

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

State-Level Complaint 2020:523
El Paso County School District 11

DECISION

INTRODUCTION

The parents (“Parents”) of a child (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso County School District 11 (“District”) on July 13, 2020.

The State Complaints Officer (“SCO”) extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in an impasse and, on July 27, 2020, the SCO resumed the investigation.

The 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 C.F.R. §§ 300.151 through 300.152. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will consider only events that occurred not earlier than July 13, 2019 to determine whether a violation of the IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate all allegations accepted in this matter. Findings of non-compliance, if any, shall be limited to one year prior to the date the Complaint was filed.

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.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP from March through May 2020 after the District suspended in-person instruction as result of the COVID-19 pandemic, specifically by:
 - a. Failing to provide Student the special education and related services required under her IEP (including physical therapy, vision, occupational therapy, and speech), consistent with 34 C.F.R. §§ 300.34, 300.320(a)(4), 300.323; and
 - b. Failing to monitor Student’s progress on her IEP goals, consistent with 34 C.F.R. §§ 300.320(a)(3), 300.323.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Student attends sixth grade at a District middle school (“Middle School”). *Interview with Parents*. Student—along with all students in the District—receives remote instruction due to the COVID-19 pandemic, and it is unclear when Student will be able to return to in-person instruction. *Id.* During the 2019-2020 academic year, Student completed fifth grade at an elementary school in the District (“Elementary School”). *Id.*
2. Student is eligible for special education and related services under the Multiple Disabilities category based on Student’s visual impairment and cognitive disability. *Exhibit A*, p. 2.
3. Student is described as a warm, friendly, loving young lady who enjoys interacting with her peers. *Interviews with Parents, Special Education Teacher, Speech Language Pathologist (“SLP”), Orientation and Mobility Specialist (“O&M Specialist”), and Occupational Therapist*. Student likes books and activities involving movement, light, and music. *Id.* Communication and mobility pose the greatest challenges to Student. *Id.*

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

B. Student's 2019-2020 IEP

4. During Student's fifth-grade year, her April 11, 2019 IEP ("2019 IEP") was in effect. *Exhibit A*, pp. 2-16.
5. The 2019 IEP reviewed Student's present levels of performance, noting that Student had met all her IEP goals for the previous year. *Id.* at pp. 4-5. These goals related to mobility, communication, vision, and academic access skills. *Id.*; *see also Exhibit R*, pp. 5-7. Each of Student's service providers shared his or her recent observations of Student. *Exhibit A*, pp. 4-5.
6. As noted in the 2019 IEP, Student's "significant limitations in cognitive functioning, her weak motor and language skills and her significant visual impairment cause[d] progress in all curricular areas to be significantly delayed." *Id.* at p. 5.
7. The 2019 IEP contained four goals targeting Student's access skills, communication skills, and vision. *Id.* at pp. 8-10.
 - Goal #1: "When given the directive to either 'push' or 'pull', [Student] will independently open a door (with resistance) to gain access to rooms in the school environment with a weekly average of 80% of opportunities over 4 consecutive weeks." *Id.* at p. 8.
 - Goal #2: "Provided verbal and visual supports, [Student] will use a variety of functional 2-3 word phrases through word approximation and sign/gesture in 8 out of 10 opportunities in 3 consecutive speech sessions." *Id.*
 - Goal #3: "While walking the length of the chain link fence along the playground, [Student] will touch the edges of the sidewalk with her long white cane less than 4 times, 3 of 4 consecutive data days." *Id.* at p. 9.
 - Goal #4: "[Student] will make a purposeful choice by selecting from an array of 2 to 4 symbols/pictures on a communication notebook and give it to her communication partner in 4 out of 5 opportunities for 3 consecutive sessions." *Id.*
8. Under the 2019 IEP, Student received the following special education and related services:
 - Special Education: 6.5 hours per day of direct "access skills" instruction, 0.25 hour per week of indirect instruction;
 - Occupational Therapy: 0.50 hour per month of direct services, 0.25 hour per month of indirect services;

- Orientation and Mobility (“O&M”): 1 hour per month of direct services, 0.50 hour per month of indirect services;
- Speech Therapy: 3 hours per month of direct services, 0.25 hour per month of indirect services;
- Physical Therapy: 1 hour per month of direct services; and
- Vision Services from Teacher of the Visually Impaired (“TVI”): 0.50 hour per month of direct services, 0.25 hour per month of indirect services.

Id.

9. Special Education Teacher, SLP, and O&M Specialist monitored Student’s progress on her IEP goals through these services. *Interviews with Special Education Teacher, SLP, and O&M Specialist.*

10. Per the 2019 IEP, Student spent 40% to 79% of her time in the general education classroom. *Exhibit A*, p. 13.

C. Suspension of In-Person Instruction

11. On March 12, 2020, the District announced the closure of all District schools for two weeks, from March 16 through March 27, to slow the spread of COVID-19. *Interview with Special Education Director.* The closure included the District’s spring break, which was originally scheduled for March 23 to March 27. *Id.*

12. On March 18, 2020, the Governor of the State of Colorado (“Governor”) issued an executive order requiring all public and private elementary and secondary schools in Colorado to suspend in-person instruction due to the COVID-19 pandemic.³ Subsequent executive orders collectively extended the suspension of in-person instruction through the end of the 2019-2020 school year.⁴

13. Once the Governor issued his initial order, the District extended its closure by an additional week, or until April 7, to allow staff to plan and prepare for remote instruction. *Id.*

14. During the closure, Special Education Director developed the District’s Special Education Distance Learning Plan (“Distance Learning Plan”). *Interview with Special Education Director; Exhibit G*, pp. 1-10. The Distance Learning Plan sought “to provide process guidance for

³ See *Colo. Exec. Order No. D 2020 007* (Mar. 18, 2020), https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20007%20Ordering%20Suspension%20of%20Normal%20In-Person%20Instruction_0.pdf.

⁴ See *Colo. Exec. Order No. 2020 041* (April 22, 2020), <https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20041%20P-12%20Closure%20Extension%20End%20of%20Year.pdf> (noting all intervening orders).

[District] special educators regarding services and IEP compliance during this distance learning period” *Id.* at p. 2.

15. The Distance Learning Plan required District staff to develop an interim service plan (“ISP”) for each special education student. *Id.* at p. 4. Staff should “review the IEP service delivery section [of each student’s IEP] to determine:

- Required services
- If services can be provided remotely
- If so, how often they should be provided and for how long
- If some services are better offered as indirect/consultative instead of direct
- Whether there are barriers to providing remote services and consideration of the need to offer compensatory services in some cases[.]”

Id.

16. Under the Distance Learning Plan, a student’s case manager should contact the student’s parents “to discuss a reasonable interim plan for services during the closure” before documenting the ISP. *Id.* “All services on the student’s current IEP will resume in full when normal school operations resume.” *Id.* at p. 4.

17. The Distance Learning Plan urged staff to “[u]se any progress monitoring tools at your disposal to help you determine how your students are progressing toward their IEP goals” *Id.* at p. 8. “Do the best you can with progress monitoring. Anecdotal information is better than no data.” *Id.*

D. Development of Student’s Interim Service Plan

18. As Student’s case manager, Special Education Teacher oversaw the development of Student’s ISP. *Interview with Special Education Teacher.* Special Education Teacher communicated individually with each of Student’s service providers via email or phone but did not hold a meeting with Student’s service providers. *Id.* It was Special Education Teacher’s expectation that each of Student’s service providers would contact Parents to seek their input in Student’s ISP. *Id.*

Special Education

19. On March 31, 2020, Special Education Teacher contacted Parents to discuss their expectations for Student’s remote instruction. *Id.*; *Exhibit B*, p. 4. Parents said they would talk and then call Special Education Teacher back. *Exhibit B*, p. 4.

20. Parents and Special Education Teacher exchanged voicemails on April 1 but did not connect. *Id.* at p. 5.

21. On April 6, Special Education Teacher emailed Parents, asking how Special Education Teacher and the Special Education Educational Assistants (“EAs”) could support Student during remote instruction. *Exhibit F*, p. 16. That same day, Parent responded: “[The] best strategy for [Student], as I have been telling her [District] therapists, is a Zoom-like platform. [H]er home health care therapists are using Zoom and it works pretty well.” *Id.*

22. On April 7, Special Education Teacher proposed meeting with Student over Zoom twice a week for 20 minutes each session. *Id.* at p. 15. Parent responded via email on April 10. *Id.* In that email, Parent declined meeting twice a week, saying “I think maybe once a week to start. Say Wednesdays at 9:30 a.m.? 20 minutes is fine to see how that length works.” *Id.*

23. Based on Parent’s input, Special Education Teacher noted in Student’s ISP that Student would receive 20 minutes per week of story reading/pre-academic work. *Exhibit I*, p. 4. Special Education Teacher planned to provide the services directly to Student using a video conferencing application, like WebEx or Zoom. *Interview with Special Education Teacher.*

Occupational Therapy

24. On April 7, Occupational Therapist emailed Parents, asking Parents to let her know “what you would like to work on.” *Exhibit F*, p. 35. Her email also included a list of activities for Parents to try with Student at home. *Id.* Parents never responded to Occupational Therapist’s email. *Interviews with Parents and Occupational Therapist.*

25. Regardless, Occupational Therapist determined that Student should receive 20 minutes per month of occupational therapy. *Interview with Occupational Therapist; Exhibit I*, p. 2. In making this determination, Occupational Therapist considered Student’s needs and the fact that Student did not have a specific occupational therapy goal in her 2019 IEP. *Interview with Occupational Therapist.* Prior to the suspension of in-person instruction, Occupational Therapist was supporting Student’s access skills and communication goals. *Id.* Occupational Therapist envisioned providing Student a combination of direct and indirect services. *Id.*

O&M Services

26. O&M Specialist called Parents on March 31 to discuss O&M services during remote instruction. *Interview with O&M Specialist; Exhibit B*, p. 4. Parents recall O&M Specialist telling them what services she was going to provide Student and not seeking Parents’ input on the services. *Interview with Parents.* But O&M Specialist remembers Parents requesting Zoom or an in-person meeting in their neighborhood. *Interview with O&M Specialist.*

27. Nonetheless, Parents consented to O&M Specialist providing indirect O&M services via weekly phone call. *Id.; Interview with Parents.* Parents proposed sending O&M Specialist a video of Student using her cane so that O&M Specialist could review the video and offer suggestions on how to improve Student’s technique. *Interviews with Parents and O&M Specialist.* O&M Specialist agreed. *Id.*

28. O&M Specialist determined that Student should receive 15 minutes of indirect O&M services per week. *Interview with O&M Specialist; Exhibit I*, p. 3. To make this determination, O&M Specialist considered Student's needs and goals and how she could serve those needs and goals remotely. *Id.*

Speech Therapy

29. On Friday, April 3, SLP emailed Parents to let them know that she would be calling the following Monday and asked them to think about how SLP could support Student during remote instruction. *Exhibit F*, p. 29; *Exhibit B*, p. 5. On Sunday, Parents indicated that they were busy on Monday and said they would let SLP know when they were available for a call. *Exhibit F*, p. 29. In the meantime, however, Parents requested that the District use Zoom to provide Student with her services during remote instruction. *Id.*

30. SLP called Parents on April 13 to follow-up and left a voicemail indicating that she wanted to discuss Student's services during remote instruction. *Exhibit B*, p. 7. Parents did not return SLP's call that day, so on April 14, SLP sent an email to Parents with activities for Student to work on at home and, again, asked to speak with Parents about Student's services. *Exhibit F*, p. 31. Parents replied the following day and asked to speak to SLP the following week. *Id.*

31. Unable to gain any substantive input from Parents, SLP determined that Student should receive 20 minutes of speech therapy per month. *Interview with SLP; Exhibit I*, p. 3. SLP made this determination by considering Student's cognitive abilities and her needs. *Interview with SLP*. SLP envisioned these services being both direct and indirect and expected to provide Student much more than 20 minutes of speech therapy per week (viewing the determined amount as only a minimum). *Id.*

Physical Therapy

32. Physical Therapist emailed Parents on March 31 but, at that time, did not know what remote instruction options would be available. *Exhibit 4*, p. 1. Though Physical Therapist said she would "be in touch," she did not follow up with Parents. *Interview with Physical Therapist*.

33. However, Parents responded to Physical Therapist's email on April 5 and requested Student receive physical therapy via Zoom: "Her home health care therapists are conducting therapy via Zoom and its working pretty well. [District] may not be doing teletherapy, but that would be the best strategy for [Student]." *Exhibit 4*, p. 1. Physical Therapist never replied to Parents' email because she just viewed it as a "comment" (not a request) since the District did not permit the use of Zoom. *Interview with Physical Therapist*.

34. Physical Therapist determined that Student should receive 20 minutes of physical therapy per month. *Interview with Physical Therapist; Exhibit I*, p. 3. To arrive at this number, Physical Therapist relied on her past experience with homebound students and what services Physical Therapist thought Student might need to access her education from home. *Interview*

with Physical Therapist. Physical Therapist did not discuss this with Parents but, instead, “just selected the 20 minutes.” *Id.*

Vision Services

35. Special Education Teacher emailed TVI on April 1 to inquire whether TVI thought Student should receive any vision services during remote instruction. *Exhibit F*, p. 18. TVI replied: “Yes, I think I should have some time listed. For my other students I have been doing half of my regular service time, so let’s go with 15 minutes a week for [Student].” *Id.* at p. 17.

36. TVI did not seek Parents’ input on Student’s vision services during remote instruction. *Interview with TVI*. Instead, TVI thought Special Education Teacher was talking to Parents. *Id.*

37. Ultimately, TVI determined that Student should receive 15 minutes per week of indirect vision services. *Interview with TVI; Exhibit I*, pp. 3-4. TVI envisioned providing these services through email with Parents. *Interview with TVI*.

38. Though TVI indicated she crafted ISPs based on students’ existing services, goals, and needs, her email correspondence with Special Education Teacher contradicts this statement—at least with regard to Student. *See id.; Exhibit F*, pp. 17-18.

39. On April 9, TVI emailed Parents to inform them of her plans for Student’s remote instruction. *Exhibit F*, p. 20. Parents replied on April 14. *Id.* at p. 20. In their reply, Parents said “Okay. Thank you” before proceeding to discuss Student’s IEP for the 2020-2021 school year. *Id.*

E. Student’s ISP

40. Student’s ISP is dated April 3, 2020. *Exhibit I*, p. 2. Special Education Teacher created the ISP template on April 3, but Parents’ slow responses delayed completion of the ISP. *Interview with Special Education Teacher*. As a result, Student’s ISP was not finalized until on or around April 13. *Id.* Special Education Teacher sent the ISP to Parents on April 21. *Exhibit 1*, p. 1.

41. The ISP “outlines the services your student will receive while he/she is unable to attend school” during the suspension of in-person instruction due to COVID-19. *Exhibit I*, p. 2. Other than temporarily changing Student’s special education and related service minutes, the ISP had no effect on Student’s 2019 IEP. *Interview with Special Education Teacher; Exhibit I*, pp. 2-4. The ISP specifically notes that “[a]ll services on the student’s current IEP will resume in full upon resumption of normal school operations.” *Exhibit I*, p. 2.

42. Student’s ISP required the following services:

- Special Education (Story Reading/Pre-Academic Work): 20 minutes per week

- Occupational Therapy: 20 minutes per month
- Consultative O&M: 15 minutes per week
- Speech Therapy: 20 minutes per month
- Physical Therapy: 20 minutes per month
- Consultative Vision Services from TVI: 15 minutes per week

Id., pp. 2-4. The ISP indicated that Student should “not use” general education services during remote instruction. *Id.*

43. The duration of each of the services in Student’s ISP was less than the duration for the same service under Student’s 2019 IEP. *See Exhibit A*, p. 13; *Exhibit I*, pp. 2-4. Some of the services—such as speech—were dramatically decreased. Under her 2019 IEP, Student received three hours per month of speech therapy, but, under her ISP, Student received only 20 minutes per month (only 11% of her prior service minutes). *See Exhibit A*, p. 13; *Exhibit I*, p. 3.

44. The ISP clearly identified Student’s O&M and vision services as “consultative”, or indirect, services. *Exhibit I*, pp. 2-4. However, the remainder of the services were not specified as either direct or indirect. *Id.*

45. The District did not issue a prior written notice (“PWN”) regarding Student’s ISP. *See Exhibit D*, pp. 1-2. Per District policy, prior written notice must be issued to the parents of a student with a disability any time the District proposes to change or refuses to change the identification, evaluation, or educational placement of the student. *Exhibit D*, p. 10.

F. Implementation of Student’s ISP

46. The District began remote instruction on April 7. *Interview with Special Education Director*. As noted above, however, Student’s ISP was not finalized until on or around April 13. *Interview with Special Education Teacher*. At that point, only 5 weeks and two days remained in the 2019-2020 school year. *Interview with Special Education Director*.

47. Each of Student’s service providers completed their portion of Student’s ISP and, therefore, was aware of the services to be provided to Student. *Interview with Special Education Teacher*. Additionally, Student’s ISP was available in the District’s system, which is accessible to all of Student’s service providers (and Special Education Teacher). *Id.*

48. During remote instruction, District staff tracked the services provided to Student in a Student Event Log. *See Exhibit B*, pp. 2-12.

Special Education

49. Beginning on April 15, Special Education Teacher or one of the EAs met with Student over Zoom every Wednesday for 20 minutes. *Interview with Special Education Teacher; Exhibit B*, p. 9. During these sessions, the special education staff generally read Student a book and

then discussed how things were going with Parents. *Interviews with Special Education Teacher and Parents*. On April 22, one of the EAs had Student work on identifying pictures in addition to reading a book. *Exhibit B*, p. 11.

50. Several of the Wednesday sessions are missing from the Student Event Log. *See Exhibit B*, pp. 11-12. However, Parents do not dispute that the Special Education team met with Student every Wednesday between April 15 and May 19, the end of the school year. *Interview with Parents*.

51. In total, Student received five 20-minute sessions with the Special Education team during the approximately five weeks her ISP was implemented. *Interview with Special Education Teacher; Exhibit B*, pp. 2-12.

Occupational Therapy

52. As noted above, on April 7, Occupational Therapist emailed Parents a list of activities to work on at home. *Exhibit F*, p. 35.

53. On April 23, Occupational Therapist and Parents had a phone conversation discussing Student's recent re-evaluation and goals for Student's next IEP. *Interview with Occupational Therapist and Parents; Exhibit B*, p. 9. This conversation did not pertain to Student's services during remote instruction. *Interviews with Occupational Therapist and Parents*.

54. Three weeks later, on May 13, Occupational Therapist emailed Parents to ask whether Parents "had questions or wanted to talk over OT ideas for your student before the end of the school year. Please let me know if you wish to talk or Webex?" *Exhibit F*, p. 41. Parents responded, indicating that they would prefer to meet via WebEx. *Id.*

55. On May 19, Occupational Therapist met with Student for approximately 20 minutes to sing songs and work on identifying Student's body parts. *Interviews with Occupational Therapist and Parents*. Student responded positively and seemed to enjoy the session. *Id.*

56. In total, Occupational Therapist provided Student with one email of activities in April and one 20-minute video meeting in May. *Exhibit F*, p. 35; *Interviews with Occupational Therapist and Parents*.

O&M Services

57. On April 5, O&M Specialist spoke with Parents to remind them to submit a video of Student using her cane. *Exhibit B*, p. 6. O&M Specialist attempted to reach Parents on April 13 to check on Student's cane usage but was unable to reach Parents. *Interview with O&M Specialist; Exhibit B*, p. 4.

58. On April 16, O&M Specialist had a 19-minute phone conversation with Parents regarding Student's use of the cane. *Interview with O&M Specialist; Exhibit B*, p. 8. During that call, Parents expressed concerns over particular aspects of Student's cane usage, and O&M provided Parents suggestions on how to address these concerns. *Interview with O&M Specialist*.
59. The following week, Parents declined their regularly scheduled call with O&M Specialist, preferring to use that time to speak with Occupational Therapist. *Interviews with Parents and O&M Specialist; Exhibit B*, p. 8.
60. O&M Specialist called Parents on May 1 for her weekly phone consultation. *Id.* at p. 10. The Student Event Log does not list the length of this phone consultation. *Id.*
61. On May 8, O&M Specialist had a thirty-minute phone call with Parents regarding their concerns with Student's cane usage. *Id.* at p. 11.
62. Finally, on May 15, O&M Specialist called Parents for her weekly phone consultation, but Parents declined the call, indicating they had a separate meeting scheduled for the same time. *Id.; Interviews with Parents and O&M Specialist*.
63. In total, O&M Specialist provided Parents a weekly phone consultation—or an opportunity for a weekly phone consultation—each of the five weeks Student's ISP was implemented. *Exhibit B*, pp. 4, 8, 10, 11.

Speech Therapy

64. SLP emailed Parents speech-related activities on April 14. *Exhibit F*, p. 31.
65. On April 20, SLP and Parents had a 35-minute phone conversation regarding Student's services during remote instruction, recent re-evaluation, and 2020-2021 IEP. *Exhibit B*, p. 9. Parents recall the majority of this conversation being focused on the latter two topics. *Interview with Parents*.
66. On April 23, SLP proposed meeting with Student for "one 15-20 minute Zoom meeting." *Exhibit F*, p. 32.
67. SLP met with Student for 30 minutes via Zoom on May 4. *Exhibit B*, p. 10; *Interviews with SLP and Parents*. Student was engaged for 15-20 minutes, and SLP spent the rest of the time talking to Parents. *Interview with SLP*.
68. In total, SLP provided Student with 15-20 minutes of direct services and provided Parents with one email of activities. *Exhibit F*, p. 31; *Exhibit B*, p. 10.

Physical Therapy

69. Physical Therapist sent Parents activities to do with Student via email on March 31, April 8, and April 21. *Exhibit F*, pp. 26-27; *Exhibit B*, p. 7. These activities targeted, for example, Student's ability to walk backwards and her balance. *Exhibit F*, pp. 26-27.

70. On May 15, Physical Therapist contacted Parents to see whether Student had adjusted to the new lift in her shoe and offered suggestions for improving Student's balance. *Id.* at p. 25.

71. In total, Physical Therapist provided Parents with four emails with physical therapy activities. *Exhibit F*, pp. 25-27.

Vision Services

72. On April 17, TVI emailed Parents to ask how Student was doing. *Exhibit F*, p. 20. Parents responded on April 20, indicating that Student seemed "bored" because Parents could not give "her the attention and direction she would get at school." *Id.* Parents indicated "[i]t would be great if [District] therapists could also do therapy on Zoom as personally that platform works well with the iPad we have for [Student] and her activities." *Id.*

73. TVI corresponded with Parents via email on April 22 and 29, but those communications did not pertain to Student's services during remote instruction but, instead, related to Student's 2020-2021 IEP. *Id.*

74. On April 23, TVI wrote:

It would be fun to work with [Student] through a video connection. The district is not allowing us to use Zoom with students, however, due to confidentiality issues, so it would have to be through WebEx. If you would like to try it, let me know some times that Student is available.

Id. Parents did not respond. *Interview with Parents.*

75. On May 14, TVI sent Parents a final email. *Exhibit F*, p. 23. That email neither inquired about Student nor offered any suggestions for Parents. *Id.*

76. In total, TVI sent Parents three emails checking in on Student during remote instruction. *Exhibit F*, pp. 20, 23. None of the emails contained anything substantive or even made any suggestions as to how Parents could work on Student's vision skills at home. *See id.*

Progress Reports

77. In accordance with its regular schedule, the District issued progress reports the final week of the 2019-2020 school year. *Interview with Special Education Teacher; see Exhibit E*, pp. 8-12. For each of Student's goals, the Progress Report indicates: "Due to school closures, no

progress monitoring completed. Once normal school operations resume, progress will be calculated at that time.” *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 failed to fully implement Student’s ISP during remote instruction, in violation of 34 C.F.R. 300.323(c)(2), by failing to provide Student all of her special education and related services and by failing to monitor Student’s progress on her IEP goals. Additionally, the District failed to provide Parents with Prior Written Notice of the change in Student’s special education and related services, in violation of 34 C.F.R. § 300.503(a).

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*, 137 S. Ct. 988, 994 (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).

In this case, once the Governor suspended in-person instruction, the District developed an ISP for Student. (FF #s 40-42.) That ISP neither amended nor replaced Student’s existing IEP. (FF #s 16, 42.) The ISP merely supplemented Student’s 2019 IEP by identifying the special education and related services Student would receive during remote instruction. As such, the ISP dictated the special education and related services that the District was obligated to provide to Student. As detailed below, the District fell short in implementing Student’s ISP, in violation of 34 C.F.R. § 300.323(c)(2).

A. Provision of Special Education and Related Services

Parents’ Complaint alleges that the District did not provide Student the special education and related services specified in her ISP. Student’s ISP was implemented for a period of five weeks

and two days over the months of April and May 2020. (FF # 46.) During this time, Student should have received the following services:

- Special Education: 100 minutes
- Occupational Therapy: 40 minutes
- Consultative O&M: 75 minutes
- Speech Therapy: 40 minutes
- Physical Therapy: 40 minutes
- Consultative Vision Services: 75 minutes

(See FF # 42.) As a preliminary matter, the SCO notes that only two of Student’s services—O&M and Vision—were identified as “consultative” or indirect services. (*Id.*). The remainder of Student’s services do not specify whether they were direct or indirect. (FF # 44.) This distinction in labeling suggests that the other services were direct or, at the very least, partially direct.

The SCO finds and concludes that Student received all the Special Education and O&M services required by her ISP. Special Education Teacher or the EAs met with Student directly via video conference on each of the five weeks Student’s ISP was implemented. (FF # 51.) Similarly, O&M Specialist provided Parents a weekly phone consultation for each of those five weeks. (FF # 63). Parents declined a call with O&M two of those weeks, but services were made available to Parents that week. (FF #s 59, 62.) Special Education Teacher and O&M Specialist fulfilled their obligations under Student’s ISP.

However, the SCO finds and concludes that Student did not receive all of the Occupational Therapy, Speech Therapy, Physical Therapy, or Consultative Vision Services promised by her ISP. Though Occupational Therapist envisioned providing Student a combination of direct and indirect services, Occupational Therapist only offered direct services in the final week of the academic year. (FF #s 25, 54). Ultimately, Occupational Therapist sent Parents one email and met with Student via video conference for 20 minutes. (FF # 56.) These two activities, taken together, do not amount to 40 minutes of services—whether direct or indirect.

Similarly, SLP sent Parents one email and met virtually with Student once. (FF #s 64, 67.) The virtual meeting lasted 30 minutes. (FF # 66.) Student received direct services for 15-20 minutes, and the SLP visited with Parents for the remainder of the time. (*Id.*) Speech Therapist offered no explanation why she initially defaulted to sending Parents an email without trying to video conference with Student or send video lessons Parents could play at home. The SCO finds and concludes that Student did not receive 40 minutes of speech therapy as required by her ISP.

Before the COVID-19 pandemic, Student was receiving three hours per month of direct speech therapy pursuant to her 2019 IEP. (FF # 43.) Half of Student’s 2019 IEP goals targeted

communication. (FF # 7.) However, the suitability of the amount of speech therapy in Student's ISP is beyond the scope of this Complaint.

Over the course of the five weeks, Parents received four emails from Physical Therapist with activities to work on with Student. (FF #s 68, 69.) Physical Therapist never offered to provide any direct services to Student, even though Parents requested virtual physical therapy and indicated Student had been doing well with virtual therapy from private providers. (FF #s 33-34, 69-71.) The SCO finds and concludes that Student did not receive the 40 minutes of physical therapy required by her ISP.

TVI sent Parents three emails checking in on Student during the suspension of in-person instruction. (FF #s 72, 74-76.) None of the emails contained any substantive information or activities for Student. (FF # 76.) On April 23, TVI agreed to meet with Student via video (as Parents had previously requested). (FF #s 72, 74.) When Parents failed to respond, TVI let it go, even though there was nearly one month of school left. The services provided by the TVI do not total 75 minutes; therefore, the SCO finds and concludes that Student did not receive the vision services required by her ISP.

Some confusion existed (and, perhaps, still exists) among Student's service providers with regard to their discussions with Parents about Student's re-evaluation and 2020-2021 IEP. (FF #s 53, 65, 73.) District staff undoubtedly devoted time to answer Parents' questions about the re-evaluation and discuss ideas for the 2020-2021 IEP. But that time did not count towards Student's service minutes under Student's ISP.

The SCO finds and concludes that each of Student's teachers and service providers was informed of her responsibilities under Student's ISP. Each teacher and/or service provider determined the services required by the ISP and, therefore, was aware of the services to be provided before the ISP was even finalized. (FF # 47.) Moreover, the ISP remained available to all teachers and service providers in the District's electronic system. (*Id.*) Therefore, the District complied with 34 C.F.R. § 300.323(d).

Nonetheless, as the Findings of Fact make clear, the District failed to fulfill Student's ISP. Once in-person instruction was suspended, the District recognized that it would not be able to provide Student with all of the special education and related services identified in her IEP. As a result, the District developed an ISP for Student, which outlined the services the District would provide. The ISP temporarily supplemented Student's 2019 IEP. During this period, the District was not required to fully implement the 2019 IEP, but it was required to fully implement Student's ISP. By failing to provide the services required by Student's ISP, the District failed to fully implement Student's IEP in violation of 34 C.F.R. § 300.323(c)(2).

B. Monitoring Student's Progress on her IEP Goals

Parents' Complaint also alleged that the District made no effort to monitor Student's progress on her IEP goals during remote instruction.

Under the IDEA, school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3). During the COVID-19 global pandemic, guidance from CDE indicated that "[s]chools should make reasonable, good faith efforts to continue to collect and report progress on IEP goals to parents consistent with the schedule identified on the student's IEP . . ." Colo. Dep't of Ed., *Special Education & COVID-19 FAQs*, Progress Monitoring Q1, available at www.cde.state.co.us/cdesped/special_education_faqs ("CDE FAQs"). CDE suggested Parents and other IEP Team members "collaborate and partner to identify flexible data collection strategies that can be used to track progress." *Id.* at Q2. The District's Distance Learning Plan encouraged staff to "do the best you can with progress monitoring", noting that "[a]necdotal information is better than no data." (FF # 17.)

The District provided Parents with a progress report for the fourth quarter of the 2019-2020 school year, which encompassed remote instruction. (FF # 77.) However, that progress report states: "Due to school closures, no progress monitoring completed. Once normal school operations resume, progress will be calculated at that time." (*Id.*)

Quite simply, nothing in the record suggests the District made any effort to collect data or anecdotal information on Student's progress on her 2019 IEP goals. Student's cognitive and physical limitations undoubtedly made it difficult for the District to provide Student the same targeted services she would have received during in-person instruction. But the lack of direct services provided to Student also complicated the District's ability to gather information on Student's progress. Only Special Education Teacher and the EAs interacted with Student more than once. (See FF #s 51, 56, 63, 68, 71, 76.)

Some of Student's 2019 IEP goals did not translate well to the home environment. For instance, Student's first goal required her to push or pull open a door with resistance (such as the doors in a school). (FF #7.) Student had no doors with resistance in her home, so she could not directly work on this goal. As a result, neither service providers nor Parents could monitor Student's progress on this goal *as written*.

But this goal still presented Special Education Teacher and Physical Therapist with an opportunity to collect some data or, at least, anecdotal information. For example, Special Education Teacher and Physical Therapist may have inquired about Student's handling of the doors in her home or her ability to backup while pulling a door open, a skill that applies regardless of the weight of the door.

The *CDE FAQs* and the District’s own policy emphasized the importance of progress monitoring during remote instruction, even if the monitoring resulted in purely anecdotal information. In its Response, the District argues it was not required to monitor progress for two reasons: (1) because the District was relying on Parents to provide the services and track Student’s progress; and (2) because the *CDE FAQs* on Compensatory Education “suggest” that progress monitoring was not required. *Response*, p. 5-6. This argument fails. It plainly contradicts specific guidance by CDE on progress monitoring and ignores the District’s own policy.

Here, the Findings of Fact make clear that the District did not monitor Student’s progress during remote instruction. As a result, the SCO finds the District violated 34 C.F.R. § 300.320(a)(3).

C. Materiality of Failure to Implement

The failure to implement a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail.” *Id.* But a child’s educational progress, or lack thereof, may indicate whether there has been more than a “minor shortfall in the services provided.” *Id.*

On March 12, 2020, the U.S. Department of Education issued guidance regarding the provision of FAPE during the COVID-19 pandemic. *Questions and Answers on Providing Services to Children with Disabilities during the Coronavirus Disease Outbreak*, 76 IDELR 77 (OSERS 2020) (“*Questions and Answers*”). This guidance indicated that school districts “must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP.” *Id.*

The *CDE FAQs* echoed the U.S. Department of Education’s guidance by advising that, to the extent a school district provides education services to the general student population, “it must ensure that students with disabilities have access to the same educational opportunities and FAPE. This means that—to the greatest extent possible—the special education and related services identified in the student’s IEP should be provided.” *CDE FAQs*, at Provision of Special Education and Related Services Q2.

Here, the District recognized that it was not possible to provide Student all the special education and related services identified in her 2019 IEP via remote instruction. Indeed, the

District developed Student's ISP for this reason—to set forth the special education and related services the District believed Student needed and that it could provide during remote instruction. There was little, if any, coordination between Special Education Teacher and Student's service providers in developing Student's ISP. (FF #s 18, 35, 36.) And, once implemented, the District neglected to provide Student with all of her services or to monitor her progress under her ISP.

Fully implemented, Student's ISP would have required only 6 hours and 10 minutes of services in total or about 70 minutes per week. (See FF # 42.) Student's services were minimal in comparison to the services she received during in-person instruction under her 2019 IEP, but this made each of Student's limited service minutes even more important. The SCO finds and concludes the District's failure to implement Student's ISP—both by failing to provide Student services and monitor her progress—to be a material failure that amounts to a denial of FAPE. This denial of FAPE entitles Student to an award of compensatory services. See *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

D. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an "hour-for-hour calculation." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). 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).

Here, because the District both failed to implement Student's ISP and failed to monitor Student's progress, nothing in the record indicates the lack of progress Student has experienced. Student has not yet returned to in-person instruction and, at this point, it is unclear when Student will be able to return. (FF # 1.) The District has proposed awarding compensatory services once Student can be evaluated. But the uncertainty around Student's return to in-person instruction makes the District's proposal too uncertain. As a result, the SCO finds an award of compensatory services appropriate here where the District failed both to fully implement Student's ISP and to monitor Student's progress towards her IEP goals (and where aberrations existed in the development of Student's ISP).

In total, the SCO finds that the District failed to provide Student with 2 hours and 10 minutes of services: 15 minutes of occupational therapy, 20 minutes of speech therapy, 20 minutes of physical therapy, and 75 minutes of vision services. (See FF #s 56, 68, 71, 76.) Student did not receive approximately 1/3 of the services required by her ISP. (See FF # 42.) The proportion of the services Student missed and the relatively low total of the minutes missed warrant an hour-by-hour award of compensatory services. The SCO, therefore, awards Student 15 minutes of

occupational therapy, 20 minutes of speech therapy, 20 minutes of physical therapy, and 75 minutes of vision services. The District should work in consultation with Parents to determine the means by which these services will be provided.

E. Prior Written Notice

The IDEA requires a school district to provide prior written notice to parents within a reasonable time when the district proposes to change the provision of FAPE to a student. 34 C.F.R. § 300.503(a)(1). Here, the District changed the provision of FAPE to Student via the ISP during the COVID-19 pandemic. As a result, the District was required to provide Parents with prior written notice of this action.

The *CDE FAQs* indicate that “CDE is not recommending that schools systematically provide a PWN to all IDEA-eligible students with disability in response to . . . the suspension of in-person learning.” *CDE FAQs*, Prior Written Notice, Q2. This guidance indicates only that districts should not automatically issue prior written notice for all special education students simply because students are transitioning from in-person instruction to remote instruction. Even though this transition does not automatically trigger the prior written notice requirements, certain circumstances still warrant issuance of a prior written notice.

Here, the SCO finds and concludes that the District should have issued prior written notice because it materially altered the provision of FAPE during remote instruction. Student’s 2019 IEP required approximately 34 hours per week of special education and related services. (See FF # 8.) Under her IEP, Student spent 40-79% of her time in the general education environment. (FF # 10.) Yet, Student’s ISP reduced her special education and related services to 70 minutes per week, only 3% of the services under her IEP. (See FF #s 8, 42.) Additionally, Student no longer had the ability to participate in the general education environment, as her ISP specifically stated that Student should “not use” general education services during remote instruction. (FF # 42.) Despite this significant change to Student’s special education and related services, the District did not provide Parents with prior written notice. (FF # 45.)

The SCO finds that such a significant change to Student’s FAPE warranted prior written notice. In accordance with CDE guidance, the suspension of in-person instruction alone does not trigger the IDEA’s prior written notice requirements. Similarly, a minor adjustment to a student’s services under his or her IEP would not necessitate prior written notice. But the District cannot materially alter the provision of FAPE to a student during the suspension of in-person learning without adhering to the IDEA’s procedural requirements. Here, Student’s services were reduced by nearly 33 hours per week and Student was precluded from participating in general education classes. There can be no doubt that such a significant reduction in Student’s services materially changed the provision of FAPE to Student.

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Based on the record, the District's failure to provide Parents with prior written notice did not impede Student's right to a FAPE, affect Parents' opportunity to participate, or deprive Student of an educational benefit. Special Education Teacher provided Parents with a copy of the ISP (FF # 40), so Parents were able to participate in Student's education and hold the District accountable for any missing services. Therefore, this procedural violation did not result in a denial of FAPE under 34 C.F.R. § 300.513(a)(2).

F. Parent Participation

During the course of this investigation, Parents expressed concern over their lack of participation in the development of Student's ISP. Given the importance of parental participation under the IDEA, the SCO finds it appropriate to address Parents' concern within this decision.

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." *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the creation of an appropriate IEP 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.*, 137 S. Ct. at 999.

Parental participation must be meaningful and include carefully considering parents' 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 Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). A school district need not simply agree to whatever parents have requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014).

On March 12, 2020, the U.S. Department of Education issued guidance regarding the provision of FAPE during the COVID-19 pandemic. That guidance advised that IEP Teams may, but are not required to, include distance learning plans in a student’s IEP to give “the [student’s] service providers and the [student’s] parents an opportunity to reach agreement as to what circumstances would trigger the use of the [student’s] distance learning plan and the services that would be provided during the dismissal.” *Questions and Answers*, 76 IDELR 77.

In April 2019, the *CDE FAQs* recommended consultation with parents consistent with federal guidance. *CDE FAQs*, Provision of Special Education and Related Services Q1. The guidance advises, in part: “[r]ecognizing that exceptional circumstances may affect how educational services are provided, FAPE may include special education and related services provided through distance instruction deemed reasonable and appropriate for a specific student, *in consultation with parents . . .*” *Id.* (emphasis added).

Here, the findings do not support Parents’ contention that they were not allowed to participate in the development of Student’s ISP. Neither TVI nor Physical Therapist contacted Parents to solicit input on their portions of the ISP. (FF #s 34, 36.) However, Special Education Teacher, Occupational Therapist, O&M Specialist, and SLP reached out to Parents to determine a plan for remote instruction. (FF #s 19-23, 24, 26-27, 29-31.) Often, Parents never responded to the providers’ emails or calls. (*Id.*)

To the extent Parents felt that a service provider *informed* them of remote instruction plans instead of asking for Parents’ input (FF # 26, 39), the SCO finds that Parents still had an opportunity to participate. Because these conversations were often over email, Parents could have responded in disagreement, proposing a different amount or type of services. But, instead, Parents simply did not respond at all. Despite the lack of input from Parents, Special Education Teacher and Student’s service providers had to press forward, out of Student’s best interest and under the emergency circumstances present.

The SCO recognizes that COVID-19 presented additional challenges for Parents with regard to Student’s caregiving. Had Special Education Teacher reached out to Parents on behalf of Student’s entire team (as envisioned by District’s Distance Learning Plan), it would have been easier for Parents to offer input on Student’s ISP in its entirety versus responding to individual emails from Student’s service providers.

G. Systemic Nature of Violations

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are “critical” to the SEA’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part

B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

In this case, it does not appear that either District’s failure to implement Student’s ISP or failure to issue PWN was systemic in nature. Instead, these violations likely resulted from the District struggling under the weight of the COVID-19 pandemic. Nothing in the record indicates that the District regularly fails to implement students’ IEPs or issue PWN. Indeed, District policy requires issuance of prior written notice under each of the circumstances set forth in 34 C.F.R. § 300.503. (FF #45.) These facts support finding that these violations are not systemic.

REMEDIES

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

- a. Failing to fully implement Student’s ISP during remote instruction, in violation of 34 C.F.R. § 300.323(c); and
- b. Failure to provide prior written notice regarding the provision of FAPE to Student, in violation of 34 C.F.R. § 300.503(a).

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

1. By **Friday, October 16, 2020**, District shall submit to CDE a corrective action plan (“CAP”) that adequately addresses the 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. Special Education Director, Special Education Teacher, and any current District case managers must review this decision, as well as the requirements of 34 C.F.R. §§ 300.323(c)(2) and 300.503(a). This review must occur no later than **Friday, October 30, 2020**. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than **Friday, November 6, 2020**.
 - b. 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. Compensatory Education Services for Denial of a FAPE

- a. The District shall provide Student with **15 minutes of occupational therapy, 20 minutes of speech therapy, 20 minutes of physical therapy, and 75 minutes of vision services from a TVI** by **Friday, December 18, 2020**. Given the COVID-19 pandemic, these services may be provided remotely. To document the provision of these services, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
- i. The service providers shall monitor and assess Student's progress on her IEP goals (to the extent any of her 2020-2021 IEP goals apply to the services being provided).
 - ii. Progress monitoring shall occur each month until the last scheduled compensatory service has been provided.
 - iii. District shall submit regular reports of Student's progress on the applicable IEP goals and objectives by the **second Monday of each month** until the last scheduled compensatory education services have been provided.
- b. **By Friday, October 16, 2020**, the 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 the District within this time period, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parents and documents its efforts. A determination that the District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
- c. The District shall submit the schedule of compensatory services to CDE no later than **Friday, October 23, 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 the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

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

Failure by District to meet any of the timelines set forth above may adversely affect District's annual determination under the IDEA and subject District to enforcement action by CDE. **Given the current COVID-19 pandemic, CDE will work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, the aggrieved party may 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 SCO.

Dated this 18th day of September, 2020.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-2

Response, pages 1-8

- Exhibit A: 2019 IEP
- Exhibit B: Student Event Log
- Exhibit C: Progress Monitoring Reports or Data
- Exhibit D: Prior Written Notices
- Exhibit E: IEP Progress Reports
- Exhibit F: Email Correspondence between Parents and District
- Exhibit G: D11 Special Education Distance Learning Plan
- Exhibit H: Identification of Witnesses
- Exhibit I: Interim Service Plan
- Exhibit J: Waiver of Instructional Days and Times
- Exhibit K: CDE FAQs
- Exhibit L: CDE COVID-19 Instructional Guidance

Reply, pages 1-4

- Exhibit 1: Email correspondence
- Exhibit 2: Email correspondence
- Exhibit 3: Email correspondence
- Exhibit 4: Email correspondence
- Exhibit 5: Email correspondence
- Exhibit 6: Email correspondence

Telephonic Interviews:

- Director of Special Education: August 25, 2020
- Physical Therapist: August 25, 2020
- TVI: August 25, 2020
- Speech Language Pathologist: August 25, 2020
- Orientation and Mobility Specialist: August 26, 2020
- Special Education Teacher: August 26, 2020
- Occupational Therapist: August 27, 2020
- Parents: September 1, 2020