Education Director]; and [Resource Teacher] was interviewed in the presence of [Special Education Director] and [Principal]. Colorado Department of Education (CDE) staff also in attendance during the telephone interviews were Laura Freppel, Assistant ESLU Director, and Stephanie Lynch, State Complaints Officer.

On 06/04/2009, the BOCES supplied documentation concerning a case manager checklist; IEP goals written by the SLP; [Resource Teacher's] 09/04/2009 IEP meeting notes; the IEP (computer accessible only by [Resource Teacher]); and the end of the year, 5/26/2009 progress report.

On 06/05/2009, the SCO conducted a telephone interview<sup>1</sup> with the Student's father, [Parent].

On 06/09/2009, at the SCO's request, [Parent] supplied a copy of "talking points" that he prepared in advance of the 09/04/2009 IEP meeting.

On 06/09/2009, the SCO conducted a second (recorded) telephone interview with [Parent].

On 06/10/2009, at the SCO's request, [Advocate] supplied copies of her 09/04/2009 and 10/16/2009 IEP meeting notes.

On 06/10/2009, the SCO conducted a recorded telephone interview with [Advocate].

The SCO closed the record on 06/10/2009.

## **B. THE PARENT'S ALLEGATIONS**

The Parent's Complaint, in relevant part, alleges as follows:

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<sup>1</sup> Although a recorded interview was attempted, the recorder malfunctioned and did not record and therefore the SCO relied solely on notes taken during that interview.

- 1) [The] “IEP was . . . not provided to . . . teachers or service providers in a timely manner. . . It is unclear whether teachers and service providers have received the IEP as of the date of this complaint.”
- 2) “The IEP is not being followed nor implemented. After repeated requests by parents to follow the accommodations and modifications in the IEP, the following accommodations are not being done – provide [Student] with lecture notes from all classes; provide supplemental materials to reinforce concepts; provide text book/reading material on tape; and we suspect that other accommodations on the IEP are not being done, but we have no means to measure . . . The following modifications are not being done – modified grades; shared grading; shortened length and requirements of writing/spelling assignments; reduced number of test items. . . Assistive technology is not being provided to [Student]. The IEP states that ‘[Student] will have access to, in skills lab and at other times approved by the Resource Teacher, a dictation program which will read [Student’s] typing back to [Student] to help [Student] correct and improve [Student’s] writing.’”
- 3) The “IEP [was] not provided [to Parents] in a timely manner. The last IEP meeting was held on October 16, 2008, the date on the IEP, but [Parents] did not receive the IEP document until the third week in January 2009. [Parents] noted errors on the IEP and returned the IEP to the special education case manager. She said she would make the corrections. A corrected IEP was provided to the parents on March 9, 2009, five months after the IEP meeting. ”
- 4) The “[Parents] have not been provided with quarterly progress reports on [Student’s] IEP goals, nor have any work samples been sent to the [Parents].”
- 5) “On the related services page, no hours are listed for direct speech therapy.”

### **C. THE BOCES’ RESPONSE**

#### **1) In response to Parent’s Allegation #1, above, and the SCO’s specific inquiries, the BOCES states as follows:**

##### **A. On what date was the 10/16/2008 IEP finalized and implemented? In Response, the BOCES states:**

Once the IEP has been completed by the special education team it is then given to the special education secretary who files and mails the IEP. [Student’s] IEP was a two-step process. An initial meeting with teachers, Advocate and parents was held on 09/04/08. The team decided that additional information was necessary so they would meet again in 2-3 weeks. During that time a support team met to come up with strategies for [Student]. The second meeting with teachers, Advocate and parents to review information gathered in that time was held on 10/16/08. [Student’s] IEP was completed by [Resource Teacher] on 11/10/08.

...

In January, when parent contacted [Principal], requesting the IEP we looked into the matter and it was determined a copy had not been mailed. [Resource Teacher] mailed a copy immediately to the parents. After receiving the IEP [in 01/2009], [Parent] requested a meeting with [Resource Teacher] regarding concerns on the IEP. [Parent] suggested some items on the IEP be fixed or clarified and [Resource Teacher] agreed and planned to fix them and supply the parents with a corrected copy.

The final IEP with corrections was filed and mailed by the special education secretary on 01/22/09.

Documentation Packet 1, pg. 1.

**B. Identify, by name and contact telephone number, all regular education teachers, special education teachers, related services providers and any other service providers responsible for implementation of the 10/16/2008 IEP.** In Response, the BOCES supplied the names and telephone contact information for all teachers (i.e., Resource, Science, English, Math, Math Concepts, Art, Geography/Civics, Speech, Health) as well as the names and contact telephone information for the School Psychologist, [SLP] and Occupational Therapist. Documentation Packet 1, pg. 1-2.

**2) In response to Parent's Allegation #2, above, and the SCO's specific inquiries, the BOCES states as follows:**

**A. Describe all steps taken to ensure that the Student's 10/16/2008 IEP was made accessible to each regular education teacher, special education teacher, related services provider and any other service provider responsible for the IEP implementation.** In Response, the BOCES states:

[Student's] IEP meeting was a two-step process.

\*\*The first meeting held on 09/04/08 was attended by: [Resource Teacher], [Math Teacher], [Science Teacher], [Geography/Civics Teacher], [SLP], [School Psychologist], [Principal], the Student, both Parents and [Advocate]. In preparation for this meeting, each teacher was given the previous IEP with a chance to review and develop suggestions for [Student]. This first meeting was held with a purpose, stated by parents and Advocate, to notify everyone involved with [Student] of new testing results and to make everyone aware of a change in diagnosis to [disability]. Each teacher in the meeting was asked to keep observing [Student] in class to assist in goal setting for [Student's] new IEP that would be continued in another meeting. [English Teacher], [Math Teacher], and [Speech Teacher] were not in attendance at this meeting. They were notified as follows: [English Teacher] meeting 09/09/08 . . . , [Math Teacher] . . . conference with [Resource Teacher] . . . on 09/05/08, [and] [Speech Teacher] . . . on 09/08/08.

\*\*The second meeting was held on 10/16/08 and was attended by: [Resource Teacher], [School Psychologist], [Behavior Specialist], [Speech Teacher], [SLP], [both] parents, [Student] and [Advocate]. At this meeting information gathered from [Student's] teachers was provided to the team. The team worked together to come up with some goals. Goals were also presented from a meeting including [Behavior Specialist], [School Psychologist], [SLP], and [Resource Teacher] to brainstorm strategies for [Student]. Afterwards, once the IEP was completed, [Student's] teachers who missed the meeting were informed of it's contents. The teachers who were not in attendance . . . were updated . . . [Science Teacher], [Math Teacher], [English teacher], [Geography/Civics Teacher]. . . on 10/21/08 [and] [Math Teacher] . . . by [Resource Teacher] on 10/20/08.

Documentation Packet 2, pgs. 1-2.

**B. Describe, in detail, how each and every regular education teacher, special education teacher, related services provider and any other service provider was informed of his or her specific responsibilities relating to implementation of the Student's IEP.** In Response, the BOCES states:

The core classes are taught by a team which meets weekly with the [Resource Teacher]. [Resource Teacher], [Science Teacher], [Math Teacher], [English teacher] and [Geography/Civics Teacher] were all notified in a weekly meeting directly following the completion of the IEP on 10/21/08.

[Speech Teacher], was informed of [Student's] goals in a meeting with [Resource Teacher] on 10/17/08. [Speech Teacher] and [Resource Teacher] met frequently during first semester to discuss [Student's] progress and possible modifications for [Student] .

[Math Teacher] was informed of [Student's] goals by [Resource Teacher] while meeting during classtime on 10/20/08. [Resource Teacher] assists [Math Teacher] during this class frequently and is available to help supervise [Student's] progress and needs.

[Art Teacher] was informed of [Student's] goals by [Resource Teacher] through e-mail discussions and meetings at the beginning of second semester when [Student] began her class. [Art Teacher] and [Resource Teacher] brainstormed ideas of how to assess [Student] in this art class. [Art Teacher] supervises the assessment process of [Student's] work and gives frequent suggestions.

Service providers [School Psychologist], [OT], and [SLP] were aware of their responsibilities to [Student's] IEP as they wrote and added their own recommendations to the IEP.

[I]nformation gathered from the "[Student's] teachers was provided to the team [and] the team worked together to come up with some goals. Goals were also presented from a meeting including [Behavior Specialist], [School Psychologist], [SLP], and [Resource Teacher] to brainstorm strategies for [Student] .

Afterwards, once the IEP was completed, [Student's] teachers who missed the meeting [i.e. [Science Teacher], [Math Teacher], [English teacher], [Geography/Civics Teacher] and Math Teacher] were informed of it's contents. . . on 10/20/08 and 10/21/08. . . [Speech Teacher] . . . was informed of [Student's] goals in a meeting with [Resource Teacher] . . . on 10/17/08 . . . [Math Teacher] . . . was informed of [Student's] goals by [Resource Teacher] . . . on 10/20/08 . . . [Art Teacher] . . . was informed of [Student's] goals by [Resource Teacher] thorough e-mail discussions and meetings at the beginning of the second semester . . . and service provides [School Psychologist]. . . [OT]. . . and [SLP] . . . were aware of their responsibilities to [Student's] IEP as they wrote and added their own recommendations to the IEP.

Documentation Packet 2, pgs. 1-2.

**C. Describe, in detail, each and every accommodation and modification that the student has received since 10/16/2008, including, but not limited to:**

- i) The name of each provider (i.e. regular education teacher, special education teacher, related services provider or any other service provider);**
- ii) All accommodations and modifications the provider supplied to the Student;**
- iii) All dates on which the provider supplied the accommodations and modifications; and**
- iv) Copies of all documentary evidence supporting the Student's receipt of said accommodations and modifications from any provider.**

Written responses from eight of the Student's teachers, summarized by the SCO, are as follows:

**2009:504 ACCOMMODATIONS AND MODIFICATIONS CHECKLIST\*\***

<u>ACCOMMODATIONS</u>	<u>TEACHER:</u>	<u>SPEECH</u>	<u>GEO/CIVICS</u>	<u>ART</u>	<u>MATH CONCEPTS</u>	<u>MATH</u>	<u>ENGLISH</u>	<u>SCIENCE</u>	<u>RESOURCE</u>
Check Comprehension often		X	X	X	X		X	X	X
Cues to Stay on Task		X	X	X	X	X	X	X	X
Encourage Visits		X	X	X	X	X	X	X	X
Extra Time		X	X	X	X		X		X
Obtain Student's Attention			X	X	X	X	X	X	X

Info: Simple & Structured			X	X	X	X	X	X	X	
Supplemental Materials		X	X	X	X	X	X	X	X	
Textbooks/Readings on Tape							X		X	
Repeat/Rephrase Info			X	X				X	X	
Math: Use Manipulatives		N/A	N/A	N/A			N/A	N/A	X	
Provide Lecture Notes		X	X		X	X	X		X	
Dictation Program									X	
<b><u>MODIFICATIONS</u></b>										
Shared/Modified Grading		X	X	X	X		X	X	X	
Shorten Writing Length/Requirements			X					X	X	
Reduce # of Test Items							x		X	
<b><u>TEACHER INSTITUTED ACCOMMODATIONS</u></b>										
Scribe/Word Processing		X	X							
Preferential Seating			X			X	X			
Retake/Correct Tests			X			X	X			
Slow Down Cues				X		X	X	X	X	
Practice Tests					X					
Makeup Labs								X		

\*\*Information summarized from Documentation Packet #2, pgs. 7-9; and Packet #3, pgs. 4-61

CSAP Accommodations: An e-mail from [Instructional Support Specialist] to [Resource Teacher] instructed her to complete an Excel spreadsheet for the CSAP Accommodations Check Worksheet. Documentation Packet, pg. 11. The spreadsheet indicates that [Student's] CSAP accommodations were: "oral presentation: directions only, scribe, extended time, 1 on 1 testing and re-teach math concepts before each section of testing." Documentation Packet 2, pg. 12. According to the supplied documentation, [Resource Teacher] was to supply the



accommodations of 1:1 oral directions, re-teach math only, assisted technology [&] scribe in lab 102 W-F. Documentation Packet 2, pg. 13.

In a 04/08/09 e-mail, [Resource Teacher] wrote all of [Student's] second semester teachers concerning accommodations, a dictation program and the provision of lecture notes. As to the dictation program, the Resource Teacher wrote:

We cannot guarantee [Student's] access to this in every classroom but you have the option to allow [Student] on the POD computer or in the library. Please keep this assistive technology in mind at times when you think it may benefit [Student]. . . there are headphones on my desk that [Student] can use at any time.

Documentation Packet 2, pg. 14.

As to the provision of lecture notes, [Resource Teacher] wrote:

Something else we talked about this year is [Student] having notes ahead of time for class. I have tried in the FLITE classes to get notes to [Student] when I know that they are coming but that doesn't cover everything. If you have notes prepared and could make an extra copy for [Student] that would be helpful.

Documentation Packet 2, pg. 14.

**D. Describe, in detail, all assistive technology devices or services that the Student has received since 10/16/2008, including, but not limited to:**

- i) The name of each provider (i.e. regular education teacher, special education teacher, related services provider or any other service provider);**
- ii) All assistive technology devices or services each provider supplied to the Student;**
- iii) All dates on which the provider supplied the assistive technology devices or services to the Student; accommodations and modifications; and**
- iv) Copies of all documentary evidence supporting the Student's receipt of said assistive technology devices or services from each provider.**

The BOCES responded as follows:

[Resource Teacher] demonstrated the Premier AT program – Universal Reader to [Student] during skills lab 02/05/09. The program was used during that class period to complete the assignment Student Led Conference Journal Entry. [Resource Teacher] explained to [Student] that [Student] would be using this software on [Student's] CSAP testing for the writing portion. [Resource Teacher] also explained to [Student] that this program would be available to [Student] at [Student's] convenience but [Student] would have to arrange with [Student's] teachers how to get access to a computer whether in the library, computer lab,



skills lab, or if in class [Student] could possibly go to another room to use a computer. This software is available to all students on all school computers and may also be used at home by connecting remotely to the school's network. [Student] was notified that headphones would be available to [Student] on [Resource Teacher's] desk if [Student] ever needs them while she is not available.

On CSAP testing, [Student] was given the choice to use Universal Reader in addition to a word processing program without word prediction or spelling correction to assist [Student] on the writing sections. [Student] chose to use the program on all of these sections.

[Student] is also aware, and is reminded at the start of each book reading assignment, of the availability of books on tape, CD and mp3 that [Student] may utilize through the school or public library.

[Student] had access to, and has been introduced in classes to, Inspiration software for graphic organizational help. This software is also available on all school computers to all students and may also be accessed at home by connecting remotely to the school's network.

Documentation Packet 2, pgs. 2-3.

**3) In response to Parent's Allegation #3, above, and the SCO's specific inquiries, the BOCES states as follows:**

**A. List all dates, including supporting documentation, that either Parent requested and either Parent was supplied with a copy of the 10/16/2008 IEP.**

In Response, [Special Education Director] admitted in her 05/13/2009 cover letter "[T]he IEP did not get mailed to the parent as it should have following the meeting." In this letter, [Special Education Director] then explained that:

As team members it would have been very appropriate for the parents to have communicated this issue to the Special Education Teacher sooner than January if they had concerns. When the issue was addressed by the parents in January they went to the building administrator without communicating with the special education teacher first.

BOCES 05/13/2009 Cover Letter, pg. 2.

**4) In response to Parent's Allegation #4, above, and the SCO's specific Inquiries, the BOCES states as follows:**

**A. List the date of each and every quarterly progress report concerning the Student's progress towards meeting the annual goals listed in the 10/16/2008 IEP that was provided to the Parents and the contents, including supporting documentation, of each progress report.** In Response, the Special Education Director admitted in her 05/13/2009 cover letter "Based on my investigation, I agree

with the parents on some of the allegations such as . . . the question of receiving progress reports from all providers on a quarterly basis.” BOCES 05/13/2009 Cover Letter, pg. 2. The Special Education Director also noted that:

[T]he special education teacher [Resource Teacher] stated that she mails a copy of the progress reports to all parents within a week after report cards are mailed. The Progress Report Page from the IEP Goals Page provides limited narrative and details and if the parents have concerns regarding such minimal information this can be addressed right away. There is no evidence that proves the [progress] reports were mailed quarterly except the teacher’s word. . . packet 3 provides documentation from [Student’s] education team.

BOCES 05/13/2009 Cover Letter, pg. 2.

**B. List every other written or telephone contact, including supporting documentation, with the Parents which reported on the Student’s progress towards meeting the annual goals listed in the 10/16/2008 IEP.**

The BOCES Response documentation, particularly Packets 3-5, indicates that the Parent’s received prompt and lengthy e-mail communications from the Student’s teachers in response to specific inquiries. Additionally, the Parents were supplied with grade reports and very brief progress reports contained in the IEP.

**5) In response to Parent’s Allegation #5, above, and the SCO’s specific inquiries, the BOCES states as follows:**

**A. Describe in detail, all speech therapy that the Student has received since 10/16/2008, including but not limited to:**

- i) The name of each speech language pathologist provider who worked directly with the Student;**
- ii) The frequency and duration (i.e. each date and number of minutes or hours) which each speech language pathologist provided speech therapy to the Student;**
- iii) Copies of all documentary evidence supporting the Student’s receipt of said accommodations and modifications; and**
- iv) Copies of any notes taken by IEP Team members concerning the frequency and duration of speech therapy the student was to receive in conjunction with the 10/16/2008 IEP.**

In Response, the Special Education Director admitted “There is no excuse for the speech language service time to be incomplete on the IEP” and noted that “the IEP . . . should have been corrected prior to dissemination.” BOCES 05/13/2008 Cover Letter, pg. 2. The Special Education Director consulted with [SLP] who clarified:

At the IEP meeting it was determined she would provide 1 hour direct and ½ hour indirect a month (not a week). . . She [SLP] recalls the discussion because the service plan was to see [Student] on Mondays on Red Days during [Student’s] free period.

She shared that the direct time determined in the fall provides appropriate services based on [Student's] needs and worked within [Student's] schedule so [Student] would not have to be pulled from core classes. In addition, she [SLP] has made up and provided additional direct service time for [Student] over the year and this is documented on her therapy and progress notes which are included in packet #5.

BOCES 05/13/2008 Cover Letter, pg. 2.

### C. FINDINGS OF FACT

After thorough and careful analysis of the record (i.e. IEP, BOCES' packets 1-5, all subsequently supplied documentation as well as telephone interviews with [Parent], [Special Education Director], [Resource Teacher], [SLP], [School Psychologist] and [Advocate]), the SCO makes the following FINDINGS:

- 1) At all times relevant to this Complaint, the Student was a child with a [disability].
- 2) At all times relevant to this Complaint, the Student had an IEP dated 10/16/2008 (IEP) which was therefore to be in effect from 10/16/2008. Although dated 10/16/2008, the IEP was not completed until 11/10/2008. [Parents] were not supplied with a copy of this IEP until sometime in January, 2009. The IEP was then amended by [Resource Teacher] on 01/22/2009 when the Parents pointed out some incorrect and incomplete information in the IEP. One of the IEP amendments concerned access to a dictation program "in skills lab and at other times approved by the Resource Teacher."
- 3) [Parents] were supplied with a copy of the amended IEP on 03/11/2009.
- 4) [Resource Teacher] was responsible for preparing and amending the IEP. The special education secretary was responsible for filing and mailing the IEP.
- 5) The BOCES has a checklist that is to be used for verification of such things as: checking for completeness and ensuring mailing of the IEP to parents. The BOCES did not provide to the SCO any checklist used in conjunction with [Student's] IEP and the SCO finds that no checklist was prepared in conjunction with the IEP.
- 6) In a cover letter to the Response dated 05/13/2009, the Special Education Director admitted that the IEP was not supplied to the Parents in a timely manner. The SCO finds that both the IEP and the amended version of the IEP were untimely supplied to [Parents].
- 7) The IEP contains six annual goals. Goal #1 addresses [Student's] organizational needs; Goal #2 addresses [Student's] physical and verbal cueing; Goal #3 addresses [Student's] relaxation needs; Goal #4 addresses [Student's] written communication needs; Goal #5 addresses [Student's] math needs; and Goal #6 addresses [Student's] speech therapy needs.

- 8) Goal #6 was read by [SLP] at the 10/16/2008 IEP meeting. The speech therapy Goal #6 was input into the IEP by [SLP] sometime after 10/16/2008 but this goal was never included in the Parent's copy of the IEP. Consequently, [Parents] have never received a complete copy of the finalized IEP.
- 9) The IEP specifies the following special education and related services:
  - a. [Student] was to receive "per week" speech therapy from the SLP outside of the general classroom. The amount of direct speech therapy time to be supplied was not listed in the IEP. The SCO finds that the "per week" notation and the omission of direct speech therapy time to be supplied to [Student] constituted clerical errors.
  - b. [Student] was to receive ten hours of direct academic services per week from [Resource Teacher] inside the general classroom and one hour per month of direct transition skills from [School Psychologist] outside the general classroom. Student was also to receive the following indirect (consultation) services: one hour per week by the SLP, 20 minutes per month by the OT, two hours per week by [Resource Teacher] and one hour per month by [School Psychologist]. The SCO finds that the notation "one hour per week" of indirect speech language services constitutes a clerical error.
- 10) In a cover letter dated 05/13/2009, the Special Education Director admitted that the speech-language service time had been omitted from the IEP and that there was no excuse for this oversight.
- 11) [Student] was to receive the following accommodations and modifications: Check for comprehension often; cue student to stay on task; encourage visits with general education teacher; extra time to complete tests; obtain student's attention prior to speaking; present information in simple, structured, sequential manner; provide lecture notes; provide supplemental materials to reinforce concepts; provide textbooks/reading materials on tape; repeat or rephrase information when necessary; use manipulatives to teach math concepts; and have access to, in skills lab and at other times approved by the resource teacher, a dictation program which would read [Student's] typing back to help [Student] correct and improve [Student's] writing.
- 12) The IEP provides that the Student's services would be provided in accordance with the [High School] Calendar and that services missed due to school closure, student absence, or student participation in all school events would not be made up. Per the IEP, [Student] was to spend 80%+ (plus) time in the general education classroom and during one of [Student's] skills lab/open period, [Student] could spend time with one or more specialists including the OT, SLP, and School Psychologist.
- 13) [Advocate] was not present for the first 20 minutes of the 10/16/2008 IEP meeting and therefore the notes that she supplied to the SCO were incomplete. In the 06/10/2009 recorded interview, [Advocate] stated that her 10/16/2008 notes indicating "once per week (about) for 90 minutes . . . met one time" indicate the intention to do speech therapy at least one time per week for 90 minutes. The SCO finds that [Advocate's] 10/16/2008

notes referencing “once per week (about) for 90 minutes . . . met one time” allude to what services were being sought by [Parents] rather than what speech therapy services were decided on by the IEP Team.

- 14) In her 05/13/2009 cover letter, [Special Education Director] indicated that she had conferred with [SLP] who “clarified that at the IEP meeting it was determined she would provide 1 hour of direct [speech language service time] and ½ hour of indirect a month (not a week).” Although [Resource Teacher] was responsible for taking notes during the two IEP meetings, she supplied no notes concerning the 10/16/2008 meeting. During the 06/04/2009 interview, [Resource Teacher] first stated that [Student] was to receive 1.5 hours of direct speech language services per week and then corrected herself, stating [Student] was to receive 1.0 hours of direct services per month and 1.5 hours of indirect speech therapy service. [SLP’s] 09/04/2008 meeting notes indicate that the IEP Team discussed when [Student] could receive speech language therapy (i.e. every other white day on Monday). [SLP] supplied no notes concerning the 10/16/2008 IEP meeting. During the 06/04/2009 interview, [SLP] stated that [Student] was to receive 1.5 hours of direct services per month and one hour of indirect services per month. [School Psychologist’s] 10/16/2008 meeting notes, which were typed during the meeting, indicate that [Student] was to receive speech language services from [SLP] “every other white Monday (indirect 1 hour/mth; direct 1 1/2 hour/mth).”
- 15) After weighing the conflicting statements and documentation, the SCO finds that the credible evidence is that [Student] was to receive 90 minutes of direct speech therapy services per month outside of the general classroom and one hour of indirect speech language services per month. The direct services were to be delivered on alternate “white” Mondays during the Student’s 8<sup>th</sup> period. Between 09/2008 and 05/2008, there were two “white” Mondays per month except in December, January, March and May when there was one.
- 16) IEP meetings were held on 09/04/2009 and 10/16/2009. In addition to [Parents], [Student] and [Advocate], these meetings were attended by several of the Student’s teachers and providers. [Student’s] teachers and providers were actively involved in providing input and planning concerning the goals and the accommodations and modifications that are contained in the IEP.
- 17) Teachers and providers who were not present at the 10/16/2009 IEP meeting were briefed by [Resource Teacher] as to many of the accommodations and modifications [Student] required. Teachers and providers also had the ability to access the written IEP by conferring with [Resource Teacher].
- 18) Between 10/16/2008 and 05/22/2009, [Student] was entitled to receive a total of 720 minutes (i.e. 90 minutes per month x eight months) of direct speech therapy services. [Student] received a total of 930 minutes of direct speech therapy services over this eight month time period and therefore received all of the speech therapy services to which [Student] was entitled.
- 19) Between 10/16/2008 and 05/11/2009, [Student] routinely received from [Student’s] teachers a significant number of the accommodations and modifications listed in the IEP.

For example, [Student] routinely was checked for comprehension; cued to stay on task; encouraged to visit with the teacher; obtained extra time; was supplied simple and structured information; was provided lecture notes and supplemental materials and had shared or modified grading. Additionally, [Student] received from various teachers several additional ‘teacher instituted’ accommodations including: preferential seating; the ability to retake or correct tests; slow-down cues; practice tests; provision of a scribe; and makeup labs. Many of these ‘teacher instituted’ accommodations had been discussed in the IEP meetings although not formally incorporated into the IEP.

- 20) There was no IEP accommodation or modification concerning homework for [Student]. In Section 6 of the IEP it was noted that [Student] “uses [Student’s] class time and extra study time very effectively to avoid having to do homework outside of school.” In fact, the IEP Team concluded that [Student] would have a structured study hall or skills lab type of arrangement in [Student’s] 8<sup>th</sup> period, in part, to provide [Student] with additional time to complete homework assignments.
- 21) The teachers and providers had knowledge of most of [Student’s] accommodations and modifications and these were implemented by the teachers and providers between 10/16/2008 and 05/11/2009, as the particular circumstances of the class dictated.
- 22) The Student was supplied with manipulatives (i.e. concrete items such as shapes and forms, three dimensional figures, drawn pictures, etc.) by both the math and math concepts teachers. [Resource Teacher] also obtained these manipulatives from the Math Teachers and used them during math classes when she worked one on one with [Student].
- 23) During the school year, the Student had textbooks for civics, algeo I and sciences classes. The Student also had five literature books for English class.
- 24) [Resource Teacher] was responsible for supplying the textbooks/reading materials on tape that are noted as accommodations in the IEP. [Resource Teacher] is not aware of how these materials are obtained when books on tape are not available in the resource department or library.
- 25) The Student was not supplied with textbooks on tape for civics, algeo I or [Student’s] science classes. Of the five literature books studied during the school year, four of the books were available on tape. The fifth book, Romeo and Juliet, was not available on tape but was read entirely in class.
- 26) Contrary to the Special Education Director’s 05/13/2009 cover letter, the Talking Word Processor was not used as a dictation program for [Student].
- 27) The dictation program made available to the student was the Premier AT Universal Reader which is a program that allows a student to highlight text which is then read back to the student. This allows the student to hear what [Student] has written, thereby making writing errors more obvious to the student. This program is contained on all computers in the school, including: the teacher’s computer in each classroom, the several computers in the skills lab and also the computers in the library. The dictation program was available to [Student] upon [Student’s] request or a teacher’s request.



- 28) [Resource Teacher] demonstrated the Universal Reader to [Student] for the first time on 02/05/2009. Between the dates of 10/16/2008 and 05/14/2009, [Student] used the Universal Reader program four to five times, only in the skills lab. There is only a limited amount of writing in the freshman curriculum. However, the SCO finds that [Student] was not provided with timely instruction on use of the Universal Reader. Nor was [Student] provided access to the Universal Reader in a timely manner.
- 29) During the 06/04/2009 interview, [Resource Teacher] was asked “When, besides skills lab did you approve [Student] to have access to a dictation program?” [Resource Teacher] stated that the dictation program “is available to [Student] all of the time if [Student] asks for it or a teacher requests it.” However, the [SLP’s] 09/04/2009 IEP meeting notes indicate that [Student] “won’t ask independently for help.” Furthermore, in the general education classrooms, [Student] would be using the teacher’s computer to access Universal Reader.
- 30) Although the accommodation was agreed to by the IEP Team, because the dictation program was not included in [Student’s] IEP until late January, the SCO finds that not all of [Student’s] teachers were aware of this accommodation. This is supported by the fact that between 10/16/2008 and 05/14/2009, only [Resource Teacher] indicated that she had implemented this accommodation in the skills lab and this did not occur until 02/05/2009.
- 31) On the CSAP, [Student] used a scribe who was the Resource Teacher to answer form questions and the Universal Reader was available to [Student] for written responses.
- 32) The IEP provided that parents would be informed of the Student’s progress towards goals and that this would be accomplished through: frequent email and telephone contact, work samples being sent home and quarterly progress reports.
- 33) In a cover letter dated 05/13/2009, the Special Education Director admitted that [Parents] had not been supplied with quarterly progress reports from all providers.
- 34) The entire team is responsible for supplying progress reports if they have goals on the IEP. The Resource Teacher is responsible for compiling and mailing these reports to the parents. The progress reports, noted beneath each goal on the IEP, are to be sent out after each quarter in conjunction with grade reports. Typically, a parent is supplied only with copies of the ‘annual goals’ pages of the IEP which list the reporting date and extremely brief information as to a student’s progress on the IEP goals.
- 35) [Parents] received timely grade reports. In January, 2009, [Parents] received the 11/08 and the 01/19/09 progress reports contained within the IEP concerning Goals 1-5. Therefore, the 11/08 progress reports were not timely. On 03/11/2009, [Parents] received the 03/11/09 progress reports contained in the amended IEP concerning Goals 1-5 during a parent-teacher conference. [Parents] also received numerous detailed emails from various teachers, which included in depth reports concerning [Student’s] progress. These emails were typically in response to inquiries from [Parents]. [Parents] were supplied with an end of the year progress report dated 05/26/2009 which supplied detailed information concerning [Student’s] progress as to Goals 1-5.



- 36) During the 06/04/2009 recorded interview, [SLP] was asked “did you make written communications to the Resource Teacher regarding whether the speech language goals were met?” [SLP] stated “Yes, I would email to parents and forward notes on to [Resource Teacher].” [Parents] received a detailed progress report from [SLP] dated 01/23/2009 via email. [SLP] stated during the 06/04/2009 interview that in addition to the 01/23/2009 progress report, she had also sent other emails to [Parents] throughout the year and some of these were progress reports. However, [SLP] supplied no supporting documentation concerning other emails or progress reports supplied to [Parents]. The SCO finds that although [Parents] received [SLP’s] 01/23/2009 lengthy progress report, they did not receive any other quarterly IEP progress reports from [SLP] concerning Goal #6, [Student’s] speech therapy needs.
- 37) The IEP quarterly progress reports (i.e. 11/08; 1/19/09; 03/11/09 and 05/26/09) indicate that as to Goals 1 and 6, [Student] made progress with the goals to be met on time; Goals 2 though 4 indicate some progress or improvement by [Student]; and as to Goal 5, [Student] “still requires prompting.”
- 38) The SCO finds that [Student] has received at least some educational benefit during the time frame relevant to the Complaint although some IEP accommodations, specifically the books on tape and the Universal Reader, were not fully implemented by all teachers.

#### **D. CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the SCO enters the following Conclusions of Law, below.

**Issue I: Whether the 10/16/2008 Individualized Education Program (IEP) was properly implemented; and**

**Issue II: Whether the accommodations, modifications, assistive technology devices and services listed in the IEP were properly implemented.**

During all times relevant to this Complaint, [Student] was a child with a disability and was therefore eligible for special education services under the Individuals with Disabilities Act (IDEA). 20 U.S.C. § 1400 *et seq.* and its implementing regulations, 34 CFR Part 300.

Per the IDEA, children who have been determined eligible for special education are entitled to a free appropriate public education (FAPE) in the least restrictive environment. *See*, 34 CFR §§ 300.101 through 300.118. The development and implementation of an IEP is the primary means by which a child with a disability receives a FAPE. *See*, 34 CFR §§ 300.320 through 300.328.

During the time period relevant to the Complaint, [Student’s] IEP was not fully implemented as it related to textbooks on tape and a dictation program (i.e. Universal Reader). The BOCES failed to ensure that all of the Student’s accommodations were

known to and implemented by [Student's] teachers. The failure to ensure that all [Student's] teachers timely knew of these accommodations and then made the accommodations available to [Student] was a violation of 34 CFR § 300.323(c)(2) and (d).

The long-standing substantive standard for determining whether a student has received a FAPE is whether the student has received "some educational benefit." *Board of Education v. Rowley*, 458 U.S. 176, 200 (1982). A school district meets this requirement and confers sufficient educational benefit when the student is making progress toward [Student's] educational goals. *O'Toole v. Olathe District Schools Unified District No. 233*, 144 F.3d 692, 707, n. 20 (10<sup>th</sup> Cir. 1995).

During the relevant time frame of the Complaint, [Student] made progress towards five of the six goals detailed in the IEP and, therefore, [Student] received some educational benefit. Because [Student] did receive some educational benefit, the BOCES' failure to fully implement [Student's] IEP did not deny [Student] a FAPE. Since [Student] was not denied a FAPE, [Student] is not entitled to receive compensatory services (i.e. a tutor during the summer, etc.).

**Issue III: Whether Parents were timely supplied with a copy of the Student's IEP.**

During the time period relevant to the Complaint, [Parents] have never been supplied with a complete copy of [Student's] IEP in violation of 34 CFR § 300.322(f) which provides "The public agency must give the parent a copy of the child's IEP at no cost to the parent." This procedural violation did not cause a denial of FAPE to [Student].

**Issue IV: Whether the Parents were supplied with reports on the Student's progress as detailed in the IEP.**

During the time period relevant to the Complaint, [Parents] were not timely and consistently supplied with quarterly periodic reports on [Student's] progress in violation of 34 CFR § 300.320(a)(3)(ii) which provides "When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided." However, this procedural violation did not cause a denial of FAPE to [Student].

**Issue V: Whether the IEP describes, with sufficient detail, the frequency (i.e. per week or per month) and duration (i.e. number of hours or minutes) that the Student is to receive speech therapy from the speech language pathologist.**

During the time period relevant to the Complaint, the IEP, as written and as amended, had information omitted or improperly entered concerning the frequency and length of time that [Student] would receive speech therapy direct and indirect services. Despite these errors and omissions, [Student] received all of the direct speech-language therapy services and indirect speech-language services to which [Student] was entitled. Consequently, this procedural violation did not cause a denial of FAPE to [Student].

However, the omission concerning the length of time (i.e. 90 minutes) and the clerical errors concerning the frequency (i.e. per month rather than per week) of direct and indirect speech language services contained in the IEP, is a per se violation of 34 CFR § 300.320(a)(7). That regulation provides that the IEP must include “The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section [i.e., special education and related services and supplementary aids and services], and the anticipated *frequency*, location, and *duration of those services* and modifications.” *Id.* (emphasis added).

## E. REMEDY

1) The BOCES shall promptly ensure that the Student’s IEP is fully implemented. To that end, the BOCES shall reconvene the Student’s IEP Team, including the Parents, as soon as possible following its receipt of this Decision, but in any event, no later than **08/31/2009**, unless the parties agree to a different date or the Parents agree that other means of communication will suffice. The purposes of the IEP Team meeting (or other means of communication) shall address:

- a. The development of a consistent and common understanding among IEP Team members as to each accommodation and modification specified in [Student’s] IEP;
- b. The development of a consistent and common understanding among IEP Team members as to when and how the accommodations and modifications will be implemented for the Student;
- c. An identification of the individual school staff members who are responsible for implementing each accommodation and modification for [Student]; and
- d. An identification of the individual school staff member(s) who are responsible for preparing and supplying to the Resource Teacher written quarterly progress reports concerning each of the six goals listed in the Student’s IEP.

Such common understandings and identified responsibilities shall be documented in writing and copies of the written documentation shall be distributed to each of the Student’s teachers and providers within seven (7) calendar days following the IEP Team meeting. **The BOCES shall also provide to the Department written documentation, and all other documents related to the IEP meeting (e.g., notice of meeting, participation page, meeting notes), particularly items a-d, above, no later than 30 calendar days after the IEP meeting.**

2) No later than **07/10/2009**, the BOCES shall:

- a. Determine [Student’s] fall class schedule for the 2009-2010 school year and also determine what textbooks on tape need to be acquired for [Student]; and
- b. Identify the person(s) responsible for ordering or otherwise acquiring each and every textbook on tape necessary for [Student’s] fall 2009-2010 school year to ensure that all of the textbooks are at the school for delivery to [Student] on **08/31/2009**.

The BOCES shall also provide to the Department written list of each textbook needed for [Student’s] fall 2009-2010 school year and also confirm whether each textbook was available for

delivery to [Student] on 08/31/2009, the first day of class. This documentation shall be supplied to the Department no later than **09/30/2009**.

3) No later than **08/31/2009**, the BOCES shall ensure that [Resource Teacher]: is effectively trained and proficient in all aspects of writing and implementation of IEPs; thoroughly familiar with the IDEA regulatory requirements, including 34 CFR §§ 300.320 through 300.324; and knowledgeable and proficient concerning the timely acquisition of textbooks on tape for special education students generally and for [Student] in particular in the 2009-2010 school year. To that end:

- a. The BOCES shall provide complete written documentation to the Department evidencing all training supplied to the Resource Teacher subsequent to the date of this Decision concerning: the writing and implementation of IEPs, IDEA regulatory training in general and regulatory training concerning 34 CFR §§ 300.320 through 300.324 in particular and the acquisition of textbooks on tape; and
- b. At a minimum, the BOCES shall ensure that [Resource Teacher] is able to demonstrate proficiency as to these three areas of responsibility.

The BOCES shall provide written documentation to the Department detailing the specific training the Resource Teacher received and proficiencies attained in these three areas no later than **09/30/2009**. The BOCES shall also supply the Department with copies of all training materials supplied to Resource Teacher in conjunction with this training.

4) No later than five (5) calendar days after receipt of this Decision, the BOCES shall supply the Parents with a complete copy of [Student's] IEP, including all six goals and all 2008-2009 IEP quarterly progress reports concerning each of the six goals. The IEP supplied to the Parents shall be amended to include the direct and indirect speech therapy services which are consistent with this Decision.

No later than **06/30/2009**, the BOCES shall provide written documentation to the Department evidencing verification of delivery of said amended and complete IEP to Parents.

5) It is laudable that the BOCES has taken steps to expand and enhance the duties of the Special Education Records and Data Manager position. However, although the BOCES had an IEP checklist in place, clearly the checklist was not implemented in this case to ensure timely distribution and implementation of a fully accurate IEP. The BOCES must correct the cited noncompliance as soon as possible but, in any event, no later than **12/31/2009**. Failure to timely correct the cited noncompliance will subject the BOCES to enforcement action by the Department. Consequently, no later than **09/30/2009**, the BOCES shall supply the Department with a proposed **Corrective Action Plan (CAP)** that effectively addresses how the BOCES will ensure that the cited areas of noncompliance will be corrected so as not to recur as to all students with disabilities attending the school in general and as to [Student] specifically. At a minimum, the CAP must address:

- i) How accommodations and modifications in the IEPs of students with disabilities attending the school will be explained to school staff responsible for implementing the accommodations and modifications;
- ii) How the BOCES will ensure that the accommodations and modifications are fully implemented by the responsible school staff;

- iii) The staff member who will be responsible for reviewing all IEPs for accuracy and the staff member responsible for timely distributing the finalized and or any amended IEP to parents;
- iv) How the BOCES or school will ensure and document that each staff member responsible for a specific annual goal in an IEP is identified and that such staff member timely prepares and forwards quarterly reports to the Resource Teacher for distribution **with the grade reports** to the parents of a student with a disability; and
- v) How the BOCES and school will supervise and document that any textbook(s) on tape listed in a student's IEP is acquired in a prompt manner to ensure timely delivery and use by the student.

The Department will review and then either approve or request revisions to the CAP. **Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the BOCES' timely correction of the areas of noncompliance.** The enclosed sample templates provide suggested formats for the CAP and include sections for "improvement activities" and "evidence of implementation and change."

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

Colorado Department of Education  
Exceptional Student Leadership Unit  
Attn.: Jeanine M. Pow, State Complaints Officer  
1560 Broadway, Suite 1175  
Denver, CO 80202-5149

Failure by the BOCES to meet any of the timelines set forth above will subject the BOCES to enforcement by the Department.

The Decision of a SCO is final and not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint.

## F. CONCLUSION

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

Dated this \_\_\_\_ day of June, 2009.

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Jeanine M. Pow, Esq.  
State Complaints Officer