

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

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**State-Level Complaint 2021:525**  
**Colorado Department of Corrections**

**DECISION**

**INTRODUCTION**

On November 1, 2021, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against the Colorado Department of Corrections (“DOC”).<sup>1</sup>

The State Complaints Officer (“SCO”) determined that the Complaint identified five (5) allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint. The Complaint also identified concerns about similarly situated students residing in DOC adult correctional facilities. Pursuant to CDE’s general supervision authority under 34 C.F.R. § 300.151(b)(2), this investigation also addresses these systemic allegations and DOC policies, procedures, and practices.

On December 10, 2021, the SCO extended the 60-day investigation timeline due to exceptional circumstances arising from DOC’s untimely submission of voluminous documentation required to resolve the Complaint’s systemic allegations, consistent with 34 C.F.R. § 300.152(b)(1).

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), CDE has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from November 1, 2020, through November 1, 2021, for the purpose of determining if a violation of the 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.

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

## **SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to identify and evaluate Student as a child with a suspected disability who is in need of special education and related services, from November 1, 2020 to present, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3).
2. Failed to convene an IEP meeting to address information provided by Parent regarding Student from November 1, 2020 to present, in violation of 34 C.F.R. § 300.324(a)-(b).
3. Failed to develop, review, and revise Student’s IEP from November 1, 2020 to present, in violation of 34 C.F.R. § 300.324(b).
4. Failed to make an offer of FAPE and provide special education and related services in accordance with an IEP from November 1, 2020 to February 2021, and from May 2021 to present, in violation of 34 C.F.R. § 300.323.
5. Failed to convene a multi-disciplinary team (“MDT”) to consider Student’s eligibility for special education and related services following the July 2021 special education evaluation, in violation of 34 C.F.R. § 300.306.

## **FINDINGS OF FACT**

After thorough and careful analysis of the entire record,<sup>2</sup> the SCO makes the following FINDINGS:

### **A. Background**

1. Student is 21 years old and currently resides in an adult correctional facility operated by DOC (“Facility”). *Exhibit A*, p. 4.
2. Student is funny, smart, and articulate, but he struggles with social emotional skills. *Interview with Parent; Exhibit A*, pp. 4-6. Academically, he requires support in math, spelling, and written composition. *Interview with Parent; Exhibit A* p. 5. Student is diagnosed with bipolar disorder, anxiety, post-traumatic stress syndrome, and oppositional defiant disorder. *Exhibit 9*, p. 1; *Exhibit 12*, p. 3.
3. Student was last enrolled in a traditional school setting in 2018, and his education has been interrupted many times throughout his academic career. *Interview with Parent*. Student was first found eligible for special education and related services in fourth grade. *Interview*

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire record.

*with Parent; Complaint*, p. 1. His last IEP prior to entering DOC custody was dated August 8, 2018 (“2018 IEP”). *Exhibit 2*, p. 1. Per the 2018 IEP he qualified for services under the Serious Emotional Disability and Specific Learning Disability categories. *Exhibit A*, p. 1

4. In November of 2019, Student was sentenced to prison as an adult, and he entered DOC custody to reside at an adult correctional facility (“Former Facility 1”). *Complaint*, p. 1; *Interviews with Parents, Director of Special Education, Student’s Former Case Manager (“Case Manager”), and Assistant Director of Prison Programs*.
5. DOC is one of five state operated programs in Colorado. *Exhibit J*, p. 3. DOC acts as a Local Education Agency (“LEA”) and is responsible for assuring that students with disabilities in DOC custody receive a FAPE. *Id.* Since DOC operates differently than a typical Colorado LEA, the SCO will review DOC’s operational structure to provide necessary background for the investigation.

## **B. DOC**

6. DOC maintains 20 adult correctional facilities in Colorado (19 adult prisons and the Youth Offenders Services (“YOS”) facility/program). *Interviews with Assistant Director of Prison Programs*. Each facility has educational staff, and DOC has a central education office that performs functions that include managing staffing at facilities, reviewing credentials of education staff, purchasing sufficient assessments, and ensuring contact hours are met. *Id.*
7. Every facility offers a baseline of General Education Development (“GED”) classes, and some facilities offer additional educational services, such as vocational and technical training. *Id.* The availability of educational resources at a particular facility is influenced by several factors, including the size of the facility (which impacts availability of educational staff), and the classification level of the offenders housed at the facility (which is based on factors that include behavioral/mental health needs, gang affiliations, time remaining in sentence, prior behavior in corrections, etc.). *Id.*
8. The custody level of a facility also directly impacts the availability of educational resources. *Id.* For example, offenders in a high custody facility have a harder time interacting safely with others. *Id.* Students in a high custody facility are often maximum custody individuals that must be chained to a table during classes due to safety concerns. *Id.* Due to these concerns and additional safety precautions, classes are also shorter and more restrictive. *Id.*
9. If a facility houses close custody individuals, students are not chained to a desk, and may be transitioned into being more engaged in daily life. *Id.* These students may have access to more time in class, but may have some restrictions, such as not being allowed to access programming that, for example, involves the use of tools or computers. *Interviews with Director of Special Education and Assistant Director of Prison Programs*.

10. Students in medium and light custody level facilities have access to more educational programming opportunities, such as technical and career education. *Interview with Assistant Director of Prison Programs.*
11. Students are placed into the various facilities after completing an intake at the Denver Regional Diagnostic Center (“DRDC”). *Interviews with Director of Special Education and Assistant Director of Prison Programs.* If an offender is identified as a student with a qualifying disability at intake, that can impact which facility the student is placed into, but otherwise educational history does not dictate which facility an offender is sent. *Interviews with Director of Special Education, Assistant Director of Special Education, Case Manager, and Educational Administrator.*

### The DRDC

12. All students incarcerated as adults are placed at DRDC for intake processing, except those processed through the YOS. *Interviews with Director of Special Education and Assistant Director of Prison Programs.; Exhibit J, p. 8.* Approximately 45 offenders are assessed daily at DRDC, six days a week. *Exhibit J, p. 8.* Out of those assessed, approximately 50-60 offenders under the age of 21 are processed each month. *Id.*
13. While at DRDC, students provide information about their educational history by completing a request for records form, wherein students are asked to identify where DOC should send requests for educational and medical documentation, such as records, transcripts, IEPs, and psychological and medical records. *Id.* Students are asked to indicate verbally whether they have a history of receiving special education and related services. *Id.; see Response, pp. 1-9.* DOC uses paper forms to make records requests but does not have access to an electronic system for matching up educational records with school districts. *Interview with Assistant Director of Prison Programs, Special Education Teacher, and Director of Special Education.*
14. The “yes” or “no” answer given by a student does not determine whether the student is eligible for special education services, but it does help provide a starting reference point. *Response, p. 1; Exhibit J, p. 8.* DOC’s written policies and procedures indicate that the information provided must then be verified by Director of Special Education, DOC’s designated child find coordinator. *Exhibit J, pp. 8-9; see ECEA Rule 4.02(2)(b).*
15. At DRDC, all students are assessed academically to measure educational ability and cognitively to measure intellectual functioning, and they are given a psychological inventory test. *Interviews with Assistant Director of Prison Programs and Director of Special Education; Exhibit J, p. 9.* Specifically, Students are given the Test of Adult Basic Education 11 & 12 (“TABE”), and the Cultural Fair IQ Test. *Exhibit J, p. 9.*

16. The TABE measures achievement of basic skills commonly found in adult basic education curricula taught in high school and adult instructional programs, and it can be used to target readiness on high school diploma equivalency exams such as the GED test. *Id.* The Culture Fair IQ Test is designed to test intelligence while minimizing cultural or educational biases. *Id.*
17. The assessments, along with the request for records information, are used as the starting point to identify students with disabilities at DOC facilities. *Id.* If a student scores low enough on the assessments, it “can” trigger the DOC mental health team to look at what the data means. *Interview with Assistant Director of Prison Programs.* However, many offenders entering DOC custody have been out of school for an extended time, and often do not put forth their best effort, which impacts the average ranges for assessment scores. *Interviews with Assistant Director of Prison Programs and Case Manager.*
18. After completing the assessment/intake process at DRDC, students are placed into one of nineteen state prisons or one of two private prisons, depending on factors that include the student’s custody level, medical needs, and gang affiliation. *Id.*

### The YOS

19. YOS refers to both a particular facility and a sentencing program within DOC. *Id.* at p. 9; *Interview with Assistant Director of Prison Programs.* YOS blends security, treatment, case management, and reentry to provide a comprehensive “middle tier” correctional sentencing option for youthful students that are sentenced as adults. *Exhibit J*, p. 9.
20. Individuals sent to YOS go through a different screening process than those at DRDC. *See id.* at p. 10. Students entering YOS go through the “IDO” program (intake process, assessment process, and orientation process). *Id.* At IDO, all students receive a full assessment. *Id.* The assessment is completed by a multidisciplinary team at IDO, and a request for records is sent to the last known school district by the case manager at IDO. *Id.* A compilation of assessment records for all students are sent to YOS once they complete the IDO “boot camp.” *Id.*
21. The assessments administered at IDO cover physical health, mental health, substance abuse history, sexual history, social and family history, work history, education/school history, education aptitude and achievement history, and “behavioral programs.” *Id.*
22. To be placed at YOS, offenders must request entry into the program at sentencing, or request a transfer later while incarcerated. *Interview with Educational Administrator.* If an offender is placed at YOS, participation in the program can result in suspension of part of the offender’s sentence, and successful completion of the program can result in early release. *Id.*

### C. Student's First Incarceration (November 2019 to February of 2021)

#### Student's Intake at DRDC

23. When Student entered custody in November of 2019, he was screened at DRDC. *Interview with Parent*. During intake, Student did not identify himself as being eligible for special education and related services. *Response*, pp. 1-9. As a result, DOC did not submit a records request to obtain educational documents, such as his IEP. *Id.* During Student's intake at DRDC, no attempts were made to contact Parent for information on Student's educational history or needs. *Interview with Parent*.
24. DRDC administered the TABE and Cultural Fair IQ test. *Interview with Assistant Director of Prison Programs*. Student's scores indicated a need for mental health services and educational programming, but his scores on both assessments were within the average range for students who have been out of school for an extended time. *Id.* Student's intake assessment scores were high enough that they did not result in him being referred for an evaluation as a student suspected of having a qualifying disability. *Response*, pp. 1-9.
25. After intake, Student was transferred to Former Facility 1. *Interview with Parent*. In January of 2020, in part because of a gang-related fight involving Student, his security level was changed to close custody, and he was transferred to Facility. *Id.*

#### DOC's Receipt of Student's 2018 IEP

26. All offenders in DOC custody are assigned to a case manager. *Interview with Case Manager*. Depending on the facility and staffing, case managers have anywhere between approximately 15 to 115 offenders on their caseload. *Id.* Case managers assist offenders with placement into classes or programs, parole planning, communicating with loved ones, answering questions, and talking about behavior. *Id.* The expectation is that case managers meet with each offender at least once a month, especially for those with higher needs. *Id.*
27. Case managers are trained by DOC to look for observable signs of disabilities (i.e., blindness) for purposes of American Disability Act ("ADA") accommodations, but they do not receive training specific to special education. *Id.* Sometimes offenders ask about accommodations, or a teacher reports a student is struggling, in which case, case managers will forward that information to the education department. *Id.* Unless there is something apparent, however, case managers neither identify students with disabilities nor initiate special education evaluations. *Id.*
28. On April 17, 2020, Parent met with Case Manager. *Interview with Parent; Exhibit 1*, p. 1. During the meeting, Parent informed Case Manager that Student is IDEA eligible, and discussed educational opportunities at DOC. *Interview with Parent*. After the meeting,

Parent followed up by email and sent Case Manager the 2018 IEP. *Interview with Parent; Exhibit 1*, p. 10; *see Exhibit 2*, pp. 1-23. Parent was told that DOC does not provide special education services and Parent was not provided with any resources or information on special education at DOC. *Interview with Parent*.

29. Case Manager responded via email the same day, writing that the information was received and would be sent to the DOC “education folks.” *Exhibit 3*, p. 1-2. Case Manager does not remember the conversations with Parent but recalls some discussion about vocational programming and “community corrections.” *Interview with Case Manager*. Case Manager does not remember receiving the 2018 IEP, but indicates that if she received an IEP, she would have sent it to the DOC education department. *Id.* Case Manager recalls reaching out to Student’s GED teacher at some point in early 2020 to inform the teacher that Student had an IEP but remembers the teacher indicating it was unnecessary to provide the IEP. *Id.*
30. Case managers do not have full access to DOC’s student information system and are unable to access educational records (although they can see whether a particular student has a GED). *Id.* Thus, Case Manager had no way of manually verifying that the 2018 IEP was processed and added to Student’s file. *Id.* The 2018 IEP was not added to Student’s file, and Student was not subsequently identified as a student with a qualifying disability. *Interviews with Parent and Case Manager*.
31. If a student is identified as having a qualifying disability, a case manager can ask to have the GED classes accept the student and move the student to the front of the waitlist. *Interview with Case Manager*. There is a waitlist to get into GED classes at every facility, and the waitlist has grown during COVID-19, with restrictions on class sizes and the number of classes. *Interview with Case Manager*.
32. In non-pandemic times, a typical facility might have as many as 50 offenders in GED classes, and up to 200 offenders on the waitlist. *Interview with Director of Special Education*. If a student has a verified IEP, he or she can get placed in class right away and skip the line. *Id.* However, getting into classes is competitive, and the practice of putting students with IEPs into class ahead of others without IEPs has caused “issues” with other offenders. *Id.* Thus, there is a “stigma” associated with being eligible for special education that sometimes impacts students’ willingness to disclose IEP status. *Interviews with Director of Special Education and Educational Administrator*.
33. Although Student was not identified as a student with a qualifying disability, he was accepted into GED classes in March of 2020 (though classes were soon halted due to the COVID-19 pandemic). *Interviews with Case Manager, Parent, and Special Education Teacher*.

### Student's Educational Programming at DOC and February 2021 Release

34. On July 8, 2020, not having received any updates on Student, Parent emailed Public Information Officer. *Exhibit 4*, p. 1; *Interview with Parent*. Parent indicated Student's GED programming was put on hold pending the pandemic and inquired about other ways for Student to access educational programming. *Exhibit 4*, p. 1; *Interview with Parent*. There was no response from DOC. *Interview with Parent*.
35. Parent was never provided with any information about special education at DOC and was told on multiple occasions that DOC does not provide special education services. *Interview with Parent*. It was difficult for Parent to obtain special education information through conversations with DOC staff and DOC's public website. *Id.* Case Manager indicates that, under DOC policies and procedures, parents cannot be provided with student-specific educational information unless the offender signs a release of information (even if the offender is under 21 years of age), and that she is not aware of any DOC resources specific to special education. *Interview with Case Manager*.
36. Upon review of DOC's public Inmate Education webpage, the SCO finds there is no mention of special education, IDEA, or ECEA Rules beyond a link to a procedural safeguards notice, and no contact information for the DOC education department. *See CDE Exhibit 1*.
37. In February of 2021, Student was released from Facility, and from DOC custody on parole. *Interviews with Parent and Case Manager; Complaint*, pp. 1-8. From entering DOC custody in November 2019 to being released in February of 2021, Student was never identified as a student with a qualifying disability, and Student received no special education or related services. *Interviews with Parents and Case Manager*.

#### **D. Student's Second Incarceration (May 2021)**

38. Student reentered DOC custody between May 17 and 24, 2021. *Interviews with Parent and Case Manager; Complaint*, pp. 1-8. Student was again screened at DRDC, and on May 26, 2021, he was administered the TABE. *Interviews with Parent, Assistant Director of Prison Programs, and Director of Special Education; Exhibit F*, pp. 1-2. Student was also given the Cultural Fair IQ test. *Interview with Assistant Director of Prison Programs; see Exhibit J*, p. 9.
39. Student's scores on the TABE and IQ test were within the average range for students who have been out of school for an extended time, so this did not result in Student being identified as a student suspected of being eligible for special education. *Id.* Student did not self-identify as a student with a qualifying disability, so DOC did not submit a records request to obtain educational records. *Response*, pp. 1-9. After his intake at DRDC, Student was sent to Former Facility 2. *Interviews with Parent, Case Manager; Response*, p. 3.

40. On June 2, 2021, Parent emailed Constituent Services Coordinator that Student recently returned to DOC custody for a second sentence. *Exhibit 5*, p. 1. Parent indicated that during his first incarceration, she was told there were no special education resources available, but she had found mention of special education in DOC's written policies and procedures. *Id.* Parent indicated that Student tried to participate in GED programs, but his disabilities made it hard for him to be successful. *Id.* Parent also provided a copy of the 2018 IEP. *Id.*
41. On June 2, 2021, Constituent Services Coordinator forwarded Parent's email to Assistant Director of Prison Programs. *Exhibit 6*, pp. 1-2. Parent provided DOC with additional documents via email, including a list of prescription medications, a 2018 letter from a psychiatrist stating that Student has a diagnosis of bipolar disorder, a 2019 letter from the Colorado Department of Vocational Rehabilitation stating that Student was found eligible for services in the category of "Most Significant Disability," a 2018 drug and alcohol assessment, and a 2019 letter from a counselor regarding the impact of trauma on the brain and Student (he suffered multiple severe head injuries in his youth and has a complex medical history). See *Exhibit 8*, pp. 1-3; *Exhibit 9*, p. 1; see *Exhibit 10*, pp. 1-4. The information suggested that he struggled socially and emotionally, and it contained details on mental health diagnoses. See *Exhibit 8*, pp. 1-3; *Exhibit 9*, p. 1; see *Exhibit 10*, pp. 1-4.

42. On June 7, 2021, Assistant Director of Prison Programs emailed Parent:

"We have had this information reviewed by the Special Education Director. In July, when your son has had time to settle in, we will schedule an educational assessment [ . . . ] to help us determine what resources might be needed."

*Exhibit 6*, pp. 1-2

43. On June 11, 2021, Parent emailed Director of Special Education to ask if there was anything Parent could do to expedite the process. *Exhibit 13*, p. 1. Director of Special Education responded the same date writing DOC "set up an academic assessment with an educational psychologist in July for [Student]. That was the first available opening. If he qualifies, we will be able to provide GED and classroom accommodations for [Student]." *Exhibit 14*, pp. 1-2.

#### **E. The July 2021 Assessment**

44. Director of Special Education reviewed the 2018 IEP and determined Student would require accommodations for the GED test. *Interview with Director of Special Education*. He reached out to a board of cooperative educational services ("BOCES") and asked that they arrange for a BOCES School Psychologist to perform a psychoeducational assessment to determine if Student qualifies for any accommodations on the GED test (DOC contracts with BOCES for the administration of psychoeducational assessments). *Id.*

45. Director of Special Education explained that Pearson Vue, the publisher of the GED assessment, requires DOC to provide psychoeducational assessments for every student with a disability before Pearson Vue will allow accommodations on the GED test. *Id.* Pearson Vue will not accept an IEP as proof that a student has a disability. *Id.*
46. Student was assessed by BOCES School Psychologist on July 20, 2021. *Exhibit F*, p. 3; *Exhibit 15*, p. 2. Student completed the Weschsler Adult Intelligence Scale – Fourth Edition (“WAIS-IV”) and Kaufman Test of Educational Achievement – Third Edition, Brief (“KTEA-3”). *Exhibit F*, p. 3. Student was not given any social/emotional assessments, and the decision as to which areas to evaluate Student was left up to BOCES School Psychologist. *Interview with Director of Special Education*. All students suspected of having a disability at DOC are assessed in this manner as the purpose is to obtain accommodations on the GED test. *Id.*
47. The WAIS-IV is an assessment that provides an overall measure of general intelligence, as well as specific sub-measurements of mental ability strengths and weaknesses. *Id.* at p. 4. Student’s full-scale estimate of intelligence fell within the average range. *Id.* His verbal comprehension, perceptual reasoning, and processing speed were within average ranges, while his short-term memory skills, which impacts the task of processing complex information and auditorily presented materials, were in the borderline range. *Id.* at pp. 4-5.
48. The KTEA-3 was administered to assess Student’s academic proficiency in reading, writing and math. *Id.* at p. 5. The KTEA-3 is an individually administered, norm-referenced measure of core academic skills for grades prekindergarten through 12, or ages 4 through 25. *Id.* Student’s Brief Achievement Score was found to be in the below average to average range. *Id.* Reading was found to be an area of relative strength, while math and writing were areas of relative weakness. *Id.* at p. 6. Student is behind grade level across academic subjects. *Id.*
49. BOCES School Psychologist made several recommendations for accommodations, including extra time for tasks that require short-term memory recall, note and graphic organizers to assist with short term memory, and extra time on tests and assignments that require math computations. *Id.* at p. 7. BOCES School Psychologist also recommended that Student receive “math instruction at 3rd/4th grade level” and that DOC “provide instruction with writing including basic writing conventions.” *Id.*
50. The SCO requested copies of consent obtained by DOC for the July 2021 assessment, but DOC reported that records of consent are missing due to staff turnover. *Response*, p. 3. DOC indicated consent was obtained from Student at a meeting prior to the assessment. *See Response*, pp. 1-9. The SCO finds that DOC neither attempted to obtain consent for the evaluation from Parent nor asked for Parent’s input regarding the July 2021 assessment. *Interview with Parent*.

51. On July 22, 2021, Parent emailed Director of Special Education to ask what would happen after the assessment. *Exhibit 15*, p. 2. Director of Special Education responded the same day:

“When we get his report we will use the information to provide the appropriate accommodations for everyday classroom instruction. We will also be able to use the assessment to send to Pearson Vue, who is the computerized GED testing company we use and get [Student] the accommodations to use when he is ready to take a GED test.”

*Id.*

52. On August 3, 2021, Parent emailed Director of Special Education and asked if DOC had received Student’s assessment report. *Id.* at pp. 1-2. Director of Special Education responded on the same day to confirm receipt of the report and said DOC would get in touch with the educational staff “to put [. . .] accommodations in place.” *Id.* at p. 1.

#### **F. Student’s Transfers (August through October 2021)**

53. In August of 2021, Student was moved from Former Facility 2 to Former Facility 3, and then from Former Facility 3 to Facility in September of 2021. *Response*, p. 2. When Student arrived at Facility, he was placed in close custody, and spent two weeks in restrictive housing due to gang-related violence. *Response*, p. 2; *Interviews with Assistant Director of Prison Programs and Parent*. At the time Student entered Facility it was down to one GED instructor. *Response*, p. 2.

#### **Transfers Between DOC Facilities**

54. Transferring between facilities within DOC is complicated, especially when an offender is changing security levels. *Interview with Educational Administrator*. Transfer requests are submitted to offender services, the transferring facility looks at the request, and there is communication between the transferring and receiving facilities to determine if the transfer should happen. *Id.* Custody levels need to be adhered to, and offender services looks very closely at each request. *Id.*

55. At the minimum-security level, transfers are more frequent, and it is easier to transfer a student to a facility with resources that match the student’s needs. *Id.* Transfer requests can be initiated by case managers, offenders, or educational staff. *Id.*

56. Transfers at higher security levels are more complicated and can be very difficult if there are security concerns about gangs and behavior. *Interview with Director of Special Education*.

57. During COVID-19, transfers take even longer than usual, as offenders that transfer must spend 14 days in restrictive housing to quarantine upon arriving at a new facility. *Id.* Each time he transferred between facilities, Student had to spend two weeks in mandatory quarantine upon arriving at the new facility, due to COVID-19 safety measures. *Interview with Director of Special Education.*
58. Facility is a mixed facility, meaning it houses offenders at medium and close custody security levels. *Interview with Educational Administrator.* As such, Facility takes up a lot of physical space and houses a large volume of offenders, so by necessity, Facility has more educational staff than other prisons. *Interviews with Educational Administrator and Director of Special Education.* There is also targeted hiring of special education staff at Facility, which is not true of all other DOC correctional facilities. *Interview with Educational Administrator.*
59. On September 9, 2021, Parent emailed Director of Special Education to ask for an update since no special education services were in place, and because she learned Student had been transferred to Facility. *Exhibit 15*, p. 2. On September 13, 2021, Director of Special Education responded:
- “Hello, in talking with [Assistant Director of Prison Programs], we decided that moving [Student] to [Facility] would be a good move as [Facility] has a special education teacher at the facility. I have contacted the facility and sent the special education teacher a copy of [Student’s] assessment. They will try to pick him up for class as soon as possible, but please know that sometimes it does take some time to have an opening to put him in class, especially with some of the COVID restrictions that we have to deal with.”
- Id.*
60. In late October of 2021, DOC hired and trained a new special education teacher (“Special Education Teacher”). *Response*, p. 3. Facility’s previous special education teacher left Facility in February of 2021. *Id.* Special Education Teacher started the hiring/training process in September of 2021, but the training (which involves safety and security training and an extensive background check through the Corrections Training Academy) took over a month to complete. *Interview with Special Education Teacher.* Once Special Education Teacher finished the hiring/training process, DOC arranged an IEP meeting to discuss the July 2021 assessment. *Response*, pp. 1-9.

### **G. The November 9, 2021 IEP (“2021 IEP”)**

61. On November 9 and 10, 2021, a properly constituted MDT met to discuss the results of the July 2021 assessments, review and revise the 2018 IEP, and develop the 2021 IEP. *Exhibit A*, pp. 1-14; *Interviews with Parent and Special Education Teacher*. The MDT included Director of Special Education, Assistant Director of Prison Programs, Special Education Teacher, a general education teacher from Facility (who had previously worked with Student in the context of normal GED classes), another general education teacher, Parent, and Student. *Interviews with Parent and Special Education Teacher*.
62. The MDT determined Student continued to be eligible for services under the Serious Emotional Disability and Specific Learning Disability categories. *Exhibit A*, p. 1.
63. The 2021 IEP reviews Student’s present levels of educational performance, indicating he likes to work with the teacher, especially when he is given 1:1 attention or works in a small group setting. *Id.* at p. 3. The 2021 IEP summarizes the results of the July 2021 assessment, as well as a records review performed using the 2018 IEP and documentation provided to DOC by Parent. *Id.* at pp. 3-6.
64. Although Student was found to qualify for services under the Serious Emotional Disability category, he was not given a social/emotional assessment during the July 2021 assessment as the data relied upon by the MDT was obtained through a records review. *Interviews with Director of Special Education and Special Education Teacher*. The SCO finds that, aside from Student’s own observations about his own social/emotional needs obtained during the personal interview portion of the July 2021 academic assessment, the social/emotional data relied upon by the MDT was from 2018. *Id.*; *See Exhibit A*, pp. 4-6. Accordingly, the SCO finds further that the evaluation was not sufficiently comprehensive under IDEA to determine Student’s instructional and educational needs.
65. According to this records review, Student is a hands-on learner, who exhibits behaviors that impact his academic success, such as excessive absences, sleeping during class, and refusing school/program expectations. *Id.* at p. 4. Student struggles with attention across subject areas, and his academic struggles may be impacted by his social emotional needs. *Id.* Per the last social/emotional/behavioral assessment in 2018, Student struggles with loss of control, sense of inadequacy, anxiety, and acting out when he does not feel safe. *Id.*
66. The 2021 IEP documents Student’s needs and the impacts of his disabilities, stating the disabilities impact his ability to access the general education curriculum, as well as attainment of his post-secondary goals. *Id.* at p. 7. Student requires direct instruction in math computation, written expression, and social/emotional skills in order to make adequate progress on his IEP goals. *Id.*

67. The 2021 IEP does not detail how Student performed on his previous annual goals. *See id.* at pp. 6-8. The 2021 IEP contains the following post school goals:

- a. Post-School Education/Training Goal: Student will attend a two year or certificate program where he will study automotive diesel mechanics.
- b. Career Employment Goal: Student will be employed as an automotive diesel mechanic. He is also interested in becoming a coach again.
- c. Independent Living Skills Goal (when appropriate): Student will create and manage an effective household budget.

*Id.* at p. 7-8.

68. In the planned course of study section, the 2021 IEP documents that, in order to obtain his GED and reach his post-secondary education and employment goals, Student will attend GED classes provided through DOC. *Id.* at p. 8. It adds that Student will attend classes that will prepare him to pass the GED test with a Mathematical Reasoning, Reasoning Through Language Arts, Social Studies, and Science. *Id.* Finally, it provides Student will also participate in “ICEV” programming through DOC to address his social/emotional and career/employment development skills. *Id.*

69. ICEV is new, computer-based programming in DOC designed to address social/emotional needs, which students work through on their own using a Chromebook. *Interviews with Special Education Teacher and Director of Special Education*. Director of Special Education explains ICEV programming allows students to work toward “certificates” and includes elements of vocational programming and social emotional learning, but adds it is a “canned program” that is the same for all students. *Id.*

70. The 2021 IEP contains the following annual goals:

- a. Goal # 1 (Social/Emotional Wellness): “When feeling frustrated, upset, or otherwise dysregulated, [Student] will use a coping strategy of his choice (i.e. asking for a break from classwork, talking with a trusted staff member, using breathing strategies, etc.) in 8/10 opportunities.”
- b. Goal # 2 (Mathematics): “When given a set of multistep algebraic equations involving any operation (addition, subtraction, multiplication, division), [Student] will use his understanding of algebraic concepts to solve the equations with 80% accuracy.”

- c. Goal # 3 (Writing): “When given a writing prompt, [Student] will use the writing process to complete a 5 paragraph essay to include an introduction, body paragraphs, and a conclusion in 4/5 trials.”

*Id.* at pp. 9-10.

71. The 2021 IEP indicates the projected achievement of all three of the annual goals is Student’s 21st birthday, which occurred in November of 2021, soon after the IEP meeting and the development of the annual goals. *Id.* pp. 1, 9-10. There is no explanation of how data for annual goals will be collected or who will monitor progress. *See id.* at pp. 9-10.
72. The 2021 IEP contains accommodations to help Student access the general education curriculum. *Id.* at p. 10. Accommodations include extended time (up to time and a half) on assignments and assessments in math and writing, being provided copies of notes, being provided graphic organizers to aid in understanding of concepts, and the use of fidgets in class. *Id.*
73. The 2021 IEP provides for 30 minutes of “direct instruction in the areas of math and writing, per subject” and “special education support in the social/emotional area for 15 minutes per week.” *Id.* at p. 13. The 2021 IEP indicates Student will also participate in online social emotional curriculum with direct support from a teacher, through a program called Social Emotional Learning on the ICEV program. *Id.* Special education instruction will occur outside the general education setting in a 1:1 setting and will be provided by a member of BOCES under the direction of a special education teacher. *Id.*
74. The 2021 IEP indicates, “[a]dditional services provided by [DOC] outside of special education services *should* include meetings with a social worker from [Facility] and monthly meetings with [Facility] staff to address [Student’s] social/emotional needs.” *Id.* (emphasis added).
75. The MDT determined it was appropriate for Student to be in the general education class at least 75% of the time. *Id.* at pp. 13-14. The only explanation for this decision provided in the 2021 IEP is that he is currently incarcerated within DOC. *Id.* at p. 13. There was confusion among the MDT as to what should be written for Student’s Least Restrictive Environment (“LRE”) given the correctional setting. *Interview with Special Education Teacher.*
76. The Prior Written Notice (“PWN”) section of the 2021 IEP provides that Student will:  
  
“[T]urn 21 shortly after this IEP is implemented and will no longer qualify for special education services under IDEA. In order to offset the possible negative impact that could have on [Student’s] academic progress, a 504 plan will be put into place so that

[Student] can continue to receive accommodations in the classroom and on the GED test.”

*Id.* at p. 14.

#### **H. November 10, 2021 to Present**

77. Student is currently in GED classes at Facility. *Interview with Special Education Teacher.* DOC is wiring living units so students may use Chromebooks to access learning (such as the ICEV programming required by the 2021 IEP). *Interview with Assistant Director of Prison Programs.* Shortly after the November 9, 2021, IEP meeting, Student turned 21. *See Exhibit A, p. 1.*
78. DOC indicates that it is currently in discussions about whether compensatory educational services would be appropriate for Student to make up for missed services, although a final decision has yet to be made. *Interviews with Assistant Director of Prison Programs, Director of Special Education, and Special Education Teacher.*

#### **I. COVID-19 and School Closures**

79. Educational operations within DOC facilities were impacted by COVID-19 throughout 2020 and 2021. *See Response, pp. 1-9.* DOC contends that, due to closures and restrictions, it was only able to provide students with limited educational programming. *Response, pp. 1-9.*
80. During times when educational programming was halted due to COVID-19, students were provided with educational packets they could complete individually. *See Response, pp. 1-9; see, e.g., Exhibit H, p. 9.* During complete educational shutdowns, staff were not permitted to enter living spaces, so DOC did what it could to provide educational services through the provision of the packets and educational videos over the TV system. *Interview with Assistant Director of Prison Programs.* Student was provided with educational packets, but he did not complete them. *See Exhibit H, p. 9; Response, p. 4.*
81. Director of Special Education explains that restrictions were very challenging during COVID-19, as there were strict restrictions on who could even enter the facilities. *Interview with Director of Special Education.* Since DOC contracts with BOCES for special education services, this made providing services in DOC facilities during COVID-19 especially difficult. *Id.* Restrictions within DOC have also been strict, sometimes limiting classes to as few as four students at a time. *Interview with Assistant Director of Prison Programs.*
82. Throughout COVID-19, restrictions have been different between facilities at different times, and within facilities cohorts were impacted differently depending on outbreaks and exposure. *Interview with Case Manager.* There has not been uniformity on restrictions

between DOC facilities, and DOC staff were unable to present a clear timeline of specific restrictions at specific facilities due to the variation between facilities and cohorts. *See Response*, pp. 1-9; *Interviews with Assistant Director of Prison Programs, Case Manager, and Director of Special Education*. During COVID-19, DOC also processed a significantly lower number of individuals due to virus prevention measures. *Exhibit S*, pp. 1-2.

#### **J. Systemic Concerns within DOC**

83. Parent alleges the special education concerns specific to Student impact other similarly situated IDEA-eligible students in DOC custody. *Interview with Parent*.

##### **DOC and BOCES – The Interagency Agreement**

84. DOC contracts with BOCES for special education evaluations and assessments under an Interagency Agreement. *See Exhibit I*, pp. 1-23. The Interagency Agreement provides that BOCES will perform evaluations to determine if an offender has a disability that justifies making application for possible accommodations to permit the offender to take GED testing. *Id.* at p. 8. The evaluations shall also provide written instructional applications for DOC educational staff with academic recommendations designed to assist the offender in classroom studies and learning experiences. *Id.*

85. The Interagency Agreement provides that BOCES evaluations and vocational assessments will make a diagnosis for the possibility of the following learning disabilities: intellectual disabilities, learning and other cognitive disabilities, attention deficit hyperactivity disorder, educational psychological and psychiatric disorder, and physical disorders and chronic health conditions. *Id.* The Interagency Agreement further provides that each evaluation shall include basic testing such as IQ tests and an educational assessment. *Id.*

86. Assistant Director of Prison Programs indicates BOCES occasionally performs social/emotional assessments, but that they are very difficult in the DOC environment. *Interview with Assistant Director of Prison Programs*. Upon review, however, the SCO finds there is no reference to social/emotional assessments in the Interagency Agreement, and the Statement of Work contained in the Interagency Agreement only addresses assessments for learning disabilities. *Interview with Assistant Director of Prison Programs*; *see Exhibit I*, p. 8.

87. DOC is currently working with BOCES to set up a new social/emotional assessment, but social/emotional assessments cannot currently be completed in DOC due to COVID-19 restrictions. *Interview with Assistant Director of Prison Programs*.

### GED Classes at DOC

88. At most facilities, GED classes vary in size, and students learn asynchronously. *Interview with Director of Special Education*. All GED teachers are instructed to look for signs of a disability, but monitoring progress is difficult because students are not learning the same material at the same time. *Interviews with Director of Special Education and Special Education Teacher*. GED classes are taught year-round, and operate on an “open entry, open exit” basis. *Interview with Educational Administrator*. Most of the work is individual, but there is some small group instruction, mainly to build community in the classroom. *Id.*
89. At YOS, GED classes run several times each day, for about an hour and a half each. *Interview with Special Education Teacher*. Classes are taught in small groups, with no more than 10 students, and each working individually (because students are at different levels working to pass the GED test). *Id.* Teachers will run lessons if the majority of students in a class are working on a particular subject. *Id.* Classes typically meet four days each week. *Id.*

### Special Education at DOC

90. IDEA eligible students are pulled out of GED classes to receive special education services. *Id.* Many students have roughly 200 minutes of classes each week and get pulled out for approximately 45 minutes of special education services at a time. *Id.* Special Education Teacher will pull up to three students at a time, and most of the time students receive 1:1 time working on skills. *Id.*
91. Once offenders become students in GED classes, GED teachers and special education teachers are instructed to look for signs of disabilities. *Id.* Identifying students with disabilities is challenging, however, because many of the students have been out of school for years, and most of the time students are working asynchronously, so it is difficult to notice when a student is falling behind. *Interviews with Special Education Teacher and Director of Special Education*.
92. If a student is identified as being special education eligible, DOC tries to obtain the student’s IEP from the previous school district and initiates a special education evaluation for purposes of obtaining accommodations on the GED test. *Interviews with Educational Administrator and Director of Special Education*. There is, however, a “stigma” attached to being identified as IDEA-eligible, and Education Administrator says most of the students she has worked with have asked not to use their IEPs (DOC will acquiesce to these requests when they are made). *Id.*
93. All special education teachers in DOC are also GED teachers. *Interviews with Assistant Director of Prison Programs and Educational Administrator*. Most teachers are hired as GED teachers, and if they have special education credentials, it is considered a bonus. *Interview*

*with Educational Administrator*. All facilities have GED teachers, but there is targeted hiring of special education staff at some specific facilities, such as Facility and YOS. *Id.* As of December 3, 2021, there were six teachers total in DOC with special education endorsements. *Interview with Director of Special Education*.

#### Student Information System (“SIS”) and Enrich

94. DOC uses Enrich, but due to security concerns, DOC does not use a typical SIS. *Interviews with Special Education Teacher, Director of Special Education, Assistant Director of Prison Programs*. As a result, the DOC systemic is incompatible with Enrich, and there is no communication between the systems. *Id.* IEPs must be manually entered; there is no software to track annual IEP meetings, reevaluations, etc., and due to technical issues with drop down menus, consent must be added as a supplemental form. *Id.*

95. In the past few years, DOC has gone through several different data systems. *Interview with Director of Special Education*. The current data system is referred to as an “Offender Management System,” and different personnel have different levels of access to records within the system depending on their role at DOC. *Interviews with Director of Special Education and Case Manager*. DOC is currently working with the Governor’s Office to purchase a new information system. *Interview with Assistant Director of Prison Programs*.

96. Because there is no communication between Enrich and the Offender Management System, processes like annual IEP reviews and reevaluations are tracked manually using an Excel sheet. *Interview with Director of Special Education*. Reevaluations are tracked at YOS, but DOC does not consistently track reevaluation data at other adult facilities (though DOC is working on those protocols). *Interview with Director of Special Education*.

#### DOC Policies and Procedures

97. When special education teachers have questions about DOC policies and procedures concerning special education, they can contact Director of Special Education or Assistant Director of Prison Programs. *Interviews with Special Education Teacher and Director of Special Education*. Special Education Teacher was provided with a copy of DOC’s policies and procedures by email shortly after starting with DOC, and she was told she could contact Director of Special Education with any questions. *Id.*

98. Upon review, however, the SCO finds concerns with DOC’s written policies and procedures in terms of compliance with IDEA and ECEA Rules.

99. For example, DOC’s written policies and procedures provides that the age of majority in Colorado is 18, so DOC does not communicate with parents about educational decisions for students or request parental input as a matter of policy. *See Exhibit J, p. 5; Interview with*

*Director of Special Education.* Despite this policy, DOC does not provide surrogate parents for educational decision making, and there are no DOC policies or procedures for assigning surrogate parents. *See Exhibit J*, pp. 1-32; *Interviews with Director of Special Education and Assistant Director of Prison Programs.*

100. Director of Special Education indicates there has been confusion within DOC about how to handle communication with parents, as many offenders cannot have contact with their parents due to the nature of their offenses, some offenders have been emancipated, and parents often have other children that are victims. *Interview with Director of Special Education.* Parents are not excluded when they reach out to DOC, but DOC does not affirmatively reach out to parents. *Id.* Assistant Director of Prison Programs indicates the lack of parental input often makes it more difficult to conduct social/emotional assessments that require parental observations. *Interview with Assistant Director of Prison Programs.*

*Similarly Situated Students within DOC*

101. The SCO requested data for other IDEA eligible students residing in DOC custody from November 1, 2019 through November 1, 2021. DOC produced a list of 17 students including Student, but only provided IEPs for 9 students and included a 10th IEP for a student who was not identified in the list. *See Exhibit P*, pp. 1-22; *Exhibit M*, pp. 1-124.
102. The SCO requested the information again, and on December 10, 2021, DOC produced additional information on the missing students. *Exhibit Q*, pp. 1-303. While the second submission from DOC contained the missing IEPs, DOC also provided additional IEPs for two students who were not identified in DOC's list. *See Exhibit Q*, pp. 157, 168.
103. Of the 17 students identified by DOC as being IDEA eligible and residing in DOC custody from November 1, 2019 to November 1, 2021, 13 of the students reside or resided at YOS. *See Exhibit M*, pp. 1-124; *Exhibit P*, pp. 1-22; *Exhibit Q*, pp. 1-303. The remaining 4 students (including Student) were either at Facility, Former Facility 3, or another facility. *Exhibit P*, pp. 1-22. No IDEA eligible students were identified in the remaining 16 DOC correctional facilities in Colorado. *See Exhibit P*, pp. 1-22; *Interviews with Assistant Director of Prison Programs and Director of Special Education.*
104. Director of Special Education indicates that the size of YOS may contribute to the increased success of identifying students with disabilities at that facility. *Interview with Director of Special Education.* The intake classes at YOS are smaller—approximately 10 at a time—whereas DRDC processes hundreds of offenders at a time. *Id.* The students in YOS are also typically younger, and about 75% of the students at YOS come from Department of Youth Services (“DYS”) facilities, so it is often easier to determine if they have an IEP. *Id.* Due to the nature of the facility/program, there is also less stigma attached to special education, which may make students more willing to self-identify. *Id.*

105. CDE records for the December Count Records Reported and Special Education End of Year Records Reported from DOC show that DOC's reported numbers have been consistently decreasing from year to year since 2013. *CDE Exhibit 2*, p. 1. The December Count is a measure of students with active IEPs within DOC, and the Special Education End of Year Report is a measure of the number of students who had active IEPs at any time during the school year, as well as the number of students who had an initial evaluation during the year and were found ineligible. *Consultation with CDE Content Specialist 3*.
106. In 2013, DOC reported 60 students for the December Count, and 89 students for the Special Education End of Year Report. *CDE Exhibit 2*, p. 1. In 2021, DOC reported 2 students for the December Count, and 15 students for the Special Education End of Year Report. *Id.* DOC reports that the decline in special education numbers was largely caused by COVID-19. *Exhibit 5*, pp. 1-2. During COVID-19, DRDC did not process as many offenders, and school districts were less responsive to records requests. *Id.*
107. The SCO finds, however, that in 2019, the year before the onset of the COVID-19 pandemic, DOC only reported 7 students for the December Count, and 16 students for the Special Education End of Year Report, a sharp decline from earlier years. *See CDE Exhibit 2*, p. 1. Although DOC indicates that, from 2013 through 2016, it had a different director of special education, the SCO finds that does not explain why the numbers were higher during those years. *Exhibit 5*, pp. 1-2. DOC concedes that the December Count numbers reported for 2021 are incorrect and should be higher. *Id.*
108. DOC also recognizes that it needs guidance from CDE regarding special education and IDEA compliance. *Response*, pp. 1-9; *Interviews with Assistant Director of Prison Programs and Director of Special Education; Consultation with CDE Content Specialist 3*. In its Response, DOC indicates it is aware there are areas of noncompliance, and DOC is currently in the process of requesting technical assistance from CDE to address areas of noncompliance. *Response*, pp. 1-9.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: DOC failed to identify and evaluate Student as a child with a suspected disability who is in need of special education and related services, from November 1, 2020 to July 20, 2021, in violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1)-(3). This violation resulted in a denial of FAPE.**

Parent alleges that DOC had reason to suspect Student might require special education and related services as early as April 17, 2020, when Parent provided Case Manager with a copy of

the 2018 IEP and informed Case Manager that Student is a child with a disability who was previously IDEA-eligible. (FF # 28).

As a preliminary matter, the SCO will discuss DOC's classification as a State-Operated Program and its responsibilities under IDEA.

#### **A. DOC as a State Operated Program**

Children with disabilities who are in detention do not forfeit their right to special education services. *See Statement of Interest of the United States, G.F. v. Contra Costa Cnty.*, No. 3 :13-cv-03667-MEJ (N.D. Cal. Feb. 13, 2014) at 12 (noting "[t]he fact that youth have been charged with or convicted of a crime does not diminish their substantive rights, procedural safeguards, and remedies provided under the IDEA to youth with disabilities and their parents."); *see also Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities, Office of Special Educ. and Rehabilitative Serv., U.S. Dep't of Educ.* 1 (Dec. 5, 2014) ("Dear Colleague Letter"). "Every agency at any level of government that is involved in the provision of special education and related services to students in correctional facilities must ensure the provision of [a free appropriate public education]." *Dear Colleague Letter* at 2.

In Colorado, DOC is a state operated program. ECEA Rule 2.49(2). Under Colorado law, a state operated program is considered an LEA, and as such, a state operated program is responsible for the provision of FAPE to children with disabilities placed in or committed to its custody – just like a school district or BOCES. *See* ECEA Rules 2.31, 3.02(2).

The IDEA places some limits on FAPE for children with disabilities aged 18-21 who, in the last educational placement prior to their incarceration in an adult correctional facility, were not actually identified as being a child with a disability under 34 C.F.R. § 300.8 and did not have an IEP under Part B. 34 C.F.R. § 300.102(a)(2)(i). However, these exceptions do not apply to child with a disability aged 18 to 21 who was previously identified as a child with a disability under 34 C.F.R. § 300.8, regardless of whether he or she received services in accordance with an IEP prior to incarceration. 34 C.F.R. § 300.102(a)(2)(ii)(A)-(B).

In this case, Student was identified as a child with a disability in fourth grade, and prior to entering DOC custody in 2019, went to school and received services under the 2018 IEP. (FF # 3). The exceptions above thus do not apply here, and to the extent that Student qualifies for special education and related services, DOC is responsible for providing Student with FAPE. The SCO now turns to DOC's child find responsibilities under IDEA.

## **B. The Child Identification Process Under the IDEA**

The IDEA mandates that LEAs develop and implement adequate procedures to identify, locate, and evaluate children with disabilities who may need special education and related services. 34 C.F.R. § 300.111(a). In Colorado, the child identification process includes “child find, special education referral; initial evaluation; and determination of disability and eligibility” for special education. ECEA Rules 4.02(1)(b) and 8.01(3).

Under the “special education referral” component of the identification process, state operated programs have an affirmative obligation to evaluate a child where the public agency has reason to suspect a qualifying IDEA disability and a need for special education and related services. 34 C.F.R. § 300.111(c); ECEA Rule 4.02(1)(b). The threshold for suspecting a disability is relatively low. *Hawaii v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw. 2001). The appropriate inquiry is “whether the child should be referred for an evaluation, not whether the child actually qualifies for the services.” *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). Suspicion “may be inferred from written parental concern, the behavior or performance of the child, teacher concern, or a parental request for an evaluation.” *Cheyenne Mtn. Sch. Dist. 12*, 117 LRP 25901 (D. Colo. 2017) (quoting *Wiesenberg v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 181 F. Supp. 2d 1307, 1311 (D. Utah 2002)).

The actions of an LEA, in terms of whether it had knowledge of, or reason to suspect, a disability must be evaluated in light of the information the LEA knew, or had reason to know, at the relevant time. *Oxnard Sch. Dist.*, 118 LRP 48450 (SEA CA 11/13/18). It should not be based on hindsight. *Id.*; see also *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). LEAs must systematically seek out IDEA-eligible students and may not take a passive approach and wait for others to refer students for special education. *Compton Unified Sch. Dist. v. Addison*, 54 IDELR 71 (9th Cir. 2010), cert. denied, 112 LRP 1321, 132 S. Ct. 996 (2012). Remaining vigilant for red flags and referring students who may have a disability and need special education is part of this ongoing obligation. *Arapahoe County Sch. Dist. 5*, 117 LRP 2988 (SEA CO 12/21/16) (citing *Cincinnati City Sch.*, 115 LRP 26069 (SEA OH 5/07/15)).

To decide whether DOC fulfilled its child find obligations here, the SCO considers the individual circumstances of this case to determine whether DOC had a reason to suspect that Student needed to be evaluated for special education. *Cherry Creek Sch. Dist.*, 119 LRP 30204 (SEA CO 5/17/19); *Weld RE-4 School District*, 119 LRP 5662 (SEA CO 1/2/19) (citing *Clark County Sch. Dist.*, 114 LRP 45477 (SEA NV 8/28/14)).

## **C. DOC’s Reasons to Suspect a Disability**

In the present case, there can be no question that DOC had reason to suspect Student needed to be evaluated for special education. Parent not only affirmatively told DOC that Student previously qualified for special education but also provided DOC with the 2018 IEP on April 17,

2020 (and Case Manager confirmed receipt of the document). (FF # 28-29). It is unclear why the 2018 IEP was not provided to the education department, or if it was, why no further action was taken by DOC. (FF # 29). Regardless, the Record clearly demonstrates DOC was in receipt of the 2018 IEP as of April 17, 2020, and the 2018 IEP showed that Student was previously eligible for special education and related services prior to entering DOC custody. (FF # 28). Under the circumstances, DOC had a strong reason to suspect that Student may need special education and related services yet did not evaluate him for special education until July 20, 2021. (FF # 46).

In addition, the SCO finds DOC's use of a student's performance on the two assessments provided at DRDC to trigger child find is inadequate for students under 18 and problematic for students over 18 without more adequate ways to obtain and verify a student's status as IDEA-eligible prior to incarceration. See (FF # 15). DOC's failure to identify Student as a student suspected of having a qualifying disability at intake is demonstrative of the inadequacy of the DRDC assessments.

The SCO accordingly finds and concludes that, as early as April 17, 2020, DOC had sufficient reason to suspect Student might have a qualifying disability that would require a special education evaluation, and by failing to evaluate Student's need for special education until July 20, 2021, DOC committed a procedural violation of 34 C.F.R. § 300.111 and ECEA Rule 4.02(1).

#### **D. Substantive Violation**

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, because of DOC's inaction, Student received no special education or related services for the entire year at issue in this investigation (November 1, 2020, to November 1, 2021). (FF # 30-60). DOC, due to its own delay, did not identify Student as eligible for special education and until a short time before Student's 21st birthday (at which point he would age out of services). See (FF # 71). Under the circumstances, the deprivation of educational benefit is clear. The SCO accordingly finds and concludes that DOC's procedural violation resulted in a denial of FAPE. 34 C.F.R. § 300.513(a)(2).

**Conclusion to Allegation No. 2: DOC failed to convene an IEP meeting to address information provided by Parent regarding Student, in violation of 34 C.F.R. § 300.324(a)-(b). This violation resulted in a denial of FAPE.**

Each public agency must ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revise the IEP, as appropriate, to address any lack of expected progress toward annual goals,

the result of any reevaluation, information about the child provided to, or by, the parents, and the child's anticipated needs. 34 C.F.R. § 300.324(b). The IDEA contemplates, however, that a student's IEP may need to be reviewed and revised more frequently than once a year to address changing needs or an unexpected lack of progress. *See* 34 C.F.R. § 300.324(a)(4)-(6), (b); *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (U.S. 2017).

With the intention of developing an IEP that is tailored to the unique needs of the child, the IDEA places particular emphasis on collaboration among parents and school districts, requiring that parents be afforded the opportunity to participate and that their participation be meaningful, including giving careful consideration to their concerns for enhancing the education of their child. *See* 34 C.F.R. §§ 300.321(a)(1), 300.322, 300.324(a)(ii), and 300.305(a)(1).

To that end, the IEP Team and other qualified professionals as appropriate must review existing evaluation data on the child, including evaluations and information provided by the parents of the child. 34 C.F.R. § 300.305(a)(1); *see, e.g., S.P. by and through Palacios v. East Whittier City Sch. Dist.*, 735 Fed. Appx. 320 (9th Cir. 2018). "Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time." Questions and Answers on *U. S. Supreme Court Case Decision Andrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017).

Here, although Parent did not explicitly request an IEP meeting with DOC, she nevertheless provided DOC with information relevant to Student's education on multiple occasions and asked about special education services. On April 17, 2020, Parent informed DOC that Student previously qualified for special education, asked about special education at DOC, and provided DOC with a copy of the 2018 IEP. (FF # 28). DOC acknowledged receipt of the 2018 IEP but told Parent DOC does not provide special education services and did not hold an IEP meeting to discuss the information provided by Parent or otherwise review and revise the 2018 IEP. (FF # 29). On July 8, 2020, Parent contacted DOC again and asked about ways for Student to access educational programming, but she did not receive a response from DOC. (FF # 34). Throughout 2020, when Parent contacted DOC about Student's education, DOC told Parent that it did not provide special education services, and Parent was unable to find helpful information about special education services on DOC's website. (FF # 28, 34-36).

In June of 2021, when Student returned to DOC custody for a second time, Parent again provided DOC with the 2018 IEP and told DOC that Student previously qualified for special education and related services. (FF # 38, 40-41). Parent also provided several other documents relevant to Student's disability, such as the letter from the psychiatrist about his diagnoses, the letter from the Colorado Department of Vocational Rehabilitation indicating Student qualified for services under the "Most Significant Disability" category, and the letter from the counselor regarding head trauma and Student's medical history. (FF # 41).

Despite this information, DOC did not hold an IEP meeting until November 9, 2021, shortly before Student aged out of services. (FF # 61, 71). DOC neither met to discuss the information provided by Parent prior to the July 2021 assessment nor reached out to Parent to discuss her concern and solicit her input prior to November 9, 2021. The SCO accordingly finds and concludes that DOC failed to hold an IEP meeting to address information provided by Parent, in violation of 34 C.F.R. § 300.324(a)-(b).

#### **A. Substantive Violation**

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, DOC's failure to hold an IEP meeting to discuss information provided by Parent prevented Parent from participating in the educational decision-making process. As discussed in the findings, DOC's written policies and procedures indicate a student reaches the age of majority at 18 years of age. (FF # 99). Under ECEA Rules, however, the age of majority for educational decision making is 21. ECEA Rule 6.02(9). Thus, parents must be included in the educational decision-making process for students under the age of 21.

As a result of DOC's erroneous policies and procedures, Parent was not invited to an IEP meeting until November of 2021, and Parent was not consulted prior to the July 2021 assessment. *See* (FF # 40-60). Until the November IEP Meeting, Parent was never provided with updates on Student's education or asked for her input, and she had to repeatedly contact DOC for information. *See id.* Parent provided DOC with information relevant to Student's disability on multiple occasions starting on April 17, 2020, but DOC did not hold an IEP meeting to discuss that information until November 9, 2021, shortly before Student aged out of services. (FF # 71).

The SCO thus finds and concludes that DOC's failure to hold an IEP meeting to discuss information provided by Parent significantly impeded Parent's ability to participate in the decision-making process, resulting in a denial of FAPE. 34 C.F.R. § 300.513(a)(2).

**Conclusion to Allegation No. 3: DOC failed to develop, review, and revise an IEP, from November 1, 2020 to the present, that was tailored to meet Student's individualized needs, in violation of 34 C.F.R. § 300.324. This violation resulted in a denial of FAPE.**

Parent alleges that from November 1, 2020 to the present, DOC failed to develop, review, and revise an IEP that was tailored to meet Student's individualized needs.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* at 207.

The inadequacies alleged by Parent are now addressed below considering these legal standards.

#### **A. Development of the 2021 IEP**

Under the IDEA, before the initial provision of special education and related services to a child with a disability, school districts must conduct a *full and individual evaluation* to determine the extent to which a student requires special education. 34 C.F.R. § 300.305 (emphasis added). To provide a thorough and comprehensive initial evaluation, school districts must ensure that the student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, *social and emotional status*, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4) (emphasis added). Evaluations must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

Here, DOC failed to comply with IDEA's procedures in the development of the 2021 IEP because DOC failed to comprehensively evaluate Student to determine his areas of need. (FF # 44-46). The July 2021 assessment was a one-size-fits-all assessment designed to obtain accommodations for the GED Test, not to comprehensively determine the impact of Student's disability and his areas of need. *See id.* A comprehensive evaluation is the foundation for determining a student's unique circumstances, and the failure to comprehensively evaluate the student results in the IEP Team lacking the information necessary to develop annual goals, as well as the supports and services necessary to meet those individualized goals.

DOC left it up to BOCES School Psychologist to determine which areas to evaluate Student, and despite Parent's information suggesting Student had social emotional needs, no social emotional assessments were ordered. (FF # 40-41, 44-46). As such, DOC failed to obtain the information about Student's individualized needs necessary as a baseline to develop an IEP tailored to Student.

The SCO accordingly finds and concludes that DOC failed to administer a comprehensive evaluation to determine Student’s areas of need, and by failing to do so, failed to comply with IDEA’s procedures at 34 C.F.R. §§ 300.304 and 300.305.

**B. IEP Tailored to Student’s Individualized Needs**

An IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S. Ct. at 999. In essence, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001. The IEP Team must consider, among other things, the results of the initial or most recent evaluation and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1).

In this case, because DOC failed to conduct a comprehensive evaluation in all areas related to the suspected disability, the 2021 IEP was therefore not tailored to Student’s individualized needs. DOC did not obtain current data about Student’s social emotional needs, and instead developed the 2021 IEP using data from the 2018 IEP and other documentation from 2018. (FF # 64). The data from the 2018 IEP and documentation provided by Parent was three years old at the time of the IEP meeting.

Moreover, the 2018 IEP was developed for a traditional school setting, and not a correctional facility. Finally, DOC assessed Student on July 20, 2021, but did not hold an IEP meeting to discuss the results until November 9, 2021, shortly before Student’s 21st birthday (at which point he aged out of services). (FF # 46, 61, 71). For all these reasons, the SCO finds and concludes that DOC failed to tailor the 2021 IEP to meet Student’s individualized needs, in violation of 34 C.F.R. § 300.324.

**Conclusion to Allegation No. 4: DOC failed to make an offer of FAPE and provide special education and related services in accordance with an IEP from November 1, 2020 to present, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.**

At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP. 34 C.F.R. § 300.323(a). 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); *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982)).

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.” 34 C.F.R. § 300.323(c)(2). If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school year within the same school year, the new public

agency must (in consultation with parents) provide comparable services until the new school district: (1) adopts the IEP developed by the old school district or (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(e).

Unlike a typical school district, DOC does not have a traditional “beginning” of the school year for its GED programs. (FF # 88). Students may enter DOC custody at any time throughout the calendar year, and while some students may be “transferring” directly from school districts, others, like Student, enter DOC custody after being out of school for an extended time prior to being sentenced. *See* (FF # 17).

DOC’s responsibilities regarding the provision of FAPE to children within DOC custody, however, are dependent on whether a student was previously identified as being a child with a qualifying disability, whether or not that student was previously in school and receiving services under an IEP. *See* 34 C.F.R. § 300.102(a)(2)(i)-(ii). As such, regardless of whether a student entering DOC custody does so as a “transfer” from another public agency, DOC must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child enrolled. *See, e.g.,* 34 C.F.R. § 300.323(g)(1).

Here, Student entered DOC custody in November of 2019. (FF # 23). Prior to entering DOC custody, Student qualified for special education and related services under the 2018 IEP. (FF # 3). When Student entered DOC custody, DOC was required to take reasonable steps to obtain Student’s records. *See* 34 C.F.R. § 300.323(a), (c)-(g).

DOC did not, however, take reasonable steps to obtain Student’s records, and instead made it the responsibility of Student to identify himself as a student with a disability and tell DOC where to send requests for his educational and medical records. (FF # 13, 23). This is inconsistent with the spirit of the IDEA as the onus is on the public agency, and not the student, to make reasonable efforts to obtain the student’s records. *See* C.F.R. § 300.323(g). The SCO accordingly finds DOC violated of 34 C.F.R. § 300.323.

Procedural violations of IDEA are only actionable to the extent that they impede the child’s right to FAPE, significantly impede the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, throughout the time at issue in this investigation, DOC did not provide Student with any special education or related services. By the time DOC did initiate the IEP process and develop an offer of FAPE for Student, it was shortly before Student turned 21 and aged out of services. (FF # 71). The SCO accordingly finds and concludes DOC’s procedural violation resulted in a denial of FAPE. 34 C.F.R. § 300.513(a)(2).

## **A. Compensatory Education**

Compensatory education is an equitable remedy intended to place a student in the same position they would have been, if not for the violation. *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). 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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package to help place Student in the same position with respect to making progress if not for the violation.

Here, DOC's violations with respect to allegations No. 1 through No. 4 resulted in a denial of FAPE. Student did not receive any special education or related services from November 1, 2020, through November 1, 2021. When DOC did develop the 2021 IEP, it was not until November 9, 2021, and it was only effective for a short time before Student turned 21. Due to DOC's failure to comprehensively evaluate Student and solicit input from Parent, the 2021 IEP was also not tailored to Student's individualized needs.

In consultation with CDE Content Specialist 1 and CDE Content Specialist 2, the SCO finds that compensatory education is appropriate, but there is insufficient information about Student's needs to create a comprehensive compensatory education package. Instead, the SCO will order that Student receive 15 hours of direct social emotional therapy to address his social emotional needs, and order Student to be reevaluated to determine what, if any, additional compensatory education services are appropriate. Since Student is 21, the remedy will not include a requirement that DOC develop a new IEP.

**Conclusion to Allegation No. 5: DOC convened a multi-disciplinary team ("MDT") to consider Student's eligibility for special education and related services following the July 2021 special education evaluation.**

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a child with a disability. 34 C.F.R. § 300.306(a)(1). In interpreting evaluation data for the purpose of determining whether a child has a qualifying disability, the public agency must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. *Id.* at § 300.306(c).

In this case, DOC failed to conduct a comprehensive evaluation of Student prior to the November 9, 2021 IEP meeting, resulting in a denial of FAPE. Nevertheless, DOC convened a properly constituted MDT to consider Student's eligibility. (FF # 61). The MDT consisted of a group of qualified professionals to include a special education teacher and a general education

teacher with first-hand knowledge of Student. *Id.* DOC also invited both Parent and Student to the meeting. *Id.* The SCO finds the MDT was composed of a group of professionals, including Parent, who were qualified to determine if Student was a child with a qualifying disability.

The SCO accordingly finds and concludes that DOC convened an MDT to consider Student's eligibility for special education and related services following the July 2021 special education evaluation on November 9, 2021, consistent with 34 C.F.R. § 300.306(a)(1).

**Systemic IDEA Violations: This investigation demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities in DOC if not corrected.**

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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).

Here, the SCO finds DOC's administration of special education and related services raises significant and widespread systemic concerns under IDEA for similarly situated students.

Student was denied FAPE because DOC failed to provide any special education and related services between November 1, 2020, and November 1, 2021, despite having the 2018 IEP as early as April 17, 2020. (FF # 28). While there is no evidence to suggest that DOC is in the practice of ignoring IEPs provided by parents, the SCO nevertheless finds and concludes that DOC's special education policies and procedures raise numerous concerns under IDEA that begin with child find.

Most offenders entering DOC custody do so by first completing intake at DRDC. (FF # 12). DOC has some assessment procedures in place at DRDC to screen for children with disabilities, but those assessments only address academic and cognitive areas, and do not include any assessments to identify social emotional disabilities or needs. (FF # 15-16). Likewise, although Assistant Director of Prison Programs indicates low scores on assessments at DRDC can trigger a review by a mental health team, DOC staff concede that the average scores on DRDC assessments are impacted because offenders do not put forth their best effort on the assessments, and many offenders have been out of school for an extended time. (FF # 17). Records requests are also dependent on students with disabilities providing information on where DOC should request records, since DOC is not connected to the state system. (FF # 13).

The SCO finds these assessment procedures, especially when paired with the record request procedures, fail to satisfy IDEA's child find requirements for students 18-21 years of age who are sentenced to adult prisons.

GED teachers at DOC are instructed to look for children with disabilities, but there is no guarantee that offenders will end up as students in GED classes. (FF # 91). The waitlist for GED classes is long, especially during COVID-19, and unless a student is already flagged as a student with a disability at intake, they must make it through the waitlist before they end up in GED classes. (FF # 31-32). This requires the offender or the offender's case manager to sign the offender up for the GED class waitlist, and case managers at DOC have no training in special education and do not assist with child find. (FF # 27).

The fact that DOC's child find procedures are not working is clear from the record. DOC processes 50-60 students that are under 21 and sentenced to prison as an adult each month. (FF # 12). That means as many as 1,440 students who might potentially be eligible for services were screened at DOC from November 1, 2019, to November 1, 2021. *See id.*

The SCO requested data for every IDEA eligible student residing in DOC custody from November 1, 2019 to November 1, 2021, and DOC provided CDE with list of 17 students, including Student. (FF # 101). Only 4 of those students, however, completed intake at DRDC, as the rest were residents of YOS. (FF # 103). Student was also not identified as a student suspected of having a qualifying disability during intake at DRDC, so DOC has only identified 3 students as having a qualifying disability between November 1, 2019, and November 1, 2021, at DRDC.

That means during the last two years, only roughly 0.21% of the students screened by DOC were identified as having a qualifying disability through the DRDC screening process. While COVID-19 may have significantly impacted those numbers during the last two years, this percentage is still shockingly low. Moreover, there has been a steady decline in numbers DOC has reported to CDE since 2013 on the December Count and Special Education End of Year Report. (FF # 105-106). While COVID-19 surely impacted screening numbers from 2020 forward, the decline in numbers was happening before the onset of the COVID-19 pandemic. *Id.*

If a student is not identified as having a disability at DRDC, there is no guarantee that they will ever have another opportunity to be identified. Unless the student or the student's case manager signs up for GED classes and the student makes it through the waitlist to get into classes, there is no guarantee that the student will ever be in front of a GED instructor. Case managers are not trained in child find or special education, so they are not sources of special education referrals, and even case managers only see students monthly. (FF # 27, 30).

The SCO further finds and concludes there are numerous systemwide concerns with DOC's special education procedures that extend beyond child find. Although DOC was eventually able to provide CDE with IEPs for all students identified as being IDEA eligible between November 1,

2019 and November 1, 2021, it needed two opportunities to provide the information. (FF # 101-102). Moreover, on both occasions, DOC provided CDE with IEPs and information for students who were not identified in DOC's list of IDEA eligible students. (FF # 101-103). This suggests that DOC does not accurately know how many IDEA-eligible students are currently in DOC custody.

Furthermore, the Interagency Agreement between DOC and BOCES only addresses limited eligibility categories, which is inconsistent with the purposes of evaluation under IDEA. (FF # 84-87). DOC's policies and procedures also incorrectly identify the age of majority as 18 years of age, which resulted in Parent being excluded from educational decision making for Student prior to the November 9, 2021 IEP meeting. (FF # 99). As a result of these erroneous policies and procedures, DOC regularly fails to assign surrogate parents to students. *Id.* Due to issues with DOC's SIS, DOC also fails to track reevaluations for students with IEPs who are sentenced to facilities other than YOS. (FF # 96).

For these reasons, the SCO finds and concludes that the violations found in this Decision are systemic, and if not corrected, are likely to impact the provision of special education to other children with disabilities in DOC custody. The SCO further finds and concludes that these violations are so extensive and widespread that they are unlikely to be resolved in the one-year period required by the Corrective Action Plan ("CAP"). The SCO will accordingly order a remedy that includes a requirement that DOC comply with a CDE audit to determine the extent of the systemic violations to better understand how to bring DOC in compliance with IDEA.

### **REMEDIES**

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

1. Failing to identify and evaluate Student as a child with a suspected disability who is in need of special education and related services, in violation of 34 C.F.R. §§ 300.304, 300.111 and ECEA Rule 4.02(1)-(3).
2. Failing to convene an IEP meeting to address information provided by Parent regarding Student, in violation of 34 C.F.R. § 300.324(a)-(b).
3. Failing to develop, review, and revise Student's IEP, in violation of 34 C.F.R. § 300.324(b).
4. Failing to make an offer of FAPE and provide special education and related services in accordance with an IEP, in violation of 34 C.F.R. § 300.323.

To remedy this violation, DOC is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Friday, March 4, 2022**, DOC 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 DOC is responsible. The CAP must, at a minimum, provide for the following:
  - i. Attendance and completion of training provided by CDE on the concerns noted in this decision. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.304, 300.306, 300.311, 300.323, 300.324, and the related concerns noted in this decision. Special Education Coordinator and CDE Special Education Monitoring and Technical Assistant Consultant, Rebecca O’Malley, will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for all GED instructors and special education staff at DOC. Such training shall be completed no later than **Wednesday, June 1, 2022**.
  - ii. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, June 10, 2022**.
- b. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm DOC’s timely correction of the areas of noncompliance.

2. CDE Audit

- a. In addition to the CAP, DOC will cooperate with an audit by CDE to determine the extent of noncompliance under IDEA and inform further corrective action and available technical assistance and support from CDE. DOC will provide requested documentation and access to records and staff as necessary for CDE to complete a thorough and complete review of DOC’s areas of noncompliance under IDEA at CDE direction and request. This audit will be completed **no later**

**than December 31, 2022**, and CDE will create intermediary deadlines as necessary for specific records and information requests. DOC must adhere to any disclosure deadlines unless extended by CDE. CDE will then conduct follow-up and verification activities as necessary.

- b. Based on the results of the audit, the CDE will collaborate with DOC to revise relevant policy, procedure, and practice and to provide technical assistance, professional development, and resources to ensure IDEA eligible students in DOC receive services in accordance with IDEA. Findings of noncompliance identified through the CDE audit must be corrected consistent with 34 C.F.R. § 300.600(e).

3. **Reevaluation and Compensatory Education Services for Denial of FAPE**

- a. Student shall receive 15 hours of direct social emotional therapy from a licensed clinical psychologist or counselor. These services may be provided by a BOCES school psychologist, or another qualified provider, so long as they are provided at DOC expense. These services may be provided virtually, where appropriate. **All 15 hours must be completed by Friday, December 30, 2022.**
- b. By **Friday, March 4, 2022**, DOC must conduct a comprehensive evaluation of Student in all possible areas of need. Consent for the evaluation must be obtained no later than **Monday, January 31, 2022**. Although DOC may determine the appropriate evaluations and evaluators, the evaluation must be conducted in all areas of suspected need and consistent with IDEA’s evaluation procedures at 34 C.F.R § 300.304 and the evaluator(s) must appropriately licensed, trained and knowledgeable to conduct the assessments. The evaluator must also make a recommendation about the extent to which additional compensatory education services may be necessary to make up for Student’s missed services. DOC may contract with BOCES or another private provider for the reevaluation. Evidence that this evaluation has occurred—including consent to evaluate, PWN, and the evaluation report—shall be provided to CDE by **Monday, April 25, 2022**.
- c. DOC shall provide Student with compensatory education services as recommended by the evaluator in (b) above. Services may be provided by BOCES or by another private provider, so long as the services are provided at DOC expense. Student’s IEP Team, including Parent, may determine the weekly schedule for the compensatory education. All compensatory education services must be completed by **Friday, December 30, 2022**, though Student may opt out of some or all of the compensatory educational hours if he wishes. Given the COVID-19 pandemic, these services may be provided remotely where possible and necessary.

- d. DOC shall submit the schedule of compensatory services to CDE no later than **Friday, May 27, 2022**. If for any reason, including illness, Student is not available for any scheduled compensatory services, DOC will be excused from providing the service scheduled for that session. If for any reason DOC fails to provide a scheduled compensatory session, DOC will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and 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.: Becky O'Malley  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

**NOTE:** Failure by the DOC to meet any of the timelines set forth above may adversely affect DOC's annual determination under the IDEA and subject DOC to enforcement action by the Department. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with DOC 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, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

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

Dated this 10<sup>th</sup> day of January, 2022.



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Ross Meyers  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-8**

- Exhibit 1: April 2020 Parent Email w/IEP
- Exhibit 2: August 8, 2018 IEP
- Exhibit 3: April 2020 DOC Response
- Exhibit 4: July 2020 Parent Email
- Exhibit 5: June 2021 Parent Email
- Exhibit 6: June 2021 DOC Response
- Exhibit 7: June 2021 Parent Email 2
- Exhibit 8: List of Medications
- Exhibit 9: Student Medical Information
- Exhibit 10: Letter from Department of Labor and Employment
- Exhibit 11: Letter to Judge
- Exhibit 12: Drug and Alcohol Assessment
- Exhibit 13: June 2021 Parent Email 3
- Exhibit 14: July 2021 Parent Email
- Exhibit 15: September 2021 DOC Email re Transfer
- Exhibit 16: Dates When Student was Removed from School Due to Schedule

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

- Exhibit A: November 9, 2021 IEP
- Exhibit B: none
- Exhibit C: none
- Exhibit D: November 5, 2021 Notice of Meeting
- Exhibit E: none
- Exhibit F: Evaluation Report
- Exhibit G: Correspondence
- Exhibit H: Additional Assessment Data
- Exhibit I: Interagency Agreement
- Exhibit J: DOC Policies and Procedures
- Exhibit K: none
- Exhibit L: none
- Exhibit M: IEPs for Systemic Investigation
- Exhibit N: none
- Exhibit O: Evaluation Data for Systemic Investigation
- Exhibit P: List of Students for Systemic Investigation
- Exhibit Q: Additional Documentation re Systemic Investigation
- Exhibit R: Statement from Director of Special Education

- Exhibit S: Statement from Assistant Director of Prison Programs

**Reply, pages 1-5**

**Telephonic Interviews:**

- Assistant Director of Prison Programs: December 3, 2021
- Case Manager: December 7, 2021
- Director of Special Education: December 3, 2021
- Education Administrator: December 3, 2021
- Parent: December 7, 2021
- Special Education Teacher: December 7, 2021

**CDE Exhibits:**

- CDE Exhibit 1: DOC Inmate Education Website