

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

**State-Level Complaint 2019:575
Jefferson County School District**

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on December 6, 2019, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA).¹

Based on the written Complaint, the SCO determined that the Complaint identified allegations 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 300.153.² The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate allegations of 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 December 6, 2018 through December 6, 2019 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 District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

¹ 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.*

² 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).

1. Failing to provide certain accommodations in Student's IEP between January and July 2019, specifically an IPAD, consistent with 34 C.F.R. §§ 300.320(a), 300.323;
2. Failing to provide educational services to Student after his tenth school day of removal during the 2019-20 school year, consistent with 34 C.F.R. § 300.530(b)-(d);
3. Failing to provide Parents with a copy of the procedural safeguards on November 19, 2019, the date the decision was made to change Student's placement based on a violation of a code of student conduct, consistent with 34 C.F.R. § 300.530(h);
4. Failing to obtain Parents' consent before excusing IEP team members during IEP meetings on February 8, 2019 and November 18, 2019, consistent with 34 C.F.R. § 300.321(e);
5. Failing to educate Student in the Least Restrictive Environment (LRE) from January 2019 to the present by repeatedly removing him from lunch and recess with his peers, consistent with 34 C.F.R. §§ 300.107, 300.114, 300.320(a)(5);
6. Failing to ensure parental participation in the development of Student's November 2019 IEP by unilaterally changing Student's BIP, removing occupational therapy services, and adding speech language services, consistent with 34 C.F.R. §§ 300.321, 300.322, 300.324.

FINDINGS OF FACT

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

A. Background

1. Student is a twelve-year-old who is eligible for special education and related services under the disability category of Other Health Impairment (OHI). *Ex. AF*, p. 1. Student attended School 1 as a fifth grader from January to May 2019, and began sixth grade at School 2 in August 2019. School 1 and School 2 are located within District.
2. Student is described as active, athletic, a strong advocate for himself and others, and an avid user of technology. *Id.*; *Interviews with Social Worker and Principal 2*. As a result of his disability, Student struggles with "impulsive actions, working memory, peer relationships, interfering behaviors, and some academic expectations." *Ex. AF*, p. 14.
3. This Complaint contains six allegations concerning the District's provision of special education and related services to Student at School 1 and School 2.

³ The appendix, attached and incorporated by reference, details the entire record.

B. Implementation of Student's iPad Accommodation from January to August 2019

4. Parents first allege that the District failed to provide Student his iPad at School 1 from January to May 2019, and in July 2019 during an Extended School Year (ESY) session, consistent with his IEP. *Complaint*, pp. 3-5. The SCO starts with Parents' allegation concerning School 1.
5. The District ensures that general education teachers, related services providers, and other staff are informed of their responsibilities for implementing IEPs. Special education administrative staff oversee individual District schools, and maintain consistent communication with the school-based teams to determine student needs and resource allocation. Case managers at the school level are responsible for implementing all IEPs. These individuals review their respective students' IEPs during in-service at the beginning of the school year, and then inform general education teachers and related services providers of their responsibilities. All individuals responsible for implementing IEPs have physical and electronic access to the documents. *Interview with Assistant Director 2*.
6. In January 2017, District's assistive technology team assessed Student to determine if technology would assist him with written language and reading. *Ex. 6*, p. 4. Based on that evaluation, Student's current IEP – developed on April 6, 2018 – lists an iPad as an accommodation. *Id.* at 12. The IEP states: "in writing, [Student] completes his written assignments via his district provided IPAD. He is very fluent with his technology skills and uses the IPAD appropriately to help him output his work." *Id.* at 4. The IEP also states: "[Student] uses an IPAD that was provided to him by the district assistive technology team. He uses this to complete most of his written work. [Student] does a great job of using his apps and showing his learning through his technology." *Id.* at 9.
7. Students at School 1 use Chromebooks rather than iPads, and School 1 lacked certain functionality for Student's iPad. *Response*, p. 2; *Interviews with Principal 1 and Classroom Teacher*. For instance, he was unable to print assignments from his iPad.
8. In anticipation of Student's arrival at School 1, staff reviewed his IEP. *Interview with Classroom Teacher*. In mid-January, Principal 1, Classroom Teacher, and Speech Language Pathologist held an informal meeting with Parents to discuss Student's IEP. Classroom Teacher explained that all students at School 1 used Chromebooks rather than iPads, and recommended Student use a Chromebook. According to Classroom Teacher, Parents agreed that Student could use a Chromebook rather than an iPad. *Id.* Parents contend that they objected to this, and that Principal 1 stated that Student would need to use a Chromebook instead of an iPad. *Interview with Parents*.
9. Parents also contend that School 1 staff insisted that Student use a Chromebook rather than an iPad at parent-teacher conferences on February 6, 2019. However, an email

sent by Principal 1 to Assistant Director 1 the following day contradicts Parents' position: "Also, the family shared that they are happy to have him use a Chromebook instead of the Ipad to support the use of google read write." *Ex. 11*, p. 1.

10. Classroom Teacher made an iPad and a Chromebook available to Student while he attended School 1; however, he typically chose to use the Chromebook. Classroom Teacher explained that the iPad and the Chromebook Student used had the same capabilities. *Interview with Classroom Teacher*. Parents counter that Student was forced to use the Chromebook because, according to Student, staff at School 1 did not know how to use the iPad and he could not print assignments. *Interview with Parents*.
11. The SCO finds that not only did Student have both an iPad and a Chromebook available to him, but also that his choice to use a Chromebook did not have an adverse academic impact. For instance, a progress report dated February 22, 2019 states that Student made progress on his writing goal. *Ex. AR*, p. 1. Student's draft IEP given to Parents in November 2019 noted that while he had not met his writing goal, he had made progress. *Ex. BA*, p. 6. Moreover, Student's grades in writing class remained consistent during his time at School 1 as he earned "2s" in writing during the second and third trimesters on a 1 to 4 grading scale. *Ex. 10*, p. 3.
12. Turning to Parents' allegation concerning the ESY session, ESY Teacher explained that the District holds a meeting for all ESY providers to discuss individual student needs. At this meeting, ESY providers are given hard copies of students' IEPs, and thereafter receive electronic access. The ESY teachers also collaborate with case managers and review related IEPs. *Interview with ESY Teacher*. In this case, ESY Teacher was the District employee responsible for implementing Student's IEP and providing the direct service minutes. She reviewed Student's IEP as part of this process, and recalled his behavioral needs and IEP goals. *Id.*
13. Student attended an ESY session from July 8 to August 1. *Ex. A*, p. 1. Assistant Director 1 prepared a services and goals form prior to the start of the session. *Response*, p. 3. This form contained annual goals and a service delivery statement specifically for the ESY session. Student's ESY writing goal stated: "when given a writing prompt, [Student] will maintain his ability to independently write at least 10 complete sentences on topic on at least 3 different occasions." *Id.* at 7. Student was to receive 6 total hours of direct services across three subjects, two hours of which were in writing. *Ex. 10*, p. 8. ESY Teacher provided instruction in reading, writing, and math. *Interview with ESY Teacher*.
14. On July 11, Parent emailed Assistant Director 2 stating that Student had not received his iPad, and that he was being forced to handwrite assignments. *Ex. C*, p. 3. Assistant Director 2 replied that Student had the option of using a computer, and that he declined to use text to speech software, preferring to have ESY teacher scribe for him. *Id.* at 1. Parent emailed again on July 15 to note that Student had not been provided with an

iPad consistent with his IEP. *Ex. D*, p. 1. On July 22, Assistant Director 1 indicated that he would pick up the iPad from School 1 and deliver it to Student that day. *Ex. E*, p. 1.

15. ESY Teacher explained that she brought several assistive technology devices with her for her ESY students, including iPads, Chromebooks, and a laptop. According to ESY Teacher, these devices were always made available to Student but he preferred to use a Chromebook. ESY Teacher also asserted that Student was not proficient using a keyboard, or using voice to text software. As a result, Student preferred for ESY Teacher to scribe for him on written assignments. *Interview with ESY Teacher*.
16. When asked about Student's progress, ESY Teacher stated that writing was incredibly laborious for Student, and that he struggled with penmanship. She asserted that Student's handwriting was difficult to read and was below the level of typical peers. *Id.* Nevertheless, a progress report dated July 18 shows: "[he] can meet the above goal while writing 5 sentences. He required an average of 4 verbal and or visual prompts every minute to continue writing during every opportunity given." *Ex. 10*, p. 9. Parent submitted two hand-written assignments as proof that Student did not have access to assistive technology, and that he handwrote assignments. *Ex. F*, p. 1. Parents withdrew Student from the last four days of the ESY session. *Complaint*, p. 4.
17. The SCO finds that ESY Teacher demonstrated a lack of familiarity with Student's needs and his IEP requirements. For instance, Student's IEP states he must use an iPad to complete written work yet he handwrote assignments. Additionally, ESY Teacher's assertion that Student was not proficient with a keyboard or voice to text software is inconsistent with his IEP. Due to lack of an iPad and familiarity with Student's needs, the SCO finds that District failed to implement Student's IEP from July 8 to July 22.

C. Educational Services Provided for 11th School Day of Disciplinary Removal

18. Parents next allege that District failed to provide educational services to Student after his tenth day of removal during the 2019-20 school year at School 2. *Complaint*, pp. 5-6.
19. On November 19, 2019, Student received a disciplinary referral for a confrontation with another student, resulting in a five-day suspension. *Ex. 11*, p. 318. Student had already been suspended a total of six school days based on three separate disciplinary incidents. *Ex. 8*, p. 3. The District determined that Student's behavior on November 19 was substantially similar to these prior disciplinary incidents, and the suspensions therefore constituted a pattern of removals. *Response*, p. 4. Student's suspension lasted from November 20 through December 3, a total of five school days, as District schools were out of session the week of November 25 for Thanksgiving. *Response*, p. 4; *Ex. 11*, p. 318. Because the cumulative days of suspension exceeded 10 school days, the November 19 disciplinary removal resulted in a change in educational placement.

20. Assistant Director 2 conferred with Principal 2, Special Education Teacher, and Social Worker regarding the services Student should receive on December 3, the eleventh cumulative day of suspension. *Interview with Special Education Teacher*. On November 21, Special Education Teacher emailed math and English homework to Parents. *Ex. 11*, p. 256. On November 22, Special Education Teacher again emailed Parents with detailed instructions regarding assignments in science, English, world studies, and math. *Id.* at 279. Special Education Teacher explained that he worked in collaboration with Student's general education teachers to collect these make-up assignments. *Interview with Special Education Teacher*. However, there is no evidence in the Record that the District attempted to communicate with Parents and the IEP team to determine the appropriate services for Student to complete on December 3.
21. Parent twice e-mailed Special Education Teacher indicating that the make-up work instructions were vague, and that Parents were not qualified to assist Student. *Ex. 11*, p. 284. On December 3, Assistant Director replied that the school team "is more than willing to collaborate with you regarding missed services for this day." *Id.* at 309. Assistant Director 2 explained that on Tuesdays Student typically received direct services minutes in math, and that Special Education Teacher could make up the missing minutes after school or during a free period. *Id.* at 309. Parent replied indicating that the services should have been provided during the period of suspension, and not made up later. *Id.* at 312-313. Student returned to School 2 on December 4, and Special Education Teacher met with him that day and on December 5 to make up the direct services minutes missed on December 3 in math and English. *Id.* at 419; *Interview with Special Education Teacher*. Based on the above information, the SCO finds that the District provided necessary educational services to Student on December 3, but that the IEP team failed to determine the nature and type of these necessary services.

D. November 2019 Disciplinary Change of Placement and Procedural Safeguards Notice

22. Parents next allege that the District did not provide them with a copy of IDEA's procedural safeguards notice on November 19, the date Student's suspension resulted in a change in educational placement. *Complaint*, pp. 6-7.
23. On November 19, Principal 2 spoke to Father, and e-mailed Parents, to explain that Student had been suspended and that the parties would need to convene a manifestation determination review (MDR). *Interview with Principal 2*; *Ex. 11*, p. 278.
24. The District concedes that it did not provide Parents with a copy of the procedural safeguards notice on November 19, but argues this error resulted in no substantive harm because Parents had been provided with numerous copies, including at the November 18 IEP meeting. *Response*, p. 6.

25. Parents state that though the District had provided procedural safeguard notices in the past, they only referenced them during IEP meetings, and disposed of them afterwards. *Reply*, p. 12. Nevertheless, the SCO finds that from August 2, 2019 to November 18, 2019, the District provided Parents with a copy of the procedural safeguards notice twelve times, nine of which were sent via email. *Ex. 13*, p. 1.

E. IEP Team Member Excusals in February and November 2019

26. Parents next allege that on February 8, 2019 and November 18, 2019, IEP team members left IEP meetings early and without Parents' consent. *Complaint*, p. 8.
27. On February 8, 2019, Student's IEP team convened at School 1. According to District staff, once the IEP team began discussing Student's behavioral issues and the use of a point card, the discussion turned adversarial. *Interviews with Assistant Director 1, Principal 1, and Classroom Teacher*. Father stood up, leaned over the table, raised his voice, and cursed at Principal 1. *Id.* At that point, Assistant Director 1 ended the meeting, explaining it was no longer productive. *Interview with Assistant Director 1 and Classroom Teacher*. Parents objected to ending the meeting early. *Interviews with Parents and Classroom Teacher*. All participants left the meeting, and Father stayed behind to speak to Assistant Director 1. *Interview with Parents and Assistant Director 1*. Based on the above facts, the SCO finds that the IEP meeting concluded when Assistant Director 1 ended the meeting, excused the IEP team, and the IEP team members left.
28. On November 18, 2019, Student's IEP team—including District Nurse—convened to update Student's IEP. *Ex. 9*, p. 6; *Interview with Parents*. Parents invited District Nurse to speak about how Student's disability affects him at school regarding discipline. *Interview with Parents*. Prior to the meeting, Parent and District Nurse had an extended conversation regarding Student's disability and medical documentation. *Id.*
29. At the beginning of the meeting, District Nurse discussed how Student's disability impacted him in the classroom, and how his disability impacted his eligibility for special education and related services. *Interview with Parents and Assistant Director 2*. However, before the IEP team had a chance to discuss Student's disability in a disciplinary context, District Nurse left the meeting to attend an obligatory training. *Complaint*, p. 8. Parents did not consent to District Nurse leaving the meeting early.
30. On November 19, Parent sent Assistant Director 2 an eight-page email listing concerns and input. Parent wrote: "I feel like we still have a long way to go with the draft . . . it seems we need another IEP meeting with the team to finish our discussions and present our data." *Ex. 11*, p. 210. Parent sent another email on November 22 stating they needed to have at least two additional, two-hour IEP meetings to discuss the draft IEP. *Id.* at 271-272. On December 20, the District reconvened Student's IEP team, including District Nurse, who remained for the duration of that meeting. *Response*, p. 9.

F. Student's "Alternative" Lunch and Recess at School 1 and School 2

31. Parents next allege that the District violated IDEA's LRE principles from January 2019 to the present by removing Student from lunch and recess. *Complaint*, pp. 8-11.
32. According to Student's IEP, he is to be educated in the general education classroom 84.1% of the time. *Ex. B*, p. 16. The IEP—in the present levels of education summary—notes that, due to peer conflict that began in December 2017 and continued into the spring semester fourth grade in 2018, Student participated in recess and lunch with the fifth grade class. *Id.* at 6. To address Student's social emotional needs, the IEP also contains two goals created to help Student better understand other people's perspectives in social situations, and to more accurately determine the severity of a stressful situation and an appropriate emotional response. *Id.* at 10-11. Student received "direct instruction in self-monitoring, self-regulation, and social skills" to help him progress towards these social emotional goals. *Id.* at 15.
33. Student transferred to School 1 in January 2019 and it soon became apparent that he struggled during unstructured times in his day, such as lunch and recess. *Interview with Principal*. On February 12, Student and a friend were involved in an altercation with another student in the lunch room. *Ex. AI*, p. 1. Principal 1 suggested to Parents that they "may need to look at other lunch options for the time being to make sure [Student] feels safe." *Id.* at 1. Parents objected to this suggestion in subsequent emails. *Id.* at 2-5. Principal 1 explained: "the idea around an alternative space for him is simply he does great with lunch outside of the cafeteria and enjoys that time with a friend. . . . This is simply an option for [Student] and all other kids." *Id.* at 3.
34. Principal 1 added that the alternative lunch plan was put in place for safety, and to prevent Student from receiving disciplinary consequences. *Interview with Principal 1*. From February to April 2019, Student ate lunch at a table outside the lunchroom, and always invited friends to eat with him. A school psychologist checked in on the students at this table and gave them games to play. Principal 1 stated that though Parents opposed Student eating outside the lunchroom, Student preferred it. Student always attended recess with the general student body at School 1. *Id.*
35. On April 4, Parent's Attorney emailed District Counsel expressing Parent's opposition to the alternative lunch plan. *Ex. AM*, p. 14. On April 8, District Counsel replied, explaining that the alternative lunch plan was not meant to be a punishment, but rather a strategy to help Student avoid peer conflict. District Counsel added that Student was given the chance to eat lunch where he wanted and invite a peer, and that Student often chose this "alternative setting." *Id.* at 11. Following this exchange, School 1 discontinued alternative lunch, and Student returned to eat with the general student body. *Id.* at 4.

36. Student began sixth grade at School 2 in August 2019, and he continued to struggle during similar unstructured times of the day. For instance, Student engaged in verbal conflicts with School 2 staff and his classmates. *Ex. AF*, p. 9. Based on these concerns, Parents and School 2 staff agreed that an alternative lunch and recess setting may be beneficial due to Student’s struggles with large crowds. *Ex. 11*, p. 6.
37. Social Worker was responsible for supervising Student’s alternative lunch and recess at School 2. *Interview with Social Worker*. During the lunch period, Student went to the front office with a friend to eat in Social Worker’s office or another room. Student and the classmate would then have recess on their own. *Id.*
38. Social Worker estimates that Student had a friend with him 85-90% of the time. *Id.* However, because Student has a fairly small group of friends, the classmate he chose to eat lunch with would sometimes become unavailable. *Interview with Principal 2*.
39. This strategy initially proved successful, and on November 11, Parent asked whether this arrangement should be included in Student’s IEP. *Ex. 11*, p. 180. Assistant Director 2 replied “my hope is that this is temporary, even though it is currently helping. He should have the chance to get back ‘in there.’” *Id.* The topic was also addressed by Student’s IEP team during the IEP meeting held on November 18. The draft IEP states that Student “re-joined the meeting and discussed his current situation with lunch and recess. The adults agreed that a slow re-integration will be best” *Ex. AF*, p. 15.
40. However, following Student’s return after his suspension on November 19, Parents changed their mind regarding this arrangement. Mother claimed that, because of staffing issues, Student was often eating alone and not going outside for recess. *Ex. 11*, pp. 373-374. Still, Parents acknowledged the alternative lunch plan at School 2 was initially well-intentioned. *Ex. AI*, p. 3. Based on Parents’ concerns, Principal 2 determined that Student would participate in lunch and recess with the general student body immediately. *Ex. 11*, p. 374. The SCO finds that because lunch and recess were not identified on the IEP as time Student was to spend outside of the general education environment, the alternative lunch plans at School 1 and School 2 were not consistent with the LRE provision identified in Student’s IEP.

G. Parent Participation Regarding November 2019 IEP Changes

41. Lastly, Parents allege that the District altered sections of Student’s IEP—by removing occupational therapy (OT) services and adding speech language (SL) services, and by altering his behavior intervention plan (BIP)—without their input. *Complaint*, pp. 12-15.
42. On October 16, Assistant Director 2 emailed Parent inviting her to a meeting with Social Worker to review Student’s BIP on October 22. Assistant Director explained that she and Social Worker spent time reviewing Student’s BIP with a Board Certified Behavioral Analyst (BCBA), and that they would appreciate Parent’s ideas and insight. *Ex. 11*, p. 51.

Parent was unable to attend the meeting. However, on October 23, Assistant Director 2 emailed Parent detailed notes about the group's discussion regarding Student's BIP, including the point sheet, movement breaks, lunch, and recess. Also, Assistant Director 2 made it clear that the group had not finalized any decisions: "we did not make any specific decisions, our time was meant to brainstorm and review everything to get ideas moving as the BCBA's work to collaborate with the team." *Id.* at 69. That evening, Parent replied with her own extensive thoughts and suggestions. *Id.* at 67-70.

43. On November 11, Parent met with Assistant Director 2 to review information and prepare an agenda for Student's November 18 IEP meeting. *Ex. 9*, p. 7. At that meeting, Assistant Director 2 gave Parent a draft BIP that contained updates based on the meeting held in October. Parent contends the District presented this BIP as a finalized version, and did not consider her input. *Complaint*, p. 13. The District counters that it provided proposed changes, none of which had been implemented. *Response*, p. 12.
44. The SCO finds that the District incorporated some of Parent's suggestions into the draft BIP presented at the November 11 informational meeting. For instance, Parent stated that Student should be the one to decide whether he lost points on his point card, in consultation with his teachers, because "just taking away points without his 'buy in' seems less effective." *Ex. 11*, p. 68. The draft BIP contains a new reinforcement strategy, stating: "[Student] should be reviewing his points for each period with staff and have an opportunity to give feedback on his behavior." *Ex. AT*, p. 9. Parent also requested an acceptable baseline for Student's behavior, and a measure to define improvement. *Ex. 11*, p. 69. The draft BIP contains an updated "criterion for success" section, specifying Student's current point sheet baseline, and stating: "[Student] will increase his daily points by 20% every trimester (12 weeks)." *Ex. AT*, p. 10.
45. Turning to OT and SL services, Student's IEP team convened on November 18 to discuss evaluations, determine eligibility, and update Student's IEP. *Ex. 9*, p. 6. Parent argues that changes to these services were made without their knowledge or input. However, on November 22, the District issued Parents a prior written notice stating: "The action of implementing speech language services inside the general education setting was proposed and agreed upon by the IEP team at the 11/18 IEP meeting [and] . . . the team agreed to discontinue direct OT services." *Ex. 8*, p. 1.
46. On November 19, Mother sent Assistant Director 2 a ten-page email detailing concerns, input, and suggestions regarding the draft IEP. Parent wrote: "I get we aren't going to continue OT The IEP team is AGREEING to use accommodations rather than to continue a goal. . . . So I want it stated here because we did talk his writing is not legible and he has no stamina to do it and we are – by choice – giving it up." *Ex. AZ*, p. 7. The SCO finds that this email demonstrates Parents were aware of the decision to discontinue OT services and begin SL services, and that Parents were involved in the decision-making process in this respect at the November 18 IEP meeting.

47. Finally, although Parents did not raise any allegations with respect to a failure to review and revise Student’s IEP—last updated on April 6, 2018—the SCO must address this issue consistent with CDE’s general supervision responsibilities. 34 C.F.R. § 300.149; ECEA Rule 5.01(10). Specifically, the SCO finds that the District did not set forth an offer of FAPE consistent with 34 C.F.R. § 300.324(b)(1) as the IEP should have been reviewed and revised as appropriate on or before April 6, 2019. The District and Parents attempted, but failed, to meet in April and May 2019. *Ex. 17.* During the 2019-20 school year, the IEP team has convened multiple times—most recently on November 18, December 20, and January 16—but the District has not yet provided a finalized offer of FAPE with respect to the IEP. The District has convened the multiple IEP meetings in an attempt to address Parents’ concerns and reach consensus on the content of the IEP. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District properly implemented Student’s IEP at School 1, but failed to properly implement Student’s IEP during the ESY session, resulting in a substantive violation of IDEA.

Under IDEA, local education agencies are required to provide eligible students with disabilities a FAPE by providing special education and related services individually tailored to meet the student’s unique needs and provided in conformity with an IEP developed according to the Act’s requirements. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; ECEA Rule 2.19. A public agency, here the District, must implement a student’s IEP in its entirety. 34 C.F.R. § 300.323(c). To satisfy this obligation, District must ensure that each teacher and service provider responsible for implementing a student’s IEP is informed of “his or her specific responsibilities related to implementing the child’s IEP” and “the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d)(2).

In this case, the SCO finds and concludes that the District has proper procedures in place to ensure all teachers and related services providers know their responsibilities regarding IEPs. (FF #5.) The District ensures all necessary staff have access to students’ IEPs. Special education directors and assistant directors collaborate with case managers at individual schools, and the case managers ensure anyone responsible for IEP implementation knows their role and has access to the IEP itself. *Id.* This is done at the beginning of the year during an in-service and anytime an IEP change occurs. The same process applies for District’s ESY sessions. (FF #12.) Both Classroom Teacher and ESY Teacher were properly informed of Student’s IEP consistent with these procedures. Each also had ongoing hard copy and electronic access to Student’s IEP.

In addition to informing teachers of their responsibilities regarding a student’s IEP, districts must ensure that the IEP is implemented. 34 C.F.R. § 300.323(c). This obligation includes ensuring that all identified services are being consistently provided. *Id.* 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. 34 C.F.R. § 300.17; ECEA Rule 2.19.

The SCO first finds and concludes that School 1 properly implemented Student's IEP. School 1 made an iPad available to Student, although he also had the option of using a Chromebook. (FF #10.) Parents contend that School 1 forced Student to use a Chromebook. However, Classroom Teacher explained that Student wanted to use the same technology as his classmates—a Chromebook—and that this technology offered the same capabilities as an iPad. The credible evidence in the Record shows that staff discussed the use of a Chromebook with Parents in January and February 2019, and that they assented. (FF #8-9.) For these reasons, the District properly implemented Student's IEP at School 1 from January to May 2019.

In terms of the ESY session, the SCO finds and concludes that the District failed to properly implement Student's IEP. ESY Teacher stated that Student was provided assistive technology options such as Chromebooks, iPads, and a laptop computer. (FF #15.) ESY Teacher added that he was not proficient with a keyboard or voice-to-text software, and thus preferred to have her scribe. (FF #15.) However, this information is inconsistent with other evidence in the Record.

First, email communication shows that Student did not have access to an iPad or a Chromebook. Student started the ESY session on July 8. On July 22, Assistant Director 1 e-mailed Parent to advise that he would pick up Student's iPad from School 1 and deliver it to Student that day. This was in response to e-mails from Parent outlining concerns regarding this assistive technology starting on July 11. (FF #14.)

Second, ESY Teacher's contention that Student declined to use an iPad or a Chromebook, and that that he was not proficient with that technology, is not consistent with his IEP. For instance, the IEP indicates that Student is familiar with and proficient in using his iPad. (FF #6.) Moreover, Classroom Teacher explained that Student successfully used a Chromebook throughout his time at School 1.

Finally, inconsistent with the assistive technology mandate of his IEP, there is evidence that Student handwrote assignments during the ESY session. (FF #16.) The SCO thus finds and concludes that the District failed to properly provide Student's iPad from July 8 through July 22, resulting in a procedural violation.

The SCO must determine if this procedural violation resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if it "seriously impair[s] the parents' opportunity to participate in the IEP formulation process, result[s] in the loss of educational opportunity for the child, or cause[s] a deprivation of the child's educational benefits." See 34 C.F.R. § 300.513(a)(2).

Here, the District failed to provide Student with his iPad for ten school days. Even though Student's IEP and ESY services and goals form were provided to ESY Teacher, Student still handwrote assignments. (FF #12-13.) Additionally, Student's progress report from July 18 indicates he was meeting his writing goal; however, that report states that Student was meeting the goal by writing 5 sentences, where the goal required that he independently write 10 complete sentences on 3 occasions. Moreover, the fact that Student required multiple verbal and visual prompts every minute during writing assignments is consistent with the evidence showing he did not have access to the assistive technology specified in his IEP. (FF #16.) It is for these reasons that this resulted in a loss of educational opportunity for Student, and thus a denial of FAPE. The SCO now considers an award of compensatory education.

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education is not typically based solely on the amount of time services were missed. *See Cherry Creek Sch. Dist.*, 119 LRP 37631 (SEA CO 6/25/19). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

In this case, based on the brief duration of the ESY session and the fact that Student's IEP was not implemented for writing instruction, a calculation based on the amount of services missed is appropriate. Student was to receive 6 total hours of direct special education services during the ESY session across writing, reading, and math. Because this violation denied Student FAPE in writing, the SCO awards 2 hours of compensatory services to remedy this deficiency.

Conclusion to Allegation No. 2: The District provided necessary educational services to Student after the tenth day of removal due to a violation of a code of student conduct, but failed to include the IEP team in determining such necessary educational services, resulting in a substantive violation of IDEA.

IDEA requires that after a student is removed from his or her educational placement due to a violation of a code of student conduct for 10 days, the District must provide educational services during any subsequent days of removal. 34 C.F.R. § 300.530(b)(2). The educational services must allow the student "to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." 34 C.F.R. § 300.530(d)(1)(i). If the removals resulted in a change in the student's placement, as happened here, the IEP team must determine what services are necessary for the student to progress towards meeting the goals in his or her IEP. 34 C.F.R. § 300.530(d)(5).

In this case, Student's five-day suspension on November 19 resulted in him being suspended for eleven cumulative school days in the 2019-20 school year. (FF #19.) Special Education Teacher

sent make-up work to Parents on November 21 and 22 in the areas of science, English, world studies, and math. The SCO finds and concludes these educational services were appropriate to allow Student to continue to participate in the general education curriculum and progress on his IEP goals for all days of suspension in excess of ten. Here, that was just one school day – December 3. The District, though, did not seek input from Parents or convene the IEP team when determining these necessary services. (FF #20.) This results in a procedural violation.

The SCO must determine if this procedural violation resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if it “seriously impair[s] the parents’ opportunity to participate in the IEP formulation process, result[s] in the loss of educational opportunity for the child, or cause[s] a deprivation of the child’s educational benefits.” See 34 C.F.R. § 300.513(a)(2).

Here, it is clear that Parents were excluded from the IEP decision-making process, resulting in denial of FAPE. *See Sioux Falls Sch. Dist.*, 118 LRP 26279 (SEA SD 5/4/18) (finding denial of FAPE where district unilaterally determined student’s services provided during suspension period). However, based on the unique circumstances presented here, no award of compensatory education or other student-specific remedy is ordered for this violation. First, because Student’s eleventh cumulative day of removal was the last day of his suspension, the District was required to provide only one day of educational services. Special Education Teacher provided necessary educational services for Student via e-mail to Parents. (FF #20-21). Second, Special Education Teacher provided make-up services to Student on December 4 and December 5 in math and English. For these reasons, although Parents were excluded from the decision-making process, no student-specific remedy is ordered because Student was provided with educational services on December 3 consistent with 34 C.F.R. § 300.530(d)(1)(i).

Conclusion to Allegation No. 3: The District failed to provide Parents with a copy of IDEA’s procedural safeguards notice on November 19, resulting in a procedural violation of IDEA.

IDEA requires that on the day a district makes the decision to remove a student with a disability based on a violation of a code of student conduct, and that removal constitutes a change of placement, the District notify the parents of the decision and provide them with a copy of the procedural safeguards. 34 C.F.R. § 300.530(h).

Here, Principal 2 notified Parents on November 19 that Student had been suspended, and that the parties would need to convene an MDR to determine whether Student’s conduct was a manifestation of his disability. Accordingly, the District properly notified Parents the day the decision was made to change Student’s placement based on a violation of a code of student conduct. Nevertheless, as noted at FF #24, the District failed to provide Parents with a copy of the IDEA procedural safeguards notice on that date, which results in a procedural violation.

The SCO must determine if this procedural violation resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if it “seriously impair[s] the parents’ opportunity to participate in the IEP formulation process, result[s] in the loss of educational opportunity for the child, or cause[s] a deprivation of the child’s educational benefits.” See 34 C.F.R. § 300.513(a)(2).

The SCO finds and concludes that this procedural violation did not result in substantive harm. As noted at FF #25, the District provided Parents with the IDEA procedural safeguards notice twelve times between August 2, 2019 and November 19, 2019, nine of which were provided via e-mail. Accordingly, despite the District’s failure to provide the IDEA procedural safeguards notice on November 19, Parents continued to have access to the document, and the SCO therefore does not find a substantive violation of IDEA.

Conclusion to Allegation No. 4: The District was not required to obtain Parents’ consent before excusing IEP team members on February 8 and November 18, and therefore did not violate the IDEA.

“Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of . . . FAPE to the child, participate in the child’s IEP Team meeting.” *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011). IDEA differentiates between mandatory and discretionary IEP Team members. See *Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include: parents, at least one regular education teacher, at least one special education teacher, a district representative with knowledge of the district’s available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). Discretionary members include other individuals who have knowledge or special expertise regarding the child. 34 C.F.R. § 300.321(a)(6). Both the district and parents have discretion to invite “other individuals” with knowledge or special expertise about the child to the IEP meeting. 34 C.F.R. § 300.321(a)(6).

Mandatory IEP Team members may only be excused from attending IEP Team meetings if the parents and district both agree in writing. 34 C.F.R. § 300.321(e). However, consent and a written agreement is not necessary to excuse “individuals who are invited to attend IEP Team meetings at the discretion of the parent or public agency because such individuals are not required members of an IEP Team.” 71 Fed. Reg. 46675 (August 14, 2006).

In terms of the February 8 IEP meeting, the SCO finds and concludes that the District appropriately concluded the meeting once Father acted aggressively towards Principal 1. At that point, Assistant Director 1 felt Father was no longer cooperating with the IEP decision-making process, and thus decided to excuse all IEP team members. (FF #27.) By aggressively posturing and cursing at Principal 1, Father did not allow the IEP team process to properly function. Accordingly, the SCO finds and concludes the District appropriately ended the

February 8 IEP meeting early. Parental consent to excuse the mandatory IEP team members was thus not required. See *Sacramento City Unified Sch. Dist.*, 114 LRP 6937 (SEA CA 1/16/14) (finding district justified in terminating IEP team meeting due to parent's confrontational and aggressive behavior).

Regarding the November 18 IEP meeting, the SCO finds and concludes that District Nurse was a discretionary member of Student's IEP team. At the meeting, District Nurse discussed how Student's disability related to his eligibility for special education and related services. However, before she could speak about how Student's disability affected him in the context of discipline, District Nurse left the meeting to attend a mandatory training. (FF #29.) As District Nurse was a discretionary member with knowledge or expertise about Student, her excusal did not require written consent. Moreover, Parent indicated in emails on November 19 and 22 that the IEP team was not close to finalizing Student's IEP, and that at least two other IEP meetings would likely be needed. (FF #30.) On December 20, the IEP team, including District Nurse, reconvened. Accordingly, the SCO finds no IDEA violations for either IEP meeting.

Conclusion to Allegation No. 5: The District's alternative lunch and recess plans for Student at School 1 and School 2 were not consistent with his IEP's LRE statement.

An IEP must include, among other things, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004).

Thus, IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116. This requirement extends outside of the classroom as school districts must ensure that each child with a disability participates with nondisabled children in meals and recess periods to the maximum extent appropriate to the needs of that child. 34 C.F.R. § 300.117.

In this case, Student's IEP requires that he spend at least 84.1% of the time in the general education environment. Student's IEP only mentions that he attended lunch and recess with the fifth-grade class while in fourth grade. (FF #32.) Thus, the presumption is that Student should attend lunch and recess with his peers. Neither alternative lunch plan called for Student to be totally isolated from his peers; however, Student only had one other classmate accompanying him, and due to various circumstances Student sometimes ate alone. (FF #38.) The decision to alter Student's LRE in this manner was made by the staff at School 1 and School 2, not by the IEP team. Because these plans altered his time spent with general education

peers, Student's LRE statement should have been revised, either through an IEP team meeting or through the IEP amendment process. 34 C.F.R. § 300.324(a)(4),(6). Moreover, because Student's behavior was the impetus for these alternative plans, the District should have proposed to conduct a new FBA and, considered a reevaluation and a revision to Student's BIP. For these reasons, the SCO concludes that the alternative lunch plans at School 1 and School 2 were not consistent with the LRE statement in Student's IEP.

However, not every deviation from an IEP's requirements results in a denial of FAPE. *L.C. and K.C. v. Utah State Bd. of Educ. et al.*, 43 IDELR 29 (10th Cir. 2005) (minor deviations from IEP's requirements which did not impact student's ability to benefit from special education program did not amount to a "clear failure" of the IEP). First, though the alternative lunch and recess plans reduced Student's exposure to his general education peers, he was allowed to have friends join him. Second, these plans were put in place in an attempt to help Student with behavioral challenges during unstructured times of day when he struggled and were temporary in nature. (FF #33, 35, 36). Third, each time Parents voiced their objection to the alternative lunch plans, the District immediately returned Student to the general education environment. Finally, at School 2, Parents initially consented to the alternative lunch and recess plan, and—recognizing it was successful—inquired whether it should be included in Student's IEP. (FF #39.) Based on the above, the SCO finds and concludes that the alternative lunch plans at School 1 and School 2 did not result in a material failure to implement Student's IEP.

Conclusion to Allegation No. 6: The District ensured parental participation in the development of Student's November 2019 IEP, and thus did not violate IDEA.

The IDEA's procedural requirements for developing a child'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, 1312 (10th Cir. 2008). Thus, the creation of an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" must involve a "fact-intensive exercise . . . informed not only by the expertise of school officials, but also by the input of the child's parents or guardians." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017).

To that end, the IDEA requires that parental participation be meaningful, to include carefully considering concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful consideration does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 4/22/18).

In this case, the SCO finds and concludes that a prior written notice sent to Parents on November 22 contradicts the claim that the District ended OT services and began SL services without their input. It provides that: “The action of implementing speech language services inside the general education setting was proposed and agreed upon by the IEP team at the 11/18 IEP meeting [and] . . . the team agreed to discontinue direct OT services.” (FF #45.) Parents attended the November 18 IEP meeting. *Id.* Moreover, Parent directly acknowledged by e-mail that the IEP team discussed and agreed to end OT services. (FF #46.) This evidence weighs in favor of the conclusion that the District provided Parents a meaningful opportunity to participate with respect to decisions about OT and SL services.

Regarding Student’s BIP, there is no evidence in the Record to support Parents’ assertion that the District presented the updated BIP on November 11 as a finalized version. To the contrary, the IEP team engaged in extensive back and forth regarding all aspects of Student’s educational programming, to include the BIP. (FF #42-43.) Additionally, email correspondence between Assistant Director 2 and Parents conclusively show the District collaborated with Parents and sought to include them in all aspects regarding BIP development. Finally, as discussed at FF #44, the draft BIP presented to Parent on November 11 contained changes she suggested in her October 23 email. This shows the District both considered and incorporated Parent’s concerns in the draft BIP. Accordingly, the SCO finds no violations with respect to parental participation.

Consistent with IDEA’s requirement for annual review, the IEP team should have reviewed Student’s IEP on or before April 6, 2019. 34 C.F.R. § 300.324(b)(1). In this case, however, the District has convened the IEP team multiple times, most recently in November, December and January, but has not yet put forth a final offer of FAPE. (FF #47). So although the SCO finds and concludes that District has meaningfully considered Parents’ comments, concerns, ideas, and suggestions throughout the IEP process, it has failed to timely revise Student’s IEP.

Where there is disagreement about a student’s educational needs and services, there is foreseeable tension between two essential obligations: 1) the District’s obligation to ensure meaningful parental participation, and 2) the District’s obligation to timely review/revise a student’s IEP and extend a firm offer of FAPE. In balancing this tension, it is reasonable for the revision of an annual IEP to be briefly delayed to ensure that parents have an opportunity to meaningfully participate in developing their child’s educational program. Here, however, the delay was lengthy. As a result, Student has been receiving services pursuant to an IEP that has not been revised for over eighteen months, during a time when he was also exhibiting behavioral challenges.

When revising a student’s IEP, the IEP team “should work towards a general agreement, but the [district] is ultimately responsible for ensuring the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE).” *Letter to Richards*, 110 LRP 52287 (OSEP 2010). Ultimately, if the parties cannot reach an agreement, the district must make an offer of FAPE, and inform parents of their right to contest the district’s offer by filing

either a due process or state complaint. *Id.* Although the District has delayed revision of Student's IEP in a continuing effort to address Parents' concerns and demands, its obligation to make a firm offer of FAPE can be delayed no longer. Accordingly, the SCO orders that the IEP team reconvene to review and revise Student's April 6, 2018 IEP, and that the District put forth an offer of FAPE at that IEP meeting.

REMEDIES

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

- a) Failing to properly implement Student's IEP during the ESY session, in violation of 34 C.F.R. §§ 300.320(a), 300.323;
- b) Failing to determine Student's services during his disciplinary removal via the IEP team, in violation of 34 C.F.R. § 300.530(d)(5);
- c) Failing to provide Parents with a copy of IDEA's procedural safeguards notice, in violation of 34 C.F.R. § 300.530(h);
- d) Failing to educate Student consistent with the LRE statement in his IEP, in violation of 34 C.F.R. §§ 300.107, 300.114, 300.320(a)(5).

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

1. By **February 25, 2020**, District shall submit to CDE a proposed corrective action plan ("CAP") that adequately addresses the four (4) violations noted in this decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. ESY Teacher, and any other staff person deemed appropriate by the District, must review Findings of Fact section "B" and Conclusion to Allegation No. 1 of this Decision, as well as the requirements of 34 C.F.R. § 300.323. This review must occur no later than **March 15, 2020**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **March 21, 2020**.
 - b. Assistant Director 2, Principal 2, Special Education Teacher, Social Worker, and any other staff person deemed appropriate by the District must review Findings of Fact section "C" and Conclusion to Allegation No. 2 of this Decision, as well as the requirements of 34 C.F.R. § 300.530(d)(5). This review must occur no later than **March 15, 2020**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **March 21, 2020**.

- c. Principal 2 and any staff person at School 2 who regularly communicate with parents regarding suspensions, and any other staff person deemed appropriate by the District, must review Findings of Fact section “D” and Conclusion to Allegation No. 3 of this Decision, as well as the requirements of 34 C.F.R. § 300.530(h). This review must occur no later than **March 15, 2020**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **March 21, 2020**.
 - d. Principal 1, Assistant Director 1, Assistant Director 2, Principal 2, Special Education Teacher, Social Worker, and any other staff person deemed appropriate by the District must review Findings of Fact section “F” and Conclusion to Allegation No. 5 of this Decision, as well as the requirements of 34 C.F.R. §§ 300.107, 300.114, 300.320(a)(5). This review must occur no later than **March 15, 2020**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **March 21, 2020**.
 - e. CDE will approve or request revisions to the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.
2. By **February 25, 2020**, the District must convene Student’s IEP team for the purpose of reviewing and revising Student’s IEP, and put forth an offer of FAPE consistent with 34 C.F.R. § 300.324(b)(1). This meeting must be held at a mutually convenient time and setting. The District must provide proof that this IEP meeting occurred by submitting a copy of the Notice of Meeting, updated IEP, and a detailed PWN explaining the District’s rationale for its offer of FAPE by **March 2, 2020**. If Parents disagree with the District’s offer of FAPE, their remedy is to exercise their rights under IDEA’s procedural safeguards, including filing a state complaint or due process complaint. If Parents do not respond to the District’s efforts to convene this IEP meeting or place conditions on the meeting that amount to a refusal to attend, the District may convene the IEP meeting without Parents, provided the District has made diligent attempts to convince Parents to participate, consistent with 34 C.F.R. § 300.322(d). In its sole discretion, CDE will determine compliance with this remedy, including Parents’ willingness to attend the IEP meeting.
3. Compensatory Education Services for Denial of a FAPE:
- a. District shall provide Student with two (2) hours of direct, individualized instruction towards his writing goal outside of the general education setting by **March 31, 2020**. To document the provision of these services, District must

submit written proof that the compensatory services have been completed no later than **April 7, 2020**.

- b. Within ten (10) days after receiving this Decision, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time period, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents its efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
- c. District shall submit the schedule of compensatory services to CDE no later than **February 21, 2020**. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents, as well as notify CDE of the change in schedule.

The Department will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the Department will arrange to conduct verification activities to verify the District's timely correction of the areas of noncompliance.

Please submit the documentation detailed above to the Department as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Michael Ramirez
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District 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. 46607 (August 14, 2006).

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

Dated this 4th day of February, 2020.

Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-17

Exhibit A: email dated 5/23/19
Exhibit B: IEP dated 4/6/18
Exhibit C: emails dated 7/10/19-7/11/19
Exhibit D: emails dated 7/18/19, 7/15/19
Exhibit E: email dated 7/22/19
Exhibit F: assignment example dated 7/8/19
Exhibit G: assignment example dated 7/16/19
Exhibit H: suspension letter dated 9/26/19
Exhibit I: suspension letter dated 10/1/19
Exhibit J: suspension letter dated 11/4/19
Exhibit K: suspension letter dated 11/20/19
Exhibit L: emails dated 11/19/19, 11/22/19
Exhibit M: email dated 11/22/19
Exhibit N: emails dated 11/21/19-11/22/19
Exhibit O: no exhibit submitted
Exhibit P: email dated 11/22/19
Exhibit Q: email dated 12/1/19
Exhibit R: emails dated 12/2/19-12/3/19
Exhibit S: email dated 11/21/19 and attached assignments
Exhibit T: email dated 11/22/19
Exhibit U: google docs screen shot dated 11/18/19
Exhibit V: email dated 11/22/19
Exhibit W: email dated 12/2/19
Exhibit X: email dated 12/3/19
Exhibit Y: email dated 10/2/19
Exhibit Z: email dated 11/5/19
Exhibit AA: email dated 12/3/19
Exhibit AB: email dated 5/10/19
Exhibit AC: email dated 3/6/19
Exhibit AD: email and attached suspension notice dated 2/26/19
Exhibit AE: notices of meeting dated 2/5/19 & 10/3/19
Exhibit AF: IEP draft dated 11/18/19
Exhibit AG: email dated 11/13/19
Exhibit AH: emails dated 2/12/19-2/13/19
Exhibit AI: emails dated 2/12/19-2/13/19
Exhibit AJ: no exhibit submitted
Exhibit AK: no exhibit submitted
Exhibit AL: no exhibit submitted

Exhibit AM: various email correspondence from April 2019
Exhibit AN: email dated 9/3/19
Exhibit AO: letter from health care provider dated 5/14/19
Exhibit AP: emails dated 10/22/19-10/23/19
Exhibit AQ: emails dated 10/22/19, 11/7/19
Exhibit AR: IEP progress report
Exhibit AS: notice of meeting dated 10/16/19
Exhibit AT: email dated 11/5/19
Exhibit AU: no exhibit submitted
Exhibit AV: no exhibit submitted
Exhibit AW: BIP dated 10/23/19
Exhibit AX: FBA dated 3/15/17
Exhibit AY: emails dated 11/11/19, 11/19/19
Exhibit AZ: emails dated 11/11/19, 11/19/19
Exhibit BA: email dated 11/13/19 and draft IEP dated 11/18/19
Exhibit BB: no exhibit submitted
Exhibit BC: email dated 11/5/19
Exhibit BD: PWN dated 11/22/19, evaluation report, email dated 11/18/19

Response, pages

Exhibit 1: District special education reference guide
Exhibit 2: District MDR reference guide; CDE guidance memorandum
Exhibit 3: requested documents contained in Exhibit 1
Exhibit 4: requested documents contained in Exhibit 1
Exhibit 5: requested documents contained in Exhibit 1
Exhibit 6: IEP dated 4/6/18
Exhibit 7: requested documents not provided by District
Exhibit 8: PWN 11/22/19; MDR report 11/19/19; PWN 12/12/19
Exhibit 9: various notices of meeting
Exhibit 10: report cards
Exhibit 11: email correspondence
Exhibit 12: information contained in Response pp. 2-12
Exhibit 13: chart showing procedural safeguards provided to Parents
Exhibit 14: various procedural safeguards notice signoffs
Exhibit 15: FedEx receipt showing Response delivered to Parents
Exhibit 16: meeting notice and emails re: 2/8/19 IEP meeting
Exhibit 17: email from District Legal Counsel dated January 28, 2020

Reply, pages 1-24

Exhibit BE: draft IEP dated 12/20/19

Exhibit BF: assistive technology request form dated 2/2/17
Exhibit BG: emails dated 4/9/18, 8/13/18
Exhibit BH: emails dated 12/10/19 and Student's daily schedule
Exhibit BI: emails dated 12/3/19
Exhibit BJ: email dated 11/18/19
Exhibit BK: draft IEP dated 11/18/19
Exhibit BL: PWN dated 12/12/19
Exhibit BM: emails dated 12/18/19
Exhibit BN: various email correspondence April 2019
Exhibit BO: IEP dated 4/6/18

Interviews with:

Parents
Classroom Teacher
ESY Teacher
Social Worker
Special Education Teacher
Principal 1
Principal 2
Assistant Director 1
Assistant Director 2