

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

State-Level Complaint 2010: 517

Pikes Peak BOCES

DECISION

INTRODUCTION

This is a pro-se, state-level complaint (“Complaint”) dated December 13, 2010 and filed on December 15, 2010.

The Complainants are the mother and father of a child who is identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”). The child is identified as a student with autism and has received special education and related services via an Individualized Education Program (“IEP”).

In order to comply with the federal privacy laws and the IDEA¹ and to protect the anonymity of the Complainants and their child, the persons and locations referenced in conjunction with the Complaint investigation and Decision will be identified as follows:

- [Parents], Complainants (“Parents”)
- [Mother], Mother (“Mother”)
- [Student], Parents’ child (“Student”)
- Pikes Peak BOCES, a Board of Cooperative Education Services and the special education administrative unit serving the [School District] (“BOCES”)
- [School District], a Colorado school district that is a member of the BOCES (“School District”)
- [Elementary School] (“Elementary School”)
- [Transfer District] (“Transfer District”)
- [Special Education Director], BOCES Director of Exceptional Students (“Special Education Director”)
- [SSN Teacher], BOCES special education teacher for Student’s autism program (“SSN Teacher”)

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 § 300.1, *et seq.*

- [Private Autism Teacher], Student’s private school teacher (“Private Autism Teacher”)
- [Private Facility], Student’s private preschool facility (“Private Facility”)
- [BOCES Special Education Teacher], BOCES special education teacher (“BOCES Special Education Teacher”)
- [Autism Specialist], autism specialist contracted by the BOCES to support Student’s program (“Autism Specialist”)
- [Independent Evaluator], BCBA, and [Independent Evaluator], ECSE, independent evaluators hired by the BOCES (“Independent Evaluators”)

Further, all references to Student’s gender have been removed.

The Complaint consisted of a 21-page written statement and Exhibits A through Z and 1 through 6. Exhibit 6 is a compact disc containing 5 recordings from IEP meetings: August 10, 2010, September 1, 2010 (Parts 1 and 2), and October 5, 2010 (Parts 1 and 2).²

The State Complaints Officer (SCO) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaints process under the Individuals with Disabilities Education Act (IDEA). The SCO has jurisdiction to resolve the Complaint pursuant to those regulations.

Specifically, the overriding issues are whether, after Student transferred into the BOCES with an IEP from another school district in Colorado, the BOCES violated Student’s rights under the IDEA and Colorado’s Exceptional Children’s Educational Act (ECEA) in conjunction with its implementation of Student’s Transfer IEP dated May 27, 2010, as well as its implementation of the IEP developed by the BOCES on October 5, 2010.

On December 21, 2010, the BOCES Special Education Director was notified of Parents’ allegations in a letter that included a complete copy of the Complaint and exhibits. The BOCES was specifically directed to supply the SCO with a written response specifically admitting or denying the Complaint allegations detailed above, as well as the following documentation and information:

1. The BOCES’ policies and procedures, in effect during the relevant time frame, that address the implementation of in-state transfer IEPs;
2. The BOCES’ policies and procedures, in effect during the relevant time frame, that address the provision of extended school year services to eligible students with disabilities;
3. The BOCES’ policies and procedures, in effect during the relevant time frame, governing the conduct of IEP meetings;

² References to the IEP meeting recordings will be cited as follows: “Ex. 6, Audio recording of [date] IEP mtg., Pt. [1 or 2] at [hour]:[minute]:[second].”

4. The BOCES' policies and procedures, in effect during the relevant time frame, that address the student enrollment process;
5. Any written communications, correspondence, or other documentation reflecting communication about Student between the BOCES and staff at the Transfer District;
6. The specific date(s) on which the BOCES requested Student's educational file or records from the Transfer District, and the specific date(s) on which the requested records were received;
7. Any documentation relating to or describing the special education program or services that the BOCES offered or provided to Student from July 6, 2010 through December 13, 2010, including:
 - a) Each IEP implemented, developed or offered by the BOCES;
 - b) Each BOCES staff member, teacher, therapist or other service provider who provided Student with special education and related services. For each individual identified, please identify the specific service provided and provide documentation relating to the person's training, licensing and/or certification, as such training, licensing or certification relates to the services provided to Student;
8. Any other written communications or correspondence between BOCES staff or between the parents and BOCES staff relevant to Student's educational program, transfer IEP, IEP development, evaluation or placement; and
9. Any other documentation that the BOCES deems necessary or useful for the Department to consider in conducting this investigation.

On January 6, 2010, the BOCES' Response (pages 1-10 and Exhibits 7 through 19 and 20-A through 20-D) was timely received.

On January 14, 2010, the Parents' Reply (pages 1-13 and Exhibits AA through MM) was timely received.

The SCO conducted the following interviews in the course of investigating the Complaint: Mother (1/20/2011 and 2/4/2011); Special Education Director (2/3/2011); SSN Teacher (2/3/2011); Private Autism Teacher (1/25/2011); and BOCES Autism Specialist (2/8/2011).

On February 9, 2011, at the SCO's request, the Parent provided documentation reflecting Student's attendance at Private Facility during the time period relevant to the state complaint, as well as receipts from Private Facility reflecting tuition. The SCO has included this documentation in the Record as Exhibit 22.

The SCO obtained a copy of the District's 2010-2011 School Calendar from the District's website. The calendar has been included in the Record at Exhibit 23.

On February 9, 2011, the SCO closed the Record.

PARENTS' COMPLAINT ALLEGATIONS

The Parents' Complaint contains 7 allegations, as follows:

Allegation 1: On or after July 6, 2010, the BOCES failed to appropriately implement Student's in-state transfer IEP, which was developed by the Transfer District on May 27, 2010;

Allegation 2: On or after July 6, 2010, the BOCES failed to develop or offer an individualized educational placement for Student, including failing to have a program in place for Student at the beginning of the 2010-2011 school year;

Allegation 3: The BOCES failed to have the appropriate individuals in attendance at Student's IEP meetings on August 10, 2010, September 1, 2010, and October 5, 2010, resulting in the denial of educational benefit to Student;

Allegation 4: On or after July 6, 2010, the BOCES failed to offer Student an IEP that was reasonably calculated to allow Student to receive educational benefit in the least restrictive environment;

Allegation 5: On or after September 1, 2010, the BOCES failed to provide Student's parents with appropriate Prior Written Notice relating to its refusal to adopt the Transfer District's IEP;

Allegation 6: On or after the IEP meetings on August 10, 2010, September 1, 2010 and October 5, 2010, the BOCES failed to provide Student's parents with appropriate Prior Written Notice relating to its refusal either to fund Student's private program at Private Facility or offer a specific, identified placement in which it would serve Student;

Allegation 7: On or after July 6, 2010, the BOCES predetermined Student's placement by refusing to make placement decisions based upon Student's individual needs and abilities, but rather based upon the services available in the BOCES.

Proposed Remedies. Parents seek recovery of tuition and related costs they incurred by placing Student in Private Facility after August 16, 2010, as well as compensatory occupational therapy ("OT") and speech services, due to the BOCES' failure to provide appropriate services after Student enrolled on July 6, 2010.

THE BOCES' RESPONSE

The BOCES' Response denied each of the Complaint allegations. The Response is summarized as follows:

Allegation 1: The Transfer IEP was developed for implementation in Transfer District and is not binding on the District or BOCES. In addition, the BOCES was not required to implement the Transfer IEP because Student transferred from Transfer District to BOCES in a different academic year than that during which the Transfer IEP was developed. Further, the BOCES is only required to provide services “comparable to those described in the previously held IEP” until it develops a new IEP. The BOCES contends that in its opinion, the BOCES was willing to implement the Transfer IEP, as explained at the August 10, 2010 IEP meeting, and that the IEPs offered at subsequent meeting offered Student a FAPE. An appropriate program, sufficient to implement the Transfer IEP, was up and running by August 23, 2010, before the start of the school year.

Allegation 2: The BOCES provided Student with an IEP designed to provide a FAPE, and which in fact did provide a FAPE. The Parents refused to consider the BOCES’ offer and chose to unilaterally enroll Student in a private program of their choice.

Allegation 3: The BOCES cannot recall why a general education teacher was not in attendance at the August 10 IEP meeting. Regarding subsequent meetings, the BOCES determined that it made little sense to require a general education teacher to attend the IEP meetings where the Parents had indicated that they would refuse to consider allowing the student to cross the road to transition from the general preschool class to the afternoon self-contained classroom. Given the Parents’ position on Student’s participation in a general education program, the absence of a general education teacher amounted to a minor technicality that did not prejudice Student in any way.

Regarding the certification of BOCES Special Education Teacher, whom Parents alleged was not certified in ECSE (“Early Childhood Special Education”), in violation of Colorado law, the BOCES contends that BOCES Special Education Teacher holds appropriate licensure and certification. The BOCES also states that the BOCES hired SSN Teacher on August 2, 2010, and that she holds appropriate early childhood special education licensing from the state of New York and is awaiting approval for the same license in Colorado. SSN Teacher attended all subsequent meetings after being hired and was in place to be Student’s teacher well before preschool started in the fall.

Allegation 4: The assertion that the BOCES failed to offer Student an IEP reasonably calculated to allow Student to make educational progress in the least restrictive environment is a “matter of opinion.” The self-contained program unilaterally selected by the parents in Private Facility was more restrictive than the BOCES’ IEP. Independent evaluators who observed Student in the District’s self-contained classroom in October 2010, during a 30-day evaluation period requested by the BOCES, recommended that Student receive the majority of the IEP services in the typical pre-school setting with typical peers.

Allegation 5: The IEPs all contain Prior Written Notice statements explaining what other options the District considered and why they were rejected. Parents were well aware prior to September 1, 2010 that the District was willing to implement the Transfer IEP, but Parents had no intention of permitting Student to attend the District’s general preschool program.

Allegation 6: On August 24, 2010, the BOCES notified the parents that it would not reimburse them for tuition or related costs associated with placing Student at Private Facility, and that the IEP developed by the BOCES for Student is appropriate and offered Student a FAPE.

Allegation 7: The allegation that the BOCES predetermined Student's placement on or after July 6, 2010 "makes no sense" because none of the BOCES staff met with Parents until late July 2010. At the late July meeting, the BOCES agreed to substantially implement the Transfer IEP. The BOCES contends that it is the Parents who predetermined Student's placement by insisting that Student receive the services in the Transfer IEP and by refusing to permit Student to attend the District's general preschool program across the road from the self-contained classroom.

PARENTS' REPLY

Parents' Reply to the BOCES' Response to the allegations in the Complaint is summarized as follows:

Allegation 1: Because Student's IEP included ESY services and thus provided services for Student on a year-round basis, the transfer occurred in the same academic year as the Transfer IEP was developed. Further, the BOCES agreed to implement the Transfer IEP, yet failed to provide a placement or services comparable to those contained in the Transfer IEP. The BOCES claim that it had a program in place by August 23, 2010, is contradicted by documents and correspondence demonstrating that as late as November 2010, the BOCES was still in the process of creating a center-based program that could have implemented the Transfer IEP, such that it did not exist in August 2010.

Allegation 2: On August 10, 2010, the BOCES failed to either adopt or implement the Transfer IEP or develop its own IEP, and failed to offer a placement to Student. The BOCES did not develop an IEP until October 5, 2010.

Allegation 3: The BOCES cannot blame Parents for failing to have a general education teacher at IEP meetings where it is the BOCES' responsibility to follow both federal law and its own IEP process policy. Where the BOCES contends that it has offered an IEP that provides for Student to spend half the day in a general education preschool setting, and that this placement is consistent with the IEP and appropriate for Student, it cannot then claim that no general education teacher needed to be at the IEP meetings.

Allegation 4: The BOCES' assertion that Parents refused to accept an IEP that provided for a full-day attendance (half a day in the general preschool program and half a day in the District's center based program) is denied, because the BOCES never offered or developed an IEP meeting that description; the only IEP it ever developed or offered to implement provided for full days in a center-based program. The BOCES has failed to implement its own IEP because it does not have an appropriate center-based self-contained classroom for Student.

Allegation 5: No IEP was developed by the BOCES on September 1, 2010, and no prior written notice was provided on that date relating to the BOCES' refusal to adopt the Transfer IEP.

Allegation 6: At the October 5, 2010 IEP meeting, the BOCES offered a placement to implement the IEP that, in fact, could not implement the IEP because the classroom offered by the BOCES lacked age-appropriate peers, a board certified behavior analyst ("BCBA"), and appropriately-trained staff – all of which were specifically required by the IEP. Parents stated that the placement offered by the BOCES did not comply with the requirements of the IEP and requested alternative placement options. Parents reiterated this request in a letter after the IEP meeting, but the BOCES did not respond or otherwise provide Prior Written Notice relating to its refusal to select one of the options requested by Parents.

Allegation 7: The BOCES' assertion that it was willing to implement the Transfer IEP with "minor modifications" is denied, because the modifications were not minor and amounted to a failure to implement the IEP or to offer FAPE. The BOCES predetermined Student's placement by refusing to even consider appropriate private placements which could have implemented Student's IEP, and failed to investigate or offer placements in private facilities, notwithstanding the fact that the BOCES lacked the appropriate classroom or trained staff to implement the IEP it had written.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record, including listening to the audio recordings of the IEP meetings multiple times,³ the SCO makes the following findings:

Background

1. Student is a preschool student (under the age of 5) who carries a medical diagnosis of autism and is properly identified as an eligible student with a disability entitled to special education and related services under the IDEA and the Colorado ECEA.⁴

2. Autism is

a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with Autism are engagement in repetitive activities and stereotyped movement, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences.

³ The Appendix to this Decision, attached and incorporated by reference, details the entire Record.

⁴ See, e.g., Ex. A, Transfer IEP; Ex. 1; Interview with Mother, 1/20/2011; Interview with Private Autism Teacher, 1/25/2011.

34 C.F.R. § 300.8(c)(1)(i). Students with autism may exhibit, *inter alia*, various levels of delayed communication including impaired language acquisition and comprehension; difficulties in understanding social situations and/or relationships; difficulties in abstract thinking involving awareness, judgment and generalization; and uneven developmental patterns in the acquisition of motor, sensory, social, play or learning skills.⁵

3. Student's autism may be characterized as "severe classic autism."⁶ Student engages in self-stimulating repetitive activities and stereotyped movement such as hand-flapping, though the behaviors are not self-injurious.⁷ Student has relatively strong visual/special skills, but demonstrates significant delays in the areas of receptive language, expressive language, motor imitation, vocal imitation skills, requesting to make needs known, age-appropriate independent play, social skills, self-help skills, joint attention⁸ and generalization of skills.⁹ Other autistic-type behaviors include eloping (running away) and a general lack of a sense of fear or awareness of dangers in the environment.¹⁰ Student does not communicate verbally with speech (though verbal skills are emerging), but rather with gestures, verbal sounds, pointing and similar indications.¹¹ By all accounts, Student is a sweet, good-natured, happy child.¹²
4. There is no dispute that as a result of the disability, and as is typical of a preschool student with autism, Student requires extensive educational interventions tailored to Student's individual needs and abilities.
5. Importantly, for preschool-aged children with autism such as Student, appropriate educational interventions are extremely important because research has shown that preschool age (before age 5) represents a "critical window" for students with autism; after the age of 5, the pace of learning and language acquisition becomes much slower.¹³ Gaps in interventions and lack of appropriate interventions for a child of Student's age can have lifelong repercussions.¹⁴

Student's Transfer to the BOCES

6. Prior to July 1, 2010, Parents resided in Transfer District where Student was educated pursuant to an IEP. Student is a preschool student who was identified and served by

⁵ Colorado Department of Education, *Fast Facts: Autism Spectrum Disorders*, Sept. 2008, <http://www.cde.state.co.us/cdesped/download/pdf/FF-Autism.pdf>.

⁶ Interview with Mother.

⁷ *Id.*; see also Ex. 1, p.1.

⁸ The term "joint attention" refers to the ability to use communication and social behavior to share an activity with another individual. *Evidence-Based Practice and Autism in the Schools*, National Autism Center 2009, p. 48.

⁹ Ex. 1; Interview with Mother.

¹⁰ Interview with Mother.

¹¹ *Id.*; Ex. A (Transfer IEP); Ex. 2 (10/5/2010 IEP).

¹² *Id.*; see also Ex. 6 (IEP meeting recordings); Ex. 2 (10/5/2010 IEP).

¹³ Interview with Private Autism Teacher; see also Richard L Simpson *et al.*, *Autism Spectrum Disorders: Interventions and Treatments for Children and Youth* (Corwin Press, 2005); National Research Council, *Educating Children with Autism* (National Academy Press, 2001).

¹⁴ *Id.*

Transfer District as a student with autism, eligible to receive special education and related services under the IDEA. On May 27, 2010, Transfer District revised Student's IEP, attached to the Complaint as Exhibit A. After developing the Transfer IEP in May 2010, the Transfer District provided Student with ESY services by implementing the IEP for half-days (to provide maintenance of skills and avoid regression) for 5 weeks, *i.e.*, through the end of the first week of July 2010.¹⁵

7. In May 2010, Parents learned that on July 1, 2010, they would be moving into the District served by the BOCES.¹⁶ Parents contacted the BOCES and met with BOCES representatives, including Special Education Director, on May 24, 2010. At the May 24 meeting, Parents informed Special Education Director and the BOCES staff that Student was an eligible student with a disability who would be transferring into the BOCES on July 1, 2010, with an existing IEP that the Parents wanted the BOCES to implement.¹⁷ At the May 24, 2010 meeting, Parents provided Special Education Director with a copy of Student's Transfer IEP.¹⁸
8. The Transfer IEP provided the following placement/services for Student:
 - a. Education full-time (24.75 hours per week) in a center-based preschool autism classroom with an Early Childhood Special Educator ("ECSE") and 1:1 paraprofessional support;
 - b. Direct speech-language therapy by a speech –language pathologist ("SLP"), provided 1 hour per week within the center-based classroom;
 - c. Direct and indirect occupational therapy by an occupational therapist ("OT"), provided 1 hour per month;
 - d. Utilization of the Applied Behavioral Analysis ("ABA") methodology;
 - e. Training for the paraprofessional in Student's sensory needs and behavior and communication strategies;
 - f. Support for Student's programming by a BCBA (board certified behavior analyst) and an autism specialist.¹⁹

The Transfer IEP also provided Extended School Year ("ESY") services for Student because Student suffers significant regression when Student experiences gaps in IEP services for longer than 2 weeks.²⁰

9. At the May 24, 2010 meeting, the BOCES staff indicated that they did not have programs capable of implementing the Transfer IEP.²¹

¹⁵ Interview with Mother.

¹⁶ Interview with Mother.

¹⁷ *Id.*

¹⁸ The Transfer IEP was in the process of being revised in late May. At the May 24 meeting, Parents provided the BOCES with a draft of the Transfer IEP, and then subsequently provided the BOCES with the finalized version of the Transfer IEP found at Exhibit A to the Complaint. (Interview with Mother.)

¹⁹ Ex. A, Sections 10, 13 and 15.

²⁰ Ex. A, Section 11; Interview with Mother.

²¹ Interview with Mother.

10. On June 16, 2010, the Parents, via email, provided the BOCES Special Education Director with another copy of Student's Transfer IEP. In the email message accompanying the attached Transfer IEP, Parents explained the specific ESY services that Student was currently receiving from Transfer District. Special Education Director responded via email, indicating that she had received the IEP and would "put together a series of meetings to prepare for [Student's] entrance into our BOCES" after July 1, 2010.²²
11. Upon moving into the District in the beginning of July 2010, Parents made repeated attempts to formally enroll Student in the District. Specifically, Mother attempted to enroll Student on July 6, 2010, only to be told by an administrative assistant that there was no one available to process Student's enrollment, and that she should try again on July 26.²³ Mother returned on July 26, 2010 and again attempted to enroll Student in the District, again to be told that there was no one that could process Student's paperwork, and to wait until August 6, 2010.²⁴
12. The SCO finds that Student's enrollment in the District was in effect as of July 6, 2010, and that as of that date, the District and BOCES were on notice of the fact that: 1) Student is an eligible student with a disability; 2) Student is a preschool student with a diagnosis of autism; and 3) Student was coming into the BOCES with an existing IEP that provided that Student required ESY services in order to receive FAPE.

The July 28, 2010 Meeting

13. In the meantime, Parents contacted Special Education Director on July 12, 2010, to let her know that they had moved into the District and to inquire about Student's IEP.²⁵ Special Education Director offered to schedule a meeting with Parents on July 28, 2010.²⁶ The July 28 meeting was not presented or described to Parents as an IEP meeting, and was not formally "noticed" as an IEP meeting.²⁷
14. On July 28, 2010, Mother met with Special Education Director and one of the BOCES' program coordinators to discuss Student's special education program and Student's need for services. At no time did Special Education Director indicate that the BOCES was refusing to implement the Transfer IEP.²⁸ Rather, the discussion at the July 28 meeting was about how the Transfer IEP would be implemented.²⁹
15. At the July 28, 2010 meeting, three BOCES programs were discussed as possible placements in which the Transfer IEP could be implemented.: 1) the Liberty Program, a special classroom serving students kindergarten-aged and older who suffered from psychological or

²² Ex. C.

²³ Interview with Mother; Ex. E, p. 2.

²⁴ *Id.*

²⁵ Ex. F; Ex. E, p. 2.

²⁶ Ex. F.

²⁷ *Id.*; Interview with Mother.

²⁸ Interview with Mother.

²⁹ Interview with Mother.

behavioral problems; 2) a general education preschool classroom for 12 hours per week; or 3) a “multi-impaired room” at the elementary school.³⁰ The Liberty Program’s coordinator stated that Student could not be served appropriately in the Liberty Program. Both the general education preschool classroom and the multi-impaired elementary school room were ruled out because neither was a full-time, center-based preschool autism program (as required by the Transfer IEP) and because the BOCES staff lacked the requisite training and expertise in the ABA methodology required by the IEP.³¹

16. Because there appeared to be no programming in the BOCES sufficient to implement the Transfer IEP, Mother suggested that the BOCES look to placements such as Private Facility, where Student had been receiving interventions to supplement Student’s school program since January 2010, or The Alpine Autism Center (“Alpine”), a private facility with established programming for preschool students with autism.³²
17. Special Education Director stated that the BOCES would not consider Alpine, but expressed interest in investigating the program at Private Facility upon learning that the BCBA at Private Facility is also ECSE certified (as required by the Transfer IEP).³³ Mother also suggested looking at nearby school districts that either had established preschool center-based programs or were scheduled to have such programs up and running by the start of the next school year.³⁴ Mother provided Special Education Director with a written proposal by Private Facility for an educational placement for Student.³⁵
18. Special Education Director agreed to look into placements in other school districts as well as Private Facility.³⁶
19. Another issue discussed at the July 28 meeting was Student’s need for ESY services. Mother explained that Student experiences significant regression of skills if Student goes without educational services for more than 2 weeks, and expressed concern to Special Education Director that if Student did not receive special education and related services until the start of the new school year at the end of August, Student would have a 6 week gap in services.³⁷ Special Education Director’s response was that she would look into Private Facility, but did not otherwise offer to provide Student with ESY services.³⁸
20. On July 29, 2010, Special Education Director toured Private Facility.³⁹ Student was receiving services at Private Facility during the tour, such that Special Education Director had the opportunity to observe Student in that program.⁴⁰

³⁰ Interview with Mother.

³¹ Interview with Mother.

³² Interview with Mother.

³³ Interview with Mother.

³⁴ Interview with Mother.

³⁵ Ex. L.

³⁶ Interview with Mother; *see also*, Ex. H.

³⁷ Interview with Mother.

³⁸ Interview with Mother; *see also*, Ex. H.

³⁹ Interview with Mother; Ex. H.

⁴⁰ Interview with Special Education Director; Interview with Private Autism Teacher.

21. Private Facility provides services to individuals with autism and other behavioral disabilities.⁴¹ It serves individuals of all ages, including adults.⁴² It is not a child care facility or a preschool, but does provide educational and behavioral interventions and services to children with autism, including preschool-aged children.⁴³

The August 10, 2010 IEP Meeting

22. On August 3, 2010, the BOCES sent out a Notice of Meeting to schedule an IEP meeting for Student on August 10, 2010. The Notice of Meeting did not indicate that a General Education Teacher would be attending.⁴⁴

23. An IEP meeting was held for Student on August 10, 2010. In attendance were, *inter alia*, Mother, Special Education Director, Special Education Teacher, and Private Autism Teacher.⁴⁵ No general education teacher attended or otherwise participated in the meeting.⁴⁶

24. The discussion at the August 10 IEP meeting involved how the BOCES could implement the Transfer IEP. At no time during the August 10 IEP meeting did Special Education Director or any other representative for the BOCES state that the BOCES was refusing to implement the Transfer IEP, nor did any BOCES representative state that the BOCES would be providing comparable services to those required by the Transfer IEP, pending evaluations and the development of a new IEP by the BOCES.⁴⁷

25. Special Education Director stated that she had researched potential out-of-district placements for Student in neighboring districts with center-based preschool autism programs that could implement the Transfer IEP, but none would accept Student in their programs.⁴⁸

26. The Parents requested that the BOCES consider the placement option of funding Student's program at Private Facility.⁴⁹ Special Education Director stated that Private Facility was a "great program" but that the BOCES could not place Student there because the facility was not "CDE approved" or properly licensed as a preschool.⁵⁰ Special Education Director stated that she had spoken to an individual with the Colorado Department of Education ("CDE") who had indicated that Private Facility "was not an appropriate placement" because "there's no special ed oversight because it's not a licensed preschool" and there would be "no way to guarantee safety."⁵¹ Private Autism Teacher, the owner and director of Private Facility,

⁴¹ Interview with Private Autism Teacher.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ex. I.

⁴⁵ Ex. K, p. 2; Ex. 6, Audio recording of 8-10-10 IEP meeting.

⁴⁶ Ex. 6, Audio recording of 8-10-10 IEP meeting.

⁴⁷ *Id.*; Interview with Special Education Director.

⁴⁸ *Id.*

⁴⁹ Ex. 6, Audio recording of 8-10-10 IEP mtg., at 02:30.

⁵⁰ Ex. 6, Audio recording of 8-10-10 IEP mtg., at 00:17:10.

⁵¹ *Id.* at 00:02:36.

offered to contract with the BOCES so that the BOCES could provide oversight.⁵² Special Education Director indicated she would look into the matter further, but was otherwise non-committal.⁵³

27. The August 10 IEP team also discussed Student's need for ESY services. Parents emphasized that Student requires ESY services because Student suffers from regression after a gap in services longer than 2 weeks, and that by August 23, when school was scheduled to start, Student would have gone without services for 6 weeks. Parents expressed concern at the amount of time required for the BOCES to hire staff, train them and put a program in place. In response, a BOCES staff member stated that the situation was "out of [their] control."⁵⁴
28. The Special Education Director stated that the BOCES was willing to implement the Transfer IEP in a general education preschool classroom within the District, but admitted that the BOCES did not currently have a trained teacher or classroom in place.⁵⁵ The August 10 IEP meeting concluded without the BOCES making a specific offer of placement.⁵⁶ Rather, the "meeting was adjourned with the school willing to look for an Early Childhood Special Education Teacher, look for training to help staff, and create a center based program."⁵⁷ Special Education Director also stated that she would contact CDE to obtain further information about placing Student in private setting such as Private Facility.⁵⁸
29. At the August 10 IEP meeting, the BOCES did not offer to provide Student with ESY services.⁵⁹
30. On August 13, 2010, Parents wrote to Special Education Director to discuss Student's educational placement and summarized the discussion at the August 10 IEP meeting.⁶⁰ Parents stated that Private Facility was the only placement that was currently appropriate and available for Student, and that

to date [the BOCES] had not offered a placement for [Student]. Therefore, in lieu of any offer by the District of any appropriate program or placement that will confer educational benefit as outlined in [Student's] IEP, we have no other option but to formally give notice that we intend to unilaterally place [Student] at [Private Facility] on August 16, 2010. Furthermore, we intend

⁵² *Id.* at 00:16:00.

⁵³ *Id.* at 00:17:00.

⁵⁴ *Id.* at 00:13:03.

⁵⁵ *Id.* at 00:23:00 to 00:25:00.

⁵⁶ Ex. K; Ex. 6, Audio recording of 8-10-10 IEP mtg.

⁵⁷ Ex. K, p. 3.

⁵⁸ Ex. 6, Audio recording of 8-10-10 IEP mtg.; Interview with Mother.

⁵⁹ Ex. 6, Audio recording of 8-10-10 IEP mtg.

⁶⁰ Ex. E.

to seek reimbursement for tuition, transportation, related expenses as well as compensatory education where appropriate.⁶¹

31. On August 16, 2010, Special Education Director responded to Parents' August 13 letter via email, stating, "I have received your letter and will get back with you shortly."⁶²
32. On August 20, 2010, Parents again wrote again to Special Education Director. "As of the writing of this letter, Friday, August 20, we have not yet received any follow up contact by the District. We can therefore only assume due to lack of continued communication since August 23, 2010, is the start of preschool, that the District continues to remain unable to provide an appropriate placement for our son."⁶³
33. On August 24, 2010, Parents received a letter from the attorney for the BOCES.⁶⁴ The letter informed Parents that an "IEP has been developed" for Student, that personnel were available in the District to implement the IEP, and that the District/BOCES was able to provide Student with a free appropriate public education, such that the BOCES would not reimburse Parents for tuition or related costs associated with placing Student at Private Facility.⁶⁵
34. Upon receipt of the letter from the BOCES' attorney, the Parents wrote to Special Education Director to ask for a copy of the IEP that the attorney's letter referred to as having been developed. Special Education Director replied on August 25, 2010, to clarify that the IEP referred to by the attorney was the Transfer IEP, and that the BOCES would "provide all of the services outlined in that document."⁶⁶

The SSN Classroom

35. In the meantime, after the August 10 IEP meeting, the BOCES and District created a significant support needs ("SSN") classroom that was intended to provide a separate classroom to serve students who required more intensive special education services than they could receive in a general education classroom.⁶⁷ The BOCES considered (and continues to consider) the SSN classroom to be a center-based program suitable to educate Student.⁶⁸
36. The SSN classroom is not designed to be a classroom solely for students with autism.⁶⁹ The SSN classroom serves students with multiple disabilities, including students with autism, students with cognitive delays, and students with physical disabilities.⁷⁰

⁶¹ *Id.*

⁶² Ex. M.

⁶³ Ex. N.

⁶⁴ Ex. O.

⁶⁵ *Id.*

⁶⁶ Ex. P.

⁶⁷ Interview with Special Education Director.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Interview with SSN Teacher; Interview with Private Autism Teacher.

37. The SSN classroom is not a dedicated preschool program. It is located in the District's elementary school building rather than the preschool building, and serves student from preschool through grade 5.⁷¹ The SSN classroom appears to be the same "multi-impaired" classroom in the elementary school that the parties had ruled out at the July 28 meeting, *see* Finding of Fact 15, *infra*.
38. When Student has attended school in the District, [Student] has been the only preschool student in the SSN classroom.⁷²
39. On or around August 11, 2010, the BOCES hired SSN Teacher to create and oversee educational programming to be provided in the SSN classroom. SSN Teacher holds a master's degree in special education including extensive graduate level course-work working with students with autism.⁷³ SSN Teacher has experience and training in the ABA methodology for educating students with autism, including running an ABA classroom.⁷⁴ SSN Teacher is licensed and certified as a special education teacher by the State of New York; her application for Colorado licensure is pending.⁷⁵
40. In its Reply, the BOCES claims that its center-based program (*i.e.*, the SSN classroom) was "up and running" on August 23, 2010, which was the first day of school.⁷⁶ The evidence in the record, however, demonstrates that whatever program was in place on August 23, 2010 (and setting aside the question of whether it was equipped to implement Student's IEP on that date), nothing was communicated to Parents about the program until after school started. By stating in the August 10 IEP that the BOCES was "willing to *look* for an Early Childhood Special Education Teacher, *look* for training to help staff, and *create* a center based program,"⁷⁷ the BOCES was clearly stating that it did not at that time have an ECSE teacher, appropriately trained staff, or a center-based program suitable to serve Student. After August 10, the BOCES did not reconvene the IEP team to identify the specific placement or to otherwise provide Parents with any information indicating that anything had changed with respect to its ability to implement Student's Transfer IEP by August 23. Parents' last communication from the BOCES at that point had been at the August 10 IEP meeting when Special Education Director indicated that she was going to check with CDE about placing Student in Private Facility; "school started on the 23rd", and [Parents] had no idea what to do with [Student]."⁷⁸ After August 10, Parents inquiries to Special Education Director about the status of Student's program essentially went ignored. Moreover, the letter from the BOCES' attorney – which was not sent until the day after school started – did not provide any specifics about the placement, such as where it would be located.⁷⁹

⁷¹ Interview with SSN Teacher.

⁷² *Id.*

⁷³ Interview with SSN Teacher; Ex. 19, pp. 1-11.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Ex. 7, Aff. of Special Education Director, ¶ 4; Interview with Special Education Director.

⁷⁷ Ex. K, p. 3 (emphasis added).

⁷⁸ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt. 2 at 00:18:20.

⁷⁹ Ex.

41. Thus, whatever programming existed in the BOCES on the first day of school, no formal offer identifying a specific placement was ever written into an IEP or communicated to parents. The SCO finds that the BOCES failed to have an IEP in place for Student on the first day of the 2010-2011 school year.

The September 1, 2010 IEP Meeting

42. On August 30, 2010, Special Education Director sent an email to Student's IEP team to inform them of an IEP meeting for Student the next day. The email stated that the purpose of the meeting was "to talk to mom about what we can offer at [the District] (everything that is listed on the IEP). I have attached a copy of the IEP we will be accepting."⁸⁰ The IEP in question was the Transfer IEP.⁸¹
43. On September 1, 2010, the BOCES convened another IEP meeting for Student. In attendance were, *inter alia*, Parents, Special Education Director, SSN Teacher, Private Autism Teacher, a speech-language pathologist and an occupational therapist. No general education teacher attended or otherwise participated.⁸²
44. At the September 1, 2010 IEP meeting, the Special Education Director opened the meeting by announcing that the BOCES was rejecting the Transfer IEP.⁸³ Special Education Director stated that the BOCES would take a 30-day interim "diagnostic" period to conduct additional evaluations and obtain information about Student, during which it would implement the Transfer IEP by providing comparable services, and then develop its own IEP in early October.⁸⁴ Special Education Director stated that the BOCES wanted the evaluation period to interact with Student, get to know Student, and develop its own IEP for Student.⁸⁵
45. When asked by the Parents why the BOCES would not be adopting the Transfer IEP, Special Education Director responded, "because we don't have to."⁸⁶ The September 1 IEP did not include a Prior Written Notice.⁸⁷
46. Special Education Director stated that during the interim period, all the services in the Transfer IEP would be provided to Student.⁸⁸ The IEP's service delivery statement provided:

Individual or small-group speech and language services will be delivered both in and out of the classroom one hour a week and half an hour a week for program planning, supervision, documentation and consultation. OT services will include 1 hour

⁸⁰ Ex. FF.

⁸¹ Interview with Special Education Director.

⁸² Ex. T.

⁸³ Ex. 6, Audio recording of 9-1-10 IEP meeting, Pt. 1 at 00:01:30.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Ex. 18, pp. 22-25.

⁸⁸ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt. 1 at 00:02:20.

of direct services a month and half an hour for program planning, supervision, documentation, and consultation. Direct services provided by ECSE with over sight of paraprofessional will be delivered in a center based classroom 24.75 hours a week.⁸⁹

47. The center-based program offered by the BOCES was the SSN classroom located in the elementary school. Mother asked SSN Teacher to describe the services that the BOCES proposed to provide and how they would be comparable to a center-based preschool autism program.⁹⁰ SSN Teacher responded by describing what a typical day would be for Student in her program. SSN Teacher stated that she would implement the IEP with a combination of services in the center-based classroom and integration into the general preschool classroom.⁹¹ Student would spend mornings in the general education preschool program and then would transition to the SSN classroom for the afternoons.⁹²
48. The Parents expressed concern that the program described by the BOCES team – services delivered in a regular education preschool class with paraprofessional support – had already been unsuccessfully attempted by the Transfer District.⁹³ Parents also pointed out that placing Student part of the day in a general education preschool class was inconsistent with the Transfer IEP, which called for full time placement in a separate center-based classroom.⁹⁴ Finally, Parents pointed out that Student had been “assessed to the hilt” and that further evaluations would be unlikely to yield any new information.⁹⁵
49. SSN Teacher explained that the time Student would spend in the regular education preschool class was to expose Student to typical peers so that Student could generalize skills.⁹⁶ Special Education Director stated that the placement offered was a “jumping point,”⁹⁷ and that the BOCES staff just wanted to see and work with Student, do some assessments, “look at what he’s doing,” and adjust the program as needed.⁹⁸
50. Regarding staff training, SSN Teacher stated that she would supervise and train the paraprofessionals, and also work with Private Facility to ensure continuity of programming.⁹⁹
51. The services in the September 1 IEP were available on September 13, 2010, and were offered to Student through October 4, 2010 (a new IEP was developed on October 5, 2010).¹⁰⁰ During this interim period, Student attended only half-days to receive services in the SSN classroom with SSN Teacher, as Parents did not feel that allowing Student to attend the

⁸⁹ Ex. T, p. 3.

⁹⁰ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt. 1 at 00:10:00.

⁹¹ *Id.*, at 00:10:50.

⁹² *Id.* at 00:11:00 to 00:21:00; *see also* Ex. 6, Audio recording of 9-1-10 IEP meeting, Pt. 2 at 00:23:00.

⁹³ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt 2 at 00:01:00.

⁹⁴ *Id.*

⁹⁵ *Id.* at 00:13:03.

⁹⁶ *Id.* at 00:10:00.

⁹⁷ *Id.* at 00:07:20.

⁹⁸ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt. 2, at 00:35:00, and discussion from 00:26:00 through 00:36:00.

⁹⁹ *Id.*, at 00:26:30.

¹⁰⁰ Ex. 18, p. 24; Interview with Mother.

general education preschool class in the mornings was appropriate or consistent with Student's IEP.¹⁰¹ During the remainder of the school day, Student received services from Private Facility.¹⁰²

52. The services described by Special Education Director and SSN Teacher at the September 1 IEP meeting and offered to Student during the interim diagnostic period of September 13 through October 4 were distinctly different from those required by the IEP. Specifically, the September 1 IEP provided that Student's direct special education services would be "delivered in a center based classroom 24.75 hours a week."¹⁰³ Yet, a significant portion of the services described in the meeting by SSN Teacher and offered to Student were to be delivered in a general education preschool classroom.¹⁰⁴ The SCO finds that the environmental setting offered to implement the IEP was not consistent or comparable with that described in the IEP.

Student's Educational Records from Transfer District

53. One of the stated reasons by the BOCES for doing evaluations during the 30-day diagnostic period in September 2010 was that it lacked any of Student's assessment data.¹⁰⁵
54. In its Reply, the BOCES asserted that Student's educational file was "originally requested by the [District] and it has not retained the e-mail request, nor has [the Transfer District]. When [District] subsequently advised [Special Education Director] it had not received the requested information, she contacted [the special education director for Transfer District]." BOCES Reply, p. 9. The BOCES' Exhibit 19, however, does contain a request by the District to the BOCES dated September 1, 2010, the same day as the September 1 IEP meeting.¹⁰⁶ The request is on a form that was sent via facsimile, indicating that record requests to other districts are not made by email, but rather using the form contained in the BOCES' Exhibit 19. Email communications sent in late September appear to be follow-ups to the September 1 records request. The only email communications between Special Education Director and the director for Transfer District are emails exchanged in July relating to autism training for paraprofessionals.¹⁰⁷
55. Based upon the documents provided by the BOCES, the SCO finds that neither the District nor the BOCES requested Student's educational records prior to September 1, 2010.
56. The BOCES received Student's education records, including evaluations, from Transfer District on or around September 23, 2010.¹⁰⁸ Based upon those current evaluations, the

¹⁰¹ Interview with SSN Teacher; Interview with Mother.

¹⁰² Interview with Mother; Interview with Private Autism Teacher.

¹⁰³ Ex. 18, p. 24.

¹⁰⁴ Ex. 6, Audio recording of 9-1-10 IEP mtg., *supra*; Interview with Special Education Director; Interview with SSN Teacher.

¹⁰⁵ Ex. 6, Audio recording of 9-1-10 IEP mtg., Pt. 1 at 00:05:30.

¹⁰⁶ Ex. 19, p. 1.

¹⁰⁷ Ex. 18.

¹⁰⁸ Ex. 17, pp. 2-3.

BOCES determined that no additional assessment data was necessary, except for another administration of the VB-MAPP (Verbal Behavior Milestone Assessment & Placement Program), an assessment tool for students with autism.¹⁰⁹

The October 5, 2010 IEP meeting

57. After the interim diagnostic period, the BOCES convened another IEP meeting on October 5, 2010.¹¹⁰ In attendance were the Parents and their advocate, Special Education Director, SSN Teacher, Private Autism Teacher, another BCBA from Private Facility, the SLP, the OT, and the Elementary School assistant principal.¹¹¹ No general education teacher was in attendance.¹¹²
58. The IEP team discussed the recent evaluation by SSN Teacher as well as the assessment data recently received from Transfer District.¹¹³ The Parents provided a summary of Student's current abilities and needs, a summary of Student's assessment data, and a history of Student's education services to date.¹¹⁴ The staff who had worked with Student during the interim period reported on Student's progress, needs and abilities.¹¹⁵ The recording of the October 5 IEP meeting reveals that the IEP team engaged in an extensive and detailed discussion of Student's present levels of academic achievement and functional performance, and there was no dispute as to what Student's strengths, deficits or educational needs were.¹¹⁶ Similarly, the IEP team engaged in an extensive and detailed discussion, based upon the input of all the meeting participants, of Student's annual goals and objectives.¹¹⁷
59. The services set out in the October 5 IEP were essentially the same services in the Transfer IEP. Under "statement of types and anticipated location of services to be provided to and on behalf of student," the October 5 IEP provided as follows:

Instruction to be provided by both the Early Childhood Special Education Teacher no less than 12 hours a week of direct service delivery. A 1:1 para-professional to provide direct instruction for the remaining time with over-sight, program planning, supervision, collaboration and data collection by the ECSE. [Student] will have 1:1 para-professional for recess, lunch and specials (PE, Music, Art). Speech Language services to be provided both within the classroom environment and in a 1:1 setting in a therapy area. Occupational Therapy services will be provided within the classroom and in a 1:1 setting outside in a therapy area. COTA

¹⁰⁹ Interview with SSN Teacher; Ex. Z, p. 3.

¹¹⁰ Ex. 2; Interview with Mother.

¹¹¹ Ex. 18, p. 35.

¹¹² *Id.*

¹¹³ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 1.

¹¹⁴ Ex. 2.

¹¹⁵ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 1.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

may provide OT under the supervision of an occupational therapist. The BOCES BCBA & Autism Specialist will also support [Student's] programming. The BOCES Autism Specialist (who is also a BCBA) will provide training to District staff in the areas of pairing, reinforcement, manding, errorless learning, prompting & fading, compliance, error correction, natural environment, and shaping to ensure the competency of all service providers who work with [Student].¹¹⁸

60. The “educational environment” specified by the IEP was “separate class.”¹¹⁹ Specifically, the “recommended placement in the least restrictive environment (special education setting)” was “self contained center based class.”¹²⁰ “[Student] needs a self contained center based classroom to maximize [Student's] on task learning opportunities. Since [Student] requires multiple repetitions of information before mastery a small classroom environment provides the best opportunity for success to occur.”¹²¹
61. The separate class in which the BOCES proposed to implement the October 5 IEP was the SSN classroom.¹²²
62. The methodology specified by the October 5 IEP was ABA. “The classroom will utilize aspects of ABA programming and Natural Environment Teaching to support Student in meeting [Student's] goals.”¹²³ “Natural environment teaching” is a specific ABA technique through which a teacher provides instruction not simply in the classroom or in a direct instruction setting, but throughout the day in the student's natural environment, including lunch, recess or play.¹²⁴ Further, the reference in the IEP's Service Delivery Statement to “pairing, reinforcement, manding, errorless learning, prompting & fading, compliance, error correction, natural environment, and shaping” are references to specific ABA techniques.¹²⁵ During the IEP meeting, SSN Teacher described the program as an “ABA program specifically for [Student].”¹²⁶
63. In order to provide a BCBA to support Student's special education services, the BOCES contracted with Autism Specialist as its autism specialist/BCBA.¹²⁷ On October 1, 2010, Special Education Director notified Parents that Autism Specialist “will be conducting observations in our center-based program and supporting us as we provide a safe and healthy learning environment for [Student] and our other students with Autism. She will provide training and support in the area of curriculum as well as introduce new methods such as the

¹¹⁸ Ex. 18, p. 53.

¹¹⁹ Ex. 18, p. 54.

¹²⁰ Ex. 18, p. 53.

¹²¹ *Id.*

¹²² Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 1 at 02:12:00.

¹²³ Ex. 18, p. 50.

¹²⁴ Interview with Private Autism Teacher.

¹²⁵ *Id.*

¹²⁶ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 1 at 02:18:00.

¹²⁷ Ex. W.

STAR curriculum.”¹²⁸ STAR curriculum is an ABA-based curriculum, the use of which in schools is supported by research.¹²⁹

64. The October 5 IEP meeting included extensive discussion by the IEP team regarding the Student’s need for the services of a BCBA to support Student’s program by evaluating data taken by the SSN Teacher regarding Student’s compliance and progress and by providing or overseeing the provision of sufficient training to the paraprofessional staff working with Student to ensure competency with ABA instructional techniques.¹³⁰ During the discussion, the team was revising the language on the draft IEP that the IEP team had been working with, and after discussion with Mother, Special Education Director expressly agreed that the BOCES’ BCBA would provide extensive training to the staff working with Student, and would also provide support and training for Student’s staff and programming 2 hours per week.¹³¹ The team’s discussion contemplated that some staff (*e.g.*, those with no ABA experience) may require between 25 to 40 hours of training to become competent in ABA instructional techniques, whereas others with some ABA experience would require less; Special Education Director agreed that it would be the BCBA’s role to provide sufficient training to ensure the competency of staff, but that she could not commit to writing a specific amount of staff training in the IEP until the BOCES’ BCBA came in to observe Student’s program and staff, which would not occur for another week.¹³²
65. The October 5 IEP team also discussed an evaluation by Private Autism Teacher of Student and Student’s program in the SSN classroom. On October 4, 2010, Student was observed by Private Autism Teacher in the SSN classroom. Private Autism Teacher holds a master’s degree in early childhood special education and autism and a bachelor’s degree in special education with a concentration in communication disorders.¹³³ She is also a Board Certified Behavior Analyst (BCBA), which is a master’s degree related to behavior analysis and techniques for implementing ABA.¹³⁴ Private Autism Teacher has worked with Student since January 2010, when Student first began receiving services from Private Facility, of which Private Autism Teacher is the director.¹³⁵
66. Private Autism Teacher prepared a written report describing not only her observation of Student’s program in the SSN classroom, but also Student’s diagnosis, educational history including a review of Student’s evaluations and previous programming, and recommendations.¹³⁶ Private Autism Teacher presented her report and explained its findings to the October 5 IEP meeting.¹³⁷

¹²⁸ *Id.*

¹²⁹ Interview with Autism Specialist.

¹³⁰ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:04:00 to 00:11:00.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Interview with Private Autism Teacher.

¹³⁴ *Id.*

¹³⁵ *Id.*; Interview with Private Autism Teacher.

¹³⁶ Ex. 1.

¹³⁷ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:15:00 to 00:19:15.

67. During Private Autism’s observation, Student’s rate of compliance to stated directives was 37%.¹³⁸ This included directives by all staff, including SSN Teacher and paraprofessionals.¹³⁹ This rate of compliance is extremely low; Private Autism Teacher explained that a teacher should be looking to achieve at least 85% compliance, because at that level the research indicates that the child is learning.¹⁴⁰ Private Autism Teacher attributed the low level of compliance she observed to the “method in which Sds [stated directives] were delivered and a lack of errorless learning techniques and proper prompting procedure,” and observed that staff required specific training in the ABA techniques in order to implement Student’s IEP properly and provide Student with appropriate instruction.¹⁴¹
68. Private Autism Teacher explained that ABA, while appearing relatively simple, requires extensive and specific training and experience, because “it’s very easy to do it wrong, and using techniques improperly can actually achieve the opposite result from that you seek.”¹⁴² Private Autism Teacher observed the paraprofessionals to be confused about how to properly implement Student’s instruction, particularly given SSN Teacher’s use of multiple methodologies in her classroom.¹⁴³ Private Autism Teacher observed Student during recess, when Student was accompanied by a paraprofessional; the paraprofessional was apparently unfamiliar with “natural environment teaching” techniques and thus missed numerous opportunities to work on Student’s manding (requesting) during periods of play.¹⁴⁴ Private Autism Teacher opined that the SSN classroom had the potential to be a good placement for Student, but that the paraprofessionals were in critical need of training in ABA instructional techniques before they could serve Student effectively.¹⁴⁵
69. The SCO credits the education, training and experience of Private Autism Teacher, particularly given her familiarity with Student and Student’s needs, and finds that the paraprofessional staff in the SSN classroom, though undoubtedly well-meaning and eager to provide appropriate instruction, lacked sufficient training in ABA instructional techniques to appropriately implement the services in Student’s IEP. Indeed, the October 5 IEP essentially acknowledged as much; based upon the language in the Service Delivery Statement on the October 5 IEP, and upon Special Education Director’s representations at the October 5 IEP meeting, the SCO finds that the October 5 IEP required the Autism Specialist to train the paraprofessional staff to ensure competency in ABA techniques, and that such training and competency was required before the staff would work with Student.
70. Another problem Private Autism Teacher identified with the SSN classroom, at least with respect to its appropriateness for Student, was the population of the class. Specifically, the class did not contain age-appropriate peers for Student, in that Student was the only

¹³⁸ Ex. 1, p. 3.

¹³⁹ *Id.*

¹⁴⁰ Interview with Private Autism Teacher.

¹⁴¹ *Id.*; Ex. 1, p. 3.

¹⁴² Interview with Private Autism Teacher.

¹⁴³ *Id.*; Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:15:00 to 00:19:00.

¹⁴⁴ Interview with Private Autism Teacher; Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:15:00 to 00:19:00; Ex. 1.

¹⁴⁵ *Id.*

preschool student in it.¹⁴⁶ Further, with one exception, the other students in the class were not students with autism, nor did Student have appropriate opportunities to interact with typically developing peers.¹⁴⁷ Even Student’s recess time was with older students.¹⁴⁸ SSN Teacher confirmed this description, explaining that there was only one other full-time student in the class with Student, and that this student was not a student with autism.¹⁴⁹ SSN Teacher stated that other students, some with autism, others with other disabilities, came in and out of the classroom for “interventions.”¹⁵⁰ She described the instruction provided to the various students as individualized instruction, based upon each child’s IEP.¹⁵¹

71. Private Autism Teacher explained that it is not enough to place a student with autism, whose needs are as severe as Student’s, in a separate classroom with children with communication or developmental disorders, because the interventions appropriate to serve students with other disorders are so distinct from the services appropriate for students with autism.¹⁵² Autism interventions require rigorous training and knowledge of data collection and data analysis in order to be effective, and the interventions are not the same as for children with other disabilities.¹⁵³ Therefore, a child with needs like Student’s needs a separate classroom with the focus of the instruction being around what’s best for children with autism, because what works for students with global developmental delays or Down’s Syndrome or other disorders is not appropriate or effective for students with autism.¹⁵⁴
72. Private Autism Teacher observed that in Student’s placement in the SSN classroom, the class had peers that were not age-appropriate and that were doing entirely different things than Student.¹⁵⁵ Private Autism Teacher described it as “a catch-all.” On the day that she observed, there was one student in the class with only physical disabilities, and others that appeared to be in 1st or 2nd grade. One of the 1st grade students who came into the room for special intervention work was a student with autism, but his characteristics and abilities were completely different than Student’s, requiring entirely different interventions.¹⁵⁶
73. Further, Private Autism Teacher explained the significance of having age-appropriate peers, including typically developing peers, to interact with a preschool student with autism. Preschoolers engage in very different school activities than students even just a year or two older. Whereas preschoolers should be engaging in play-based activities such as songs and games, by 1st grade, students are sitting at a table and working on more concrete skills such as using money – activities that are not at all “preschool-like.”¹⁵⁷

¹⁴⁶ Interview with Private Autism Teacher;

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Interview with SSN Teacher.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Interview with Private Autism Teacher.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

74. At the end of the October 5 IEP meeting, Parents felt that the placement offered by the BOCES was insufficient to implement the October 5 IEP and would not allow Student to achieve the IEP goals. Accordingly, they announced to the IEP team that they were rejecting the October 5 IEP because it wasn't appropriate at that time.¹⁵⁸ The Parents noted that the BOCES was in the process of developing a program that might be appropriate at some point in the future, but that at that point, on October 5, the level of training required by the paraprofessionals, the fact that the consultation with Autism Specialist was not scheduled to commence for at least another week, and the fact that the curriculum to be implemented by the Autism Specialist took approximately 3 months to put in place (according to the curriculum developers), meant that it would be at least January 2011 before the elements required by the October 5 IEP would be in place in the BOCES.¹⁵⁹ The Parents stated that they believed that the BOCES had great staff and that once the training and proposed curriculum was in place, the BOCES program would be appropriate for Student.¹⁶⁰
75. The Parents requested that the BOCES provide Student with one of the following educational options until the training and curriculum implementation could be put in place: 1) a home-bound tutor from Private Facility for Student paid for by the BOCES until the Autism Specialist could come in and implement the STAR curriculum in the BOCES; or 2) a private placement at the Joshua School in Denver, paid for by the BOCES. In the alternative, Parents stated that they would pull Student from school, place Student unilaterally in Private Facility, and seek reimbursement.¹⁶¹
76. Special Education Director responded that she would convey the Parents' rejection of the current offer of placement and their request for alternative services or reimbursement to other officials in the BOCES and that they would contact Parents.¹⁶²
77. There is no evidence that anyone ever contacted the Parents to respond to their request, nor did the BOCES provide a written response such as a Prior Written Notice relating to the Parents' request for private services pending the BOCES' implementation of the training and curriculum development contemplated by the IEP, nor were these requests addressed in the Prior Written Notice section of the October 5 IEP.¹⁶³
78. Student did not attend school in the BOCES from October 5, 2010 through December 6, 2010, except for 4 days in mid-October.¹⁶⁴ During that time period, Student received services from Private Facility.¹⁶⁵ Private Facility provided services both in its center and in Student's home.¹⁶⁶ At Private Facility, Student received ABA services designed to develop the same skills as those targeted on Student's IEPs, including speech and communication,

¹⁵⁸ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:25:00.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*, 00:25:00 to 00:26:30.

¹⁶² *Id.* at 00:26:35.

¹⁶³ Ex. 20C, p. 81; Ex. 18, p. 55.

¹⁶⁴ Ex. 10; Ex. 20A, p. 71; Interview with SSN Teacher.

¹⁶⁵ Interview with Mother; Interview with Private Autism Teacher; Ex. 5, p. 5.

¹⁶⁶ Interview with Mother; Interview with Private Autism Teacher.

counting, identifying colors and shapes, social interaction, identifying pictures, manding (requesting) and toileting.¹⁶⁷

Student's Placement from October 5 through December 13, 2010

79. The reason Student attended for 4 days in October was so that the BOCES could bring in outside, independent evaluators (*i.e.*, someone other than Private Autism Teacher, who Special Education Teacher believed to have an interest in the outcome of the evaluation) to observe Student in the SSN classroom.¹⁶⁸ Parents agreed to this request and brought Student to school on October 15, 18, 19 and 20.¹⁶⁹ The evaluation was conducted on October 20, 2010 by Independent Evaluators, a BCBA and an ECSE.¹⁷⁰ A substantive discussion of the findings of the Independent Evaluators is contained *infra*.

80. On November 12, 2010, Autism Specialist provided a full-day training session to BOCES staff on the topic of Autism.¹⁷¹ The agenda was as follows:

- Facts about Autism, the Diagnosis and Differential Diagnosis (1 hr. 45 min.)
- Characteristics that interfere with learning/classroom accommodations (1 hr. 45 min.)
- Methodology (1 hr.)
- ABA in the classroom (1 hr. 30 min.)¹⁷²

The following BOCES staff attended this training were OT, SLP, SSN Teacher, Special Education Teacher, Special Education Director, and the paraprofessionals.¹⁷³

81. After November 12, 2010 and through December 13, 2010, the Autism Specialist did not provide training to the paraprofessional staff, or take steps to implement the STAR curriculum.¹⁷⁴

82. At some point in early December 2010, Mother approached the BOCES about having Student attend school in the BOCES again for 4 days per week.¹⁷⁵ Student attended school and received services in the SSN classroom December 6, 8, 9, 10 and 13.¹⁷⁶

83. On December 13, 2010, Parents filed this state complaint.

¹⁶⁷ Interview with Private Autism Teacher; Ex. 18, pp. 40-49.

¹⁶⁸ Ex. 6, Audio recording of 10-5-10 IEP mtg., Pt. 2 at 00:27:10; Interview with Special Education Director.

¹⁶⁹ Ex. 20C, p. 65.

¹⁷⁰ Ex. 10.

¹⁷¹ Ex. 19, p. 22-24.

¹⁷² *Id.*

¹⁷³ *Id.*, p. 22; Interview with Autism Specialist.

¹⁷⁴ Interview with Autism Specialist.

¹⁷⁵ Interview with Mother; Ex. 20A, pp. 71.

¹⁷⁶ *Id.*

Evaluations of Student and the SSN Classroom After October 5, 2010

84. As noted above, on October 20, 2010, Independent Evaluators did an evaluation/observation of Student in the SSN classroom. Independent Evaluators observed Student working with SSN Teacher for approximately 45 minutes, then talked to SSN Teacher about Student's programming before going across the street to observe the typical preschool classroom (without Student in it).¹⁷⁷ Independent Evaluators then went back to the SSN classroom to complete their observation of Student and Student's program, review documentation and evaluations, and ask questions of SSN Teacher.¹⁷⁸
85. The findings of the Independent Evaluators, as reflected in their evaluation report, were largely consistent with Private Autism Teacher's opinion that Student should not be educated entirely in a separate, non-preschool classroom (such as the SSN classroom) without access to typically developing or age appropriate (*i.e.*, preschool-aged) peers. For example, Independent Evaluators noted that other students in the SSN classroom "appeared older than [Student]," and that Student should be served in a typical preschool setting that "offers [Student] the opportunity to learn and apply social skills in the typical preschool environment."¹⁷⁹ The Independent Evaluators did not recommend that Student be provided an

entire inclusive [*i.e.*, general education] program as [Student] does need some skills to be pre-taught in a 1:1 environment, but we recommend these teaching sessions occur in short (approx. 10-15 mins) session throughout [Student's] day at the pre-school. The preschool building will allow for a separate area for this teaching which will not require any disruptive or unnecessary transitions. Some of the social teaching sessions can involve a typical peer (such as taking turns, playing a game) and [SSN Teacher] can structure these activities during regular preschool activities, such as centers, or free play.¹⁸⁰

The Independent Evaluators did not offer any opinions regarding the competency of staff in the SSN classroom or discuss the issue of staff training or curriculum development.¹⁸¹

86. The Independent Evaluators' recommendations differed from those of Private Autism Teacher to the extent that Private Autism Teacher disagrees that Student can benefit from receiving significant instruction in the general education preschool setting.¹⁸² Private Autism Teacher, who has worked with Student for over a year and who has personal knowledge of what Student needs and what interventions Student responds to, stated that it would not be beneficial right now to Student to receive the majority of Student's services in a general

¹⁷⁷ *Id.*; Interview with SSN Teacher.

¹⁷⁸ *Id.*

¹⁷⁹ Ex. 10, p. 2.

¹⁸⁰ Ex. 10, pp. 2-3.

¹⁸¹ Ex. 10.

¹⁸² Interview with Private Autism Teacher.

education preschool setting, because Student is barely able to attend in a group of only 2 or 3 – “[Student] would be lost in a group bigger than that.”¹⁸³

87. Another evaluation of Student’s program was conducted by Autism Specialist on December 13, 2010.¹⁸⁴ (The evaluation report was provided to the BOCES in January 2011.) Except for the training Autism Specialist provided in the BOCES on November 12, 2010, this appears to be the first time Autism Specialist consulted with the BOCES or SSN Teacher regarding Student or Student’s program.
88. Autism Specialist concurred with both Private Autism Teacher and Independent Evaluators in finding that the SSN classroom was not in the placement that was appropriate for Student:

[Student] would be better served in the preschool in order to offer LRE. It is especially prudent at [Student’s] developmental age to allow [Student] access to typical peers. We feel [Student] has potential to learn to communicate with peers and with the proper programming in that placement, be best served. We feel having [Student] in the special education classroom would not be optimal as there was only one peer in the classroom who appeared to have moderate speech delays. [SSN Teacher] was in full agreement with this recommendation.

We feel [Student’s] intervention should occur in a small room in the preschool, using discrete trial methodology for those targets that will provide the foundation for social interaction and later social language. [Student] also needs to be taught basic receptive and expressive skills using this methodology. Because [Student] was very responsive to Pivotal Response Training [a training method derived from ABA] we suspect that [Student’s] response pattern would increase if [Student] was able to interact with typical or less affected peers.¹⁸⁵

89. Thus, all three evaluators that observed Student in the SSN classroom after the development of the October 5 IEP found that it was not the appropriate placement for Student, and that Student should be served in the preschool setting with access to typically developing (or “less affected”), age appropriate peers.¹⁸⁶ Indeed, according to Autism Specialist’s evaluation report, even SSN Teacher believes that Student should be served in a setting other than the SSN classroom.¹⁸⁷

¹⁸³ *Id.*

¹⁸⁴ Ex. 11.

¹⁸⁵ *Id.*

¹⁸⁶ Compare Ex. 1, Ex. 10 and Ex. 11.

¹⁸⁷ Ex. 11.

90. Notwithstanding the difference of opinion regarding the amount of instruction Student should receive in a general education classroom, there is no dispute among the evaluators that Student should be served in a preschool setting with some access to typically developing peers. The SCO finds that the BOCES' placement of Student in the SSN classroom, located in the elementary school and which does not provide Student with access to typically developing, age-appropriate preschool peers, does not comport with the recommendations of any of the evaluators.

Student's Services at Private Facility

91. As noted above, from August 16, 2010, Student has received services at Private Facility that were appropriate to target the same skills that are targeted in Student's IEPs. Student's tuition at Private Facility has been \$1,440.00 per week for 20-24 hours of direct 1:1 ABA services.¹⁸⁸ Student's services are subject to a contract under which Parents must provide advance notice to Private Facility if Student is to be withdrawn.¹⁸⁹ Student's tuition is not "fee for service," and is not reduced if Student happens to attend a half-day (or not at all).¹⁹⁰ Rather, the options for attending Private Facility are either full-time over a 180 day school year (for \$1440 per week), or half-time over a 180 day school year (for \$720) per week.¹⁹¹

92. Parents paid full tuition for Student through December 3, 2010.¹⁹² On December 6, 2010, when Parents returned Student to attend school in the BOCES 3 days per week, Parents and Private Facility entered into a new arrangement through which Student receives 12-18 hours of service for \$720.00 per week.¹⁹³

93. Parents also incurred the expense of transporting Student to and from the Private Facility, which is 18.26 miles away from where Student lives.

94. Private Facility spreads its services out over a full 7 day week, including Saturdays and Sundays.¹⁹⁴

95. The District's schools are in session 4 days per week during the school year.¹⁹⁵ Most weeks, school is not in session on Friday, except in certain cases when school is closed earlier in the week because of a holiday.¹⁹⁶

96. Exhibit 22 includes a list of the days that Student attended Private Facility from August through December 2010. The SCO has cross-referenced that list with the District's 2010-2011 school calendar. Of the 68 days that Student attended Private Facility during the

¹⁸⁸ Ex. 5; Ex. 22.

¹⁸⁹ Ex. 22.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Ex. 5.

¹⁹⁴ Ex. 22.

¹⁹⁵ Ex. 23.

¹⁹⁶ *Id.*

relevant time period, 27 days were days that school was not in session in the District because it was either a Friday or a Saturday or a holiday.¹⁹⁷

97. Throughout the time Student has been enrolled in Private Facility, Student has not received OT or speech-language services except for those provided by the BOCES during the very limited time Student attended school there.¹⁹⁸

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact (FF), the SCO makes the following conclusions of law:

Allegation 1: On or after July 6, 2010, the BOCES failed to appropriately implement Student's in-state transfer IEP, which was developed by the Transfer District on May 27, 2010.

1. The IDEA provides that when a student with an IEP transfers to another school district within the same state, the receiving school district must implement the student's existing IEP or develop a new IEP for the student, consistent with the procedural requirements governing the development of IEPs. "If a child with a disability (who had a disability that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency either adopts the child's IEP from the previous public agency or develops, adopts and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324." 34 C.F.R. § 300.323(e).
2. On July 6, 2010, Student enrolled in the District with an existing IEP from Transfer District. (FF 6, 8, 12.) The BOCES had known for over a month that Student was a preschool student with autism who would be transferring in the BOCES in early July 2010 and that Student had an existing IEP developed by Transfer District, and in fact had met with Parents on May 24, 2010, to discuss the BOCES' implementation of the Transfer IEP. (FF 7-10.) By the time of Student's enrollment, Parents had provided the BOCES with a copy of Student's Transfer IEP on at least two occasions, both well before Student enrolled in the District. (*Id.*)
3. The BOCES argues that it was not obligated to implement the Transfer IEP because Student transferred to the BOCES in between school years, and that the IDEA only requires a receiving district to implement a transfer student's IEP when the student transfers in the same school year.
4. The BOCES argument would be relevant if the BOCES had ever communicated to the Parents during the summer of 2010 that it was rejecting the Transfer IEP or that it would not provide services to Student because it wished to develop its own IEP. The BOCES did neither. In meetings with the Parents on May 24, 2010 and July 28, 2010, the BOCES unequivocally communicated to the Parents its intention to adopt and implement the Transfer IEP; the

¹⁹⁷ Ex. 22; Ex. 23.

¹⁹⁸ Complaint; Interview with Mother.

discussion was not *whether* the Transfer IEP would be implemented, but *how*. (FF 9, 14.) Accordingly, based upon its representations to Parents and its failure to timely convene an IEP meeting to develop its own IEP, the BOCES was obligated to implement the Transfer IEP or at least provide services comparable to those provided by the Transfer IEP.

5. Implementing the Transfer IEP required the BOCES to provide Student with ESY services until the academic school year started. (FF 8.) Almost a month in advance of Student's enrollment in the BOCES, Parents provided the BOCES with information regarding the specific ESY services Student was receiving during the summer break between the 2009-2010 and 2010-2011 school years. (FF 8, 10.) The BOCES never offered or otherwise made ESY services available to Student prior to the start of the 2010-2011 school year and thus failed to implement the Transfer IEP with respect to ESY services during the summer of 2010. (FF 19, 29.) Based upon the BOCES' knowledge of Student's need for services without more than a 2 week gap in interventions, the BOCES should have started implementing the Transfer IEP by providing ESY to Student after Special Education Director observed the program at Private Facility on July 29, 2010, or by August 2, 2010, at the latest. In failing to do so, the BOCES denied the Student a FAPE.
6. The BOCES also failed to implement the Transfer IEP after the start of the 2010-2011 school year. As discussed *infra*, the BOCES did not have any IEP or offer of services in place for Student at the start of the school year (*i.e.*, August 23, 2010); it did not convene an IEP at which an actual offer of placement was made until September 1, 2010 (but under which services did not commence until September 13). (FF 28, 33-51.)
7. Further, as part of the transfer process, "[t]he new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and other records relating to the provision of special education or related services to the child, from the previous agency in which the child was enrolled." 34 C.F.R. § 300.323(g)(1). In this case, the BOCES Special Education director declined the Parents' offer to provide copies of Student's evaluations and other educational records at the July 28 IEP meeting, and then failed to take steps to make sure that the records were timely requested from Transfer District. The District did not request Student's educational records from Transfer District until September 1, which under the circumstances, was an unreasonable delay, given the Parents' diligence in attempting to work with the BOCES to effect a smooth transition and the fact that Student's age and disability render Student particularly vulnerable to gaps in service. (FF 55.)
8. Finally, the interim placement offered by the BOCES in September 2010 to implement the Transfer IEP was not comparable to that required by the Transfer IEP. The Transfer IEP called for Student to be placed full-time in a self-contained, center-based preschool classroom to receive ABA services from trained professionals. (FF 52.) The placement offered by the BOCES was afternoons in the SSN classroom (a separate classroom serving only students with disabilities) and mornings in the regular education preschool classroom, a distinct difference from the services called for by the Transfer IEP. (*Id.*) Accordingly, the "interim" services offered to Student were not appropriate to implement Student's Transfer IEP and therefore denied Student a FAPE.

Allegation 2: Or on after July 6, 2010, the BOCES failed to develop or offer an individualized educational placement for Student, including failing to have a program in place for Student at the beginning of the 2010-2011 school year.

9. The IDEA requires each public agency or school district to have an IEP in effect for each child with a disability within its jurisdiction at the beginning of each school year. 34 C.F.R. § 300.323(a).
10. At the August 10 IEP meeting, the BOCES agreed to implement the Transfer IEP, but then concluded the meeting without identifying a placement in which it could be implemented. (FF 28.) The BOCES claims that Special Education Director offered to implement the IEP at the District's center-based program, but at that point, the center-based program did not exist. Further, the audio recording of the meeting reveals that Special Education Director did not definitively offer to implement the Transfer IEP in what was to become the SSN classroom, but rather left the question open after the team discussed the possibility of placing Student at Private Facility and Special Education Director stated that she would check with CDE about the viability of that option. (FF 27.) Thus, at the August 10 IEP meeting, the question of a specific placement to implement the IEP, including the possibility of a placement in Private Facility, was left unresolved. (FF 28.)
11. Moreover, to the extent that the BOCES was under the impression that the August 10 IEP made a definite offer of a placement that perhaps did not exist at the moment, but would on the first day of school, the Parents' letter of August 13 put the BOCES on notice that the Parents believed that no offer of placement had been made for Student. (FF 29.) Rather than immediately respond to clarify that a teacher had been hired and a classroom had been identified to serve Student, the BOCES waited until after school started to notify Parents (via a letter from the BOCES counsel) that an "IEP had been developed" and that personnel were available to serve Student. (FF 33.) The SCO notes that even the August 24 letter from the BOCES counsel did little to clarify the Parents' confusion about Student's placement. It stated that an IEP had been developed, but in fact, the BOCES had agreed to implement an existing IEP. Further, it provided Parents with no specific information about the placement. (FF 33.)
12. Accordingly, the BOCES failed to have an IEP in place for Student at the beginning of the 2010-2011 school year, denying Student a FAPE.

Allegation 3: The BOCES failed to have appropriate individuals in attendance at Student’s IEP meeting on August 10, 2010, September 1, 2010, and October 5, 2010, resulting in the denial of educational benefit to Student.

Allegation 4: On or after July 6, 2010, the BOCES failed to offer Student an IEP that was reasonably calculated to allow Student to receive educational benefit in the least restrictive environment.

13. In the seminal case of *Board of Education v. Rowley*, the United States Supreme Court established a two-pronged analysis for determining whether an IEP has offered a FAPE. 458 U.S. 176 (1982). The first part of the analysis looks to whether the IEP development process complied with the IDEA’s procedures; the second looks to whether the resulting IEP was reasonably calculated to confer some educational benefit upon the child. *Id.* at 207; *see also Thompson R2-J School Dist. V. Luke P.*, 540 F.3d 1143, 1148 (10th Cir. 2008).
14. Under the first “prong” of *Rowley*, the analysis looks to whether the IEP was developed according to the IDEA’s procedures. In this case, it is clear that they were not. Specifically, though the Act includes among the required IEP team members at least one “regular education teacher of the child (if the child is, or may be, participating in the regular education environment),” no general education teacher participated in either the August 10, September 1 or October 5 IEP meetings. 34 C.F.R. § 300.321(a)(2).
15. As to the August 10 IEP meeting, the BOCES appears to concede the point with its statement that Special Education Director “cannot recall why there wasn’t [a general education teacher] at the August [10 IEP] meeting.” (BOCES Reply, p. 6.) The SCO finds no violation related to the licensure/certification of Special Education Teacher who attended the August 10 IEP meeting. In any event, the SCO has already found that the BOCES denied Student a FAPE through and including the August 10 IEP meeting.
16. As to the September 1 and October 5 IEP meetings, the BOCES argues that “since [Mother] had indicated that she would refuse to consider having [Student] ‘cross the road’ to transition from the general preschool class to the afternoon self-contained classroom (which included two other students with autism), it made little sense to [Special Education Teacher] to require [a general education] teacher to attend these IEP meetings.” (BOCES Reply, p. 6.) The BOCES also described this requirement of having a general education teacher at the IEP meetings as a “minor technicality.” (*Id.*) Essentially, the BOCES’ argument is that the IDEA requires a general education teacher to participate in the development of the IEP only “if the child is, or may be, participating in the regular education environment,” and that in this case, Parents’ objection precluded that possibility, such that the BOCES was excused from complying with the IDEA’s procedural requirements.
17. The SCO disagrees. First, the option of having student spend part of the day in the general preschool class and then cross the road to spend the remainder of the day in the self-contained classroom (which was across the road in the elementary school building) was not presented to Parents until the September 1 IEP meeting. (FF 45.) Therefore, the Parents’ objection to having

the student cross the road could not have been communicated to the BOCES in advance of the September 1 IEP meeting and cannot serve as a basis for failing to invite or include a general education teacher in the IEP process.

18. Second, the law is clear that whatever opinions or positions asserted by parents in an IEP meeting, the obligation to develop an appropriate IEP and offer a student a FAPE lies with the public agency (or the state), not the parents. 34 C.F.R. §§ 300.101, 300.200. The fact that parents might object to a particular placement does excuse a school district from offering it, if the placement constitutes a FAPE. Where the BOCES was in fact offering to implement Student's Transfer IEP by serving Student 30% of the day in the general education setting, it was unquestionably obligated to include a general education teacher in the September 1 IEP meeting.
19. Therefore, the BOCES violated the IDEA's procedural requirements by failing to include a general education teacher in the IEP meetings on August 10, September 1 and October 5.
20. Under the *Rowley* analysis, the question is now whether the procedural violations in developing the IDEA resulted in substantive educational harm to the child. *E.g., Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). In this case, the SCO has already determined that the BOCES denied the Student a FAPE throughout August and September 2010, such that there is no need to revisit whether the Student was denied a FAPE through its procedural violations at the August 10 and September 1 IEP meetings. Rather, the SCO will focus on the October 5 IEP.
21. Regarding the substantive appropriateness of the October 5 IEP, the dispute between the parties stems less from the content of the IEP and more from the BOCES' ability to implement the IEP as written. There does not appear to be any dispute regarding the appropriateness of goals and objectives in the IEP, for example. (FF 58.) The BOCES included the bulk of the language requested by the Parents with regard to methodology (ABA), the need for staff training, and the need for oversight and support of Student's program by a BCBA. (FF 59, 64.)
22. The only programmatic or placement issue requested by the parents relates to the population of the classroom and Student's access to age-appropriate peers: Parents believed the IEP should specifically designate a center-based preschool autism classroom as Student's placement, but the BOCES declined to be so specific, instead writing in the IEP that Student be educated in a "center based classroom," which could include the SSN classroom. (FF 60.) In the SSN classroom, however, Student had little interaction with typically-developing peers, and none with those of Student's own age. (FF 38, 70.)
23. In this case, however, that slight distinction makes a difference. The IDEA's "least restrictive environment" requirement provides that students with disabilities be educated with children who are nondisabled to the maximum extent appropriate. 34 C.F.R. § 300.114(a); *see also, L.B. v. Nebo Sch. Dist. et al*, 379 F.3d 966 (10th Cir. 2004)(school district's placement for student with autism violated LRE by offering to serve student in a restrictive setting without appropriate role models or opportunities to meet behavioral and social goals, instead of more mainstream setting sought by Parent). In *Nebo*, the Tenth Circuit adopted the LRE test set out by the Court of Appeals for the Fifth Circuit in *Daniel R.R. v. Board of Education*, 874 F.2d 1036 (5th Cir. 1989),

which looks to (1) whether education in a regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily; and 2) if not, whether the school district has mainstreamed the child to the maximum extent appropriate. *Nebo, supra* at 976, citing *Daniel R.R., supra*. As the *Nebo* court noted, “the LRE requirement is a specific statutory mandate. It is not ... a question about educational methodology.” *Nebo, supra* at 976.

24. At the October 5 IEP meeting, Private Autism Teacher provided the IEP team with her assessment of Student’s program in the SSN classroom, including the fact that Student did not have opportunities to interact with age-appropriate peers whose behavior and communication Student could model. (FF 69-72.) Private Autism Teacher’s assessment was consistent with those offered by Independent Evaluators and Autism Specialist with respect to the LRE question. Independent Evaluators noted that Student should have greater opportunities to “learn and apply social skills in the typical preschool environment,” and Autism Specialist stated that “[Student] would be better served in the preschool in order to offer LRE,” and that “having [Student] in the special education classroom would not be optimal as there was only one peer in the classroom who appeared to have moderate speech delays.” (FF 83.)
25. The BOCES argues that Parents would never have been willing to consider allowing Student to “cross the road,” such that their efforts to mainstream Student were for naught. As a result, the BOCES asserts that the presence of a general education teacher in the October 5 IEP meeting was irrelevant.
26. The SCO disagrees. First, to characterize the Parents’ objection to the general preschool classroom as a mere unwillingness to have Student cross the street to receive services is a gross over-simplification of the Parents’ position. Based upon a thorough review of the correspondence between the parties, as well as careful and repeated listenings to the audio recordings of the IEP meetings, the SCO finds that the Parents have been more concerned with the BOCES’ failure to properly train staff or implement the methodology required by the IEP. Second, their concerns about the BOCES’ offer to “mainstream” Student have been less about the location of the preschool classroom and more about the fact that the BOCES’ concept of mainstreaming – placing Student in a general education preschool class with paraprofessional support – had already been tried and failed. (FF 48.)
27. More fundamentally, numerous goals in the October 5 IEP cannot be implemented in the placement offered by the BOCES. For example, Goal 5 requires Student to participate in classroom activities, as measured by the following objectives:
 - a. Sitting, attending and participating in “circle time activities with up to 5 students to include stories and songs for 15 minutes with less than 5 visual or verbal cues”
 - b. Transitioning between activities upon hearing whole group instruction in 4 out of 5 opportunities over 3 consecutive sessions.¹⁹⁹

But given that the placement offered by the BOCES, *i.e.*, the SSN classroom, contains only 1 other full-time student and no other preschool students, there are no “circle time activities with

¹⁹⁹ Ex. 18, p. 44.

up to 5 students to include stories and songs for 15 minutes” available in the environment to meet the stated goal. (FF 38.) Similarly, SSN Teacher confirmed that students in the SSN classroom receive individualized instruction, not group instruction, such that there are no group instruction opportunities through which Student could demonstrate achievement of transitioning between activities.

28. The SCO finds that a regular education teacher might have had insights or perspectives to aid in the development of the IEP, particularly where Student had received services in the general education setting in the past (including from the BOCES) and the Student’s IEP goals specifically contemplated interaction with age-appropriate peers. Had the BOCES had a general education teacher present at the October 5 IEP meeting – particularly a general education preschool teacher – that general education teacher could have suggested alternative ways to craft Student’s program to provide opportunities for Student to interact with age-appropriate or typically developing peers, and thereby meet (or work towards) specific IEP goals based upon such interaction. Instead, the BOCES hamstrung the process by failing to include a general education teacher or to consider ways to provide Student with appropriate opportunities to interact and learn from age-appropriate or typically developing peers. As a result, the BOCES wrote an IEP that it could not implement and placed Student in a restrictive, isolating setting which violated the Student’s right to be educated in the least restrictive environment.
29. For these reasons, in failing to include a regular education teacher in the October 5 IEP meeting, the BOCES committed a procedural violations of IDEA that resulted in substantive educational harm and a denial of a FAPE to Student.
30. The BOCES also denied Student a FAPE in that the October 5 IEP required a level of competency in ABA instructional techniques by the paraprofessionals that the paraprofessionals did not have. (FF 59, 68.) Though the BOCES committed via the IEP process to providing that training to its paraprofessional staff that would be serving Student, on October 5, 2010, the paraprofessionals were insufficiently familiar or competent with the instructional methods required by the IEP, such that the IEP could not be implemented immediately. (FF 59, 68, 69.)

Allegation 5: On or after September 1, 2010, the BOCES failed to provide Student’s parents with appropriate Prior Written Notice relating to its refusal to adopt the Transfer District’s IEP.

Allegation 6: On or after the IEP meetings on August 10, 2010, September 1, 2010 and October 5, 2010, the BOCES failed to provide Student’s parents with appropriate Prior Written Notice relating to its refusal either to fund Student’s private program at Private Facility or offer a specific, identified placement in which it would serve Student.

31. The IDEA requires that a public agency provide prior written notice (“PWN”) to the parents of a child with a disability a reasonable time before the public agency proposes or refuses “to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a)(1)-(2). The notice must include:

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

34 C.F.R. § 300.503(b).

32. The rejection of the Transfer IEP on September 1 was a proposal to change the identification, evaluation, or educational placement of the child, triggering the PWN requirement. *Id.* At the September 1 IEP meeting, at which the BOCES announced it was rejecting the Transfer IEP after communicating to the Parents that it would be accepted, the BOCES provided the Parents with no Prior Written Notice explaining its change of position, and thereby violated the procedural requirements of the IDEA.
33. At the August 10 IEP meeting, Parents requested that the BOCES fund Student's private services at Private Facility. (FF 26.) The Parents then wrote to the BOCES on August 13, 2010, putting the BOCES on notice that they would be placing Student in Private Facility on August 16 and seeking reimbursement from the BOCES.
34. After the August 10 IEP meeting, the BOCES did not provide Parents with PWN relating to its refusal to place Student in Private Facility.
35. The BOCES' counsel responded to Parents' August 13 letter by stating that the BOCES was refusing to provide or reimburse the Parents for their private placement because Private Facility was not licensed by CDE. While the letter from counsel contained elements (1) and (2) of the regulatory requirements cited above, it contained none of the remaining 5 elements. (FF 33.) Accordingly, the BOCES failed to provide PWN relating to its refusal to fund Student's placement at Private Facility after August 16, 2010.
36. At the September 1 IEP meeting, the Parents did not specifically request that the BOCES fund Student's placement in Private Facility. Accordingly, no PWN was required as to that issue on September 1.
37. At the October 5 IEP meeting, the Parents requested that the BOCES pay for Student's services at Private Facility pending the provision of staff training and curriculum development required to implement the IEP. This was a request to change the Student's placement that required the BOCES to respond by providing a PWN. 34 C.F.R. 300.503(a). The BOCES provided no PWN in response to this request, and thus violated the requirements of the IDEA. (FF 77.)

Allegation 7: On or after July 6, 2010, the BOCES predetermined Student's placement by refusing to make placement decisions based upon Student's individual needs and abilities, but rather based upon the services available in the BOCES.

38. In the development of IEPs, school districts are required to consider parental suggestions and requests and to the extent appropriate, to incorporate them into the IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692, 107 (10th Cir. 1998). Predetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when the agency presents one placement option at the IEP meeting and is unwilling to consider others. (*see Ms. S. ex. rel. G. v. Vashon Island School Dist.*, "A district may not enter an IEP meeting with a 'take it or leave it' position." 337 F.3d 1115, 1131 (9th Cir. 2003).
39. The Parents allege that the BOCES predetermined Student's placement, and thereby violated their rights under the IDEA, by insisting upon serving Student in the SSN classroom, even though that placement was inappropriate for Student. As explained above, the SCO agrees that the BOCES offered Student a placement was inappropriate and that did not provide Student with a FAPE in the LRE. However, the SCO finds insufficient evidence to conclude that the BOCES staff predetermined Student's placement as that term has been interpreted by the federal courts.

REMEDIES

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

- a) Implementation of a transfer IEP, 34 C.F.R. § 300.323(e);
- b) Having an IEP in place at the beginning of the school year, 34 C.F.R. § 300.323(a);
- c) Providing FAPE by offering services consistent with an IEP;
- d) Include a general education teacher in the IEP meeting, 34 C.F.R. § 300.321(a)(2);
- e) Prior written notice, 34 C.F.R. § 300.503;

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

1) Reimbursement for denial of FAPE:

The SCO has concluded that throughout the time period covered by the state complaint, Student was denied a FAPE. As a result, the SCO concludes that Parents are entitled to recover the tuition and related costs associated with placing Student in Private Facility. 20 U.S.C. 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c) (public agencies may be required to reimburse parents for costs of privately placement for student with disability if the public agency has not made FAPE available to the child in a timely manner). Parents are entitled to reimbursement for ESY services that the BOCES failed to provide from August 2 through August 22 (the first day of school), at a rate of half the full tuition cost, because Student only received half-day services during the ESY time period. Following the first day of school on August 23, 2010, Parents are entitled to full reimbursement for the tuition they paid through December 11, 2010 (the last day Student attended Private Facility during the relevant time period).

The SCO also awards reimbursement to Parents for the costs associated with transporting Student to and from Private Facility on 41 days during the relevant time period. The SCO does not award mileage reimbursement for transporting Student to and from Private Facility on days that school was not in session in the District, *i.e.*, 27 of the 68 days Student attended Private Facility. The SCO has used the mileage reimbursement rate used by the State of Colorado, or 45 cents (\$ 0.45) per mile. *See*, C.R.S. § 24-9-104.

Finally, the SCO awards compensatory OT and speech therapy services, based upon the Student's lack of access to those services while [Student] was placed in Private Facility.

Accordingly, the SCO awards reimbursement to Parents as follows:

- a. By **03/14/2011**, the District/BOCES must reimburse the Parents **\$25,153.80** for the tuition and costs related to Student's services at Private Facility from August 2, 2010 through December 13, 2010, calculated as follows:
 - i. Half-day tuition from August 2, 2010 through August 22, 2010 (ESY services), or 3 weeks of service at \$720 per week = \$2,160.00
 - ii. Full tuition from August 23 through December 10, 2010, or 15 weeks at \$1,440 per week = \$21,600.00;
 - iii. Half tuition from December 6 through December 10, 2010, or 1 week at \$720.00 per week = \$720.00;
 - iv. Mileage reimbursement for transportation to and from Private Facility, or 36.52 miles on 41 days at \$ 0.45 per mile = \$673.80
 - b. Within **3 business days** of providing Parents with the reimbursement required above, the District/BOCES must provide the Department with written proof of payment.
- 2) Compensatory education for denial of FAPE:
- a. **4 hours** of occupational therapy services, to be provided by **05/27/2011**;
 - b. **10 hours** of speech therapy services, to be provided by **05/27/2011**;
 - c. Within **3 business days** of completing the requirement to provide Student with the compensatory services detailed above, the District/BOCES must provide the Department with written evidence of same, including service logs, therapy notes, or similar documentation.
- 3) By **03/14/2011**, the District/BOCES 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 **04/01/2011**.
 - b. Conduct effective staff training of all District staff working with children with a disability, (including each person whom the District/BOCES uses or intends to use as a special education director designee), concerning the policies and procedures to be provided no later than **05/27/2011**.

- c. 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) and provided to the Department no later than **06/03/2011**.
- 4) By **03/21/2011**, the District/BOCES must submit to the Department evidence that it has:
- a. Provided the paraprofessional training required by the October 5 IEP;
 - b. Provided the BCBA support for Student's educational program, as required by the October 5 IEP.

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

CONCLUSION

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

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

Dated this 10th day of February, 2011.

Wendy J. Armstrong, Esq.
State Complaints Officer

APPENDIX A - Record

**Parents' Complaint
Complaint Exhibits:**

A – Transfer IEP

- B – Email from Private Autism Teacher to BOCES
- C – 6/16/2010 Email from Parents to BOCES
- D – 6/29/2010 Email from Private Autism Teacher to Parents
- E – 8/13/2010 Email from Parents to BOCES
- F – 7/12/2010 Email exchange between Parents and BOCES
- G – 7/21/2010 Email from Parents to BOCES
- H – 7/28/2010 Email from BOCES to Parents
- I – 8/3/2010 Notice of Meeting
- J – Regression of Skills Development document
- K – 8/10/2010 IEP
- L – Private Facility Proposal for Educational Placement for Student
- M – 8/16/2010 Email from BOCES to Parents
- N – 8/20/2010 Letter from Parents to BOCES
- O – 8/23/2010 Letter from BOCES Counsel to Parents
- P – 8/25/2010 Email from BOCES to Parents
- Q – 8/30/2010 Letter from Parents to BOCES
- R – 9/20/2010 Letter from Parents to BOCES
- S – 8/30/2010 Letter from Parents to BOCES
- T – 9/1/2010 Prior Notice and Consent for Initial Provision of Special Education and Related Services
- U – 8/30/2010 Notice of Meeting
- V – 9/20/2010 Letter from Parents to BOCES
- W – 10/01/2010 Email from BOCES to Parents
- X – 10/04/2010 Letter from Parents to BOCES
- Y – 10/04/2010 Letter from Parents to BOCES
- Z – VB-MAPP Milestones Master Scoring Form
- 1 – Private Autism Teacher Evaluation of Learning Needs and Recommendations
- 2 – 10/05/2010 IEP, including Notice of Meeting
- 3 – 10/04/2010 Letter from Parents to BOCES
- 4 – 12/01/2010 Letter from Parents to BOCES
- 5 – Private Facility receipts
- 6 – Audio recordings of 8/10/2010 IEP meeting, 9/01/2010 IEP meeting and 10/05/2010 IEPmeeting

BOCES Response

BOCES Response Exhibits:

- 7 – Affidavit of Special Education Director
- 8 – Licensing record from Colorado Department of Education for Special Education Teacher
- 9 – Printout from Private Facility website
- 10 – Independent Education Evaluation of 10/20/2010
- 11 – 1/05/2011 Letter/evaluation by Autism Specialist and resumes of Autism Specialist and BCBA
- 12 – BOCES policy related to Transfer Placements
- 13 – BOCES policy related to Extended School Year (ESY) Services

- 14 – BOCES policy related to IEP meetings
- 15 – District policies relating to student enrollment
- 16 – Various emails reflecting correspondence between the BOCES and the Transfer District relating to Student
- 17 – Various facsimile records and emails relating to the transfer of Student’s educational records from Transfer District to the BOCES
- 18 – Student’s IEPs implemented or developed by the BOCES, including:
- 05/27/2010 Transfer IEP (pp. 1-17)
 - 08/10/2010 IEP (pp. 18-21)
 - 09/01/2010 IEP (pp. 22-33)
 - 10/05/2010 IEP (pp. 34-55)
 - 12/14/2010 IEP (pp. 56-77)
- 19 – Licensing, certification and training documents for SSN Teacher, OT, SLP, and Autism Specialist
- 20A – Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20B - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20C - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20D-1 - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20D-2 - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20E - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 20F - Various written correspondence and emails between Parents and BOCES staff or among BOCES Staff (including numerous duplicates of documents elsewhere in the Record)
- 21 – Student Attendance Record in District

Parents’ Reply

Parents’ Reply Exhibits:

- AA – 08/17/2010 Email from Special Education Director to District staff
- BB – 08/26/2010 Email from SSN Teacher re: observing classroom in another district
- CC – 11/04/2010 Email from SSN Teacher to Special Education Director
- DD – 10/17/2010 Letter from Parents to Special Education Director
- EE – 08/27/2010 Email exchange among District staff

FF – 08/20/2010 Email from Special Education Director to IEP team
GG – 10/15/2010 Email from SSN Teacher to District staff
HH – 10/18/2010 Email from Special Education Director to Elementary School
Asst. Principal
II – 10/20/2010 Letter from Parents to BOCES
JJ – 12/26/2010 Letter from Parents to BOCES
KK – 5 pages from 10/05/2010 IEP
LL – 10/07/2010 Email from SSN Teacher to Special Education Teacher
MM – 10/11/2010 Emails between SSN Teacher and Special Education Teacher

Additional Documents Requested by the SCO:

- 22 – Documents relating to Student’s enrollment at Private Facility, including receipts and dates of attendance and Private Facility’s tuition policy/schedule
- 23 – District’s 2010-2011 School Calendar