

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

State-Level Complaint 2022:560
Boulder RE-1J, St. Vrain

DECISION

INTRODUCTION

On November 7, 2022, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Boulder RE-1J, St. Vrain (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from November 7, 2021 through November 7, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review, and revise an IEP tailored to Student’s individualized needs between November 7, 2021 and present, in violation of 34 C.F.R. § 300.320(b) and ECEA Rule 2.51(1), specifically by:
 - a. Failing to develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments; and

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

- b. Failing to include the transition services needed to assist Student in reaching those goals.

FINDINGS OF FACT

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

A. Background

1. Student is 17 years old and receives homebound services through District. *Exhibit A*, p. 39. Student is assigned to a District high school (“School”) but receives online instruction from a special education teacher (“Teacher”) at an online school in District (“Virtual School”). *Exhibit H*, p. 188. Student and his Parent reside within the boundaries of District. *Exhibit A*, p. 39.
2. Student is currently identified as a child with multiple disabilities including an intellectual disability, an orthopedic impairment, a vision impairment, and a speech-language impairment. *Id.* at p. 59.
3. Student is social, with a smile that lights up his face, and loves interacting with those he knows, including family and providers. *Interviews with Parent, Teacher, District physical therapist (“PT”), and District teacher of students with visual impairments and blindness (“Vision Teacher”).* Student makes choices and communicates preferences and needs by answering yes/no questions. *Id.* Student loves listening to audiobooks, movies and family conversations. *Interview with Parent.* Student is hardworking and engaged during sessions and has a great sense of humor. *Interviews with Teacher, PT and Vision Teacher.*
4. Student has cerebral palsy (“CP”), spastic quadriplegia, and a vision impairment, including cortical visual impairment (“CVI”). *Exhibit E*, pp. 2, 9. Student is primarily confined to his bed, as he has not had an appropriate sized wheelchair for years. *Interview with Parent.* Student has been homebound for his entire educational career and has worked with PT and Teacher for 12 and 13 years respectively. *Interviews with PT and Teacher.*

B. 2020 IEP

5. IEP teams in District begin transition planning for students no later than ninth grade or the first IEP after the student turns 15. *Interview with Director of Special Education (“Director”).* However, conversations can begin before that in middle or elementary school, depending on the needs of the student. *Id.*
6. For students with significant impairments, one focus of transition goals should be on building interdependence so they can play a more active role in their own lives. *Interview with CDE*

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

Content Specialist 1. This helps set them up for a meaningful and active life. *Id.* Transition IEPs should clearly set out how the student’s work will translate to earning full-time credit and ultimately a high school diploma. *Interview with CDE Content Specialist 2*. If the student is transitioning to an outside agency, transition planning should include setting everything up for a smooth transition. *Id.*

7. In November of 2021, Student’s operative IEP was from December 9, 2020 (“2020 IEP”). *Exhibit A*, p. 1. A special education teacher at School acted as Student’s case manager (“Case Manager”) and continues to serve in that role. *Id.* at p. 2; *Interview with Case Manager*. Parent, Case Manager, PT, Teacher and a former vision teacher attended Student’s 2020 IEP team meeting. *Exhibit A*, p. 2.
8. As a result of COVID-19, Student moved to virtual services in March of 2020. *Id.* at p. 3. According to the present levels section, Student’s range of motion in his neck was declining, impacting his ability to turn his head to the left to hit the switch which said “no” for him. *Id.* at p. 4. Instead, he was looking left towards the switch for no, although he continued to drop his jaw down to activate his “yes” switch. *Id.*
9. Instead of spending time in his wheelchair daily, Student was choosing to stay in bed and only spending time in his wheelchair once or twice a week, potentially due to discomfort in his wheelchair. *Id.* Student can only get a new wheelchair through Medicaid every five years. *Interview with Parent*. When he finally got a new chair five years ago, Student had already outgrown it. *Id.* Student became progressively more uncomfortable in the chair, until he was grimacing in pain, so it is only used when necessary. *Id.*
10. Being able to sit up in his chair is important for Student’s health and wellbeing as it can be a cardiovascular workout compared to lying in bed. *Interview with PT*. Sitting upright might also increase Student’s ability to turn his head. *Id.*
11. Student is homebound and dependent on caregivers for all his needs, including mobility. *Exhibit A*, p. 6. Because of virtual learning, Student was able to join classes at School via Webex for 10-15 minutes once or twice a week, and he really enjoyed the peer interaction. *Id.* at pp. 5-6.
12. As a transition assessment, Case Manager held a discussion with Student’s family. *Id.* at p. 6. Parent and District staff wanted Student to be able to have more choices and “express his preferences throughout the day.” *Id.* Student’s “therapies, social interactions and personal work will continue to be at home throughout his time in high school and as an adult.” *Id.*
13. Student’s three transition goals were:

- Education/Training Goal: “[Student] will participate in therapies and educational opportunities at home by letting others know if he is feeling OK or if he needs something different or by making choices between activities.”
- Career Employment Goal: “[Student] will work at home by giving information and directives to caregivers to help them meet his physical and recreational needs.”
- Independent Living Skills (“ILS”) Goal: “[Student] will let others know his thoughts and feelings by answering yes/no questions using a switch or eye gaze.”

Id.

14. Student had a learning media plan for his vision impairment and needed adult-facilitated communication with novel adults or peers. *Id.* at p. 7. He also needed assistive technology including “yes/no” switches for communication and magnification “such as the iPad or larger screens for optimal vision enhancement.” *Id.* Finally, if Student were to attend school in person, he would require transportation services and a health care plan. *Id.*

15. Student’s course of study was to receive programming at home where he would work on “functional communication, functional movement and visual classification skill development” and have exposure to content from all four core areas with Teacher. *Id.* at p. 8. No agency linkages had been made. *Id.* Student’s transition services included:

- Education/Instruction and Related Services:
 - Weekly instruction from a vision teacher “targeting strategies on how to use his vision to better understand various responsibilities of the adults he interacts with so he can more effectively communicate his needs and wants with them.”
 - Working with PT to maintain his range of motion for switch access and maintain or increase his tolerance to position changes and upright positioning so he can direct caregivers to meet his needs. Student also practiced “choice-making/caregiver directing” in each session with PT.
 - Case Manager would provide Teacher with access to curriculum and allow Student to come to class via Webex.
- Career/Employment and other Post-School Adult Living Objectives:
 - A vision teacher will provide Student with a choice board and instruction on how to use it to make choices and “let his needs be known.”

- Teacher would provide chances to “make choices about the order and modality with witch (sic) he has his lessons.”
- Community Experiences: “[Student’s] family, nursing staff and school staff will discuss experiences that they have had in the community with [Student.]”

Id.

16. Student had three annual goals, for which progress would be sent home each semester. *Id.*

- Goal 1, ILS: Supported by PT, to participate in daily care, Student “will maintain his functional gross motor skills.” *Id.* at p. 9.
 - Student’s baselines were quite variable depending on how Student was feeling and his energy levels. *Id.* at p. 8. He consistently used switches to say how he was feeling with a faces scale and would consistently choose positions of comfort and PT activities. *Id.* at pp. 8-9. However, “some days he responds to 100% of yes/no questions with 100% accuracy, other days he responds to 25% of yes/no questions with 75% accuracy.” *Id.* at p. 9. PT could not assess him but concluded that his range of motion appeared to be declining, along with his tolerance for sitting in his wheelchair. *Id.*
 - Objective 1: “participate in a daily range of motion program to maintain his range of motion for switch access, for minimizing the risk of skin breakdown, and for maintaining/improving his tolerance to out of bed positioning.” *Id.*
 - Objective 2: “respond to yes/no questions posed by caregivers/staff to direct caregivers to at least two activities per day and” direct staff to at least two activities during a session. *Id.*
- Goal 2, ILS: Student will “increase his ability to make and communicate choices” through the following objectives, so he can inform teachers and therapists about his wants and needs. *Id.*
 - Objective 1: “After instruction, [Student] will use a visual choice board to make his needs/wants known from up to 4 items, in 3/4 trials.” *Id.* From a baseline of using eye gaze to left for no and chin switch for yes. *Id.*
 - Objective 2: From a baseline of making one choice per session, Student will make choices about the content, modality or timing of activities he wants to engage in at least three times per session. *Id.*

- Goal 3, Vocational/Career Skills: From a baseline of not identifying preferences, Student “will increase his understanding of various careers and activities he experiences in his home as evidenced by mastery of the following objectives:” *Id.*
 - Objective 1: “After learning about various activities in the household, [Student] will identify his a) likes and dislikes of each activity and b) compare 3 of the activities, by answering at least 4 yes/no questions relating to the activity in a 30 minute vision lesson.” *Id.* at p. 10.
 - Objective 2: After instruction on professionals working with him or in his home, Student “will choose which jobs he would prefer to work in by ordering them from most preferred to least preferred – for at least 9 jobs total over the course of the IEP year.” *Id.*
 - This goal was tied to expanded core curriculum standards for students with visual impairments. *Id.* The first two goals were not tied to any standards. *Id.* at pp. 9-10.

17. Student had eight accommodations, largely related to his vision impairment, including “enlarged print to at least 72pt font,” high contrast and adaptation of lights or seating to reduce glare on visual materials. *Id.* at p. 10. Due to his cognitive disability, Student was “working towards achievement of Extended Evidence Outcomes,” (“EEOs”) not grade-level standards and would be taking alternate assessments. *Id.* at pp. 10, 12.

18. Student’s services were divided into a plan for in-person learning and a separate plan for remote learning. *Id.* at p. 13. By November of 2021, PT and Vision Teacher had resumed in-person instruction:

- Physical Therapy: 160 minutes per month (“MPM”) of direct services to “address his PT goals.” During remote learning, PT provided 30 MPM of consultation with Student’s caregivers.
- Blind/Visually Impaired Instruction: 160 MPM, or 40 minutes per week (“MPW”) of direct services, with availability for consults with Student’s team as necessary. During remote learning, a vision teacher would provide direct services via Webex for 30 MPW.
- Specialized Instruction: 240 MPW of direct instruction if in person, or 180 MPW of direct instruction via Webex. In either case, Student would have access to School’s significant support needs (“SSN”) class via Webex whenever it worked with his schedule and energy levels.

Id. at pp. 13-14.

19. Student's least restrictive environment ("LRE") was homebound where he could get needed medical care throughout the day and there was a decreased risk of infection. *Id.* at p. 14. The disadvantages of this LRE include "less exposure to same-age peers" and reduced content and experiences. *Id.* The team also considered placing Student in general education less than 40% of the time. *Id.* While that would allow for "increased exposure to peers, content and socialization," Student's "medical condition is such that exposure to a school and other people is extremely likely to cause significant" and potentially life-threatening infection. *Id.*

C. 2021 IEP

20. Parent, Case Manager, PT, Vision Teacher, and Teacher met virtually on December 1, 2021 for Student's annual IEP team meeting and created a new IEP ("2021 IEP"). *Id.* at pp. 21, 34. The IEP was drafted in advance and then reviewed by the IEP team. *Id.*

21. Information about Student's age was updated and it was noted that PT and Vision Teacher were now seeing Student in his home, but the Student Strengths section is otherwise copied verbatim from the 2020 IEP. *Compare Id.* at pp. 3, 22. Vision Teacher took over providing Student's vision services from another instructor in January of 2021. *Id.* at p. 24.

22. The 2021 IEP included updates on Student's progress on prior goals and observations from PT. *Id.* at p. 23. PT provided an update on Goal 1. *Id.* at p. 23. For objective 1, participating in a daily range of motion program, she indicated that Student enjoyed participating in a range of motion program that PT designed and Student's nurse implemented. *Id.* As for objective 2, answering yes/no questions to direct staff, Student was accessing a "yes" switch through a chin drop and using a gaze to the left for "no". *Id.* He would answer questions in 90% of his sessions with PT and his average accuracy was 80%. *Id.* PT observed that his endurance had decreased after an illness, and he was now visibly tired after just 20-25 minutes of activity with PT. *Id.* Most of Student's motion remained at baseline, but he "no longer has active cervical rotation to the left past midline." *Id.* PT intended to help with wheelchair positioning as Student was only using his chair for medical appointments because it was so uncomfortable. *Id.*

23. The 2021 IEP also included updates from Vision Teacher. *Id.* at pp. 23-24. For Goal 2, Objective 1, Student was making "his needs/wants known from up to 4 items" in two or three out of four trials, when he was feeling well. *Id.* at p. 23. For Goal 2, Objective 2, from a baseline of one choice per session, Student was making one to two choices "when feeling well." *Id.* She does not explain what constitutes "feeling well" or how frequently that occurs. *Id.* Goal 3 is described, but no update is provided. *Id.* Vision teacher notes that although Student answers most questions, he rarely says "no." *Id.* at p. 24.

24. For transition planning, Case Manager relied on a discussion with Parent in lieu of a formal assessment or tool. *Id.* Student is connected with his local community center board ("CCB").

Id. After public school, Student will continue to live at home and “indicate preferences and needs with his family and his therapists.” *Id.* The summary notes that he will continue to receive nursing services, physical therapy and possibly massage or music therapy. *Id.*

25. The Student Needs and Impact of Disability statement is copied verbatim from the 2020 IEP. *Compare Id.* at pp. 6, 24. Parent thinks Student is doing well but wants him to continue working with the same staff and to continue receiving District services until he turns 21. *Id.*
26. Student had the same three post-school goals focused on communication. *Compare Id.* at pp. 6, 24-25. However, the ILS goal was slightly modified to note that Student would answer yes/no questions by “using a switch, eye gaze (no is up to the left), smile, jaw drop for a yes.” *Id.* at p. 25.
27. Student continues to need a learning media plan for his vision impairment and have unique communication needs. *Id.* He would also still require a health care plan and special transportation if he were to attend school in person. *Id.* According to the 2021 IEP he requires assistive technology for communication, but there is no longer mention of using technology for vision enhancement. *Id.*
28. The planned course of study and transition services and activities are copied verbatim from the 2020 IEP. *Compare Id.* at pp. 8, 26. District still had not made any agency linkages. *Id.* at p. 26.
29. The 2021 IEP contains four annual goals, for which progress reports will be sent home each semester. *Id.*
 - Goal 1, Physical Motor: Student “will maintain/improve the following skills to better access his school/home environment.” *Id.* at p. 27.
 - Objective 1: “To facilitate switch access, [Student] will maintain his ability to hold his head in a midline position (when supine) for at least 5 minutes at a time,” from a baseline of three minutes. *Id.*
 - Objective 2: “To increase his tolerance to upright positioning, [Student] will gradually increase time in his wheelchair to two hours per day (he will need specialty seating before this goal can be addressed),” from a baseline of using his wheelchair for medical appointments only. *Id.*
 - This goal is tied to a high school movement competence and understanding standard. *Id.*
 - Goal 2, ILS: From a baseline of one choice, Student “will increase his choice making skills, to better access his home environment.” *Id.*

- Objective 1: “When presented with a choice between educational activities such as audio only, audio and visual, or teacher delivery solely, [Student] will make a minimum of 3-4 choices per teaching session as to which medium he would like to start with, in 4 out of 5 trials.” *Id.* at p. 28.
- Objective 2: “When presented with two different resources for academic content such as, but not limited to Science with Flocabulary or Science with Mystery Science, [Student] will make a minimum of 3-4 choices per teaching session as to which one he would prefer at that time, in 4 out of 5 trials.” *Id.*
- This goal is tied to an eleventh/twelfth grade band standard for oral expression and listening and an EEO standard for use of digital media. *Id.*
- Goal 3, Vision: This goal is identical to Goal 3 in the 2020 IEP, except that the baseline was updated to “[Student] can give information about his likes and dislikes by answering yes/no questions, but has not compared activities.” *Compare, Id.* at pp. 9-10 and 28-29. Additionally, the sessions in objective 1 were now 20-minute vision lessons. *Id.*
 - This goal is tied to an 11th grade, EEO oral expression and listening standard. *Id.* at p. 29.
 - This goal was carried forward because it could not be worked on virtually. *Id.* at p. 37.
- Goal 4, Vision: From a baseline of never using eye gaze, Student “will use eye gaze to make choices between 2 visual materials (3D or 2D) that represent activities, feelings, or functions in 4/5 opportunities during a 20 minute lesson.” *Id.* at p. 29.
 - This goal does not have objectives and is tied to an 11th grade, EEO reading for all purposes standard. *Id.*

30. The 2021 IEP includes the same eight accommodations and the same description of Student’s need for modification that are included in the 2020 IEP. *Compare, Id.* at pp. 10, 29, 30. Student continued to work toward EEOs and to need alternate assessments. *Id.* at pp. 30-31.

31. Student’s services included:

- Physical Therapy: 120 MPM of direct services.
- Blind/Visually Impaired Instruction:

- Direct: 160 MPM to “continue facilitating integrating his vision with function.
- Indirect: 20 MPM for collaboration with the team.
- Specialized Instruction: 180 MPW of direct instruction to be provided virtually so long as “there continue to be concerns about the Corona Virus.”

Id. at p. 32.

32. Student’s LRE remained homebound because Student could not come to school due to the risk of infection, although this means he has no connection to same-aged peers. *Id.* at p. 33. No other placements were considered. *Id.*
33. According to the embedded PWN, the team agreed to reduce Student’s specialized instruction to three hours per week because “he gets very fatigued” and four hours (1.25 hours 3 times a week) is more than he can handle. *Id.* The PWN does not indicate whether the IEP team considered alternatives like offering four one-hour sessions or five 48-minute sessions. *Id.* The PWN does not indicate that Student’s physical therapy services were decreasing or explain why. *Id.* Student’s PT services were reduced because he could now only tolerate 30-minute sessions instead of 40-45 minutes. *Interview with PT.*

D. Progress on 2021 IEP Goals

34. District reported on Student’s progress on December 17, 2021 and May 26, 2022. *Exhibit F*, p. 1. Additional progress was reported in his next IEP, on November 16, 2022 (“2022 IEP”). *Exhibit A*, pp. 41-44.
35. Goal 1, Objective 1: holding head in midline position, from a baseline of three minutes. *Exhibit A*, p. 27. Progress reported:
- On December 17, 2021, although it was reported that Student had made progress, he had regressed and could only hold his head for two minutes. *Exhibit F*, p. 2.
 - On May 26, 2022, PT reported that Student had made progress, but he was still holding his head for an average of two minutes, and his ability to do so was dependent on medication levels. *Id.* Although Student could quickly answer yes/no questions when his head was in a midline position, he had a much harder time communicating no when his head was turned to the right, its default position. *Id.*
 - PT reported that the goal was partially met in November of 2022. *Exhibit A*, p. 41. Student could hold his head at midline for at least three minutes (the baseline), when he felt good and had lower muscle tone. *Id.* On days when he had higher muscle tone,

he could only maintain the position for 10-15 seconds. *Id.* PT does not indicate how often Student had higher muscle tone. *Id.*

36. Goal 1, Objective 2: from not being able to use a poorly fitting wheelchair, Student will increase tolerance for upright positioning up to two hours per day, once he has specialty seating. *Id.* at p. 27. Progress reported:

- Student did not work on the goal before December 17, 2021, but PT made a referral to a specialty seating clinic to get him a better fitting chair. *Exhibit F*, p. 2.
- Student still did not have a chair in May of 2022, although “steps [were] being made toward getting him a better fitting, more comfortable, and more supportive wheelchair,” including an appointment at the clinic. *Id.* Student could still only use his chair for medical appointments, but PT reported progress on this objective. *Id.*
- In November of 2022, Student had been approved and fitted for a chair that would not be delivered until 2023. *Exhibit A*, p. 41. Student was using his chair for appointments, and could stay in it for several hours, but it left him exhausted. *Id.*
- Being able to sit upright is important to Student’s health and well-being. *Interview with PT.* It might also make it easier for Student to turn his head to use his “no” switch. *Id.* Although CP is not a progressive disease, its impact on the body gets worse. *Id.* That is why it is getting harder for Student to turn his head to the left. *Id.* PT is trying to preserve Student’s range of motion in the hopes that he may regain volitional control of the ability to turn to the left. *Id.*

37. Goal 2, Objective 1: from a baseline of one choice, Student will make three to four choices per session about the medium for educational activities in four out of five trials. *Exhibit A*, pp. 27-28. Progress reported:

- As of December 17, 2021, Student had not yet made progress on this new goal. *Exhibit F*, p. 2.
- By May 26, 2022, Student had made progress and was making an average of two to three choices per session. *Id.* at p. 3.
- The November update is copied verbatim from the May Progress Report. *Compare Id.; Exhibit A*, p. 43. It is unclear if Student did not work on this goal in the Fall or if Teacher did not conduct any progress monitoring.

38. Goal 2, Objective 2: from a baseline of one choice, Student will make three to four choices per session about the resources for academic content in four out of five trials. *Exhibit A*, pp. 27-28. Progress reported:

- As of December 17, 2021, Student had not yet made progress on this goal. *Exhibit F*, p. 2.
- By May 26, 2022, Student had made progress and was making an average of two to three choices per session. *Id.* at p. 3.
- The November update is copied verbatim from the May Progress Report. *Compare Id.; Exhibit A*, p. 43. It is unclear if Student did not work on this goal in the Fall or if Teacher did not conduct any progress monitoring.

39. Goal 3, Objective 1: from a baseline of never comparing activities, Student will compare household activities by answering at least four yes/no questions in a vision lesson. *Exhibit A*, pp. 28-29. Progress reported:

- In December of 2021, Student had not yet made progress in the few weeks since this goal was implemented. *Exhibit F*, p. 3.
- Vision Teacher focused on careers and leisure activities with Student and had not had time for this objective by May of 2022. *Id.*
- No progress was reported on this objective in the 2022 IEP, suggesting that Student still had not worked on it. *Exhibit A*, p. 43.

40. Goal 3, Objective 2: from a baseline of never comparing activities, Student will compare potential jobs by ordering at least nine professions from most to least preferred over the course of the IEP year. *Exhibit A*, pp. 28-29. Progress reported:

- In December of 2021, Student had not yet made progress in the few weeks since this goal was implemented. *Exhibit F*, p. 3.
- Student made progress on this objective by May of 2022, having learned about four providers he works with and answering five-ten questions about each. *Id.* at pp. 3-4. With practice, he was also able to use eye gaze to identify the careers represented by pictures. *Id.* at p. 4.
- As of November of 2022, Student could rank his interest in the four professions he had learned about. *Exhibit A*, p. 43. He also joked with Vision Teacher and learned about the jobs of comedian and entertainer, both of which interested him. *Id.*

41. Goal 4: from a baseline of not using eye gaze, Student will use eye gaze to choose between two visual materials representing activities, feelings or functions in four out of five opportunities in a lesson. *Exhibit A*, p. 29. Progress reported:

- Student made progress on this goal in the first month, and was able to choose between two books, using eye gaze. *Exhibit F*, p. 4.
- By May 26, 2022 Student practiced the skill often, using it to make choices during various activities with Vision Teacher. *Id.* The update does not quantify how often Student was using eye gaze to make choices or how often Student did not feel up to doing so. *Id.*
- By November of 2022, Student could choose between two objects or pictures in three out of five opportunities, in a variety of contexts (e.g. crafts, numbers, books). *Exhibit A*, p. 44. Student was also improving on his ability to track objects over midline, which helped with the goal. *Id.*

E. Student's Proposed Graduation

42. District conducted more in-depth training on transition planning and eligibility for 18-21 services before the 2021-2022 school year. *Interview with Director; Exhibit G*, pp. 13-135. District also created an internal website and toolkit to support staff with the process. *Interview with Director; Exhibit G*, pp. 82-97. District has tried to focus the training on explaining that while all students are potentially eligible for 18-21 services, IEP teams must determine if there is a need in order for students to receive those services. *Interviews with Director and Assistant Director of Special Education ("Assistant Director")*. District also issued a memo to special education staff reminding them that eligibility for services from 18-21 is an IEP team decision that must be based on identifying a need. *Exhibit G*, p. 138.
43. Staff understanding in District used to be that most students would qualify for transition services. *Interviews with Case Manager and PT*. Guidance from District in the last two years has been that students must be transitioning to something substantially different, or have a specific need, to qualify for transition services. *Id.* Since the recent change, to qualify for services beyond age 18, students must be working toward things like community exposure or work experience. *Interview with Teacher*. Students who need full-time support and cannot or will not access the community likely would not receive transition services from District. *Interview with Case Manager*.
44. Life Skills Alternative Cooperative Education ("LSACE") is a District program that provides programming for 18-21-year-old students "who have met graduation requirements yet continue to require specially designed instruction to work towards post-school goals." *Exhibit G*, p. 1. LSACE administrators attend IEP meetings where 18-21 transition services are being considered. *Interview with Case Manager*. The rest of the IEP team sometimes changes its decision about what a student needs based on feedback from the LSACE administrator. *Id.* Decisions about whether a student needs 18-21 transition services happen at the District level, in conjunction with the IEP team. *Interview with Teacher*.

45. To graduate, students in District must earn 24.5 credits and complete specific subject area requirements for graduation. *CDE Exhibit 1*, p. 1. “No course credit shall be granted for less than a ‘D-’ grade in a course.” *Id.* at p. 2.
46. Students must be enrolled full time during high school, as defined by CDE. *Id.* District special education staff do not know if students must be enrolled for a certain number of hours per week to be considered full-time or on track to graduate in four years. *Interviews with Director, Assistant Director, Case Manager and Teacher.* The students in Case Manager’s SSN program at School generally attend school from 7:45 a.m. to 2:45 p.m. daily and earn eight credits each year. *Interview with Case Manager.*
47. To graduate, all students must also demonstrate college and/or career readiness by completing a graduation capstone which includes an Individual and Career Academic Plan (“ICAP”) and a personal financial literacy class. *CDE Exhibit 1*, p. 6. At the agreement of the IEP team, students on an IEP can have an IEP transition plan instead of an ICAP. *Id.*
48. All students in District receive a regular diploma. *Interview with Director.* Students on EEOs work toward those standards to earn credits and ultimately graduate. *Id.* On an individual basis, their schedules are correlated with required credits for graduation. *Id.* IEP teams and building administrators collaborate to set up a “scope and sequence” of EEO standards that mirrors general education content and standards to measure student progress towards graduation. *Interview with Assistant Director.*
49. Local school boards are responsible for setting graduation requirements in Colorado. *CDE Exhibit 2*, p. 1. However, the state requires students to earn qualifying scores on at least one measure in reading, writing, and communicating, and one measure in math to demonstrate college and career readiness prior to graduating. *Id.* After meeting with stakeholders, Colorado opted not to create an alternate diploma for students on EEOs. *Interview with CDE Content Specialist 1.* Those students can meet state graduation requirements based on the completion of a capstone. *Id.* However, those students have not met the requirements for a regular diploma as defined by federal law, including IDEA, so they are not reported to the federal government as having earned a regular diploma. *Id.*
50. During the 2021 IEP team meeting, Parent was informed that Student would be graduating in May of 2023 and public-school services would end. *Exhibit H*, p. 163. Parent did not want Student to graduate and stop receiving services. *Id.* After a conversation with Parent, in mid-August of 2022, Teacher asked Assistant Director, who supports District’s high schools and transition program, to follow up with Parent. *Id.* at pp. 156, 163.
51. An instructional coach who helps with connections to transition and adult services (“Instructional Coach”) called Parent to follow up. *Id.* at pp. 156, 214. Instructional Coach told Parent that Student would not qualify for 18-21 services because he is not working toward employment, college or independent living. *Interview with Parent; Exhibit B*, p. 1.

52. After the phone call, Instructional Coach issued a PWN summarizing the conversation. *Exhibit B*, p. 1. The PWN indicates that Student would “complete his high school requirements” and receive his diploma in May of 2023. *Id.* It indicates Student could not access the community, school, or work through District’s 18-21 transition program, LSACE, because of his needs. *Id.*
53. According to the PWN, District refused to keep student in public school beyond May 2023 because he cannot access District’s LSACE program. *Id.* District considered that Student is already connected to his CCB. *Id.*
54. After doing more research, including contacting staff at CDE and in other districts, Parent felt Student should continue to receive services from District until he was 21. *Interview with Parent*. Parent contacted another assistant director of special education to again request that Student receive services until he was 21. *Exhibit H*, p. 228. The email was forwarded to Assistant Director, who called Parent and reiterated the same things as Instructional Coach. *Id.*; *Interview with Parent*.
55. PT has other high school students on her caseload, like Student, who she previously expected would continue to receive 18-21 services but who have now been told they will stop receiving services from District after four years of high school. *Interview with PT*.

F. Student’s Course of Study

56. By age 15, as part of a transition plan, students’ IEPs should include a “course of study” which provides for how the student will attain the necessary credits for graduation and postsecondary goals. *CDE Exhibit 1*, p. 6.
57. For Students on EEOs, IEP teams create a course of study which aligns their goals, which should be based on EEOs, to District graduation requirements. *Interview with Assistant Director*. IEP teams must then determine if meaningful progress has been made towards the standards to qualify for graduation. *Id.* District does not offer any written guidance on this process. *Id.*
58. According to the 2020 IEP and the 2021 IEP, Student’s course of study consisted of working on “functional communication, functional movement and visual classification skill development” as well as “exposure to content from all 4 core academic areas.” *Exhibit A*, pp. 8 and 26.
59. As of October 28, 2022, Student had not been connected to coursework or credits. *Exhibit H*, p. 222. Instead, Assistant Director worked “behind the scenes” to make things line up for Student to get a regular diploma and graduate in May of 2023. *Id.* at p. 224.

60. On November 9, 2022, Assistant Director worked with District staff to create a course of study for Student and “map out credits and a transcript.” *Id.* at p. 295; *Exhibit C*, pp. 24-28. Teacher was not part of determining what credits Student had earned. *Interview with Teacher.*
61. The course of study connects Student’s goals and services to graduation requirements. *Exhibit C*, pp. 24-28. Based on the course of Study, District generated a transcript for Student on November 10, 2022. *Exhibit F*, p. 1. According to the transcript, Student has earned 27 of his attempted 27 credits in pass/fail courses. *Id.*
62. According to the course of study, Student’s vision goal(s) around job skills and learning about household activities met the requirements for 11th grade language arts, 10th grade math, and 9th, 11th, and 12th grade social studies. *Exhibit C*, pp. 24-25. It is not clear if it is referring to the goal in the 2020 IEP or the 2021 IEP. *Id.* Student also earned 10th and 11th grade science and 10th grade social studies credit for an “if/then” ILS goal. *Id.* It is not clear which IEP or goal this is referring to. *Id.*
63. Student earned four PE credits and two health credits for PT services. *Id.* at p 25. He also earned eight elective credits for “Vision/PT/Sped Services/Goals.” *Id.*
64. Student’s anticipated graduation in 10th grade was May of 2026, but in 11th grade it was May of 2023. *Id.* at p. 26. Assistant Director did not know why. *Interview with Assistant Director.*
65. Student does not meet state graduation requirements. *Interview with Director.* He would not earn a “regular diploma” as defined by IDEA. *Interview with CDE Content Specialist 1.*

G. 2022 Triennial Evaluation

66. District drafted a prior notice and consent for Student’s triennial reevaluation on October 18, 2022. *Exhibit B*, pp. 2-4. District proposed evaluating Student’s communicative status, academic performance, motor abilities, adaptive functioning, and vision. *Id.* at p. 2. Parent signed the consent form on October 31, 2022. *Id.*
67. District completed Student’s triennial evaluation in November of 2022 (“Evaluation”). *Exhibit E*, pp. 1-13. Assistant Director, an Assistant Principal from School, Schools’ psychologist, PT, Case Manager, Teacher, Vision Teacher, Parent, Student’s youth services case manager from CCB (CCB Case Manager), and Parent’s advocate (“Advocate”) met to review the Evaluation and Student’s eligibility on November 16, 2022. *Exhibit A*, p. 59. The multidisciplinary team (“MDT”) met virtually, and Student was also present as Parent participated from his room. *Interview with Case Manager.*
68. On the Colorado Emergent Literacy Scales, Student scored a one on all six scales. *Exhibit E*, pp. 4-5. No explanation or interpretation of those results was provided. *Id.* Teacher also provided a summary of Student’s academic performance, noting that Student can make

choices using yes/no switches and that he likes listening to music and being read to. *Id.* at p. 5. There is no further reference to academic skills or abilities. *Id.*

69. The Evaluation includes a summary of Student’s motor abilities as well as the results of a range of motion assessment. *Id.* at pp. 5-7. Student’s range of motion is compared to the results of his last evaluation in 2019. *Id.* at pp. 6-7. Student’s range of motion decreased in most areas, with the “[m]ost notable decrease in right elbow extension and the decrease in cervical rotation to the left.” *Id.*
70. Both Parent and Teacher completed Vineland-3 rating scales to formally assess Student’s adaptive skills. *Id.* at pp. 7-9. Both Parent and Teacher indicated that Student’s adaptive skills were in the low range, with both coming to similar composite scores. *Id.*
71. Vision Teacher reviewed Student’s medical information and conducted formal and informal observations. *Id.* at p. 9. She reviewed Student’s abilities across the 10 characteristics of CVI and concluded that Student’s CVI resulted in a moderate impact on Student’s visual functioning. *Id.* at pp. 10-13. As a result, Student needs “accommodations to support his visual attention to his environment” and “is using a combination of his auditory and visual channels to access his curriculum.” *Id.* at p. 13.
72. District did not complete a cognitive assessment “as there is not currently a cognitive assessment that meets [Student’s] needs in terms of his ability to access the assessment and communicate his abilities that would result in meaningful information.” *Exhibit A*, p. 59. The MDT agreed with that decision and concluded it had enough data from other assessments, observations, and records to determine eligibility. *Id.*
73. The MDT found that Student was eligible as a student with multiple disabilities. *Id.* Student qualified as a student with an intellectual disability, an orthopedic impairment, a vision impairment, and a speech-language impairment. *Id.*

H. 2022 IEP

74. The same team continued the meeting to review and revise Student’s 2022 IEP, starting with a draft provided by District. *Id.*; *Exhibit H*, p. 259; *Exhibit C*, pp. 14-23. The draft did not include any goals or any services other than PT. *Exhibit C*, pp. 19-22.
75. The 2022 IEP includes an updated description of Student’s strengths and interests, which include making choices between two activities and self-advocating to “let people know when he wants more of something or wants to change activities.” *Exhibit A*, p. 41. Student enjoys having peer interaction during teaching sessions and likes interacting with family and care providers, as well as listening to audiobooks and being read or sung to. *Id.*

76. There is a description of Student’s present levels, including his progress on prior goals. *Id.* at pp. 41-44. There is also a summary of the Evaluation results. *Id.* at pp. 44-45. Finally, the 2022 IEP notes that Student is working towards EEOs and that his specialized instruction has been designed to meet graduation requirements, as described in his “course of study.” *Id.* at p. 44.
77. To create Student’s transition plan, Vision Teacher asked Student a series of yes/no questions to complete the “transition passport” assessment. *Id.* at pp. 46, 60. The team felt that he answered familiar questions accurately, although they noted that he reported attending his IEP team meetings when he had never done so prior to answering those questions. *Id.* at p. 60. Based on the results, the 2022 IEP concludes that “[s]elf-advocacy and choice making to let his care-givers know of his needs and preferences are attainable and reasonable” goals for Student. *Id.* at p. 46.
78. According to the Student Needs and Impact of Disability statement, Student is homebound “due to medical fragility” and is “dependent for all mobility via a ceiling track lift, manual wheelchair, wheelchair-accessible van, LiftKar for stair access, and a specialty bed at home.” *Id.* Student requires significant modifications to access academic content and communicate what he knows. *Id.* Student can answer yes/no questions or choose from “no more than 3 objects/visuals” like describing his feelings by choosing among three faces. *Id.* Student also has a visual impairment, so providers should refer to his learning media plan when presenting visuals. *Id.*
79. The parent interview from the Evaluation is copied and pasted as Parent’s input, stating that Parent had no concerns at this time. *Id.* at pp. 47, 60. Parent also emphasized the importance of maintaining Student’s ability to indicate no and expressed a desire for Student to understand his schedule and who he will be interacting with. *Id.* at p. 47. There is no mention of Parent’s disagreement with the plan to discontinue Student’s IEP services. *Id.*
80. Student’s transition goals were very similar to the 2020 and 2021 IEPs. *Compare, Id.* at pp. 7, 24-25, and 47.
- Education/Training Goal: Instead of participating in therapies and educational opportunities at home, Student will participate in “therapies such as physical therapy or massage at home.” *Compare, Id.* at pp. 7, 47. Student will also “self-advocate by indicating his pain/comfort level or his need for more or different movements.” *Id.* at p. 47.
 - Career Employment Goal: is the same, but clarifies that Student will give information “by answering yes/no questions or selecting from a familiar set of 2-3 choices.” *Compare, Id.* at pp. 7, 47.
 - Independent Living Skills (“ILS”) Goal: “[Student] will live at home with family members and participate to the maximum extent possible in his daily routines, such

as feeding, dressing, bathing, by making choices about his free time activities using a switch, eye gaze (no is to the left), smile, jaw drop for a yes.” *Id.* at p. 47. This is a new goal. *Compare, Id.* at pp. 7, 47.

81. Student continues to need a learning media plan for his vision impairment and have unique communication needs. *Id.* at p. 48. He would also still require a health care plan and special transportation if he were to attend school in person. *Id.* Student needs assistive technology because he “uses head switches to communicate yes/no.” *Id.*

82. Student’s “course of study” is copied into the 2022 IEP and the team “agreed this level of individualization and modification [was] appropriate for [Student].” *Id.* at pp. 48-50. The “course of study” was presented at the IEP meeting, and they left space for discussion, but there was no additional discussion around it. *Interview with Assistant Director.*

83. Student was to receive the following transition services:

- Education/Instruction and Related Services:
 - Teacher “will provide instruction around schedules and weather.”
 - Vision Teacher will provide support and practice for Student “to be able to indicate yes/no or make a choice” among visual options.
 - PT will provide support for Student’s “Range of Motion.”
- Career/Employment and other Post-School Adult Living Objectives:
 - Teacher, with help from PT and Vision Teacher, “will provide opportunities for [Student] to practice making choices and communicating his needs and preferences.”
- Community Experiences: “[Student’s] family and caregivers will provide [Student] with information about community places and activities.”

Id. at p. 50. For agency linkages, District noted that Parent was already connected with the CCB and that District invited Student’s CCB Case Manager and Advocate to the meeting. *Id.* at p. 51.

84. The 2022 IEP contains three goals, for which progress reports will be sent home each semester. *Id.* at pp. 51-54.

- Goal 1, ILS: From a baseline of one opportunity, to increase his ILS and prepare to “interact and communicate with a variety of people in his daily life” to participate in

adult-services, Student “will identify activities and make choices to communicate his preferences in 4 of 5 opportunities per session.” *Id.* at p. 51.

- Objective 1: “Given his weekly visual schedule and what day it is, [Student] will identify which person, activity or appointment he will have that day when asked a series of yes/no questions” from a baseline 0% accuracy to 50% accuracy over three opportunities. *Id.* at p. 52.
- Objective 2: “Given 3 tasks that are available or need to be completed in a session, [Student] will identify which one he wants to do first in 2 out of 3 opportunities,” from a baseline of one out of three. *Id.*
- Objective 3: “Given the weather report for that day or the next, and up to 3 visual/object choices or yes/no questions, [Student] will identify 1 activity a person could do that day or what type of clothing a person would need to wear to feel comfortable in that weather in 2 of 3 opportunities per session.” *Id.* No baseline is given for this objective. *Id.*
- This goal is tied to several expanded core curriculum standards for students with visual impairments, an eleventh/twelfth grade band standard for oral expression and listening and two EEO standards. *Id.* at pp. 52-53.
- Goal 2, Physical Motor: Student “will improve his functional gross motor skills so he can continue to access his educational environment (home) to the best of his ability.” *Id.* at p. 53.
 - Objective 1: “When [Student] gets his new wheelchair, he will tolerate out of bed, upright positioning for at least 2 hours at a time, 3x a week and will tolerate a routine range of motion program designed by PT for nursing staff” from a baseline of enjoying his range of motion program and being tired for two days any time he has to be up and out in his wheelchair for medical appointments. *Id.*
 - It is noted that in a supported sitting position, Student “will be able to access needed accommodations for his yes/no communication.” *Id.*
 - Objective 2: “[Student] will continue to use movement and/or eye gaze to left (past midline) to activate a no response and will have 50% normal left cervical rotation when moved passively,” from a baseline of 20% passive left cervical rotation and 80% accuracy in answering PTs question using eye gaze for no. *Id.*
 - Objective 3: From an average of 20 seconds across six trials per session, Student “will be able to maintain a midline head position (once positioned there by caregiver/therapist) for at least 1 minute” to facilitate left eye gaze.” *Id.*

- This goal is tied to a high school physical and personal wellness standard. *Id.*
- Goal 3, Vision: “In order to develop an alternative method to indicate ‘yes or no’, when given visual symbols for yes and no, [Student] will use eye gaze/head movements to answer yes/no questions in 4/5 opportunities (or 80% of presented opportunities)” from a baseline of choosing “between two visual symbols in 2/4 opportunities. *Id.* at pp. 53-54.
- This goal is not tied to any standards. *Id.* at p. 54.

85. The 2022 IEP includes the eight accommodations from the 2020 and 2021 IEPs, with some minor changes and the addition of two additional accommodations to address Student’s vision impairment. *Compare, Id.* at pp. 10, 29-30, 54. The Description of Student’s need for modifications, including working towards EEOs, is also the same. *Id.*

86. Student’s services included:

- Physical Therapy: 120 MPM of direct services to “work on his functional motor goals.”
- Blind/Visually Impaired Instruction: 120 MPM of direct instruction to “receive the accommodations and support he needs to maintain visual behaviors and skills.”
- Specialized Instruction: 180 MPW of direct instruction, currently provided in a virtual format.

Id. at p. 56.

87. Student’s LRE remained homebound because he could not come to school due to the risk of infection. *Id.* at p. 57. He can interact with a peer now that he gets services through Virtual School and no disadvantages were identified. *Id.* No other placements were considered. *Id.*

I. 2022 IEP Team Meeting

88. During the meeting on November 16, 2022, Parent continued to advocate for Student to receive services from District beyond age 18. *Exhibit A*, p. 61. To get 18-21 transition services, District said the IEP team would need to “identify specific skills or instructional areas where [Student] continues to require instruction” because the post-school goals have not been met. *Id.* Related services would be provided if they were required for Student to access that instruction. *Id.* Parent understood that to mean Student needed goals geared toward his adult lifestyle to continue receiving services. *Interview with Parent.*

89. Parent wanted Student to continue working on his ability to communicate, including using vision to communicate. *Exhibit A*, p. 61. She also wanted to build on his understanding of and interaction with his support people and maintain his range of motion so he can “access communication and his environment.” *Id.* After discussion, the IEP team agreed on annual goal areas to support Student with his post-school goals of self-advocacy and participation with adult services: 1) understanding his schedule, 2) self-advocacy especially around needs and 3) communication and retaining the ability to use his yes/no switches. *Id.*
90. Assistant Director said those goals still would not generally qualify Student for 18-21 transition services. *Interview with Parent.* Against Parent’s wishes, the IEP team decided to continue planning for a May 2023 graduation because Student did not require further specialized instruction to participate in adult services. *Exhibit A*, p. 61. However, Student’s increasing difficulty with using his “no” switch concerned the IEP team, so it set a goal around developing an alternative way to communicate “no” and agreed to reconvene in March to review his progress and determine if Student would require 18-21 programming to make adequate progress on developing an alternative “no.” *Id.* at p. 57.
91. No one on the IEP team knew what adult services Student would receive or when they would start. *Interviews with Assistant Director, Case Manager, Teacher, Vision Teacher, and PT.* They knew he would transfer to an adult waiver on his 18th birthday in January of 2023. *Id.* Assistant Director spoke with the CCB about adult services generally and was told what types of services they can provide and that there was not currently a waitlist for services. *Interview with Assistant Director.* It will be up to Parent and a CCB case manager to determine what services Student will receive. *Id.*
92. In recent years, Student has really grown in his ability to advocate his wants and needs. *Interview with Parent.* This has included learning about his body parts to tell providers what is hurting and telling staff when he is too tired to continue, instead of pushing through. *Id.* He has also been learning about the people in his world, including family and providers. *Id.*

J. Student’s Current Services

93. An in-home nurse supports Student during the day on Mondays, Tuesdays, Thursdays, and Fridays. *Id.* Parent acts as his nurse on Wednesdays. *Id.* Student’s nurse implements a range of motion program created by PT. *Interviews with Parent and PT.* Student also has a massage therapist, through the CCB, who comes twice a week. *Interview with Parent.*
94. Student meets virtually with Teacher for three hours per week. *Id.* During the 2021-2022 school year, they met via Webex for one hour three times per week. *See e.g. Exhibit H*, pp. 24-25, 133-134. This year, Teacher is assigned to Virtual School and supports Student through its program. *Exhibit H*, p. 188. She meets with Student for 30-40 minutes per day, four or five times per week. *Interviews with Parent, Teacher, and Case Manager.*

95. At the start of his sessions, Student overlaps with another student, allowing for a brief peer interaction. *Id.* During sessions, they work on Student's goals and objectives, particularly around making choices, like deciding which science lesson he wants. *Interview with Teacher.* They also work on all four content areas; for instance in math they watch engaging videos about numbers and they are particularly focusing on the number 17 (Student's age) and talking about the fact that next month he will be 17 plus 1 after his birthday. *Id.*
96. PT meets with Student for 30 minutes once per week in his home. *Exhibit D*, pp. 1-6. Her sessions usually overlap with Student's nurse, and they talk about Student's medical status or how to implement Student's range of motion plan. *Interview with PT.* During sessions, PT works with Student on accessing his communication system (yes/no switches) to make choices. *Id.* PT is also working on helping Student self-advocate around physical management, including increasing his ability to say what hurts or what he wants to do. *Id.*
97. Vision Teacher meets with Student in his home twice a week for 20-30 minutes at a time, for a total of about 40 MPW. *Interview with Vision Teacher.* She starts by asking Student about his day and his family and then they work on visual fixation and tracking. *Id.*
98. Student's endurance has been decreasing in recent years, resulting in a reduction in service minutes. *Interviews with Case Manager and PT.* Student's tolerance for engaging with staff is at about 20 minutes before he needs a break. *Interview with Case Manager.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to review and revise an IEP tailored to Student's individualized needs, in violation of 34 C.F.R. § 300.324(b)(1). This violation resulted in a denial of FAPE.

Parent's concern is that District has not provided Student with an appropriate transition plan tailored to his unique needs to prepare him to transition to adult services this year.

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. *Andrew 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 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

A. IEP Development Process

An IEP is “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 *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). An IEP must include a statement explaining how the child’s disability impacts the student’s involvement in and progress in the general education curriculum. *Id.* at § 300.320(a)(1)(i). It must also include supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* at § 300.320(a)(4).

In addition, the IEP must include measurable goals designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. *Id.* at § 300.320(a)(2). Beginning with the first IEP developed at age 15, but no later than the end of ninth grade, an IEP is required to include a transition plan. ECEA Rule 4.03(6)(d).

i. 2020 IEP and 2021 IEP

Here, the 2020 IEP was developed outside the Complaint window, and no concerns have been raised about the development process. (FF # 7.) The 2020 IEP was developed at a properly constituted IEP team meeting on December 9, 2020. (*Id.*) The 2020 IEP includes a description of Student’s present levels, the impact of his disability, a transition plan, and annual goals. (FF #s 8-16.) It also includes accommodations, a statement that Student was working towards EEOs and not grade-level standards, and a description of the special education services Student was to receive and his LRE. (FF #s 17-19.)

The 2021 IEP was developed at a properly constituted IEP team meeting on December 1, 2021, and no concerns have been raised about the development process. (FF # 20.) Like the 2020 IEP, the 2021 IEP includes a description of Student’s present levels, the impact of his disability, a transition plan, annual goals, accommodations, and a description of Student’s LRE and the services he was to receive. (FF #s 21-32.)

Thus, the SCO finds and concludes that the development processes for the 2020 and 2021 IEPs complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206. The SCO turns next to the second question of whether each of the IEPs were substantively appropriate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of the IEPs

Among other required components, an IEP must contain measurable annual goals designed to: (1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student's other educational needs that result from his or her disability. 34 C.F.R. § 300.320(a)(2). Beginning with the first IEP developed at age 15, but no later than the end of ninth grade, an IEP is required to include a transition plan. ECEA Rule 4.03(6)(d). Such plan must identify "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills," as well as the transition services, including a course of study, the student needs to reach those goals. *Id.*; *see also* 34 C.F.R. § 300.320(b). As defined in the IDEA, "transition services" refers to:

(a) A coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

34 C.F.R. § 300.43(a); *see also* ECEA Rule 2.51(1). A student's individual needs inform the development of the student's annual goals and transition plan. *Id.*; 34 C.F.R. § 300.320(a)(2). While IDEA does not specifically require reporting on student progress on transition goals, OSEP anticipates "a relationship between the academic and functional goals of a transition-aged student and that student's postsecondary goals." *Letter to Pugh*, 69 IDELR 135 (OSEP 2017).

i. 2020 IEP

The 2020 IEP contained three transition goals, one each for education, career, and ILS. (FF # 13.) All three essentially focused on Student's ability to communicate feelings and needs to family and caregivers. (*Id.*) As a result, all of Student's goals and objectives, except Goal 1, Objective 1, focused on his ability to communicate. (FF # 16.) However, Student was unable to work on the third goal due to virtual services. (FF # 31.) In addition, the 2020 IEP offered only a vague course of study, without a clear plan for how Student would earn credits to graduate. (FF # 15.) In reality, Student did not earn any credits until the fall of 2022. (FF # 59.) The 2020 IEP also did not consider or include any agency linkages. (FF # 15.) The SCO—in consultation with CDE Content Specialist 2—finds that both components are important to facilitate a child's movement from school to

post-school activities such as adult services. (FF # 6.) However, at that point Student was not expected to graduate until 2026, six years in the future. (FF # 64.)

To support his annual and transition goals, Student had services with Teacher, PT and Vision Teacher. (FF #s 15 and 18.) Through various objectives, Teacher, PT and Vision Teacher were all working on Student's ability to communicate various wants and needs with his caregivers in different contexts. (FF # 15.) As a result, while he did not meet his goals, at least when feeling well, Student made progress on three objectives (FF #s 22 and 23.) The SCO finds—in consultation with CDE Content Specialist 1—that improving Student's ability to communicate was critical to increasing his interdependence to allow him a more active role in his life. (FF # 6.)

For these reasons, the SCO—in consultation with CDE Content Specialists 1, 2 and 3—finds that the transition plan in Student's 2020 IEP was based on his needs and designed to improve his functional achievement to facilitate his movement to adult services, consistent with 34 C.F.R. § 300.43. Thus, the SCO finds and concludes that the 2020 IEP was reasonably calculated to enable Student to receive an educational benefit, consistent with IDEA's substantive requirements related to the development of an IEP in 34 C.F.R. § 300.320(b) and no violation occurred.

ii. 2021 IEP

The 2021 IEP contains the same three transition goals as the 2020 IEP, and much of the transition plan, including the vague course of study and lack of agency linkages, is the same. (FF #s 26 and 28.) Student also had four annual goals, most of which continued to focus on Student's ability to communicate and make choices. (FF # 29.) The vision goal Student could not work on from the 2020 IEP was carried forward. (*Id.*) As Vision Teacher had resumed in-person instruction by that point, the SCO finds that the decision to repeat that goal was reasonable. (FF # 21.) Vision Teacher also added goal 4, working on Student's ability to choose between two materials. (FF # 29.)

To support these goals, Student continued to receive services from PT, Vision Teacher, and Teacher. (FF # 28 and 31.) However, Student's PT services were decreased to 120 MPM because Student was tiring after 20-25 minutes of activity. (FF # 22 and 31.) Student's special education instruction was also reduced by an hour per week due to fatigue. (FF # 33.) The SCO finds and concludes that Student continued to have the same needs and the same post-school plan, so the transition plan in the 2021 IEP, targeting his ability to communicate his wants and needs, continued to be consistent with the requirements of 34 C.F.R. § 300.43. Thus, the SCO finds and concludes that the 2021 IEP was also reasonably calculated to enable Student to receive an educational benefit, consistent with IDEA's substantive requirements in 34 C.F.R. § 300.320(b) and no violation occurred.

C. Review and Revision of the IEPs

However, District had an obligation to review and revise Student's 2021 IEP when he was unable to work on one of two motor objectives from December of 2021 until present.

Whether an IEP is reasonably calculated to allow a student to make appropriate progress is determined prospectively, based on what was known when the IEP was drafted, and not determined by the student's actual progress. *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993), *reh'g denied*, 110 LRP 65930 (3d Cir. 06/08/93); and *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999). Instead of promising a particular educational or functional outcome for a student with a disability, the IDEA provides a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address new information or a lack of expected progress. 34 C.F.R. § 300.324(a)(2). To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs, a lack of expected progress or any other matters. *See id.* §§ 300.324(b)(1)(ii); *Endrew*, 137 S. Ct. at 994.

Here, Goal 1, Objective 2, was to gradually increase Student's tolerance for sitting in his wheelchair. (FF # 29.) Being upright was important for Student's health and could increase his ability to turn his head and thus to communicate. (FF # 10 and 36.) Being upright was expected to facilitate his ability to direct his caregivers to meet his needs. (FF # 15.) At the time this objective was written, PT recognized that Student would not be able to work on it until he got new specialty seating. (FF # 29.) Student and School were waiting on Medicaid to provide Student with a new wheelchair. (FF # 9.)

Student's new wheelchair still has not arrived, and he never worked on this objective. (FF # 36.) Although Student is still waiting for a chair, this objective was also repeated in the 2022 IEP. (FF # 84.) When it became clear that Student would not receive specialty seating shortly after the IEP was written, the IEP team should have revised the objective to something within its control to work on. The SCO, in consultation with CDE Consultant 1, suggests District should have considered the purpose of maintaining upright positioning and whether optimal positioning for learning could have been worked on using alternative equipment such as a Rifton chair. The SCO—in consultation with CDE Consultant 3—finds that it was not reasonable to wait over a year to work on this objective, especially since this skill was so important for Student's health and other transition goals. (FF # 10, 15 and 36.)

For this reason, the SCO finds and concludes that District failed to review and revise Student's 2021 IEP to address Student's ongoing lack of specialty seating from December 1, 2021 to present, in violation of 34 C.F.R. § 300.324(b)(1).

i. Procedural Violation

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making

process regarding the provision of a 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).

At this point Student can only use his wheelchair for medically necessary appointments, and he is tired for two days afterwards. (FF # 84.) His ability to hold his head in a midline position has decreased from a baseline of three minutes in December of 2021 to a baseline of 20 seconds. (FF # 29 and 84.) His range of motion has declined, especially his cervical rotation to the left. (FF # 69.) This has impacted his ability to access his “no” switch, which is vital for his communication. (FF #s 84 and 90.) Sitting in a supported position, Student is expected to be able to access necessary accommodations for his communication. (FF # 84.)

For these reasons, the SCO finds and concludes that District’s failure to review and revise Student’s 2021 IEP to include objectives he could work on impeded Student’s right to a FAPE and resulted in a deprivation of educational benefit. Thus, the SCO finds and concludes that District’s procedural violation of § 300.324(b)(1) resulted in a denial of FAPE.

To remedy this violation, the SCO will order remedies intended to compensate Student for the denial of FAPE. The SCO also cautions District that if Student’s wheelchair is not delivered at the beginning of 2023, as anticipated, District will again have an obligation to review and revise, as described above, Student’s 2022 IEP to ensure it meets his individualized needs.

ii. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position she would have been in if not for the violation. *Reid v. Dist. Of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

As described above, the ability to sit upright is expected to improve Student’s access to accommodations necessary for communication. While District did not work on this goal, Student’s range of motion decreased, and he is now at risk of losing his ability to communicate “no.” (FF #s 35, 79, 84 and 90.) The SCO—in consultation with CDE Content Specialist 3—finds that this denial of FAPE must be remedied with compensatory education designed to improve Student’s progress on motor goals. Considering Student’s individualized needs and limited stamina, the SCO—in consultation with CDE Content Specialist 3—awards 9 hours of PT compensatory services to be delivered in short sessions spread over a number of weeks.

D. Ongoing Eligibility

At the heart of Parent's concern is that District intends to graduate Student in May of 2023 and stop providing services³.

Students are eligible for a FAPE between the ages of three and 21. 34 C.F.R. § 300.101(a). The obligation to provide a FAPE does not apply to students who "have graduated from high school with a regular high school diploma." *Id.* at § 300.102(a)(3)(i). The obligation to provide a FAPE does not end for students "who have graduated from high school but have not been awarded a regular high school diploma." *Id.* at § 300.103(a)(3)(ii). As used in this section, a "regular high school diploma" means:

the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the [Every Student Succeeds Act ("ESEA")]. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

Id. at § 300.102(a)(3)(iv).

In addition, meeting state graduation requirements is a prerequisite for graduation but is not always sufficient. *See, e.g., Quabbin Reg'l Sch. Dist.*, 44 IDELR 56 (SEA MA 2005) (holding that a student's graduation could be rescinded where she met requirements for graduation but the district had not provided her with appropriate transition planning). To graduate, students must meet the graduation requirements and "must also make progress on or complete the IEP goals and objectives, or otherwise complete the student's IEP requirements." *Id.* Thus, students who have met graduation requirements may continue to be eligible for services under IDEA if they continue to require specialized instruction to meet their post-secondary goals. *Id.*

Informed by the needs of the student, transition services must be designed to improve the child's academic and functional achievement to facilitate the transition to post-secondary activities including, but not limited to, ongoing education, employment, adult services, and independent living. 34 C.F.R § 300.43(a). Transition services can address a variety of needs, including continuing education, occupational skills, daily living skills, self-determination, mobility, health and physical care and social skills. *See Mason Cmty. Sch. Dist.*, 21 IDELR 241 (SEA IA 1994).

In this case, Student is working on EEOs and would only be able to receive a diploma aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA.

³ Parent raised this problem/concern in the Complaint, but the allegation accepted for investigation focused on problems/concerns that had already occurred, transition planning, given the Complaint's supporting facts. However, based on a conversation with the SCO, District was aware that the SCO would consider this related problem/concern in this investigation and had an opportunity to provide its position in the Response.

(FF #s 17, 30 and 76.) Thus, even if Student meets District requirements for graduation in May of 2023, it will not end District's obligation to provide Student with a FAPE. 34 C.F.R. § 300.102(a)(3).

To graduate, District requires that Students be enrolled full time and complete course credits in specific subject areas. (FF #s 45 and 46.) District staff did not know what qualified as full-time enrollment in District. (FF # 46.) However, students in Case Manager's SSN program attend school for six hours a day to earn eight credits a year. (*Id.*) Student receives three hours of specialized instruction per week and was previously receiving four hours. (FF # 18, 31 and 86.) Thus, while local school boards are free to set their own graduation requirements, the SCO has concerns as to whether Student has even met District requirements for graduation. (FF # 49.)

District contends that this issue is not yet ripe for review because Student's IEP team agreed to reconvene in March of 2023 to review data and determine if Student continues to require special education services to preserve his ability to communicate "no." (FF # 90.) District is correct that no violation has occurred yet as Student is still receiving services. However, the SCO—in consultation with CDE Content Specialists 1, 2 and 4—cautions District that Student's ongoing entitlement to FAPE is not limited to his ability to communicate "yes" and "no." Transition services can address a wide variety of needs relevant to a student's transition to post-secondary plans, including adult services. *See Mason Cmty. Sch. Dist.*, 21 IDELR 241 (SEA IA 1994).

Student's ability to communicate with his caregivers has blossomed in recent years. (FF # 92.) Transition services can continue to build on Student's interdependence to allow him to play a more active role in his life as he transitions to adult services. (FF # 6.) Additionally, when the time comes for Student to transition to adult services, transition planning should set him up for a smooth transition to those services, including knowing what services he will receive and when they will start to facilitate a warm handoff. (*Id.*)

Because District has not yet terminated services, and only indicated its intention to do so, the SCO finds and concludes that District has not violated 34 C.F.R. §§ 300.43, 300.101 and 300.102.

Systemic IDEA Violations: This investigation demonstrates concerns that are systemic and will likely impact the future provision of services for all children with disabilities 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).

The SCO finds and concludes that the violation of 34 C.F.R. § 300.324(b)(1) is not systemic in nature. There is no evidence in the Record that suggests District is regularly failing to review and

revise IEPs for students to address a lack of appropriate progress. Instead, it appears that this issue was related to lengthy delays, outside of District's control, in the process of replacing Student's specialty wheelchair. While it was unreasonable for District to go an entire year without revising an objective it could not work on, circumstances suggest this is not a situation likely to impact the provision of services to other IDEA-eligible students.

However, the SCO finds and concludes that District's lack of written procedures consistent with IDEA's transition service provisions is systemic in nature. Written procedures are essential to ensuring that school staff understand their responsibilities and provide special education services consistent with ECEA Rules, the IDEA, and school district policy. District increased its efforts to train on transition services in the past two years. (FF # 42.) This training has led to a shift in understanding about who is eligible for 18-21 transition services. (FF # 43.) Staff understanding of who is eligible is also consistent with recent written guidance produced by District. (FF # 42.) Parent spoke with members of Student's IEP team and several District administrators about her desire for Student to continue receiving services until age 21. (FF #s 50-54.) All of them told her that Student was graduating and would no longer be eligible for services. (*Id.*) Similar messages have been conveyed to other parents at IEP team meetings. (FF # 55.)

District also seems to misunderstand what students can work on during 18-21 transition services. For instance, District issued a PWN that Student would be graduating because he could not access the community, school, or work, and thus its LSACE program is not appropriate for him. (FF #s 52-53.) District has now stated that it will consider providing transition services if they are necessary to ensure Student can continue to answer yes/no questions. (FF # 90.) However, transition services can more broadly work on building his interdependence to set him up for a more meaningful life and a smooth transition to adult services at the appropriate time. (FF # 6.)

Because Parent proactively filed this Complaint before Student graduated, there was no violation of 34 C.F.R. §§ 300.43, 300.101 and 300.102. However, District does not have policies or procedures that accurately describe eligibility for services beyond age 18. In fact, recent guidance, written and verbal, appears to misstate IDEA requirements. (FF #s 42 and 43.) Thus, the concern for the SCO is that District may inappropriately graduate other IDEA-eligible students and deny them a FAPE. As District's guidance on this issue contributed to the decision to have Student graduate this May, the SCO finds and concludes that this investigation raises systemic concerns about the appropriate future provision of services for other IDEA-eligible students in District. Accordingly, the SCO will set forth specific remedies consistent with the IDEA to ensure procedures are in place and designed for the provision of appropriate transition services for all IDEA-eligible students in District.

REMEDIES

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

- a. Failing to review and revise Student's 2021 IEP, in violation of 34 C.F.R. § 300.324(b)(1).

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

1. Corrective Action Plan

- a. By **February 6, 2023**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation 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 District is responsible. The CAP must, at a minimum, provide for the following:
 - i. Executive Director, Director, Assistant Director, Case Manager, Teacher, Vision Teacher, and PT must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.43, 300.101, 300.102 and 300.324(b)(1). This review must occur no later than **than Monday, March 6, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, March 13, 2023**.
 - ii. Attendance and completion of training provided by CDE on transition services. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.43, 300.101 and 300.102 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant 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 Executive Director, Director, Assistant Director, Case Manager, Teacher, Vision Teacher, PT and all District providers who regularly support homebound high school students. Such training shall be completed no later than **Monday, April 17, 2023**.
 - a. 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 **Monday, April 24, 2023**.
- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. District Procedures

- a. By **Friday, April 21, 2023**, District must develop and submit written procedures regarding how District will ensure compliance with 34 C.F.R. §§ 300.101 and 300.102. These procedures should clarify eligibility for 18-21 transition services and specifically explain that graduation based on EEOs does not terminate a student's eligibility for a FAPE. The procedures should also provide additional written guidance on the broad spectrum of transition services that can be provided, including to students for whom LSACE is not appropriate.
- b. These procedures must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. Once finalized, but no later than **Thursday, May 25, 2023**, District must disseminate the updated procedures to staff and parents by doing the following and submitting evidence of each to CDE Special Education Monitoring and Technical Assistance Consultant:
 - i. Sending a communication to all special education staff, such as a written memo;
 - ii. Adding the new procedures to District's internal website and toolkit;
 - iii. Updating descriptions of transition services on District's internal and external website to be consistent with the new procedures, including clarifying that graduation based on EEOs does not terminate a student's eligibility for a FAPE and describing the broad spectrum of transition services that can be provided, including to students for whom LSACE is not appropriate.

3. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **9 hours of physical therapy**. This instruction must be provided by an appropriately licensed physical therapist. These services must be designed to support Student's progress on his IEP goals.
- b. These nine hours must be spread out over no fewer than 26 weeks. Sessions during the school year shall be limited to one 15-minute session per week. However, if District provides services over the summer, sessions may be increased in length to 30 minutes or two 15-minute sessions can be provided in the same week. Given Student's limited endurance, these sessions cannot be provided at the same time that Student is receiving any other services. All nine hours must be

provided by **Friday, November 17, 2023**, though Parent may opt out of some or all of the compensatory services if she wishes.

- c. **By Monday, February 6, 2023**, District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services to the CDE no later than **Tuesday, February 7, 2023**. If District and Parent cannot agree to a schedule by February 6, 2023, the CDE will determine the schedule for compensatory services by **Monday, March 6, 2023**.
 - i. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
- d. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- e. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the

scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

- g. These compensatory services must be provided to Student outside of Student's regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 6th day of January, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-19

- Exhibit A: IEPs
- Exhibit B: PWNs
- Exhibit C: IEP Meeting Documentation
- Exhibit D: Service Logs
- Exhibit E: Evaluations
- Exhibit F: Progress Data
- Exhibit G: Policies and Procedures
- Exhibit H: Correspondence
- Exhibit I: None
- Exhibit J: Verification of Delivery to Parent

Reply, None

Telephone Interviews

- Parent: December 9, 2022
- Director: December 13 and 16, 2022
- Assistant Director: December 13 and 16, 2022
- Case Manager: December 13, 2022
- Vision Teacher: December 13, 2022
- Teacher: December 13, 2022
- PT: December 13, 2022

CDE Exhibits

- CDE Exhibit 1: Board Policy
- CDE Exhibit 2: State Graduation Requirements