

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

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**State-Level Complaint 2015:511  
East Central BOCES**

**DECISION**

**INTRODUCTION**

This state-level complaint (Complaint) was filed on June 29, 2015, by the parent of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup>

On July 13, 2015, the Board of Cooperative Educational Services (BOCES) filed a due process complaint raising allegations identical to those raised in this Complaint. Because Federal regulations require that the Colorado Department of Education (Department) set-aside any part of a state complaint that is being addressed in a due process complaint until the conclusion of that proceeding, the Parties were notified that the Complaint would be held in abeyance. 34 C.F.R. § 300.152(c)(1).

On August 28, 2015, the Department was notified by the Office of Administrative Courts that the due process complaint had been dismissed for insufficiency. Because the due process complaint was dismissed without resolution of the issues, the state complaint investigation resumed to resolve the allegations initially accepted for investigation.

Based on the written Complaint, the State Complaints Officer (SCO) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.<sup>2</sup> The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 CFR § 300.1, *et seq.*

<sup>2</sup> Hereafter, only the IDEA regulation and any corresponding Exceptional Children's Educational Act (ECEA) rule will be cited (e.g., § 300.000, Section 300.000 or Rule 1.00).

## **COMPLAINT ALLEGATIONS**

Parent's Complaint raised two allegations, summarized as follows:

1. Whether the BOCES failed to implement Student's IEP during the summer of 2015.
2. Whether the BOCES changed Student's placement during the summer of 2015 without providing Parent with prior written notice and without parental participation.

## **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>3</sup> the SCO makes the following FINDINGS:

### **Background:**

1. At all times relevant to the Complaint, Student was [age] years old and residing with her Parents within the boundaries of the BOCES, the administrative unit responsible for compliance with IDEA and ECEA. Student has been determined eligible for special education and related services since preschool.
2. The relationship between Parent and the BOCES has become exceedingly adversarial, a dynamic that significantly impacts their ability to collaborate in the development of Student's educational program. Since June of 2014, and at all times relevant to this Complaint, the Parties have been engaged in one or another of IDEA's formal dispute resolution options, i.e., mediation, state complaint, and due process complaint.
3. On June 27, 2014, Parent filed a state complaint alleging that the BOCES denied Student a FAPE by failing to implement Student's IEP. On July 29, 2014, Parent filed a second state complaint against the BOCES raising similar allegations. Because the two complaints involved the same parties and subject matter, they were consolidated, and a final decision was issued on September 25, 2014. Parent prevailed on all issues accepted for investigation in the consolidated Complaint, and remedies were ordered.
4. In February of 2015, Parent filed a due process complaint to challenge whether Student's 2013, 2014, and 2015 IEPs were substantively appropriate. Because the allegations and facts Parent raised in her due process complaint included the same facts and allegations raised in her previous state complaint, the pending due process decision would supersede the outcome of the state complaint decision pursuant to federal regulation.

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire record.

5. On June 29, 2015, and before the final decision was issued in the pending due process complaint, Parent filed this state complaint alleging that the District changed Student's placement for the summer of 2015 without notice and parent participation and failed to implement Student's IEP during the summer of 2015. At the same time that the Parties were attempting to discuss and develop ESY services for the summer of 2015, they were also rigorously preparing for their upcoming due process hearing.

6. Following a four-day due process hearing, the ALJ issued a final decision on July 14, 2015. The ALJ concluded that the BOCES had not violated IDEA as alleged or denied Student a FAPE, an outcome that vacated the remedies ordered in Parent's September 2014 state complaint.<sup>4</sup> Parent has appealed the due process decision to Federal District Court.

7. Despite six separate IEP meetings, held between December 2014 and July of 2015, the Parties have been unable to agree on Student's IEP.<sup>5</sup> Consequently, Student is currently receiving special education and related services pursuant to her October 2013 IEP. It is within this adversarial and challenging dynamic that the Parties have attempted to discuss, develop, and implement ESY services for Student during the summer of 2015.

#### **Implementation of Student's IEP during the Summer of 2015:**

8. Parent alleges that the BOCES failed to implement Student's IEP, specifically ESY services, during the summer of 2015. In support of this allegation, Parent asserts that an agreement, labeled and referred to by the parties as the "Six Year Agreement," was part of Student's 2013 IEP, and that the BOCES failed to provide services in accordance with this agreement. As explained more fully below, the SCO finds that the Six Year Agreement was not part of Student's IEP. Consequently, the BOCES was not obligated to provide the services that were identified as part of the Six Year Agreement for the summer of 2015.

9. In the spring of 2014, Parent expressed concerns that Student's IEP was not being properly implemented at School, and as a result, Student had failed to make sufficient educational progress. In addition, Parent did not agree that the ESY services being proposed for the summer were appropriate to meet Student's needs, particularly in light of the alleged failure to implement Student's IEP during the 2013-14 school year. To remedy her concerns, Parent requested compensatory education services during the summer. Although the BOCES maintained that Student had been provided with a FAPE and that the proposed ESY services

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<sup>4</sup> In her Reply, Parent raised an allegation concerning the BOCES' compliance with the remedies ordered in the state complaint, i.e. consultation with Summer Teacher. Because the due process complaint vacated the previous remedies ordered by the SCO, the Department would not have the authority to enforce the state complaint remedy. Consequently, this allegation was not investigated.

<sup>5</sup> Exhibit 1; Recordings of IEP meetings, as referenced in Appendix. These meetings represented a minimum of 17 hours.

were adequate to maintain Student's skills and knowledge over the summer, it proposed the Six Year Agreement in an effort to resolve the dispute.<sup>6</sup>

10. On June 11, 2014, the Parties signed the Six Year Agreement. The agreement specifically provided as follows:

If the proposed educational plan outlined is deemed to be beneficial to [Student], by both parties, as determined by the summary report provided by the educational plan provider(s) compared to her end of year progress reports on goals and objectives, we agree to provide the same services unless changes are agreed to by all parties [defined as the special education director, assistant special education director, parent, and another party chosen by parent] every summer through elementary, including the summer prior to middle school.<sup>7</sup>

11. Pursuant to the agreement, Student was to receive the following services during the summer of 2014:

- 140 minutes of direct instruction from a special education teacher during the week of June 2, 2014.<sup>8</sup>
- Two weeks at a summer day camp program (8 hours per day);
- 6 hours per day of direct instruction from a general/special education teacher between June 24 and August 15, 2014.<sup>9</sup>

12. Parent claims that the Six Year Agreement was attached or incorporated into Student's IEP, at her request, when the agreement was initially signed.<sup>10</sup> According to the BOCES, the Six Year Agreement was offered in an effort to resolve the dispute between Parent and the BOCES that arose in the spring of 2014 concerning special education services, including ESY services, and was never incorporated into Student's IEP. The continual nature of the agreement, i.e., that it would continue for the next six years, supports the BOCES' characterization that this agreement was an effort to prevent future disputes, and thus was never intended to be part of Student's IEP. In other words, the Six Year Agreement reads more like a settlement agreement than ESY services.

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<sup>6</sup> Complaint; Response; Interviews with Parent, Down Syndrome Education Specialist, and Special Education Director.

<sup>7</sup> The Parties who signed the agreement include Parent, Down Syndrome Education Specialist, Special Education Director, and Former Special Education Director. Exhibit D, p. 13.

<sup>8</sup> Parent rejected these services because she did not agree that they were being offered in the LRE. Interview with Parent.

<sup>9</sup> Exhibit 6, pp. 2-3.

<sup>10</sup> Complaint; Interview with Parent.

13. Consistent with the BOCES' position, the credible evidence demonstrates that the Six Year Agreement was not incorporated into Student's IEP at the time it was signed or at any time after. Notably, correspondence between the Parties consistently demonstrates that the agreement was understood by them as something outside of, or in addition to, Student's IEP. According to Parent, the services provided pursuant to the agreement were in "no way connected to ESY" and were instead intended as "a way to be sure that [Student] has continual growth year round."<sup>11</sup> As further support for this finding, Parent refers to the Six Year Agreement throughout her correspondence with the BOCES as the Continual Growth Summer Plan, the Summer Continuous Learning Plan, or Summer Plan, and not as Student's IEP or ESY services.<sup>12</sup> Because the SCO finds the consistency in the Parties correspondence more reliable and persuasive than the assertions Parent now makes in the Complaint, the SCO finds it more likely than not that the Six Year Agreement was not part of Student's IEP.

14. Parent also alleges that the ESY services proposed by the BOCES for the summer of 2015 were developed without her participation and without proper notice. Parent bases this allegation exclusively on her assertion that the Six Year Agreement was part of Student's IEP, and thus any proposed change would require parental input and prior written notice. As discussed above, the SCO does not agree that the services provided pursuant to the Six Year Agreement were incorporated into Student's IEP. And, for the reasons explained more fully below, the SCO further finds that Parent was provided with multiple opportunities to participate in the development of ESY services but refused to do so based on her belief that Student was entitled to the exact same services she received in the summer of 2014.

15. The Parties did not begin to actively or meaningfully discuss Student's ESY services until the end of the school year. Between December of 2014 and April 3, 2015, five IEP meetings were held in an attempt to develop a new IEP.<sup>13</sup> Although it appears that the BOCES and Parent expected to discuss ESY at each IEP meeting, ESY was not determined or discussed in any substantive way during these meetings.<sup>14</sup> At the end of the April 3 IEP meeting, the Parties mutually agreed to reconvene on April 20, 2015, for the primary purpose of determining ESY services.<sup>15</sup> The day before the scheduled IEP meeting, Parent cancelled the IEP meeting because she was ill.<sup>16</sup>

16. Between the end of April and July 8, 2015, the BOCES offered multiple times to meet with Parent to discuss and determine ESY services. Parent, however, initially refused to meet

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<sup>11</sup> In an email to Special Education Director, Parent wrote that the "clear agreement was that the Summer Plan was in no way connected to ESY or Compensatory Education--but a way to be sure that [Student] has continual growth year round." Exhibit 1, p. 82.

<sup>12</sup> See, e.g., Exhibit 1, pp. 34, 78, 111; Complaint at page 2; Reply at page 6.

<sup>13</sup> Exhibit 1, pp. 61-76; Complaint; Response; Interviews with Parent and Special Education Director. Recordings of IEP meetings on February 4, March 13, and March 20, and April 3, 2015.

<sup>14</sup> Recordings of IEP meetings on February 4, March 13, and March 20, 2015. The SCO notes that each of these meetings lasted more than three hours.

<sup>15</sup> Interview with Special Education Director; Exhibit 1, pp. 75

<sup>16</sup> Exhibit 1, p. 29.

until the BOCES agreed in writing to provide the same services provided during the summer of 2014 pursuant to the Six Year Agreement, also referred to by Parent as the “Continuous Learning Plan.” Consistent with all other email exchanges between May 3 and July 7, 2015, Parent and Down Syndrome Education Specialist informed the BOCES that “there can be NO decisions about ESY until you provide the agreed upon Continuous Learning Plan for Summer for our review.”<sup>17</sup>

17. In mid-June, Parent cancelled a scheduled IEP meeting because the draft proposal she requested was not identical to the Six Year Agreement. When cancelling the IEP meeting scheduled for June 18, Parent informed Special Education Director that an IEP meeting would be a “waste of everyone’s time,” until and unless the BOCES agreed to provide the same services as last summer.<sup>18</sup> In response, the BOCES informed Parent that the agreement signed by the Parties was not part of Student’s IEP, and that it was no longer in agreement that the services were appropriate. Because Parent had refused to meet to discuss ESY services, the BOCES included a draft of proposed services based on Student’s educational needs and assured Parent that the BOCES was available to meet with Parent at any time to discuss ESY services. The BOCES also assured Parent that it was prepared to offer the services in the proposal until the Parties could find a mutually agreeable time to meet so that Student would not miss out on educational services during the summer.<sup>19</sup>

18. On July 8, 2015, Parent agreed to meet to discuss ESY services, and the BOCES convened an IEP Team for that purpose. During this meeting, Parent was provided with a meaningful opportunity to participate in the development of Student’s ESY services. Throughout the meeting, Special Education Director asked Parent for input and suggestions on how to help Student maintain her current skills over the next couple of months, including proposed activities and the environment where services should be provided. In response to specific input from Parent about opportunities for Student to interact with typical peers, Special Education Director offered to provide some ESY services in the public library and include trips to the museum and zoo, activities similar to those that had been provided the previous summer. Parent, however, focused on the dispute concerning the Six Year Agreement, the qualifications and experience of proposed service providers, and the fact that ESY services were not provided earlier in the summer.<sup>20</sup>

19. The outcome of this IEP meeting was to schedule yet another IEP meeting for the purpose of developing Student’s IEP. The Parties scheduled an IEP meeting for July 13, 2015, but Parent cancelled the meeting. Because the next available meeting date appeared to be July

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<sup>17</sup> Exhibit 1, p. 90.

<sup>18</sup> Exhibit 1, p. 141.

<sup>19</sup> Exhibit 1, p. 140; Interview with Special Education Director.

<sup>20</sup> Recording of July 2015 IEP meeting. Challenging the qualifications, experience, and expertise of licensed personnel hired by the School or BOCES to work with Student has become a dominant characteristic of Parent’s participation in IEP meetings and communication with educators and service providers. Recordings of IEP meetings referenced in the Appendix.

28, 2015, the BOCES sent Parent an ESY plan and updated proposed schedule for the remainder of the summer.

20. Throughout the summer, the BOCES offered to provide educational services to Student and had made arrangements to have transportation, interpreters, and teachers available should Parent decide to make Student available. From May 20, 2015, through July 9, 2015, the BOCES agreed to provide the following services while the Parties continued to try and resolve their ongoing dispute concerning ESY:

- Four hours of direct instruction from a special education teacher during the week of June 1, 2015;
- Summer day camp program (8 hours per day) during the weeks of June 8 and June 15.
- 26 days of 2 hours of direct instruction (i.e., 52 hours total) from a special education teacher between June 23 and August 10, 2015, including extra time on specified days for Student to attend activities with typical peers at the local library.<sup>21</sup>

Because Parent refused to meet as an IEP team, the proposed services were based on input from Student's service providers.<sup>22</sup> In addition, the BOCES agreed to provide the extra time for Student to attend activities at the local library in direct response to the concerns Parent expressed at the July 8, 2015 IEP meeting that Student needed exposure to typical peers.<sup>23</sup>

21. In her Reply, Parent explained that she rejected the proposed services because they were not consistent with the Six Year Agreement and the BOCES did not respond to her requests for additional information or concerns regarding providers. Specifically, Parent refused the Summer Camp because the BOCES had not provided her with the names of the transportation driver, interpreter, and paraprofessional who would be working with Student during this time, even though this is the same camp Student attended the previous summer.<sup>24</sup> Similarly, Parent refused the other proposed educational services, i.e., direct instruction, because Parent did not agree that the licensed teacher hired by the BOCES to provide these services was sufficiently qualified, experienced, or skilled.<sup>25</sup>

22. Contrary to Parent's assertions, the special education teacher scheduled to provide these services is licensed, and there is no evidence to suggest that she is not appropriately qualified to provide the proposed services.

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<sup>21</sup> Service offered May 20, 2015 at Exhibit 1, pp. 91-102; updated calendar and services offered July 17, 2015 at Exhibit 1, pp. 125-133; and updated calendar and services offered July 9, 2015 at Exhibit 1, p. 160.

<sup>22</sup> Interview with Special Education Director.

<sup>23</sup> Interview with Special Education Director; Exhibit 1 at pp. 125-33.

<sup>24</sup> Reply at page 5.

<sup>25</sup> Reply, pp. 2-5.

23. As a result of Parent's refusal to meet and make Student available for the services offered, Student received no ESY services during the summer of 2015. Moreover, Student missed an opportunity to get to know the teacher assigned to her for the upcoming school year, an opportunity that all agree would have helped her transition more successfully at the start of the 2015-16 school year.

### CONCLUSIONS OF LAW

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

**Allegation One: The BOCES did not fail to implement Student's IEP during the summer of 2015.**

1. Under IDEA, local education agencies, here the BOCES, are required to provide eligible students with disabilities with a free appropriate public education (FAPE) by providing special education and related services individually tailored to meet the student's unique needs and provided in conformity with an individualized education program developed according to the Act's requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. Where the definition of FAPE specifically references the provision of special education and related services consistent with an IEP, a failure to implement an IEP can result in a denial of FAPE. *Id.*
2. Parent alleges that the BOCES failed to implement Student's IEP during the summer of 2015 based on her assertion that the educational services provided pursuant to the Parties "Six Year Agreement" were incorporated into Student's 2013 IEP. Contrary to Parent's allegation, the SCO found that the Six Year Agreement was not incorporated into Student's IEP. This finding was based primarily on email correspondence between the Parties that evidenced their mutual understanding that the agreement was something intended to remedy Parent's concerns, i.e., a settlement agreement, and was separate from Student's IEP. For example, Parent herself reminded Special Education Director that the agreement was in "no way" connected to ESY services and was instead a way to ensure Student had continual, year-round growth. Consequently, the SCO concludes that the BOCES did not fail to implement Student's IEP, as alleged by Parent, because the Six Year Agreement was not part of Student's IEP.
3. Moreover, a conclusion that the BOCES was obligated to implement the Six Year Agreement as part of Student's IEP would be at significant odds with the IDEA's procedural requirement regarding the development of the IEP and the purpose of ESY services. The special education and related services appropriately identified in an IEP, including ESY services, are reviewed and revised *annually* by a properly constituted IEP Team based on the student's present levels of academic and functional performance and identified needs. 34 C.F.R. § 300.324(b). Thus, the notion that the Parties could develop a six year IEP is contrary to the IDEA's established procedures for IEP development and review.



4. Similarly, a conclusion that the BOCES was obligated to implement the Six Year Agreement would be at odds with the purpose and appropriateness of ESY services. ESY services must be provided only if a child's IEP Team determines, on an individual basis and in accordance with §§ 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2); ECEA Rule 5.01(1)(f). ESY services are defined as special education and related services that are provided beyond the normal school year and in accordance with the child's IEP, at no cost to the parents. 34 C.F.R. § 300.106(b). Consistent with all special education and related services, ESY services are not intended or required to maximize a student's educational benefit. *Cordrey v. Euckert*, 17 IDELR 104 (6<sup>th</sup> Cir. 1990), *cert denied*, 499 U.S. 938 (1991). Rather, ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010); see *CDE School Year Determination: Using Predictive Factors*, available at [http://www.cde.state.co.us/cdesped/webinar\\_esy\\_powerpoint](http://www.cde.state.co.us/cdesped/webinar_esy_powerpoint) for more CDE guidance on ESY determinations.

5. In contrast to preventing severe loss or regression, the purpose of the Six Year Agreement was to provide Student with year-round continual growth for the next six years. The summer services provided pursuant to the agreement were not developed by an IEP team in accordance with IDEA's procedural requirements to maintain Student's skills. Consequently, the SCO would have had difficulty concluding that the summer services were substantively appropriate, i.e., based on Student's individual needs and reasonably calculated to confer some educational benefit.

**Allegation Two: The BOCES did not change Student's placement for the summer of 2015 without notice and parent participation.**

6. The IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1313 (10<sup>th</sup> Cir. 2008). Meaningful parent participation is prevented 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.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003) ("A district may not enter an IEP meeting with a 'take it or leave it' position."); *Ms. S v. Vashon Sch. Dist.*, 39 IDELR 154 (9<sup>th</sup> Cir. 2003). When parents are prevented from meaningful participation because an aspect of their child's IEP, such as educational methodology or placement, has been predetermined, the resulting procedural violation denies the student a free appropriate public education. *Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005). On the other hand, courts have found that parents have been afforded an opportunity for meaningful participation when an educational agency, here the BOCES, considers their suggestions and requests, and to the extent appropriate, incorporates them into their child's IEP. *O'Toole v. Olathe Dist. Schools*, 144 F.3d 692 (10<sup>th</sup> Cir. 1998).

7. In this case, Parent was provided with multiple opportunities to participate in the development of Student's ESY services but refused to do so until July 8, 2015. Between April and July 8, 2015, Parent refused multiple requests to meet because the BOCES would not provide her with a written proposal that identified the exact services Student received during the summer of 2014 pursuant to the Six Year Agreement. Because Parent refused to meet, the BOCES developed proposed goals and services based on Student's needs, as identified by her teachers and providers. Here, it was Parent who approached the development of Student's ESY services with a closed mind, as evidenced by her unwillingness to meet unless the BOCES agreed to her demands. Parent cannot reasonably complain about the BOCES' failure to provide her with a meaningful opportunity to participate in the development of Student's ESY services when it was she who refused multiple opportunities to do just that.

8. Once Parent finally agreed to meet to discuss ESY, the BOCES provided her with a meaningful opportunity to participate in that discussion. On July 8, 2015, the BOCES convened an IEP meeting for the purpose of discussing ESY services. Parent attended this meeting with Down Syndrome Education Specialist and actively engaged in the discussion by asking questions, providing input regarding Student's needs, and offering suggestions. Special Education Director listened to Parent's concerns and incorporated some of her suggestions into the ESY services offered. Specifically, the Special Education Director offered to include activities at the public library in response to Parent's concern that Student needed to receive services where she would be able to interact with typical peers. Accordingly, the SCO concludes that the BOCES meaningfully considered Parent's requests at the July 8, 2015, IEP meeting by incorporating some of her suggestions into Student's ESY plan.

9. Parent's conduct at IEP meetings, as well as correspondence with the BOCES, suggests a misunderstanding of IDEA's provisions regarding parent participation. For example, Parent participates in IEP meetings as if she has the sole authority to determine what special education services Student will receive and how the services will be delivered, including which personnel will provide specific services. The emphasis on parental involvement does not mean that a parent has veto power or sole decision making authority. Under IDEA, meaningful consideration happens when the educational agency listens to parental concerns with an open mind, such as when the educational agency answers parent's questions, incorporates some suggestions or requests into the IEP, and discusses privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *Id*; *See Deal v. Hamilton County Bd. of Educ.*, 42 IDELR 109 (6<sup>th</sup> Cir. 2004), *cert denied*, 546 U.S. 936 (2005). Meaningful consideration does not require a school district to simply agree to whatever a parent has suggested or requested.

10. Also essential to a parent's ability to participate in the development of her child's educational program is the procedural requirement that the school district provide sufficient notice before it makes substantial changes to the student's educational program. 34 CFR § 300.503(a). Prior written notice must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a

description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those options were rejected; and a description of any other factors relevant to the district's proposal or refusal. 34 CFR § 300.503(b)(1-3) and (6-7). Prior written notice must also include a statement that the parents of a child with a disability have protections under the procedural safeguards and the means by which to obtain a copy if the notice is not for an initial evaluation, and sources for parents to contact to obtain assistance in understanding the procedural safeguards. 34 CFR § 300.503(b)(4-5).

11. In this case, Parent alleged that the BOCES changed Student's placement without providing her with prior written notice or an opportunity to participate in developing Student's ESY services. Parent based her allegation on the fact that the ESY services proposed by the BOCES for the summer of 2015 were not identical to the services offered the previous summer pursuant to the Six Year Agreement. As discussed above, the SCO concluded that the Six Year Agreement was not part of Student's IEP. Consequently, the BOCES' obligation to provide prior written notice was not triggered because it was not proposing changes to Student's IEP. And even if the SCO were to conclude that the BOCES obligation to provide prior written notice was triggered, the email correspondence sent to Parent from Special Education Director in May and June of 2015 served the essential purpose of prior written notice in that it informed Parent that it was no longer abiding by the Six Year Agreement because it did not agree that it met Student's current needs. Moreover, the BOCES continually offered to meet with Parent to discuss ESY services, an effort that satisfied its obligation to encourage meaningful parent participation. Parent cannot reasonably complain that the BOCES failed to provide her with notice or with an opportunity to participate in the development of Student's ESY services.

### **REMEDIES**

Concluding that the BOCES has not violated IDEA as alleged in this Complaint, no remedies are ordered.

### **CONCLUSION**

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

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

Dated this 5<sup>th</sup> day of October, 2015.

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Candace Hawkins, Esq.  
State Complaints Officer

## Appendix

### **Complaint, pages 1-4.**

Exhibit A: "Six Year Agreement" and documentation related to services provided during the summer of 2014.

Exhibit B: Progress report for summer of 2014.

Exhibit C: Email correspondence.

Jump-drive with recordings of IEP meetings held on the following dates:

- July 8, 2015;
- April 3, 2015;
- March 20, 2015;
- March 13, 2015;
- February 4, 2015;
- December 16, 2014; and
- October 4, 2013.

### **Response, pages 1-9.**

Exhibit 1: Email correspondence.

Exhibit 2: Notes of meetings regarding ESY for summer of 2015.

Exhibit 3: Contact information for relevant witnesses, provided in Response at page 8.

Exhibit 5: ESY services proposed for summer of 2014.

Exhibit 6: "Six Year Agreement."

Exhibit 7: Final Agency Decision in Parties' due process complaint.

### **Reply: pages, 1-8.**

**Exhibits D and E:** Notices of suspension.

### **In-person interviews with:**

- Parent
- Down Syndrome Education Specialist
- Special Education Director