

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

State-Level Complaint 2010: 510

Adams County School District 14

DECISION

INTRODUCTION

This pro-se, state-level complaint (Complaint), dated 05/31/2010, was filed on 06/04/2010.

The Complainant is the mother of a child with a disability. In order to comply with the federal privacy laws (i.e., Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA))¹ and to protect the anonymity of Complainant and her child, hereafter, the persons and locations identified in conjunction with the Complaint investigation and Decision will be abbreviated as follows and redacted prior to publication:

- [Parent], Complainant [Parent];
- [Student], Child of Parent, [Student];
- [Student's] age of [Age] [Age];
- [School] [School];
- [Special Education Director], District Special Education Director [Special Education Director];
- [Special Education Coordinator], Special Education Coordinator [Special Education Coordinator];
- [Principal], Principal [Principal];
- [School Psychologist], School Psychologist [School Psychologist];
- [Special Education Teacher], Learning Specialist [Special Education Teacher];
- [General Education Teacher], Primary General Education Teacher [General Education Teacher];
- [SLP], Speech Language Pathologist [SLP];
- [OT], Occupational Therapist [OT];
- [Para], Special Education Paraprofessional [Para];
- [General Education Teacher #2], General Education Teacher #2 [General Education Teacher #2];
- [General Education Teacher #3], General Education Teacher #3 [General Education Teacher #3];

¹ FERPA, codified at 20 U.S.C. § 1232g, was enacted in 1974, to protect a parent's access to education records and to protect the privacy rights of students and their parents. The IDEA regulations are found at 34 CFR § 300.300, *et seq.*

- [Advocate], Advocate [Advocate]; and
- [Interpreter], Interpreter [Interpreter].

The Complaint was filed in Spanish on the Colorado Department of Education's (Department's) Spanish language state complaint form and consisted of two pages and exhibits.² The body of the Complaint was translated by a Department employee the same date.

The State Complaints Officer (SCO) determined that the Complaint identified five allegations subject to the jurisdiction of the state-level complaints process under the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR §§ 300.151 through 300.153.³ The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

The overriding issue and, therefore, the scope of the investigation identified by the SCO, between the dates of 08/13/2009 and 05/27/2010, is:

Whether the District denied [Student] a free appropriate public education (FAPE) in violation of IDEA, 20 U.S.C. § 1400 *et seq.* and its implementing regulations at 34 CFR, Part 300 by:

- I. Failing to properly implement [Student's] 01/09/2009 and 01/08/2010 IEPs as written;
- II. Improperly suspending [Student] for conduct which was a manifestation of [Student's] disability;
- III. Denying [Parent] the ability to participate in the 05/10/2010 IEP meeting;
- IV. Failing to have the appropriate persons at the 01/08/2010 IEP meeting; and
- V. Failing to supply [Parent] with prior notices in [Parent's] native language (Spanish).

The Adams County School District 14 (District) [Special Education Director] was notified of [Parent's] allegations in a letter dated 06/04/2010. The letter included a complete copy of the Complaint, the Departmental translation, and all supporting documentation. In conjunction with the Response, the District was specifically directed to supply the SCO with all supporting documentation substantiating the District's Response including:

- Complete copies of the 01/09/2009 and 01/08/2010 IEPs;
- Complete copies of all meeting notices and prior written notices supplied to [Parent] during the 2009-2010 school year;
- Copies of all sign-in sheets for the IEP meetings conducted on 01/09/2009 and 01/08/2010;

² Exhibits A-E.

³ Hereafter the IDEA regulations will be referred to by regulation number, e.g., § 300.000.

- A copy of the sign-in sheet for the 05/10/2010 meeting;
- Copies of all written communications and notes that were exchanged or received from [Parent] concerning the 05/10/2010 meeting;
- A complete copy of [Student's] attendance records for the 2009-2010 school year;
- Details of each and every day during the 2009-2010 school year that [Student] was suspended from school, including, but not limited to: the date(s) of each suspension, the specific conduct which precipitated the suspension, and the name and title of each person who had notice of the suspension;
- Complete copies of all dates, records, written communications, logs and persons attending each and every meeting that was held to discuss the behavior, discipline or behavioral interventions concerning [Student] during the 2009-2010 school year;
- The complete name and contact information of each and every teacher and provider who taught or supplied special education services to [Student] during the 2009-2010 school year;
- Complete copies of all service logs for all special education services supplied to [Student] during the 2009-2010 school year;
- A copy of the 2009-2010 school calendar; and
- Any other information the District believes would be helpful in resolving the Complaint.

The District's Response, submitted by [Special Education Director], consisted of a six page cover letter and supporting documentation⁴ and was timely received on 06/22/2010.

The [Parent's] Reply consisted of a 23 page letter and documentation,⁵ were timely received on 07/06/2010. The SCO sent the District a copy of the Reply and documentation by certified U.S. mail on 07/06/2010. The Reply was not translated prior to mailing to the District.

On 07/13/2010, the District supplied the SCO with its translation of [Parent's] Reply.

On 07/21/2010, the SCO sent by U.S. mail a copy of the Department's translation of the Reply and assorted Spanish language documentation to the District's legal counsel, Stu Stuller, Esq.

On 07/01/2010, the SCO conducted a telephone interview with [Advocate] who supplied documentation at the SCO's request.⁶

Between 07/02/2010 and 07/28/2010, the SCO conducted interviews with the following District staff: [Special Education Director]; [General Education Teacher]; [OT]; [Para]; [General Education Teacher #2]; [General Education Teacher #3]; [Special Education Teacher]; [SLP]; [School Psychologist]; and [Principal]. The District's legal counsel was present during all of these interviews.

⁴ Exhibits 1-16.

⁵ Exhibits F-J.

⁶ Exhibit K.

On 07/08/2010, the SCO conducted a face-to-face interview of [Parent] in the presence of [Interpreter].⁷

In conjunction with District interviews, the District supplied additional information.⁸

On 07/12/2010, at SCO's request, [General Education Teacher] supplied SCO with a copy of her college transcripts.

On 07/14/2010, at SCO's request, [Parent] supplied additional information.⁹

On 07/28/2010, subsequent to the final District interviews, the SCO closed the Record.

On 07/30/2010, the SCO notified the parties by certified U.S. mail that, due to exceptional circumstances, the Decision deadline had been extended to 08/17/2010.

THE PARENT'S COMPLAINT ALLEGATIONS

[Parent's] Complaint contains five allegations that are summarized below:

- 1) During the 2009-2010 school year, the District failed to properly implement Student's 01/09/2009 and 01/08/2010 IEPs by failing to provide the special education, related services and accommodations as detailed in Student's IEPs.
- 2) During the 2009-2010 school year, the District improperly suspended Student from school as a result of conduct which was a manifestation of [Student's] disability.
- 3) The District denied Parent the ability to participate in the 05/10/2010 IEP meeting by:
 - a) Providing insufficient notice of the meeting; and
 - b) Failing to reschedule the 05/10/2010 meeting when Parent provided notice that she had a scheduling conflict that prevented her from attending the meeting.
- 4) The District failed to have the appropriate meeting participants at the 01/08/2010 Annual IEP meeting. Specifically, not all of the persons who were listed as having attended the IEP meeting did in fact attend the IEP meeting.
- 5) The District failed to supply Parent with prior notices in Parent's native language, Spanish.

Proposed Remedy: Move Student to a district that will properly implement the IEP and pay for the services needed.

⁷ During the interview, [Parent] requested reimbursement for [Interpreter's] fees, but [Interpreter] noted that she was not charging [Parent] for her services connected with the interview.

⁸ Exhibits 17-23.

⁹ Exhibit L.

THE DISTRICT'S RESPONSE

The District's Response is summarized as follows:

- 1) The District maintained that [Student] was provided all of the services set forth in the 01/09/2009 and 01/08/2010 IEPs.
- 2) The District denied that [Student] was improperly suspended in violation of the IDEA.
- 3) The District acknowledged that it misunderstood [Parent's] desire to participate in the 05/10/2010 meeting to determine [Student's] eligibility for ESY services.
- 4) The District denied that the 01/08/2010 IEP meeting did not include all the required participants and denied that [Special Education Coordinator] was required to attend the meeting. The District noted that [School Psychologist] served as the Special Education Director designee at the 01/08/2010 meeting.
- 5) The District denied that it failed to supply [Parent] with the 01/08/2010 or 05/23/2010 Meeting Notices in both English and Spanish, [Parent's] native language.

THE PARENT'S REPLY

In Reply to the District's Response, [Parent] restated her Complaint allegations and supplied additional, voluminous documentation (i.e. Exhibits F-J).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,¹⁰ the SCO makes the following FINDINGS:

1. At the time of the Complaint, [Student] was [Age] years of age and eligible for special education and related services on the basis of a [disability].
2. [Parent] has resided in the United States for ten years and denies that English is spoken in the home except between [Student] and [Student's] sibling. [Parent] works in an insurance office and although she speaks and writes in English, it is apparent that her understanding of the English language is limited. Although [Student's] father was not interviewed, mother, the complaining [Parent] advised the SCO that [Student's] father speaks no English. The SCO finds this information credible.

¹⁰ Appendix A, attached and incorporated by reference, details the entire Record.

3. The District's 2009-2010 school year was from 08/13/2009 to 05/27/2010.
4. **IEP of 01/09/2009 (2009 IEP).**¹¹ The IEP in effect when [Student] enrolled in the 2009-2010 school year at [School] had been developed the previous year while [Student] was enrolled in a preschool setting. General provisions of the 01/09/2009 IEP relevant to the Complaint provided as follows:
- **Special Education and Related Services:** SLP (Primary) - 2 hrs/mo. (direct); Early Childhood Special Education Teacher - 15 min/wk (indirect), 30 min/wk (integrated services in general classroom), and 15 min/wk (direct outside classroom); and OT - 15 min/mo (indirect) and 30 min/mo (direct outside classroom).
 - **Extended School Year:** No
 - **Recommended Placement in Least Restrictive Environment:** 97% of time with non-disabled students – In Regular Early Childhood Program at Least 80% of the Time. Justification: Student benefits from small group instruction to improve speech/language and fine motor skills as well as support within the preschool classroom for academics and behavior.
 - **Does [Student] Require a Behavior Plan?** No
 - **Accommodations/Modifications:** Check for understanding; extended time; flexible scheduling/breaks; flexible setting/group; and preferential seating.
 - **Primary Language:** Spanish, English Language Learner.
5. **IEP of 01/08/2010 (2010 IEP).**¹² General provisions of the 01/08/2010 IEP relevant to the Complaint provided as follows:
- **Special Education and Related Services:** SLP (Primary) - 2 hrs/mo. (direct); Special Education Teacher - 2 hrs/wk (direct outside classroom); OT - 30 min/mo (direct outside classroom); and [School Psychologist] - 30 min/month (indirect consultation).
 - **Extended School Year:** To be determined by 05/15/2010
 - **Recommended Placement in Least Restrictive Environment:** 92% of time with non-disabled students – In Regular Early Childhood Program at Least 80% of the Time. Rationale: [Student] will benefit from small group instruction to improve language, motor and academic skills.
 - **Does Student Require a Behavior Plan?** Yes
 - **Accommodations/Modifications:** Behavior/performance contracting; Check for understanding; extended time; flexible scheduling/breaks; flexible setting/group; preferential seating; and sensory aids.
 - **Primary Language:** Spanish, English Language Learner.
6. At the beginning of the 2009-2010 school year, [Student] was assigned to [General Education Teacher's] classroom but, consistent with team teaching, [Student] was initially assigned to [General Education Teacher #3] for Literacy 30-60 minutes per day and also to [General Education Teacher #2] for Language 1 ½ hours per day. Because it was determined

¹¹ Exhibit 1.

¹² Exhibit 6.

that [Student] was having difficulty with the number of daily transitions, in 10/2009 the general education teacher's team determined that [Student] would receive Literacy from [General Education Teacher]. After Spring break, [Student] and other general education students received a two-week, 40 minutes per day, Science section from [General Education Teacher #3]. Additionally, between 01/2010 and 05/27/2010, the [Para] pulled [Student] out of class daily between 9:00 a.m. and 10:00 a.m. during Math class because [School] staff determined that [Student] became extremely agitated with classmate noise level during the class. The SCO finds that, excluding pull-outs for related services, the majority of [Student's] education occurred in [General Education Teacher's] classroom.¹³

7. [Student] had [] surgery and, consequently, did not attend school between 08/24/2009 and 09/04/2009.¹⁴

Allegation #1: Improper Implementation of the 2009 and 2010 IEPs.

8. The crux of [Parent's] Complaint (allegation #1) concerning improper implementation of [Student's] IEPs was due to expectations and perceptions of [Parent] which occurred over the course of the school year:

- a) Despite [Parent's] expectations, [Student] was forced to take all classes in English;
- b) Despite assurances by the District to the contrary, [Parent] did not believe that [General Education Teacher] had minored in Spanish and, therefore, did not have appropriate language skills to teach [Student];
- c) Teachers failed to provide [Student] with supports (i.e., sensory breaks/resting) which would enable [Student] to learn to interact appropriately with other students;
- d) [Student] was ignored and given tasks away from the other students;
- e) During the school year, [Student's] negative behaviors (i.e., bumping, pushing, hitting, spitting; throwing objects; defiance; and inability to follow directions or participate in group activities) increased, and this regression was documented in communications between [School] staff and [Parent] as well as the IEP progress notes.; and
- f) [Student] did not receive therapy from [School Psychologist] despite oral promises to the contrary made subsequent to the 01/08/2010 IEP meeting.¹⁵

9. As to each of [Parent's] specific claims (in bold) concerning allegation #1, the SCO makes the following findings:

- (a) **[Student] was forced to take all classes in English:** In a letter dated 07/28/2009, the District Superintendent of Schools sent a letter to the parents and guardians of students in the District. This letter, supplied to parents of the District in both English and Spanish, notified parents that, beginning in the 2009-2010 school year, the

¹³ Interviews of [General Education Teacher]; [General Education Teacher #2]; [General Education Teacher #3]; and [Para].

¹⁴ Exhibit 9, pg. 1 and interview with [Parent].

¹⁵ Exhibit A and [Parent] interviews.

District would be implementing an “English for Speakers of Other Languages” (ESOL) model. Consistent with the ESOL model, students would not be punished for speaking languages other than English. However, in academic settings, students would be expected to focus on learning and practicing their newly acquired English skills. In social settings (i.e., lunchroom, outdoor activities) students could choose to use their native language skills. [Parent] denied having received the District’s letter. The SCO finds that, given the evidence in the Record, it is more likely than not that [Parent] received this letter prior to [Student’s] enrollment in the 2009-2010 school year. Under the ESOL model, all literacy at [School] was taught in English with supports in Spanish.¹⁶ The SCO specifically finds that [Parent’s] expectation that [Student] would be taught in Spanish during the school year was not supported by the Record.

The 2009 IEP noted that “When [Student] becomes angry [Student] reverts completely to speaking in Spanish. [Student] benefits from being spoken to in Spanish at these times to help calm [Student] down.”¹⁷ [General Education Teacher] reported that [Student] spoke “primarily in English” during her classes, understood conversations and responded in English appropriately. Upon further questioning, [General Education Teacher] explained that [Student] always used English with her but if [Student] was playing with peers who spoke Spanish, [Student] would usually join in [speaking] Spanish. Other District staff reported that [Student] consistently spoke in English in their classes. The [Special Education Teacher] noted that [Student’s] English comprehension was very high as compared with all students, including English language students.¹⁸ The SCO finds, given the overwhelming evidence in the Record that [Student] consistently spoke in English in the classroom and had a good understanding of information conveyed to [Student] in English

(b) Disbelief that [General Education Teacher] had minored in Spanish and, therefore, did not have appropriate language skills to teach [Student]: At SCO’s request, [General Education Teacher] supplied copies of her official college transcripts which provided credible evidence of the fact that she received a minor in Spanish while attending college. The SCO finds that [General Education Teacher] was certainly qualified to converse with and teach English Language Learners such as [Student]. The SCO also finds that, given [General Education Teacher’s] demonstrated knowledge of the Spanish language, it was appropriate for the majority of [Student’s] classes to be with [General Education Teacher].

(c) Teachers failed to provide [Student] with supports (i.e., sensory breaks/resting) which would enable [Student] to learn to interact appropriately with other students:

Given the credible evidence in the Record, the SCO specifically finds:

¹⁶ Exhibit 17 and interviews with [Parent] and [Special Education Director].

¹⁷ Exhibit 1, pg. 5.

¹⁸ Interviews with [General Education Teacher]; [General Education Teacher #3]; and [Special Education Teacher].

- “Sensory aids” were not listed as an accommodation in [Student’s] 2009 IEP although they were included in the 2010 IEP. The SCO concludes that the 2009 IEP did not require sensory aids although the 2010 IEP did require sensory aids.¹⁹
- [General Education Teacher] did not observe [Student] to exhibit the behaviors detailed in the 2009 IEP (e.g., hitting, bumping, restlessness, defiance, the need to move about classroom, etc.), until mid 09/2009. When [Student’s] behaviors began and persisted, [General Education Teacher] and [Special Education Teacher] conferred with [Parent] by email to gain insight as to behaviors [Student] was displaying at home; how [Parent] addressed the behaviors; and to supply information concerning [Student’s] response to various classroom techniques, including sensory supports, being implemented at [School].²⁰ [Parent] viewed these email communications as evidence of the teacher’s lack of knowledge of the 2009 IEP and lack of expertise.²¹ However, the SCO concludes that the emails demonstrate the teacher’s attempts to inform and strategize with [Parent] on approaches which might prove successful in addressing [Student’s] behaviors.
- Early in the school year, [General Education Teacher], [General Education Teacher #2], [General Education Teacher #3] and [Special Education Teacher] were supplying a variety of sensory supports to [Student] including frequent sensory breaks (i.e., five-minute breaks from sitting with group on the rug consisting of three breaks in the a.m. and three breaks in the p.m.) and various sensory resting activities (e.g., encouraging [Student] to push [Student’s] hands against the table, pulling exercises, running, and applying pressure to [Student’s] arms).²²
- A green, yellow and red chart was used throughout the school year to alert [Student] when [Student’s] behaviors were becoming inappropriate or were unacceptable. At the suggestion of the [Special Education Teacher], when [Student] was getting close to “red” behaviors, the teachers would give [Student] a five-minute sensory break to allow [Student] to calm down. These sensory breaks typically consisted of having [Student] sit alone and read a book.²³
- In late 09/2009 or early 10/2009 [Student’s] behaviors persisted and increased. In response, the General Education teachers’ team conferred with [Special Education Teacher] and [OT] to strategize and develop coherent methods to address [Student’s] behaviors (i.e., implementing a variety of

¹⁹ Exhibits 1 and 6.

²⁰ Exhibits 8, pg. 19 and F.

²¹ Interview with [Parent].

²² Interviews with [General Education Teacher], [General Education Teacher #2], [General Education Teacher #3] and [Special Education Teacher].

²³ Interviews with [General Education Teacher]; [Special Education Teacher] and [Para].

behavior modification techniques such as incentives and rewards; loss of privileges; having one-to-one discussions with [Student]; and time outs).²⁴

- The [Special Education Teacher], [General Education Teacher] and [School Psychologist] met and developed a Behavior Plan, dated 11/02/2009, which analyzed [Student's] sensory stimulation needs and problem behaviors; and detailed teaching strategies (e.g., "If-Then" chart; punch card; frequent reminders concerning keeping arm's length personal space; drawing at table while peers were on the rug, etc.) to consistently address the behaviors. A Crisis Plan was also developed by this team. The Crisis Plan described a graduated list of steps to be taken in the event that [Student] became physically aggressive (i.e., time out in the classroom; sent to a different classroom for a short time out; escorted to the time out room; and [Parents] called to take [Student] home).²⁵ The SCO specifically finds that [Parent] was made aware of the Behavior Plan in various emails in 11/2009 and [Principal] discussed the Behavior Plan with [Parent] in a meeting on 11/30/2009.²⁶
- In 11/2009, a sensory cushion was supplied to [Student] at the request of the General Education teachers but failed to calm or decrease the movements of [Student].²⁷
- On approximately 11/01/2009, [OT] supplied a "heavy work activities list" for all of the General Education teachers and [Special Education Teacher]. This list highlighted ten specific heavy work activities that [OT] recommended teachers have [Student] perform in order to help calm [Student].²⁸ As a result of the [OT] consult, [Student] was given a heavy work activity at the start of each school day and also whenever [Student] was becoming agitated. By 01/26/2010, staff reported to the [OT] that the recommended heavy work activities were helping.²⁹ Additionally, between 11/01/2009 and the end of the school year, [Student] was allowed to use the computer as a reward for good behaviors as well as for sensory breaks.³⁰
- At the end of 11/2009, [Parent] was supplied with a general questionnaire concerning behaviors of [Student] as well as a Spanish language Sensory Profile Caregiver questionnaire. The responses were scored by [OT] and incorporated into her 2010 IEP notes.³¹

²⁴ Interviews with [General Education Teacher]; [General Education Teacher #2]; [General Education Teacher #3]; [Special Education Teacher] and [OT].

²⁵ Exhibit 6, pgs. 23-37.

²⁶ Exhibit 8, pgs. 20-27 and interview with [Principal].

²⁷ Exhibit 5, pg. 2 and [OT] interview.

²⁸ Exhibit 13 and [OT] interview.

²⁹ Exhibit 5, pg. 1 and [OT] interview.

³⁰ Id.

³¹ Exhibits 11, 12 and [OT] interview.

- [Special Education Teacher] developed “social story” charts for [Student] (i.e. 12/07/2009 - focusing on [Student] following directions and classroom participation; and 01/08/2010 - focusing on [Student’s] violent behaviors directed at other students). Each of these charts contained pictures and a ‘story’ about [Student’s] behaviors and supplied various consistent alternative behaviors and appropriate social skills. Initially, the social story being emphasized was read to [Student] at the beginning of the day. As [Student] became familiar with the story, [Student] was prompted by General Education teachers and [Para] to recite the ‘story,’ depending on the behavior being addressed.³²
- Commencing sometime in 12/2009, a paraprofessional was assigned to work one-to-one with [Student]. [Para] worked with [Student] for one hour per day, Monday through Friday in 12/2009. Between approximately mid 02/2010 until the end of the school year, [Para] worked one-to-one with [Student] from 9:00 a.m. to 12:45 p.m., Monday through Thursday and from 9:00 a.m. to 3:45 p.m. on Fridays. [Para] worked under the supervision of [Special Education Teacher]. Her duties included: working with [Student] on the group activities to keep [Student] on task; using the red, green and yellow behavioral charts; reviewing the ”social stories” charts with [Student]; supplying [Student] with heavy work activities; using lanyard activities and a computer as positive reinforcement for staying on task; use of the “chill-out” chair and sensory breaks to calm [Student]; working with [Student] in a separate classroom between 9:00 a.m. and 10:00 a.m. on a daily basis to do Math lessons; and, as tolerated by [Student], sitting with [Student] in groups during group activities. The District supplied no service logs to SCO concerning [Para’s] activities.³³ The SCO finds that the decision to provide [Student] with paraprofessional services and to pull [Student] out of class on a daily basis during Math class was a unilateral decision made without [Parent’s] input. Furthermore, the SCO finds that the District failed to provide [Parent] with amended IEPs concerning the services or pull-outs [Student] was receiving from [Para].
- Sensory aids developed in conjunction with the 2010 IEP included: a trampoline and mat; a lanyard which contained a variety of sensory activities which [Student] could choose from a bag of tools (i.e., therapy putty; therapand; small objects embedded in putty for [Student] to extract; a webbed finger exerciser, etc.). When [Student] had successfully accomplished a required classroom activity, [Student] could then choose an activity from the lanyard as a sensory break. Additionally, [Student] had four scheduled sensory breaks each day with an additional six breaks as [Student’s] needs indicated.³⁴

³² Exhibit 23 and interviews with [Special Education Teacher]; [SLP]; and [Para].

³³ Interviews with [Special Education Teacher] and [Para].

³⁴ Exhibit 5, pg. 3 and interviews with [OT], [Para] and [General Education Teacher].

- Given the overwhelming evidence in the Record, the SCO concludes that [Student] received a multitude of sensory breaks and supports from teachers and providers throughout the school year.

(d) [Student] was ignored and given tasks away from the other students: On 05/24/2010, at [Parent's] request and with the knowledge of [School] administrators, [Advocate] observed [Student] for approximately two hours in an unidentified classroom, in the lunchroom, at recess and in Literacy class, which is taught by [General Education Teacher]. As a result of her observations, the following day [Advocate] sent [Special Education Coordinator] an email advising that, based on her observations, [Student] might benefit from a different placement and also a different identification than had been noted in the 2010 IEP. The [Advocate] also noted that during her two hour observation, "most of the time it did not appear that there was an expectation that [Student] would be with the rest of the children during instructional time."³⁵

Given the credible evidence in the Record, the SCO specifically finds:

- Throughout the school year, at the beginning of each day, [General Education Teacher] encouraged students to share (i.e., communicate about how they were feeling). Because [Student] had difficulty participating in this group activity, [Student] was given the choice of participating in the activity or, alternatively, going to the classroom of [General Education Teacher #2] in advance of other classmates.³⁶
- Throughout the school year, [Student] had great difficulty sitting in groups or in close proximity to other students. When any situation resulted in other students or teachers being within [Student's] personal space, [Student] became physically aggressive as evidenced by hitting, poking, pushing, etc.³⁷
- Consistent with the 11/02/2010 Behavior Plan, during group activities, the General Classroom teachers and [Special Education Teacher] permitted [Student] to be seated at a table while peers were on the rug. During this time, although seated at a distance, [Student] was still engaged by the teachers and absorbed the class materials being taught.³⁸
- Initially, [OT] worked with [Student] within a group. However, in late 11/2009 or early 12/2009, as [Student] demonstrated increased personal space difficulties, [OT] opted to work with [Student] on an individual rather than a group basis. As a result, [OT] observed a decrease in the hitting behaviors although [Student's] inability to comply with or follow directions continued.³⁹

³⁵ Exhibit K, pg. 13 and [Advocate] interview.

³⁶ Interview with [General Education Teacher].

³⁷ Interviews with [General Education Teacher]; [General Education Teacher #2]; [General Education Teacher #3]; [Special Education Teacher]; [OT]; and [Para].

³⁸ Id.

³⁹ Interview with [OT].

- Because of [Student's] sensitivity and reactions to the loud noise by peers during Math class, [Para] supplied [Student] the daily Math exercises in a separate room each day.⁴⁰
 - While [Student] was in [General Education Teacher #3's] Literacy classroom between 09/2009 and 10/2009, "when [Student] did not have a paraprofessional, as long as [Student] was not hurting [him/her]self, I just let [Student] do what [Student] wanted." She explained "You have to choose your battles. If I told [Student] 'no' [Student] would just continue and be defiant." Commencing sometime in 10/2009, [Student's] Literacy class was provided by [General Education Teacher] rather than [General Education Teacher #3].⁴¹
 - Between 09/2009 and 10/2009, [Student] had several absences from [School].⁴²
 - Between the first and fourth quarters, [Student] received steadily improving academic performance reports.⁴³
 - Excluding the Literacy class with [General Education Teacher #3], [Student] was not ignored. Rather, in order to keep [Student] calm and on task as well as to protect peers from [Student's] physical aggressions, [Student] was permitted to work on group activities from a distance (i.e., a nearby table) or, in the alternative, to work one-to-one with providers.
 - As to the Literacy class taught by [General Education Teacher #3], [Student] was ignored.
- (e) **During the school year, [Student's] negative behaviors increased and resulted in [Student] exhibiting regression:** Progress reporting during the 2009-2010 school year concerning [Student's] relevant goals and objectives is summarized as follows:

2009 IEP – Goals and Progress Notes Relevant to Complaint:⁴⁴

- [Student] will increase [Student's] time on task for required activities and learn peer engagement skills to improve social emotional functioning. Short-term Objective/Benchmarks:

-[Student] will attend large group activities independently for up to 10 minutes. Criteria: 90%, Baseline: 50%. Progress Reports: 02/27/2009: Progress – [Student] does best when adult facilitates – up to 5 minutes; 05/28/2009: Progress – able to attend w/reinforcement; 12/16/2009:

⁴⁰ Interview with [Para].

⁴¹ Interviews with [General Education Teacher #3] and [General Education Teacher].

⁴² Exhibit 9.

⁴³ Exhibit 18, pg. 4.

⁴⁴ Exhibit F, pgs. 143-144

Progress – [Student] has progressed in using [Student’s] “Break Time Chart” and inconsistently responds to rewards.

-[Student] will invite a peer to join [Student’s] play and sustain play for up to 5 minutes, initially requiring adult facilitation and progressing to independence. Criteria: 100%, Baseline 25% w/adult facilitation. Progress Notes: 02/27/2009: Progress – can be facilitated for up to 10 minutes, beginning to become an interest of [Student’s]. 05/28/2009: Progress – same as above. Seeking friends on the playground. 12/16/2009: Progress.

- [Student] will begin to utilize sensory strategies, both adult directed and self directed, for increased body awareness and decreased disruptive behaviors in class. Short-term Objective/Benchmarks:

-[Student] will continue to participate in adult-directed sensory breaks in the classroom or outside the classroom for sustained participation and decreased sensory seeking (hitting, bumping, etc.). Criteria: 80%, Baseline: currently participating. Progress Reports: 10/08/2009: Progress-[Student] is able to maintain [Student’s] attention to the teacher while using a sensory toy about 50% of classroom time (In 5 of 10 trials in the classroom; 12/16/2009: Progress – [Student] has begun taking sensory breaks on [Student’s] own and is able to monitor [Student’s] need for a break. Upon returning from a break, [Student] is able to being working again in about 7 out of 10 trials.

-[Student] will walk through the classroom demonstrating safe hands and safe feet on 8/10 attempts during the day, utilizing a sensory tool as needed. Criteria: 80%, Baseline: hits/kicks 50%. Progress Reports: 10/08/2009: No Progress – [Student] still walks through the classroom with safe hands and feet only about 50% of the time; 12/16/2009: Progress

2010 IEP – Goals and Progress Notes Relevant to Complaint:⁴⁵

- [Student] will improve [Student’s] self control in the classroom and at school by increasing both [Student’s] attention span and [Student’s] awareness of personal boundaries. Short-term Objective/Benchmarks:

-[Student] will increase [Student’s] ability to maintain attention during large group instruction for up to 10 minutes at a time. Criteria: 90%, Baseline: 5 minutes. Progress Reports: -03/15/2010: No Progress – [Student] continues to be reluctant to join the class during large group

⁴⁵ Exhibit 22, pg. 6.

instruction; -05/26/2010: Progress – [Student’s] attention span during small group instruction has increased to up to 30 minutes. However, [Student] continues to have difficulty participating with the class during large group instruction.

-[Student] will increase [Student’s] awareness of personal boundaries by refraining from engaging in physical contact with both peers and adults. Criteria: no more than one contact form per week, Baseline: 5-10 contact forms per week. Progress Reports: 03/15/2010: No Progress – [Student] continues to have difficulty keeping [Student’s] hands to [him/her]self in all environments (large group, small group, recess); 05/26/2010: Progress – Incident’s of physical contacts with peers have decreased. [Student] received one contact form during March and one in April.

[Parent] observed that [Student] regressed “from the start to the end of the school year” but noted that [Student’s] “bumping and pushing stopped at the end of 04/2010” after [Student] had been prescribed medication by a pediatrician.⁴⁶

Given the overwhelming evidence in the Record, the SCO finds:

- [Student’s] inappropriate behaviors and sensory issues became readily apparent in 09/2009. As the frequency of [Student’s] inappropriate behaviors increased, the teachers and providers conferred with [Parent] and each other to strategize methods of calming [Student] and modifying the behaviors.⁴⁷
- Although teachers and providers designed and implemented an extensive number of methods to address [Student’s] behavioral issues, once the novelty of an approach wore off, [Student] would revert to negative behaviors. When [Para] began working with [Student] on an increased basis during the second semester, [Student] demonstrated a noticeable improvement in [Student’s] behaviors and was more engaged. By the end of the school year, [Student’s] negative behaviors (i.e., hitting, spitting, etc.) had ceased, [Student] was “on task,” and [Student] would have some interactions with two to three other students during play periods.⁴⁸
- During the 2009-2010 school year, [Student] demonstrated progress on the 2009 IEP goals and, by 05/24/2010, demonstrated progress on the 2010 behavioral goals. By the end of the school year, [Student] demonstrated progress rather than regression in all behavioral areas.⁴⁹

⁴⁶ Interview with [Parent].

⁴⁷ Interviews with [General Education Teacher]; [General Education Teacher #2]; [General Education Teacher #3]; [OT]; [Para]; and [Special Education Teacher].

⁴⁸ Id.

⁴⁹ Exhibits F, pgs. 143-144 and 22, pg. 6; multiple emails between teachers and [Parent]; and interviews with [General Education Teacher]; [General Education Teacher #2]; [General Education Teacher #3]; [OT]; [Para]; and [Special Education Teacher].

f) **[Student] did not receive therapy from [School Psychologist] despite promises to the contrary in the 01/08/2010 IEP meeting:** According to the 2010 IEP, [School Psychologist] was to supply [Student] with 30 minutes per month of indirect (i.e. consultation) services. These indirect services were to provide consultations to teachers, providers and [Parent] between 01/2010 and 01/2011. On 07/28/2010, [School Psychologist] provided the SCO with a summary of the indirect services delivered between 01/08/2010 and 04/19/2010. The summary was written retrospectively and did not list the number of minutes attributable to the indirect consult activities of [School Psychologist].⁵⁰ However, the SCO concludes that, given the number of activities detailed in the summary, between 01/2010 and 05/2010 [School Psychologist] supplied [Student] with all of the indirect services to which [Student] was entitled (i.e., 5 months x 30 minutes/month or 180 minutes). Although not listed in the 2010 IEP, with [Parent's] knowledge, [School Psychologist] also supplied [Student] with anger management group therapy for 30 minutes per week between 03/03/2010 and 05/05/2010. These pull-out group therapy services were conducted with five other students, including non-disabled students. The SCO finds that [Student] did receive all of the indirect psychological services to which [Student] was entitled under the 2010 IEP.⁵¹

10) In summary, as to allegation #1, items (a) through (c) and (e) through (f), the SCO finds that [Parent's] specific claims are not supported by the Record and [Student's] 2009 and 2010 IEPs, *as written*, were properly implemented. However, as noted above (FFs 9(c) and (f)), the IEPs were not amended to accurately reflect the services or pull-outs of [Para] or [School Psychologist]. As to [Parent's] claim that [Student] was ignored (i.e., paragraph 9(d)), the SCO finds [General Education Teacher #3] did ignore or fail to engage [Student]. Therefore, between 09/2009 and 10/2009, [General Education Teacher #3] did not properly implement the [Student's] 2009 IEP.

Allegation #2: During the 2009-2010 school year, the District improperly suspended Student from school as a result of conduct which was a manifestation of [Student's] disability.

11) There was conflicting information concerning the number of days that [Student] was suspended from school during the school year. According to [Parent] interviews, [Student] was suspended a total of six days on the following dates: 11/19/2009 (one day, in-school suspension); 11/30/2009 (one day); 12/07/2009 (one day); 03/31/2010 (one day); and 04/21/2010 (two days). According to the District Response, [Student] was "removed from the school as a result of behaviors for a total of three days on 12/07/2009 and 04/21/2010." There is no dispute that all of the suspensions were precipitated by [Student] hitting other students.⁵²

12) SCO questioned [Principal] concerning each of the "Contact" (i.e. incident) forms and the suspension report.⁵³ Given the credible evidence in the Record, the SCO concludes that, during

⁵⁰ Exhibit 24 and [School Psychologist] interview.

⁵¹ Exhibits 7 and 24; and interview with [School Psychologist].

⁵² Exhibit 8, pgs. 1-18 and interviews with [Parent] and [Principal].

⁵³ *Id.*

the 2009-2010 school year, [Student] received a total of three days of out-of-school suspensions (i.e., 12/07/2009 - one day; and 04/21/2010 - two days) and received no in-school suspensions.

Allegation #3: The District denied Parent the ability to participate in the 05/10/2010 IEP meeting.

13) The purpose of the 05/10/2010 IEP meeting was to discuss the appropriateness of [Student] attending an Extended School Year (ESY) program. The Meeting Notice is dated Friday, 04/30/2010. There is no dispute that the Notice was supplied to [Parent] in both English and Spanish. According to the District's Response and the interview with [Special Education Director], it is the District's practice to mail correspondence (including meeting notices) on the same date as is listed on the correspondence. The District therefore inferred that the 04/30/2010 Meeting Notice provided [Parent] with reasonable and timely notice. According to [Parent], the envelope containing the Meeting Notice was postmarked 05/05/2010 and was received on Friday, 05/07/2010. The SCO finds that [Parent's] version of these events is more credible as evidenced by the original District envelope which [Parent] supplied to the SCO.⁵⁴ The SCO finds that the Meeting Notice gave [Parent] a maximum of three days notice and therefore failed to supply [Parent] with sufficient notice to ensure that she could attend the meeting.

14) On 05/08/2010, [Parent] notified the District (i.e., [School Psychologist]; [General Education Teacher]; [SLP]; and [Special Education Teacher]) by email that, due to two previously scheduled doctor appointments on 05/10/2010 [Parent] could not attend the meeting. Additionally, due to other previously scheduled appointments later in the week, [Parent] requested that the meeting be rescheduled to a date after 05/12/2010. [School Psychologist] communicated to [Parent] on an unspecified date that it would be difficult to reschedule the meeting since all ESY staffing were being conducted on the same date when [Special Education Coordinator] was available. On 05/11/2010, [Special Education Teacher] notified [Parent] by email that the IEP team had met and determined that [Student] qualified for ESY services to be offered for two hours per day, 07/19/2010 to 07/29/2010. "[Special Education Coordinator] will be able to share more with you at your meeting on Thursday. . ."⁵⁵ The SCO finds that, despite [Parent's] request, the 05/10/2010 IEP meeting was not rescheduled, was conducted in [Parent's] absence and, thereby, denied [Parent] the ability to participate.

15) On 05/27/2010, another IEP meeting was conducted at [Parent's] request in order "to review [Student's] current programming."⁵⁶ At [Parent's] request, many of the providers associated with [Student's] 2008-2009 school year were invited to attend the meeting. Most of the 90 minute meeting time involved [Parent's] presentation of her concerns about matters that had occurred during the school year.⁵⁷ Consequently, the meeting was continued to 06/23/2010. On 06/23/2010, [Parent] notified the District that "because all the people who had attended the 05/27/2010 meeting would not be present at the 06/23/2010 meeting," she saw no point in having the meeting. On 06/24/2010 [Special Education Director] emailed [Parent] requesting to reschedule the 06/23/2010 IEP meeting in order to discuss "ESY eligibility and services. . .

⁵⁴ Exhibit L and interviews with [Parent] and [Special Education Director].

⁵⁵ Exhibit 15, pgs. 1-2 and 16-17 and interviews with [Parent] and District Response.

⁵⁶ *Id.*, pg. 12.

⁵⁷ Interviews with [Parent], [Advocate] and [Special Education Director].

placement for the 2010-11 school year . . . [and an] autism-spectrum assessment.”⁵⁸ It is unknown whether the meeting has since been conducted.⁵⁹

Allegation #4: The District failed to have the appropriate meeting participants at the 01/08/2010 Annual IEP meeting.

16) [Parent] claimed that the District failed to have the appropriate participants present at the 01/08/2010 IEP meeting. The District denied that the proper participants failed to attend the meeting. During the interview, [Parent] explained that: a) contrary to the boxes checked on the pertinent Meeting Notice, the [OT] failed to attend the meeting; and, b) the meeting was conducted without [Special Education Director] being present. Additionally, because [Special Education Coordinator] had served in past meetings as the Special Education Director, [Parent] believed that [Special Education Coordinator] was also required to attend the 01/08/2010 meeting.

17) The SCO finds that, on the pertinent Meeting Notice, the box “occupational therapist and/or physical therapist” was checked however [OT] did not attend the meeting. [Student] does not have a physical therapist.⁶⁰ The Meeting Notice form notified [Parent] “who may” be at the meetings rather than who “will be” in attendance at the meetings.⁶¹

18) The SCO finds that the 01/08/2010 meeting was attended by the following persons: [Parents]; [General Education Teacher]; [Principal]; [SLP]; [School Psychologist]; [School Psychologist] in the capacity of Special Education Director Designee and [an interpreter].

Allegation #5: The District failed to supply Parent with prior notices in Parent’s native language, Spanish.

19) [Parent] alleged that the District failed to supply her with a copy of the 2010 IEP in her native language, Spanish, and therefore she did not understand the services that were being offered to [Student].⁶² In the 06/04/2010 letter to the District, the SCO framed this allegation as “a failure of the District to supply prior notices in [Parent’s] native language.” In conjunction with its Response, the SCO directed the District to supply the SCO with “complete copies of all meeting notices and *prior written notices* supplied to [Parent] during the 2009-2010 school year” (emphasis added). The District’s Response included copies of all Meeting Notices in both English and Spanish. However the Response made no mention of prior notices supplied to [Parent]. Additionally, the Record, although voluminous, contained no prior written notices in either English or Spanish.

⁵⁸ Exhibit 20, pg. 6.

⁵⁹ [Parent] advised the SCO that beginning in 06/2010 and continuing until 08/06/2010, [Student] is to receive day treatment, M-F, 9:00-1:00, through a non-school provider and that consequently [Parent’s] “would probably not do ESY because of this scheduling conflict.” ([Parent] interview). On 07/09/2010, [Parent] notified [Special Education Director] by email that [Student] would not be able to attend the offered ESY program.

⁶⁰ Exhibit I, pg. 2 and [Parent] interview.

⁶¹ Similarly, the Meeting Notices associated with the 05/27/2010 and 06/23/2010 meetings also advised [Parent] who “may” be at the meetings rather than who “will be” at the meetings.

⁶² Complaint and Exhibit A, pgs. 5-10.

20) [School Psychologist] advised the SCO that, as the [Special Education Director Designee], she was responsible for: finalizing the 01/08/2010 IEP; supplying [Parent] with a copy; and for preparing any prior written notices. Upon questioning, [School Psychologist] reported that [Parent] was supplied with an English version of the 2010 IEP on 03/16/2010. The SCO finds that the District's 2-month delay in providing the 2010 IEP was untimely. The SCO notes that [Parent] was not supplied with a Spanish version of the IEP until 06/2010 after the Complaint had been filed.⁶³ [School Psychologist] explained that she had not prepared a prior written notice as a result of the 01/08/2010 IEP meeting since "it was not a standard practice when the placement was not changed."⁶⁴ The SCO finds that as a result of the 01/08/2010 IEP meeting the special education and related services (i.e., FAPE) of the [Student] were changed.

21) The SCO concludes that subsequent to the 01/08/2010 IEP meeting, the District failed to timely supply [Parent] with a copy of [Student's] IEP in any language and also failed to supply a prior written notice in [Parent's] native language.

22) Despite extensive use of an interpreter, during the course of the SCO's interview, [Parent] exhibited a poor understanding of the related services, accommodations, goals and short term objectives offered in the 2009 and 2010 IEPs or of the various sensory supports and methods used to address [Student's] social and behavioral issues. Although an interpreter was present at the IEP meetings conducted on 01/08/2010 and 05/27/2010, the SCO finds that [Parent's] confusions and misunderstandings concerning the services offered under the 2010 IEP were complicated by the fact that [Parent] had not been timely supplied with either an IEP or prior written notice in her native language.⁶⁵

CONCLUSIONS OF LAW:

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

1. Under the IDEA and the corresponding Colorado law, the Exceptional Children's Educational Act (ECEA), students with disabilities have the right to a FAPE. (20 U.S.C. 1400 *et seq.*; ECEA Rule 2220-R-1.00 *et seq.*)⁶⁶ The relevant IDEA regulation defines a FAPE to mean *special education and related services that:*

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the Colorado Department of Education;
- (c) Include an appropriate preschool, elementary school, or secondary school education; and
- (d) *Are provided in conformity with the student's IEP.*

⁶³ Interview with [Special Education Director].

⁶⁴ [School Psychologist] interview.

⁶⁵ Exhibits 6, pg. 2 and 19, pg. 3 and [Parent] interview.

⁶⁶ Hereafter, only the IDEA regulation and corresponding ECEA rule will be cited.

(34 CFR § 300.17; Rule 2.19) (emphasis added).

2. The standard for determining whether a student has received a FAPE is whether the student received “some educational benefit.” *Board of Education v. Rowley*, 458 U.S. 176 (1982). The educational benefit required by the IDEA must be “more than *de minimis*.” *Urban ex re. Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 727 (10th Cir. 1996).

3. In assessing whether a district has provided a student with a FAPE, courts follow a two-step process as set forth by the U.S. Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176, 206-207 (1982). First, the court considers whether the district complied with the procedures set forth in the IDEA, including the specific requirements of the IEP. *Garcia v. Board of Educ.*, 520 F.3d 1116, 1125 (10th Cir. 2008). Next, the court looks at whether the special education services provided to the student in the IEP are reasonably calculated to enable the child to receive educational benefits. *Id.*

Issue #1: Whether the District failed to properly implement [Student’s] 01/09/2009 and 01/08/2010 IEPs.

4. Implicit in determining whether a district has complied with the requirements of an IEP is whether the IEP, *as written*, was in fact implemented. During the 2009-2010 school year, excluding the Literacy class taught by [General Education Teacher #3], the District properly implemented [Student’s] 2009 and 2010 IEPs *as written* and provided the special education, related services and accommodations detailed in the 2009 and 2010 IEPs. (FF #s 4-6 and 8-10). Therefore, excluding the actions of [General Education Teacher #3], during the 2009-2010 school year, [Student] received a FAPE.

5. [Student] was ignored by [General Education Teacher #3] (i.e., FF 9(d)). Therefore, between 09/2009 and 10/2009, [General Education Teacher #3] did not properly implement [Student’s] 2009 IEP. (FF #10). However, during the Fall of 2009, [Student] had a number of absences from school which limited the amount of time [Student] spent in [General Education Teacher #3’s] class. (FF #s 7 and 9(d)). Additionally, [Student’s] academic performance steadily improved throughout the year and [Student] progressed on [Student’s] 2009 IEP Goals (FF #s 9(d) and 9(e)). The Record clearly demonstrates that during the 2009-2010 school year, [Student] received educational benefit which was not merely *de minimus*. Consequently, although [General Education Teacher #3’s] actions constituted a procedural violation of the IDEA, this did not result in a denial of FAPE to [Student].

Issue #2: Whether the District improperly suspended [Student] for conduct which was a manifestation of [Student’s] disability.

6. The IDEA’s student discipline protections (i.e., 34 CFR § 300.520) are not triggered until a student has been removed from [Student’s] current placement for more than ten school days in a school year. This is true regardless of whether the behaviors causing the suspensions were a manifestation of the student’s disability. 34 CFR § 300.536(a)(2)(i). Because [Student’s] disciplinary removals did not exceed a total of ten school days during the school year, (FF #’s

11-12), the District's actions did not violate IDEA.. There being no violation of the IDEA no Remedy is ordered as to Issue #2.

Issue #3: Whether the District denied [Parent] the ability to participate in the 05/10/2010 IEP meeting.

7. One of the key purposes of the IDEA is to ensure that the rights of children with disabilities and their parents are protected. 34 CFR § 300.1(b). To ensure that the rights of the child and parent are protected, the IDEA places great emphasis on parental participation in IEP meetings. Consequently, a district must take specific steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting. To accomplish this, the IDEA requires that a district: (1) notify parents of the meeting early enough to ensure they will have an opportunity to attend; and (2) schedule the meeting at a mutually agreed time and place. 34 CFR § 300.322(a)(1)-(2). If neither parent can attend an IEP meeting, the district must use other methods to ensure parent participation, including individual or conference telephone calls. 34 CFR § 300.322(c). However, it is a violation of the IDEA and a *per se* denial of FAPE for a district to simply decline to reschedule an IEP meeting and, as the facts in this case demonstrate, to conduct the meeting without parent participation. (FF #s. 13-15). 34 CFR § 300.513(2)(ii). *See also* Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46679 (August 14, 2006) (Only when a public agency is unable to convince a parent to participate in an IEP Team meeting may the meeting be conducted without the parent).

8. The purpose of the 05/10/2010 IEP meeting was to make a determination concerning ESY services for [Student]. As a result of the meeting, [Parent] was offered ESY services for [Student]. (FF #14). However, [Parent] declined the District's ESY offer. (Footnote #59). Consequently, no Remedy as to the provision of ESY services is ordered although the District's actions clearly constituted a procedural violation of the IDEA.

Issue #4: Whether the District failed to have the appropriate persons at the 01/08/2010 IEP meeting.

9. An IEP meeting notice must inform parents of the purpose, time, and location of the meeting and who *will be in attendance at the meeting*. 34 CFR § 300.322(b)(1)(i) (emphasis added). The 01/08/2010 Meeting Notice advised [Parent] of the District staff who *might be present rather than who would be present* (FF #17) and, therefore, violated the cited IDEA regulation.

10. In conducting an IEP meeting, a district must ensure that the IEP team includes:

- (a)(1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the [district] who-
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

- (ii) Is knowledgeable about the general education curriculum; and
- (iii) Is knowledgeable about the availability of resources of the [district].
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or [district], other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

34 CFR § 300.321(a)(1)-(7). Consistent with the IDEA regulation, the 01/08/2010 IEP Team was composed of the proper members although, in using a noncompliant Meeting Notice form, the District led [Parent] to believe that [OT] would attend the meeting. (FF #s 16-18).

11. Although the [District's] noncompliant Meeting Notice violated the IDEA, the procedural violation did not result in a denial of FAPE since the IEP Team was attended by those persons required under 34 CFR § 300.321(a)(1) – (7).

Issue #5: Whether the District failed to supply [Parent] with prior notices in [Parent's] native language (Spanish).

12. “Prior [written] notice” is one of the numerous procedural safeguards afforded to parents and children under the IDEA. Under the IDEA, prior [written] notice requires:

- (a) Notice. *Written notice . . . must be given to the parents of a child with a disability a reasonable time before the [district] –*
 - (1) *Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or*
 - (2) *Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.*
- (b) Content of notice. The notice . . . must include –
 - (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the [district] proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the [district] used as a basis for the proposed or refused action;
 - (4) A statement that the parents of a child with a disability have protection under the procedural safeguards . . . and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the [district's] proposal or refusal.
- (c) Notice in understandable language. (1) The notice required . . . must be –
 - (i) Written in language understandable to the general public; and

(ii) *Provided in the native language of the parent. . .*

34 CFR § 300.503(a)-(c)(1) (emphasis added). The purpose of prior written notice is to ensure that a parent understands the special education and related services which a district is proposing or refusing to provide to the student. If a parent does not understand the services being proposed, it follows that the parent could not have agreed to the proposed services. *Letter to Boswell*, 49 IDELR 196 (OSEP 2007).

13. The IDEA does not require that a district supply parents with a copy of the IEP in the native language of the parent. Nevertheless, an IEP may provide sufficient information to supply a parent with the prior written notice required by 34 CFR § 300.503. *See* Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46691 (August 14, 2006). However, if the IEP is intended to serve as prior written notice, it follows that the IEP would need to be supplied to the parent in a timely manner subsequent to the meeting and in the parent's native language.

14. Spanish is [Parent's] native language. (FF #s 2 and 21). Here, consistent with 34 CFR § 300.322(e), the District did supply a interpreter during the 01/08/2010 and 05/27/2010 IEP meetings

15. [Parent] was not timely supplied with a copy of the 2010 IEP or supplied with a copy in her native language until 06/2010. (FF #s 20 and 22). Therefore, the 2010 IEP did not supply [Parent] with prior written notice. Additionally, contrary to the IDEA, the District failed to supply [Parent] with prior written notice consistent with 34 CFR § 300.503(a)-(c) at anytime subsequent to the 01/08/2010 IEP meeting. (FF #'s 20 and 22).

16. [Parent's] Complaint did not specifically mention that Student was receiving certain special education services that were not included in the 2009 IEP and the 2010 IEP (i.e., paraprofessional support and direct school psychological services). However, during the course of investigation, it became apparent that such was the case. With regard to the paraprofessional support, the District unilaterally supplied [Student] with that support without the input or knowledge of [Parent]. (FF #s 9(c), 9(f) and 10).

17. In developing or amending an IEP, the IEP Team must consider the concerns of the parents. 34 CFR § 300.324(a)(1)(ii) and (6). In order to amend the IEP, either a properly constituted IEP team must be convened or the requirements for amending IEPs without convening the IEP team must be followed. *See* 34 CFR §§ 300.322 and 300.324(a)(4) and (6). The District's failure to comply with these requirements not only contributed to [Parent's] confusion as to the services actually being supplied to [Student] but also violated the IDEA regulations concerning parental participation and prior written notice. 34 CFR §§ 300.322 and 300.503. Additionally, as previously noted, the District conducted the 05/10/2010 IEP meeting *despite the fact* that [Parent] could not attend and had requested a reschedule of the meeting. As a result, the parent was denied a meaningful opportunity to participate in decisions regarding her child's IEP.

18. During the 2009-2010 school year, [Student] received the vast majority of the special education and related services to which [Student] was entitled under the 2009 and 2010 IEPs *as written*. (FF #s 9 and 10). However, in failing to supply [Parent] with prior written notices in her native language, subsequent to the 01/08/2010 IEP meeting or in conjunction with the increase in services under the 2009 and 2010 IEPs, the District violated 34 CFR § 300.503(a)-(c). The District's procedural violations of the IDEA constituted a *per se* denial of FAPE.

REMEDIES

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

- a) Parent participation requirements at 34 CFR § 300.322;
- b) Prior written notice requirements at 34 CFR § 300.503; and
- c) Amendment of IEPs at 34 CFR § 300.324(a)(4) and (6).

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

- 1) By **09/20/2010**, the District must submit to the Department a corrective action plan (CAP) that addresses each and every violation noted in this Decision. The CAP must, at a minimum, provide for the following:
 - a) Submission of compliant, written policies and procedures and, as applicable, compliant forms that address each of the cited violations no later than **08/31/2010**.
 - b) Conduct effective staff training of all [School] staff working with children with a disability, (including each person whom the District uses or intends to use as a special education director designee), concerning the policies and procedures to be provided no later than **09/30/2010**. Evidence that such training has occurred must be documented (i.e., training schedule(s), agenda(s), curriculum/training materials, and legible attendee sign-in sheets).
 - c) Evidence of correction via a Department file review conducted on or before **11/30/2010**.
- 2) By **09/07/2010**, the District shall reconvene [Student's] IEP team to consider whether the special education and related services provided to Student during the 2009-2010 school year should be included [Student's] IEP. No later than **09/14/2010**, the District shall submit to the Department documentation that the IEP team met, including copies of the meeting notice(s), prior written notice(s) and, as applicable, a revised IEP. The revised IEP must be fully compliant with the IDEA and this Decision.

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

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

Denver, CO 80202-5149

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

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

CONCLUSION

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

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

Dated this 13th day of August, 2010.

Jeanine M. Pow, Esq.
State Complaints Officer

Appendix A

2010:510 Record

Complaint (in Spanish), pgs. 1-3 and Department translation, pg. 4;

- Exhibit A Parent Incident Log for 2009-2010 School Year and Advocate Email of 05/25/2010
- Exhibit B IEP of 01/08/2010, Pediatrician Letters of 01/12/2010 & 01/12/2010
- Exhibit C IEP of 01/09/2009
- Exhibit D IEP of 01/09/2008 and Meeting Notices
- Exhibit E Permission for Initial Assessment of 11/09/2007 & Pediatrician Letter of 12/28/2007

Reply (in Spanish), pgs. 1-23 as well as the District and Department translations

- Exhibit F Assorted documentation (i.e., emails, medical records, duplicate IEP, and Community Reach Treatment Plans (Effective 03/16/2010 and 06/15/2010)), pgs. 1-155
- Exhibit G Assorted documentation (i.e., [Student] attendance records, medical records, calendars and emails), pgs. 1-48
- Exhibit H Assorted Emails in English & Spanish, pgs. 1-112
- Exhibit I Meeting Notice for 01/08/2010 IEP Meeting, sign in sheet and one page of IEP
- Exhibit J Assorted Emails Medical Records, Advocate Report, pgs. 1-61

Additional Documentation Supplied by [Parent]:

- Exhibit K Email Documentation Supplied by Advocate I 05/08/2010 and 07/01/2010, pgs. 1-15
- Exhibit L Notice of 05/10/10 IEP Meeting, Letter from [School Psychologist] (in Spanish) and Envelope

Response, pgs. 1-6;

- Exhibit 1 IEP of 01/09/2009
- Exhibit 2 SLP Service logs, 2009-2010
- Exhibit 3 SLP Individual Data Sheets, 09/09/2009 to 05/10/2010
- Exhibit 4 OT Service Logs, 2009-2010
- Exhibit 5 OT Progress Notes 09/14/2009 to 05/17/2010
- Exhibit 6 IEP of 01/08/2010
- Exhibit 7 Psychological Services Group Attendance Records 03/03/10 to 05/05/10
- Exhibit 8 Documentation re 2009-2010 Behavior Issues
- Exhibit 9 [Student's] 2009-2010 School Attendance Records
- Exhibit 10 Behavior Plan for 2009-2010 School Year.
- Exhibit 11 Parent Questionnaire re [Student] Behavioral Issues
- Exhibit 12 Sensory Profile of 12/02/2009
- Exhibit 13 Heavy Work Activities List for Teachers
- Exhibit 14 Motivation Assessment Scale
- Exhibit 15 All Written Communications re 05/10/2010 Meeting
- Exhibit 16 Teacher and Staff Contact Information

District' Supplement to Record

Exhibit 17 07/28/2009 Superintendent Letter to all Parents (in English & Spanish)
Exhibit 18 05/10/2010 Draft ESY IEP
Exhibit 19 05/27/2010 Draft IEP
Exhibit 20 Email Communications (post complaint) 06/07/2010 to 06/23/2010
Exhibit 21 Emails 04/20/2010 to 06/04/2010 (post complaint emails not considered)
Exhibit 22 [Student] Progress Reports through 05/24/2010
Exhibit 23 Social Stories of 12/7/2009 and 01/08/2010

SCO Interviews with:

[Advocate I], 07/01/2010 (via telephone);
[Special Education Director], 07/02/2010 (direct);
[General Education Teacher], 07/02/2010 (direct) and 07/12/2010 (via telephone);
[Parent], 07/08/2010 (direct);
[OT], 07/09/2010 (direct);
[Para], 07/09/2010 (direct);
[General Education Teacher II], 07/09/2010 (direct);
[General Education Teacher III], 07/09/2010 (direct);
[SLP], 07/19/2010 (direct);
[Special Education Teacher], 07/19/2010 (direct);

Telephone interview of Advocate on 07/01/2010;

Face-to-face interviews between 07/02/2010 and 07/28/2010, with the following District staff: [Special Education Director]; [General Education Teacher]; [OT], [Para], [General Education Teacher II]; [General Education Teacher III]; [Special Education Teacher];[SLP]; [School Psychologist] and [Principal]. The District's legal counsel was present during all of these interviews;

Face-to-face interview with [Parent] in the presence of Interpreter on 07/08/2010; and

Telephone interview with [General Education Teacher] on 07/12/2010 in presence of District's legal counsel.