

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

State-Level Complaint 2024:503
San Juan BOCES

DECISION

INTRODUCTION

On January 29, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Dolores School District RE-4A (“District”), a member district of the San Juan BOCES (“BOCES”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 29, 2023 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP from August 2023 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide Student the accommodations required by her IEP; and

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

- b. Failing to provide Student the life skills instruction required by her IEP.

FINDINGS OF FACT

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

A. Background

1. Student is a tenth grader who resides outside the boundaries of the District. *Response*, p. 1. Before the COVID-19 pandemic, Student attended school in the District. *Id.* After the pandemic ended, Parent enrolled Student in a virtual school offered by the BOCES (“Virtual School”). *Id.* Student began the 2023-2024 as a “hybrid student,” attending the BOCES’ Virtual School for her academics and receiving her special education and related services from a District high school (“High School”). *Id.*
2. The District is a member of the BOCES. *Id.* The BOCES is responsible for providing FAPE to all IDEA-eligible children with disabilities attending school in its member districts. ECEA Rule 2.02.
3. Student is twice exceptional. *Response*, p. 1. She qualifies for special education and related services under the disability category of Autism Spectrum Disorder. *Exhibit A*, p. 1.
4. Staff described Student as a lovely, engaging young woman who enjoys art and video games. *Interview with BOCES Occupational Therapist (“Occupational Therapist”); Exhibit A*, p. 3. Though Student has some challenges related to social communication, she enjoys being around peers. *Interview with Occupational Therapist.*

B. Student’s IEP

5. When the 2023-2024 school year began, Student’s IEP dated April 6, 2023 (“IEP”) was in effect. *Exhibit A*, pp. 1-16.
6. The IEP reviewed Student’s present levels of performance, noting that Student passed all her classes during the first semester of the 2022-2023 school year. *Id.* However, in second semester, Student struggled in her classes. *Id.* Parent reported that Student was “dealing with a significant mental health challenge” and that “process[ing] and communicat[ing] emotions need[ed] to take precedence over academics.” *Id.* Though Student had made progress on her communication and social-emotional skills, she continued to need support in those areas. *Id.*
7. As noted in the IEP, Student experienced challenges with sensory processing, communication, and social/emotional issues. *Id.* at p. 6. Due to these challenges, she required help with

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

interpretation of social language and interactions, checks for understanding, visual supports, and warning of changes in routines. *Id.*

8. The IEP included a postsecondary transition plan tailored to Student's goal of attending college and seeking a degree in the medical field. *Id.* at pp. 7-9.
9. The IEP contained three annual goals: two self-determination goals and one social/emotional wellness goal. *Id.* at pp. 9-11.
10. The IEP identified three accommodations: extended time for completing projects with steps broken down into achievable chunks, checks for understanding for weekly assignment load with online instructors, and access to quiet space to work. *Id.* at p. 12.
11. Under the IEP, Student received the following special education and related services:
 - Occupational Therapy: 540 minutes per year of indirect occupational therapy provided by an occupational therapist inside the general education environment;
 - Access Skills: 90 minutes per month of direct access skills instruction provided by a special education teacher outside the general education environment; and
 - Speech/Language Therapy: 15 minutes per month of indirect speech/language therapy provided by a speech language pathologist outside the general education environment.

Id. at p. 14. The occupational therapy services were intended to target Student's sensory differences and socialization skills during a "cooking/socialization group" at High School. *Id.* Meanwhile, the access skills instruction would be provided by Student's case manager during weekly meetings. *Id.*

12. Per the IEP, Student spent 98% of her time in the general education environment. *Id.* at p. 15.

C. 2023-2024 School Year

13. During the first semester of the 2023-2024 school year, Student received all her academic instruction from Virtual School. *Interview with Virtual School Principal*. Once a week, she went to a socialization group at High School. *Interview with Occupational Therapist*. Student also participated in an extracurricular drama club. *Id.*; *Exhibit H*, p. 7.
14. Virtual School offers online instruction to students in grades six through 12 from the eight member districts of the BOCES. *Interview with Virtual School Principal*. Virtual School students participate in asynchronized learning offered by specific teachers. *Id.* The curriculum for each course is "chunked" into "small bite size" assignments. *Id.* Some courses release one week's

worth of assignments at a time, while other courses release the assignments for the entire semester at once. *Id.* All Virtual School students can submit work late without penalty if they let the teacher know. *Id.*

15. Virtual School's tutors monitor all students' weekly progress reports to ensure students stay on track. *Id.* Staff members post calendars with their available tutoring hours. *Id.* If any student has a "D" or "F" or experiences a drastic decrease in grades, staff reach out to the student to schedule a tutoring session. *Id.*
16. When a Virtual School student has an IEP, the student's school district will send the IEP to Virtual School. *Id.* Virtual School's counselor reviews the IEP and sends the IEP to each of the student's teachers, as well as Virtual School's tutors. *Id.* The counselor checks in with teachers throughout the school year to make sure each student's needs are being met consistent with the student's IEP. *Id.* Virtual School Principal also communicates with parents to address any concerns they have about implementation of their child's IEP. *Id.* Virtual School staff followed these practices during the 2023-2024 school year with regard to Student's IEP. *Id.*

D. Student's Accommodations

17. As noted above, Student's IEP required three accommodations: extended time for completing projects with steps broken down into achievable chunks, checks for understanding for weekly assignment load with online instructors, and access to quiet space to work. *Exhibit A*, p. 12.
18. During Fall 2023, Student had extended time to complete coursework and her assignments were broken down into achievable chunks. *Interview with Virtual School Principal*. Regardless of the course, the assignments in Student's Virtual School courses were broken down into "bite size" assignments. *Id.* Student automatically received extended time for all assignments. *Id.* When her IEP was sent to teachers at the beginning of the school year, they were told not to put any zeros in for late assignments. *Id.* After this Complaint was filed, Virtual School Principal contacted Student's teachers and confirmed that she did not have any zeros for late assignments. *Id.*; *Response*, p. 4.
19. Student's teachers and Virtual School's tutors reached out to Student throughout Fall 2023 to check on her assignment load and see how she was doing with her courses. *Interview with Virtual School Principal; Response*, pp. 4, 5. Student did not respond to their attempts to contact her. *Interview with Virtual School Principal; Response*, pp. 4, 5.
20. Because she completed her instruction and coursework at home, Student had access to a quiet space to work. *Interview with Virtual School Principal; Response*, p. 4. To the extent Student's workspace was not quiet, that variable was controlled solely by Student or Parent and not by Virtual School. *Interview with Virtual School Principal*.

E. Student's Occupational Therapy

21. Student's IEP required her to receive 540 minutes per year (or 270 minutes per semester) of indirect occupational therapy provided by an occupational therapist inside the general education environment. *Exhibit A*, p. 14. Per the IEP, the occupational therapy would support Student "with her sensory difference and with socialization with peers" and would be provided in a "cooking/socialization group." *Id.*
22. During the 2022-2023 school year, the District provided Student's occupational therapy in a cooking class at High School. *Interview with Occupational Therapist*. However, at the beginning of the 2023-2024 school year, Student began receiving her occupational therapy services in a lunch/socialization group ("Lunch Group") at High School. *Id.* The purpose of the "cooking/socialization group" was addressing Student's sensory and communication needs, not learning to cook. *Id.* Cooking was merely the way staff could engage Student to work on those needs. *Id.* Parent refers to the Lunch Group as "life skills" in her Complaint. *Complaint*, p. 5.
23. Lunch Group met for 45 minutes every Thursday. *Id.* One or two peers joined Student to eat together, address sensory issues (many of which were related to food), and practice conversation skills. *Id.* Speech Language Pathologist helped lead the group and target students' social communication. *Id.*
24. Occupational Therapist documented Student's attendance and the Lunch Group activities in a service log. *Exhibit C*, pp. 1-6. In Fall 2023, Student received 360 minutes of occupational therapy through the Lunch Group. *Id.* at pp. 1-6. This exceeded the service minutes required by her IEP. *See Exhibit A*, p. 14. In only one-half of the school year, Student received more than two-thirds of her annual service minutes. *Id.*; *Exhibit C*, pp. 1-6.
25. Rather than Fall 2023, Parent's Complaint focused more on the District's refusal to allow Student to participate in Lunch Group after Parent started homeschooling Student. *Complaint*, pp. 5-6.

F. Transition to Homeschool

26. In October, BOCES and District staff met with Parent to discuss Student's schedule for second semester. *Interviews with BOCES Director of Special Education ("BOCES Director") and Occupational Therapist*. At the time, Student's engagement with her academic courses through Virtual School was low. *Interviews with Occupational Therapist and Virtual School Principal*. Though Virtual School staff reached out to Student, she typically did not respond. *Interview with Virtual School Principal*.
27. To increase Student's engagement, the attendees discussed implementing a hybrid schedule for Spring 2024. *Id.* Under that schedule, Student would attend five periods of classes at High

School each day, while completing two hours of online courses through Virtual School. *Exhibit H*, p. 5.

28. Following the meeting, Parent expressed frustration regarding the way a BOCES staff member treated her and spoke of individuals with disabilities. *Exhibit H*, p. 6. On October 26, 2023, Parent detailed her concerns in email correspondence to High School Principal and asked that the BOCES staff member not be allowed near Student. *Id.*
29. On November 1, 2023, Parent notified High School Principal of her intent to homeschool Student based on her belief that she was “more qualified to instruct her than many of the staff provided.” *Id.* at pp. 3, 5, 30. The written notice stated that Student “will continue to attend [District] schools for select courses, extracurricular activities, afterschool activities for social engagement opportunities and therapies including but not limited to Life Skills/Cooking courses.” *Id.* at p. 30. Parent also expected Student to “maintain an active IEP through the [District] with yearly (minimum) IEP meetings to be scheduled by school staff.” *Id.*
30. The BOCES has a procedure identifying the steps District staff should take when a student with an IEP transfers to homeschool. *Exhibit G*, p. 1. The District should prepare a prior written notice (“PWN”) to inform the student’s parents that the student’s IEP will no longer be in effect and the student is no longer eligible to receive services while homeschooled. *Id.* If the student were to re-enroll in the District, the IEP would be reinstated, and the District would convene the student’s IEP Team to update the IEP. *Id.*
31. Pursuant to its procedure, the BOCES issued a PWN on or around November 17, 2023. *Exhibit D*, pp. 1-2; *Response*, p. 8. That PWN indicated that Student was “attending a Homeschool program rather than a public education setting per the choice of her parent.” *Exhibit D*, p. 1. Student’s special education and related services would be “suspended” while she was homeschooled. *Id.* If Student were to reenroll in the BOCES, her special education and related services would be “reviewed and renewed” to provide her a FAPE. *Id.*
32. On January 8, 2024, Parent emailed High School Principal to “make sure things are in order for [Student] to resume her social luncheon this week with [Occupational Therapist].” *Exhibit H*, p. 1.
33. On January 15, 2024, BOCES Director emailed Parent, stating:

Since [Student] is now enrolled as a homeschool student, she is entitled to the rights and opportunities of all homeschool students within [the District]. Homeschool students are able to attend extracurricular activities; however, homeschool students are not able to attend specialized classes or able to receive specialized services. The state of Colorado does not recognize homeschool programs as a general education setting and without a general education setting we cannot provide a specialized setting.

Id. at p. 27.

34. None of the BOCES's member districts offer special education and related services to homeschooled students. *Interview with BOCES Director.* However, some member districts allow homeschooled students to attend academic classes or participate in extracurricular activities. *Id.* The District's refusal to allow Student to receive special education and related services while being homeschooled is consistent with its historic practice. *Id.*
35. Student last attended Lunch Group on November 16, 2023. *Exhibit C*, p. 6. She missed the next session due to an extended Thanksgiving break trip, and she was sick for the sessions in December 2023. *Id.* The District did not allow Student to attend Lunch Group beginning in January 2024. *Interviews with BOCES Director and Occupational Therapist.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The BOCES properly implemented the accommodations and occupational therapy services required by Student's IEP, consistent with 34 C.F.R. § 300.323. No violation of the IDEA occurred.

The sole allegation in Parent's Complaint relates to implementation of Student's IEP from Fall 2023 to present. Specifically, Parent asserts that the District failed to provide Student the accommodations and "life skills instruction" required by her IEP. Parent's references to "life skills instruction" mean Student's participation in Lunch Group (and the occupational therapy she received therein).

A. Legal Requirements for IEP Implementation

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 1580 U.S. 386, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

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

implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

B. Accessibility of Student’s IEP to Teachers

The SCO first determines whether the BOCES satisfied its obligation under 34 C.F.R. § 300.323(d), by ensuring appropriate staff were informed of their responsibilities under Student’s IEP. Here, the District provided Student’s IEP to Virtual School. (FF # 16.) Virtual School’s counselor then gave a copy of Student’s IEP to her teachers and to Virtual School’s tutors. (*Id.*) As a result, the SCO finds and concludes that the BOCES complied with the requirements of 34 C.F.R. § 300.323(d).

C. Accommodations

Student’s IEP required three accommodations: extended time for completing projects with steps broken down into achievable chunks, checks for understanding for weekly assignment load with online instructors, and access to quiet space to work. (FF # 10.) As explained in the Findings of Fact, the BOCES provided Student with all three accommodations during Fall 2023 while Student attended Virtual School. (FF #s 17-20.) Two of these accommodations were provided to all Virtual School students, including Student. (FF #s 14-15.) The third accommodation—related to a quiet workspace—was within the sole control of Student and Parent given that Student participated in asynchronized learning through Virtual School. (FF # 20.) For these reasons, the SCO finds and concludes that the BOCES properly implemented Student’s accommodations.

D. Occupational Therapy

Student’s IEP required her to receive 540 minutes per school year of indirect occupational therapy services. (FF # 11.) This equates to 270 minutes per semester. (*See id.*) As detailed in the Findings of Fact, Student received 360 minutes of occupational therapy in Fall 2023 through the Lunch Group. (FF #s 21-24.) During Lunch Group, Occupational Therapist (with the help of Speech Language Pathologist) targeted Student’s sensory differences and socialization skills. (*Id.*) For these reasons, the SCO finds and concludes that the BOCES provided Student the occupational therapy services required by her IEP in Fall 2023.

Parent also alleged that the District failed to provide Student’s occupational therapy services after she began homeschooling. (FF # 25.) The BOCES does not dispute that Student was not permitted to attend Lunch Group after Parent chose to homeschool her. (FF # 35.) On that fact,

the parties agree. (FF #s 25, 35.) However, the BOCES contends that it was not obligated to offer Student a FAPE following Parent’s decision to homeschool Student. (FF #s 29, 33.)

Guidance from the U.S. Department of Education makes clear that State law determines whether homeschooled children are entitled to special education and related services:

Whether home-schooled children with disabilities are considered parentally-placed private school children with disabilities is determined under State law. If the State recognizes home schools as private elementary schools and secondary schools, children with disabilities in those home schools must be treated in the same way as other parentally-placed private school children with disabilities.

Questions and Answers on Serving Children with Disabilities Placed by their Parents in Private Schools, Question I-1 (OSEP 02/2022) (hereinafter *Q&A*). Colorado law, in turn, specifically states that homeschools do “not qualify as a private and nonprofit school.” C.R.S. § 22-33-104.5(2). Therefore, Colorado law does not require school districts to provide special education and related services to homeschooled students in Colorado. *Id.*; *Q&A*; *see also* 34 C.F.R. § 300.130-300.132.

Parent chose to homeschool Student based on her feeling that BOCES and District staff were unqualified. (FF #s 28, 29.) Once Parent made that decision and withdrew Student from the District, neither the BOCES nor the District were obligated to provide Student with special education and related services. None of the BOCES’s member districts offer special education and related services to homeschooled students with disabilities. (FF # 34.) Allowing homeschooled students to participate in academic courses or extracurricular activities does not compel the BOCES or the District to provide special education and related services. For these reasons, the SCO finds and concludes that the BOCES was not required to provide Student special education and related services, including Lunch Group, after her transition to homeschool.

REMEDIES

The SCO concludes that the BOCES did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; *see also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 29th day of March, 2024.

Ashley Schubert

Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-12

Response, pages 1-9

- Exhibit A: IEP
- Exhibit B: Evaluation and Eligibility Determination
- Exhibit C: Service Logs
- Exhibit D: PWNs
- Exhibit E: Notices of Meeting
- Exhibit F: Grade and Attendance Reports
- Exhibit G: Policies and Procedures
- Exhibit H: Correspondence
- Exhibit I: List of Staff with Knowledge
- Exhibit J: Verification of Delivery
- Exhibit K: Example of Chunked Assignments

Telephone Interviews

- BOCES Director of Special Education: March 12, 2024
- Occupational Therapist: March 8, 2024
- Parent: Did not respond to requests to participate in an interview
- Virtual School Principal: March 12, 2024