

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

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**State-Level Complaint 2023:502**  
**El Paso 11, Colorado Springs School District 11**

**DECISION**

**INTRODUCTION**

On January 9, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against El Paso 11, Colorado Springs School District 11 (“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.

On January 6, 2023, Parents filed a due process complaint against District, raising the same issue included in the Complaint. Pursuant to 34 C.F.R. § 300.152(c)(1), the Complaint was held in abeyance pending the resolution of the due process complaint. On March 15, 2023, the SCO received notice that the due process complaint was dismissed and reinstated the investigation.

During the course of the investigation, Parents raised an additional concern. Because the additional concern was closely related to the original allegation, the SCO allowed an amendment to the Complaint and gave District time to submit an additional written response.<sup>2</sup> The SCO determined that the Complaint, as amended, identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 9, 2023 to the present for the purpose of determining if a violation of IDEA

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

<sup>2</sup> See United States Department of Education, Office of Special Education and Rehabilitative Services (“OSERS”), *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,603 (Aug. 14, 2006) (providing guidance on amended complaints).

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 District:

1. Failed to implement Student’s IEP from April 2022 to present by failing to provide Student with the service minutes required by his IEP, including mental health services, speech language pathology, occupational therapy, and physical therapy, in violation of 34 C.F.R. § 300.323(c)(2).
2. Failed to develop, review and revise an IEP from October of 2022 to present that included all the special education and related services necessary to allow Student to advance appropriately toward attaining his annual goals, in violation of 34 C.F.R. § 300.320(a)(4).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. Student is 16 years old and, for part of the 2022-2023 school year, attended a District high school (“School”). *Exhibit A*, p. 61. At the time, Student and his family resided within the boundaries of District. *Id.*
2. Student is currently eligible for special education services as a student with an intellectual disability (“ID”). *Id.*
3. Student is kind, social, friendly, and always willing to help others. *Interviews with psychologist at School (“School Psychologist”) and Student’s special education teacher and case manager (“Case Manager”).* He can independently access his environment. *Interviews with Case Manager and physical therapist at School (“PT”).* He also advocates for himself. *Interviews with Case Manager and District’s Executive Director of Special Education (“Director”).*
4. Student struggles with academic work, but he is a very hard worker. *Interview with Case Manager.* Student has difficulty retaining information, and he requires repetition and reminders. *Interview with School Psychologist and speech and language pathologist in District (“SLP”).* He can be easily distracted due to his desire to socialize. *Interview with School Psychologist and Case Manager.*

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

## **B. Enrollment in District and the 2021 IEP**

5. Parents completed paperwork at a District office on April 28, 2022, in order to enroll Student. *Interview with Parents*. After a brief disagreement over whether Student would be enrolled in seventh or eighth grade, Student started eighth grade at a middle school in District (“Middle School”) on May 9, 2022. *Exhibit J*, pp. 30-31.
6. At the time of enrollment, Student had an IEP dated June 1, 2021 from a district in another state (“2021 IEP”). *Exhibit A*, p. 1. According to the 2021 IEP, Student was IDEA-eligible as a child with multiple disabilities, including ID, other health impairment and speech and language impairment (“SLI”). *Id.* at p. 10.
7. The 2021 IEP included nine annual goals with short-term objectives. *Id.* at pp. 11-19. There were two biology goals, an occupational therapy goal, a gross motor goal, a social/emotional wellness goal, a reading goal, two math goals, and a language goal. *Id.*
8. Student had special communication needs and required services for students with limited English proficiency. *Id.* at pp. 20-21. He did not require assistive technology or a behavioral intervention plan, but the IEP included “goals and interventions to address specific behavior concerns.” *Id.* He also qualified for special transportation. *Id.* at p. 32.
9. According to the 2021 IEP, Student received the following services:
  - Physical Therapy: 30 minutes per week (“MPW”) inside the special education classroom;
  - Occupational Therapy: 30 MPW inside the special education classroom;
  - Speech Therapy: 30 MPW inside the special education classroom;
  - Special Education Instruction: 320 minutes per day (“MPD”) of academic instruction inside the special education classroom; and
  - English Language Services: 30 MPW of speech and language instruction in another environment.

*Id.* at p. 22.
10. In total, Student was receiving special education services more than 88% of the time. *Id.* As a result, his least restrictive environment (“LRE”) was general education less than 40% of the day. *Id.* at p. 23.

11. The 2021 IEP included 15 accommodations and modifications including consultations with a physical therapist, occupational therapist and speech and language pathologist, extended time on assignments and tests, assignments and tests read aloud, cues to stay on task and a native language dictionary translating words to Student’s native language without providing a definition in either language. *Id.* at pp. 23-24.

### C. Transfer IEP

12. District has a written process for newly enrolled students with IEPs. *Exhibit I*, pp. 1-3; *Interview with Director*. The process differentiates students coming from out of state and those enrolling from other districts in the state. *Exhibit I*, p. 1. If the student is coming from out of state, District staff is instructed to review the eligibility and IEP paperwork to determine if the eligibility determination “meets Colorado eligibility criteria.” *Id.*
13. If the determination meets Colorado criteria, staff must then determine if the recommended services will be a significant change of placement. *Id.* If not, District need not conduct its own evaluation. *Id.* Instead, District staff should either:
- Accept the IEP as written, “complete the transfer form and follow the incoming IEP until the next IEP meeting is due;” or
  - Reject the IEP, complete the transfer form and provide comparable services and “complete a new IEP within 30 calendar days.”
- Id.*
14. If the eligibility determination does not meet Colorado criteria or District will be recommending a significant change in placement, staff are instructed to complete an evaluation. *Id.* In the meantime, District instructs staff to complete the transfer form, indicating what is not accepted and including comparable interim services. *Id.* Staff are also instructed to get consent for an evaluation and complete a re-evaluation and a new IEP within 60 calendar days. *Id.*
15. District defines comparable services as “similar or equivalent” indicating that services should match, although minor adjustments may be appropriate. *Id.* District further defines comparable using federal guidance and state complaint decisions. *Id.* The written guidance indicates transfer services should approximate, as closely as possible, the prior services, but District does not have to replicate those prior services. *Id.*
16. District advises staff to complete transfer paperwork within 10 days. *Interview with Director*. Parents should be included in creating the transfer document, and they are required to sign it. *Id.* Services and goals on the transfer form should match what is in the incoming IEP. *Id.*

17. After reviewing the incoming records, the next step for the special education coordinator at School (“Coordinator”) is to invite the parent and student in for a meeting to find out what they are hoping to see at the new school. *Interview with Coordinator*. After talking with the parent, District would provide some version of the services in the IEP until District conducts its own evaluations to determine if it is an appropriate service. *Id.*
18. On a transfer IEP, Coordinator does not always include all of a student’s goals. *Id.* Instead, he focuses on academic goals and might skip seemingly extraneous goals that do not require special education services, like career research. *Id.*
19. If District has determined an evaluation is necessary, Coordinator expects to see providers report on progress in the evaluation report instead of in a quarterly progress report. *Id.* District strongly encourages the use of graphs to capture quantitative data when tracking academic skills, but progress monitoring in other areas may be more flexible, relying on qualitative or anecdotal data. *Id.*
20. A special education teacher at Middle School (“Middle School Teacher”) completed the transfer form for Student on May 9, 2022 (“Transfer IEP”). *Exhibit A*, p. 53. The Transfer IEP concluded the prior eligibility determination does not meet Colorado standards and the 2021 IEP was not adopted. *Id.*
21. Under the Transfer IEP, Student received the following services:
  - Special Education Instruction: 1,500 MPW of academic instruction outside the general education setting;
  - Physical Therapy: 30 MPW to support accommodations in school;
  - Occupational Therapy: 30 MPW of “collaborative occupational therapy support for fine motor accommodations in the school setting;”
  - Counseling: 120 MPM of social support in a small group or one-to-one setting.

*Id.* at p. 53.

22. Speech and language services were accidentally not included in the Transfer IEP. *Response*, p. 2. Counseling services were included although the 2021 IEP did not include any mental health services to support the social goal. *Id.* at p. 1.
23. The Transfer IEP included six annual goals. *Exhibit A*, pp. 53-54. Five goals—one social, one reading, two math and one speech and language—were taken directly from the 2021 IEP. *Compare, Id.* at pp. 11-19 and 53-54. A sixth physical therapy goal was new. *Id.* at pp. 54. The

Transfer IEP did not include the two biology goals, the occupational therapy goal, or the gross motor goal. *Id.*

24. Middle School Teacher called Parent on May 16, 2022 to let her know what the District had decided regarding transfer services. *Response*, p. 2. Specifically, she informed Parent that District was not adopting the 2021 IEP but would be providing comparable services and was deferring a new evaluation to the next year. *Id.* Parent was not in agreement with this. *Id.*
25. That same day, District issued a prior written notice (“PWN”) indicating that it was deferring the reevaluation to the high school and providing Student with comparable services and supports. *Exhibit C*, p. 1. The PWN indicates that “Parent input was considered” but does not explain what that Parent input was. *Id.*

#### **D. Middle School Services**

26. The 2021-2022 school year ended on May 25, 2022 for middle schools in District. *Interview with Director*. The SCO finds that Student attended District for 13 days, or 2.5 weeks, during the 2021-2022 school year and that Student should have received 75 minutes each of physical therapy, occupational therapy, speech and language therapy, and mental health services.
27. Parents are concerned that Student was not receiving his physical therapy, occupational therapy, mental health and speech and language therapy services because Student said he was not. *Interview with Parents; Exhibit J*, p. 6; *Exhibit A*, p. 63.
28. On Friday, May 20, 2022, a physical therapist met with Student for 30 minutes and observed him performing various activities, such as walking long distances, squatting, and walking up and down stairs. *Exhibit E*, p. 2. She attempted to meet with Student again on May 24, 2022, but Student was absent. *Id.* Student was not observed to require any physical support to access school. *Id.* Thus, the SCO finds that District failed to provide Student with 15 minutes of physical therapy services during the 2021-2022 school year.
29. District did not provide any other service logs for the 2021-2022 school year. *See Exhibit E*. District also did not provide any progress monitoring data from that time period. *See Exhibit G*. District did not identify an occupational therapist or mental health provider who worked with Student during the 2021-2022 school year. *See Exhibit K*. The SCO did not receive any records of occupational therapy or mental health services being provided to Student while he attended Middle School and finds that District failed to provide Student with 75 minutes each of occupational therapy and mental health services.
30. SLP also serves students at Middle School. *Interview with SLP*. She first met and observed Student on his first day, May 9, 2022. *Id.* She then met with Student and provided 45 minutes of direct service on May 10, 2022. *Id.* She did not meet with Student again before the end of

the year and could not remember why. *Id.* Thus, the SCO finds that District failed to provide Student with 30 minutes of speech and language therapy.

#### **E. Academic Services at School Under Transfer IEP**

31. Parent signed a form giving District consent for the initial provision of special education services on August 15, 2022. *Exhibit C*, p. 3. On this form, she noted Student had the right to continue his services from the 2021 IEP and that she was temporarily accepting the interim services, even though she did not think District was justified in not accepting the 2021 IEP. *Id.*
32. Student had two independent living skills classes, a college and career readiness class, an English class, and a math class with Case Manager. *Interview with Case Manager*. He also had history with another special education teacher and two general education classes, gym and art. *Id.*
33. Case Manager worked with Student on the one reading and two math goals from the Transfer IEP. *Id.* She did not work on the biology goals from the 2021 IEP because they were not included in the Transfer IEP. *Id.*
34. Although she was working on the goals from the Transfer IEP, Case Manager was not tracking Student's progress. *Id.* Reading comprehension remained a challenge, but she indicates Student made progress because his attitude toward trying to learn was increasing. *Id.* Student was also "excelling" in computation, as he was adding and subtracting using manipulatives and Touch Math and not relying on a calculator. *Id.*
35. On his prior reading goal of identifying "the main idea of the story in 3 out of 5 trials with 60% accuracy" when read aloud a simple story, Case Manager notes that Student enjoys reading and needs support from an adult. *Exhibit A*, p. 64. He can "identify key details of the story when given options" but "identifying the main idea can be a challenge for [Student]." *Id.* at pp. 64-65. There is no quantitative data regarding Student's progress. *Id.*
36. Progress on his prior math goals is reported together. *Id.* at p. 65. The goals were solving "simple algebraic expressions with the aid of a calculator using simple addition and subtraction in 3 out of 5 attempts with 60% accuracy" and recognizing "the math operational signs of addition, subtraction, multiplication, and division in 4 out of 5 trials with 50% accuracy." *Id.* Case Manager reports that Student is proficient with the addition and subtraction functions of a 4-function calculator and solving problems up to 20. *Id.* He also uses Touch Math for addition from 0-9. *Id.* Student continues to require support of a paraprofessional or teacher. *Id.* Finally, he can "identify the addition, subtraction and multiplication sign when asked." *Id.* There is no quantitative data on his progress. *Id.*
37. With regards to the two biology goals, Case Manager reports that Student "participates with enthusiasm in his social science classes" and "asks questions when needed." *Id.* at p. 66.

Student helps others but “needs support in all content of his social science class, including but not limited too (sic) graphic organizers, supported notes, and paraprofessional help.” *Id.*

#### **F. Mental Health Services Under Transfer IEP**

38. School Psychologist supported Student during his general education art class and sometimes provided support in the special education classroom as well. *Interview with Case Manager.* Generally, School Psychologist met with Student as part of a small group of six students from 11:40-12:40 every Wednesday and Friday in the art classroom, starting the week of September 2, 2022. *Interview with School Psychologist.*
39. During the month of August, School Psychologist provided services to Student’s special education classes instead of providing small group instruction. *Id.* This was not recorded in her service log but is standard practice as part of the adjustment to the new school year. *Id.* She used the time to get to know students and help everyone adjust to routines. *Id.* The SCO credits District with 60 minutes of counseling services for this time.
40. She worked with students on social stories and social skills and provided differentiated art instruction. *Id.* The social stories touched on a variety of topics including following directions, appropriate classroom behavior and peer interactions, turn taking and not blurting out. *Id.*
41. After whole group instruction, with the support of two paraprofessionals, they would break into smaller groups to focus on the skills in each student’s IEP before moving on to differentiated art instruction. *Id.* They spent about 30 minutes a day in small group or individual practice. *Id.*
42. School Psychologist maintained a log of her services, which she updated the same day services were provided, to record basic information about what was worked on during a lesson. *Id;* see *Exhibit E*, pp. 17-19.
43. School Psychologist met with Student for one hour on the following dates in September: 2, 7, 9, 14, 16, 28 and 30, for a total of seven hours. *Exhibit E*, p. 17. Student was absent on September 21, 2022. *Id.* School Psychologist met with Student for one hour on the following dates in October: 5, 7, 12, 19, 21 and 26, for a total of six hours. *Id.* at pp. 17-18. She met with Student for one hour on the following dates in November: 2, 4, 9 and 11, for a total of four hours. *Id.* at p. 18.
44. As of October 10, 2022, on his goal of interacting “with peers in a socially acceptable manner” in 6/10 opportunities with 60% accuracy, Student was interacting with peers in a socially acceptable manner. *Exhibit A*, p. 66. Student enjoys participating with peers, does a good job waiting his turn when told no, and asks permission before borrowing belongings. *Id.* However, he is working on “keeping an appropriate distance” when talking to someone and requires



prompts to “not talk out of turn, stand up in the middle of class, and talk to other students during group settings.” *Id.* There is no quantitative data reported for this goal. *Id.*

### **G. PT Services Under Transfer IEP**

45. PT’s primary goal is to make sure students can access the school environment, including classes, classrooms, and other areas such as auditoriums or stairs. *Interview with PT.*
46. PT met with Student about once per week, usually in his gym class. *Interview with Case Manager.* Afterwards, she would usually walk him back to Case Manager’s classroom to consult with her and provide recommendations. *Id.* PT first observed Student on August 24, 2022 and began providing direct services on September 9, 2022. *Interview with PT.* PT’s direct services included evaluations for Student’s reevaluation. *Id.*
47. PT spent time with Student on September 13, 2022, observing him going through typical daily activities throughout the school environment such as opening doors or using stairs. *Id.* Student was able to independently use the bathroom and wash his hands, although a paraprofessional had walked him there. *Id.*
48. PT keeps daily notes on her services, which she later transfers into a Medicaid billing system. *Id.* District provided two different logs of her services, which are not consistent. *Exhibit E*, pp. 6 and 15-16.
49. The record generated by District’s data management system includes information on when PT e-signed the entries. *Id.* at pp. 15-16. Most entries were entered at the end of the month in question, although some were entered much later. *Id.* The other record, along with its explanations, appears to have been created in response to this investigation. *Id.* at p. 6.
50. Because the entries from the data management system were mostly created close in time to when the services were provided, the SCO finds that to be the most accurate record of the services provided to Student.
51. PT observed Student for 45 minutes on September 9, 2022. *Id.* at p. 15. PT worked with Student for 50 minutes and observed him for 30 minutes on September 13, 2022. *Id.* On October 21, 2022, PT worked with Student for 60 minutes in order to provide some make up services. *Id.* PT worked with Student for 45 minutes on October 25, 2022, and “practiced various ball skill and racket activities.” *Id.* The SCO finds that Student received 125 minutes of physical therapy in September 2022 and 105 minutes in October 2022.
52. Parent raised concerns that Student tended to bump into furniture at home. *Interview with PT.* As a result, PT worked with Student on balance and coordination for 30 minutes on November 4, 2022. *Exhibit E*, p. 15. Student had difficulty with many of the tasks, especially related to balance, and coordination activities took him longer than PT would expect.

*Interview with PT.* This is not something she usually works on as a school-based PT, instead she would expect those concerns to be addressed in medically based physical therapy. *Id.*

53. On November 10, 2022, Student was unusually sad and refused to work with PT. *Exhibit E*, p. 15. The SCO credits District with 30 minutes for these attempted services. PT did not see Student again that month. *Id.* at pp. 15-16.
54. PT did not initially work with Student on goals because there were no PT goals on the Transfer IEP. *Id.* Once the goals came up in the evaluation process, she gathered data one time. *Id.* In PT's opinion, the motor goal in the 2021 IEP is really a physical education goal and not something she would put in an IEP. *Id.* However, she modified the goal for Student's setting, such as having him throw balls at a basketball hoop instead of a target. *Id.*
55. The motor goal in the 2021 IEP had three objectives: 1) throw a 2-3-inch ball and hit a target from a distance of 9-10 feet with 60% accuracy; 2) participate in a variety of gross motor activities incorporating strength, endurance, balance and coordination for 15-20 minutes; and 3) catch a four-inch ball from a distance of 9-10 feet with 60% accuracy. *Exhibit A*, p. 67.
56. As of October 10, 2022, Student had not met the first objective, but PT wondered if vision was impeding his abilities. *Id.* He could participate in a variety of gross motor activities for over an hour in gym class. *Id.* Finally, he could catch balls of various sizes from a 9–10-foot distance with 75% accuracy. *Id.*

#### **H. OT Services Under Transfer IEP**

57. An occupational therapist at School ("OT") met with Student one-on-one either in the special education classroom or in a nearby empty room. *Interview with OT.* They met for 30 minutes weekly to work on fine motor skills. *Id.* Their focus was on handwriting, but they also practiced using technology like keyboarding and tying laces. *Id.*
58. OT initially did not realize she was supposed to be meeting directly with Student. *Id.* She first provided Student with direct services for 45 minutes on September 15, 2022. *Exhibit E*, p. 7. Student was independent with all lunch skills. *Id.* She also met with Student for 30 minutes on September 21, 2022 and 45 minutes on September 28, 2022, for a total of two hours. *Id.* Student was independently printing his name and copying simple shapes but required visual models and verbal cues to write in cursive and to write smaller. *Id.*
59. OT met with Student for 60 minutes on October 5, 2022, as part of his reevaluation. *Id.* She then provided Student with direct services for 50 minutes on October 6, 30 minutes on October 10, and 60 minutes on October 26, for a total of 140 minutes. *Id.* She also provided 30 minutes of direct services on November 7, 2022. *Id.* Student was able to navigate between classes, including independently accessing stairs and he had a functional writing grasp, but continued to require visual cues to write in cursive. *Id.* He also benefited from the visual cue

of writing in a small box drawn on the paper to write smaller. *Id.* He was also able to independently lace on a lacing board. *Id.*

60. There was no gross motor goal in the Transfer IEP. *Exhibit A*, pp. 53-54. The occupational therapy goal in the 2021 IEP had three objectives: 1) with cuing, Student will tie adaptive laces with moderate assistance, 2) with cuing, Student will “write his full name in cursive and manuscript with 75% legibility,” and 3) Student will copy punctuation marks with 75% accuracy. *Id.* at p. 13.
61. By October 10, 2022, Student could independently take shoes on and off, although he wore shoes with elastic laces. *Id.* He could legibly print his name without cuing, although he needed verbal cues to write smaller. *Id.* With a visual model, Student could write his name in cursive with 53% legibility. *Id.* Finally, Student could “copy punctuation marks from a visual model with 75% accuracy.” *Id.*

#### I. SLP Services Under Transfer IEP

62. SLP generally met with Student as part of a small group on Wednesday mornings for 45 minutes. *Interview with SLP.* They worked on asking and answering “wh” questions. *Id.* She provided Student with 45 minutes per week of services, as she viewed the 30 MPW in his IEP as a minimum. *Id.*
63. SLP kept a record of her services in a spreadsheet that she updated daily after meeting with students. *Id.*; *See Exhibit E*, pp. 10-14. The notes about each session also include progress monitoring data. *Exhibit E*, pp. 10-14.
64. SLP met with Student for 10 minutes on August 18, 2022 and five minutes on August 22, 2022. *Id.* at p. 10. They worked on asking and answering “wh” questions and interactions. *Id.* They also met for 45 minutes on Wednesday August 31, 2022. *Id.* With maximal cuing, Student was asking and answering “wh” questions 30-40% of the time. *Id.* The SCO finds that Student received 60 minutes of SLP services in August of 2022.
65. SLP also met with Student in two different 45 minutes sessions on September 7, 2022. *Id.* She met with him for 45 minutes each on September 21 and 28. *Id.* at 11. On September 28, 2022, he was asking and answering “wh” questions 40% of the time, with minimal cuing. *Id.* The SCO finds that Student received 180 minutes of SLP services in September of 2022.
66. SLP met with Student for 50 minutes on October 5, 2022 and 55 minutes on October 12, 2022. *Id.* She tried to meet with Student on October 19, 2022, but he was testing. *Id.* Student was asking and answering “wh” questions with more than 35% accuracy with minimal cuing on October 5 and 38% accuracy from a choice of two on October 12. *Id.* The SCO finds that Student received 105 minutes of SLP services in October of 2022.

67. SLP provided Student with direct services for 50 minutes on November 1, 2022 and 45 minutes on November 9, 2022. *Id.* Student was asking and answering “wh” questions with more than 40% accuracy with a choice of two. *Id.* The SCO finds that Student received 95 minutes of SLP services in November of 2022.
68. Consistent with the progress data in his notes, SLP reported that Student had met his speech goal of asking and answering “wh” questions with 40% accuracy with no more than three prompts as of October 10, 2022. *Exhibit A*, p. 66.

#### **J. Evaluation**

69. On August 15, 2022, District obtained signed parental consent to conduct an evaluation of Student. *Exhibit C*, p. 2. District sought consent to evaluate “Educational Impact, Physical (including occupational and physical), Communication, Intellectual Capacity, Social/Emotional/Behavioral, Transition.” *Id.* Parent signed, giving consent, but noted that Student had an IEP from his prior state. *Id.*
70. District conducted an evaluation of Student (“Evaluation”) that consisted of formal and informal testing, record review and observations conducted by special education teachers, a nurse, SLP, Coordinator, Case Manager, School Psychologist, PT and OT. *Exhibit B*, p. 1.
71. The Evaluation includes a summary of the 2021 IEP and Student’s time at Middle School, consistent with what is described in prior findings of fact. *Id.* at pp. 1-2.
72. Student requires “guidance when learning new routines, significant redirects for on-task behavior, and significant modifications of his curricula in order to make adequate progress.” *Id.* at p. 2. With supports, Student had A’s in all of his classes, except college and career readiness, where he had a C. *Id.*
73. The Evaluation also includes Student’s progress on the goals from the 2021 IEP, as reported in sections E-I of these findings. *Id.* at pp. 2-4.
74. Student scored in the very low range on all areas of the Kaufman Test of Educational Achievement. *Id.* at pp. 4-5.
75. Case Manager reports that Student is very positive and can “get frustrated easily but gets redirected back to work” with adult support. *Id.* at p. 5. Student is good at asking for help but is easily distracted by trying to help others. *Id.* He also struggles with standing still or staying in his seat and not blurting out or “listening with a quiet voice.” *Id.*
76. Both Parent and Case Manager completed the Adaptive Behavior Assessment Scales, “a measure of adaptive functioning.” *Id.* Case Manager’s ratings ranged from extremely low to below average, with a composite score in the low range. *Id.* Parent rated Student in the low

to extremely low range, with a composite score in the extremely low range. *Id.* Based on this discrepancy, School Psychologist administered the Test of Nonverbal Intelligence to assess Student's cognitive abilities. *Id.* However, she had concerns about the results of that assessment. *Id.*

77. School Psychologist also administered the Wechsler Intelligence Scale for Children to assess Student's cognitive abilities. *Id.* Student's composite scores and full-scale IQ were all in the extremely low range, above approximately .1% of children his age. *Id.* at pp. 5-6. Due to his extremely low cognitive abilities, Student is "able to overall function well within a highly structured setting that provides one-to-one support, reminders, redirection, and differentiated instruction." *Id.* at p. 6.
78. SLP was unable to complete the administration of the Clinical Evaluation of Language Fundamentals due to Student's "current skill levels." *Id.* On the Colorado Communication Rating Scales, Student's receptive and expressive language skills were moderately to severely impaired, while there was no impairment of his articulation. *Id.* He was noted to have inconsistent articulation errors which SLP concluded did not negatively impact his academics. *Id.* Parent noted he demonstrates consistent difficulties in his native language, Spanish. *Id.*
79. Observations across multiple environments noted that Student participated in classes but needed frequent redirection to stay focused and to complete tasks. *Id.* at p. 7.
80. OT administered the Wide Range Assessment of Visual Motor Abilities but could not report a standard score because Student required repetition and modification of verbal directions. *Id.* However, Student was able to copy a variety of shapes and designs, use an isolated index finger to point to shapes in a matching task and demonstrated a fine pincer grasp. *Id.* Student "demonstrated functional bilateral integration with both hands to participate in classroom activities" and "manages his self-care needs himself while at school." *Id.*
81. PT assessed Student's gross motor skills. *Id.* at p. 8. She observed that Student could move independently through his school environment and access various seating options. *Id.* Despite Student's external hip rotation, "he has not been observed tripping or losing his balance." *Id.* Student was observed participating in gym class, where he demonstrated multiple skills and played for 85 minutes without fatiguing. *Id.*
82. In summary, the evaluation concludes that Student has "deficits in the areas of adaptive and cognitive abilities, overall academic achievement, and language/communication abilities that... affect his ability to access all academic state standards." *Id.*

## **K. Eligibility Determination**

83. It is District practice to pick the eligibility category that best describes a student. *Interview with Director*. Some students could qualify in multiple areas, but one makes the most sense. *Id.* For instance, multiple disabilities is frequently a combination of an intellectual disability and SLI. *Id.* However, SLI is really part of an intellectual disability, not a separate disability. *Id.* Regardless, student need, and not eligibility categories, drives services in District. *Interview with OT*.
84. During the evaluation process at School, the service providers meet weekly to look at the data that has been gathered and determine what more is needed. *Interview with Coordinator*. This builds on the initial conversation with parents, where they identify what testing to conduct based on areas of concern. *Id.* Together, these conversations determine which areas of eligibility will be considered. *Id.*
85. Parents, Case Manager, a District special education facilitator (“Facilitator”), Coordinator, School Psychologist, SLP, OT, PT, a special education instructional coach and a general education teacher attended a meeting on October 10, 2022, to review the Evaluation (“Eligibility Meeting”). *Exhibit A*, p. 121.
86. During the meeting, they reviewed the evaluation report. *Interviews with OT, PT and Case Manager*. Parents asked some clarifying questions. *Interview with Case Manager*. The meeting lasted three hours. *Exhibit C*, p. 4. There were no significant disagreements before they got to the eligibility checklists. *Interview with Coordinator*.
87. Based on their evaluations, PT and OT recommended discontinuing their services. *Interview with Parents*. It was Parents’ understanding that the team was not recommending any services even though Student continued to score very poorly in those areas, which they could not understand. *Id.* Parents requested individual reports from each of the providers and had a hard time understanding that the Evaluation was all that existed. *Interview with PT*. Parent shared that Student often bumped into furniture at home. *Id.*
88. At the end of the meeting, participants agreed Student was IDEA-eligible as a child with an ID. *Interviews with Coordinator and Case Manager*. They did not consider any other areas of eligibility. *Id.* Parents were very frustrated that the School staff would not consider Student’s other prior areas of eligibility, especially multiple disabilities. *Interviews with Coordinator and Parents*. Parents would not sign the eligibility paperwork. *Exhibit A*, pp. 120-121.

## **L. November 7, 2022 IEP Team Meeting**

89. District, and especially School, is committed to student-led IEP meetings, where students present their strengths, interests, and needs to the IEP team. *Interview with Coordinator*. This helps parents to see what their student is capable of and facilitates a more collaborative IEP

team process. *Id.* Instead of having staff lead the meeting, the whole team lines up behind the student to “help them continue to grow.” *Id.*

90. At the Eligibility Meeting, they agreed to reconvene to review and finalize an IEP for Student. *Exhibit C*, p. 4. The meeting was eventually scheduled for November 7, 2022, to allow Parents adequate time to review and consider a draft. *Id.*
91. On November 7, 2022, School Psychologist, Director, Case Manager, Facilitator, Coordinator, SLP, OT, PT, a bilingual school psychologist (“Bilingual Psychologist”) and a general education teacher (collectively, the “IEP Team”) met to review the draft IEP. *Exhibit A*, p. 59. Student’s father was present in person, and his mother later joined by phone. *Interviews with Director and Coordinator*. An interpreter participated via Webex. *Exhibit A*, p. 59. Difficulties with the sound made it hard for her to interpret, so Bilingual Psychologist interpreted much of the meeting. *Id.* Student was initially present to lead the meeting, but Parent asked that he not participate in the meeting. *Interviews with Parent and Coordinator*.
92. The IEP Team agreed on several sections of the IEP before getting stuck on the annual goals. *Interview with Coordinator*. Parents thought the draft goals were neither measurable nor sufficiently ambitious. *Interview with Parents*. It felt to them like an uphill battle to create a thorough plan. *Id.*
93. Based on Parents’ concerns, the providers agreed to adjust the goals and add more. *Interviews with Case Manager, School Psychologist and Coordinator*. The meeting ended so that they could make changes and send Parents an updated draft. *Id.* The IEP Team agreed to reconvene on November 14, 2022 to finalize the IEP after sending Parents an updated draft by November 10, 2022. *Exhibit C*, p. 4.
94. After the meeting, Case Manager had a call with Parent about goals. *Interview with Case Manager*. Parent wanted the goals to be more rigorous. *Id.* The providers split most of the goals into two goals so that they could focus on specific skill sets and increase the rigor. *Id.*

#### **M. November 14, 2022 IEP Team Meeting**

95. The IEP Team reconvened on November 14, 2022. *Exhibit A*, p. 60. Most of the participants were the same, including School Psychologist, Case Manager, Facilitator, Coordinator, SLP, OT, PT, and Bilingual Psychologist. *Id.* Student’s mother attended in person without Student’s father, Director was not present, and a different general education teacher attended. *Id.* The interpreter was also present in person. *Id.*
96. This was the shortest meeting. *Interview with Case Manager*. The IEP Team went through the remaining sections of the IEP, including services and LRE. *Id.* Providers shared the recommended changes to Student’s services, including indirect services from OT and PT and

a reduction in special education hours to increase Student's LRE, adding an additional general education class. *Id.*

97. After Parent shared that Student was bumping into things at home, PT and OT changed their recommendations to 30 MPM of indirect services so that they could continue to monitor that concern and support Student's team. *Id.* The elimination of direct services was based on the Evaluation of Student, finding that he "is able to navigate all areas of his school safely and independently." *Exhibit C, p. 4.*
98. School Psychologist recommended 30 MPM of direct services because Student's social emotional goals focused on social interaction. *Interview with School Psychologist.* She wanted to see Student more in a classroom setting. *Id.* School Psychologist provides push-in support in the general education setting for all her students but does not include it in IEPs. *Id.*
99. Parent was quiet through most of the meeting. *Interviews with Case Manager and Coordinator.* The meeting ended with Parent saying she did not agree with the services in the draft IEP or with the Evaluation. *Interviews with PT, Case Manager and Coordinator.*
100. The embedded PWN notes that Parent:

does not agree with the services described within the IEP, that she does not accept the results of the evaluation in any area and does not accept the recommendations. She stated that she does not accept the IEP, and the totality of the evaluations (OT, PT, SLP, everything).

*Exhibit C, p. 4.*

101. Parent wanted Student to receive individual services in a one-on-one setting. *Interviews with Parent and Coordinator.* This is what a prior district told Parents Student required to "be more enriched" and learn the most. *Interview with Parents.* Parent believes Student continues to require direct services from OT to work on fine motor skills like keeping letters a consistent size, putting on a shirt, tying his shoes or safely identifying whether objects are hot or cold in the kitchen. *Id.* Parent said he needs ongoing services from PT to maintain and improve his strength because of the external rotation of his hips. *Id.* Parent thinks that Student has regressed without these services. *Id.*
102. District observed Student to be excelling in small group and general education settings. *Interview with Case Manager.* District has a strong commitment to inclusion, educating students in the general education setting to the greatest extent possible. *Interview with Director.* District indicated it would be unethical to pull Student out of classes with other students to provide one-on-one services. *Interviews with Director and Coordinator.* They did not see evidence that Student required such a restrictive setting. *Id.*



103. At Parent's request, they finalized the IEP ("2022 IEP") and provided her with a copy before she left. *Interview with Coordinator*. Student started at School on August 16, 2022. *Response*, p. 3. The SCO finds that School implemented the Transfer IEP for two weeks in August, four weeks in September, four weeks in October and two weeks in November of 2022, or a total of 12 weeks. *See Exhibit H*.

#### N. 2022 IEP

104. The 2022 IEP includes a copy of the Evaluation. *Exhibit A*, pp. 62-73. This is separate from the Present Levels Section. *Id.* at pp. 74-78.

105. Student responds well to positive reinforcement and perseveres and asks for help when tasks are hard. *Id.* at p. 74. He "requires significant adult support, a consistent schedule, and significant modifications to his curricula in order to make adequate progress." *Id.* The 2022 IEP includes a description of Student's current schedule, grades, and the progress updates on the 2021 IEP annual goals from the Evaluation. *Id.* at pp. 74-75.

106. A bilingual speech-language pathologist administered the Clinical Evaluation of Language Fundamentals in Spanish, the results of which are reported in the present levels. *Id.* at pp. 75-76. Standard scores were not reported, but Student's "overall Spanish language skills are delayed when compared to peers of the same age." *Id.*

107. Bilingual Psychologist administered the Ortiz Picture Vocabulary Acquisition Test and the Weschler Intelligence Scale for Children in Spanish to "provide additional data regarding [Student's] English language acquisition skills and cognitive abilities in Spanish." *Id.* at p. 76. Student's rate of English acquisition is extremely low relative to same-age peers who have been learning English for the same amount of time. *Id.* His scores on the cognitive assessment were comparable to the results of the English assessment, in the extremely low range. *Id.*

108. According to the Student Needs and Impact of Disability statement, Student's cognitive deficits cause significant delays in progress in all curricular areas. *Id.* at p. 77. Student also has deficits in reading comprehension, written expression, and basic math skills. *Id.* Finally, difficulties with expressive and receptive language impact "his ability to demonstrate progress in the general classroom." *Id.*

109. The Parent Input section includes Parents' request for individual services to be provided by SLP and School Psychologist and their disagreement with the Evaluation, recommendations, and all sections of the 2022 IEP. *Id.* at pp. 77-78.

110. Student has a health care plan, limited English proficiency, and requires special transportation due to his cognitive disability. *Id.* at p. 79.

111. The 2022 IEP includes 10 annual goals: two reading, two writing, two math, two speech and two social skills. *Id.* at pp. 82-91. Progress would be reported quarterly on all goals. *Id.*
112. There are 15 accommodations in the IEP, including use of a calculator, reading materials aloud, small group instruction and extended time. *Id.* at p. 92. Student was also working on modified standards “for all subject areas, curriculum, and instruction.” *Id.*
113. The 2022 IEP includes the following special education and related services, to be provided “in accordance with the [District] academic calendar:”

- Special Education Instruction:
  - 720 MPW (12 hours) of small-group instruction “with a focus on functional communication, life-skills, literacy, numeracy, and pre-vocational skills” outside the general education setting;
  - 30 MPM of indirect services from a special education teacher to “assist teachers in developing and implementing needed accommodations and/or adjusting instruction to meet” Student’s needs in general education.”
- Speech/Language Services:
  - 90 MPM of direct services from an SLP “to aid [Student] in developing new language skills and maintaining language skills” in a small group setting;
  - 15 MPM of indirect services.
- Counseling: 30 MPM of “affective skill instruction in a small-group setting inside and outside of general education;”
- Physical Therapy: 30 MPM of indirect PT support;
- Occupational Therapy: 30 MPM of indirect services to allow OT to collaborate with special education teacher on fine motor skills and provide training to staff;
- Other: unspecified adult support for academics, safety, and transitions. There is no place in the service delivery chart to indicate whether services will be provided inside or outside of general education.

*Id.* at p. 94.

114. Student’s new LRE was general education 40-79% of the time, to allow “access to general instruction and participation with peers to the highest extent possible” with “significant

remediation of skills in the areas of functional academics, communication, [and] social skill development.” *Id.* at p. 95.

#### **O. The 2022 IEP’s Services**

115. Service providers make recommendations about service minutes based on their best judgement. *Interview with Director.* Depending on the team and the goals, providers might work together to make those recommendations. *Id.* Either way, it should be an individualized process that takes into consideration student needs and method of delivery. *Id.*
116. District guidance is that services in the IEP are a recommended minimum. *Interview with Coordinator.* Services can go above that amount if it does not change the student’s LRE/placement. *Id.* Providers might pull students for more if they believe a specific lesson would benefit that student. *Id.* Ideally, they would not be pulling the student from “equally relevant” services. *Id.*
117. School was closed for a week in November 2022 for Thanksgiving and two and a half weeks in December 2022 and January 2023 for winter break. *Exhibit H.* Student stopped attending School after February 7, 2023. *Exhibit F*, p. 4. He was officially withdrawn on February 17, 2023, when District received confirmation that he was enrolled in a school in another district. *Exhibit J*, p. 78.
118. After finalizing the 2022 IEP on November 14, 2022, SLP continued to pull Student in a small group for 45 MPW, as she had been doing since he started at Middle School. *Interview with SLP.* 90 MPM was intended as a minimum. *Id.* They also continued to work on similar skills, as the new goals required measurement of a variety of different types of “wh” questions. *Id.*
119. SLP did not provide Student with any direct services in November after the meeting on November 14. *Id.* at p. 11. Student was absent on December 6, 2022, so SLP met with him for 45 minutes on December 7, 2022. *Id.* at 11-12. She observed Student for 15 minutes on January 10, 2023 and did not note any regression from break. *Id.* at p. 12. She then met with Student for 60 minutes on January 11, 2023, 45 minutes on January 13, 2023 and 75 minutes on January 25, 2023. *Id.* at p. 13. SLP met with Student for 90 minutes on February 1, 2023 and Student was absent for any remaining attempts to meet with him. *Id.* at pp. 13-14. The SCO finds that Student received 45 minutes of direct SLP services in December 2022, 180 minutes in January 2023, and 90 minutes in February 2023, for a total of 315 minutes.
120. Under the 2022 IEP, School Psychologist continued to provide Student with the same amount and frequency of services, specifically two hours per week. *Interview with School Psychologist.* The focus of those services changed based on the new goals. *Id.*
121. School Psychologist met Student for an hour each on November 16 and 18. *Exhibit E*, p. 18. She also met with Student for an hour on the following days in December: 2, 7, 9 and 14, for

a total of 4 hours. *Id.* at pp. 18-19. She met with him for an hour on the following days in January: 11, 13, 18, 20, 25, and 27 for a total of six hours. *Id.* Finally, she met with Student for an hour on February 1 and February 3, 2023, for a total of two hours. *Id.* The SCO finds that Student received 14 hours of direct services from School Psychologist under the 2022 IEP.

122. PT and OT stopped providing Student with direct services after finalizing the 2022 IEP. *Interviews with OT and PT.* Instead, they provided indirect services, observing Student in various environments and consulting with Case Manager. *Id.*
123. PT attempted to see Student on December 5 and 6, 2022, but Student was absent. *Id.* at p. 16. PT observed Student for 30 minutes on December 13, 2022 and provided a 30 minute make-up session of direct services working on basketball shooting techniques. *Id.* PT also observed Student playing basketball on January 24, 2023 for 30 minutes, noting his physical abilities while playing basketball. *Id.* PT attempted to observe Student on February 14 and 16, 2023, but he was absent. *Id.* After observations, PT would walk back to Case Manager's classroom with Student to hear concerns and provide recommendations. *Interview with Case Manager.* The SCO finds that PT provided 60 minutes of indirect consultative services to Student under the 2022 IEP, in addition to providing 30 minutes of compensatory direct services in December 2022.
124. OT provided consultative services for Student for 30 minutes each on December 9, 2022 and January 13, 2023. *Id.* She also provided consultation for 15 minutes each on January 27, 2023 and February 7, 2023. *Id.* The SCO finds that OT provided 90 minutes of indirect consultative services under the 2022 IEP.
125. Student's five special education courses had 7-21 students, all of whom had disabilities. *Exhibit G*, p. 59. Each had a classroom teacher and at least one special education teacher, with larger classes having two special education teachers. *Id.* Several also had part-time co-teachers. *Id.* Each had the support of at least 3 paraprofessionals.
126. Student's gym class had 28 students, 14 of whom had disabilities. *Id.* The class was supported by a general education teacher, a special education teacher and three paraprofessionals. *Id.* Student's art class had 22 students, seven of whom had disabilities. *Id.* The class was supported by a general education teacher, School Psychologist, two paraprofessionals and a substitute. *Id.* Student's Astronomy class, which was added second semester, had 33 students and one teacher. *Id.* Student was the only one with a disability, and he was supported by a paraprofessional.

#### **P. Progress on 2022 IEP Goals**

127. District issues progress reports at the end of each quarter. *Interview with Coordinator.* The only progress report for the annual goals in the 2022 IEP is from late December 2022 and early January 2023. *Exhibit G*, pp. 39-57. There were four weeks of school between when the

2022 IEP was finalized on November 14, 2022 and the end of the quarter on December 16, 2022. *Exhibit H*.

128. At the end of the quarter, Student had made insufficient progress on his reading comprehension goal. *Exhibit G*, p. 39. His abilities had regressed over two data points from November and December 2022. *Id.* However, he had made progress on his vocabulary goal, as he was able to define nine words, up from a baseline of seven. *Id.* at p. 41.
129. Student also made progress on his two writing goals by the end of December 2022. *Id.* at pp. 43-46. Specifically, he was writing three-word sentences with correct grammar and syntax with at least 30% accuracy and using correct capitalization and punctuation with at least 50% accuracy. *Id.*
130. Probes in November and December showed some regression in Student's math computation abilities and no growth on his math application goal. *Id.* at pp. 47-50.
131. Student made progress on both of his language goals before the start of second semester. Specifically, he was asking and/or answering questions in various environments with 45-60% accuracy, up from 40% accuracy. *Id.* at pp. 51-54.
132. School Psychologist noted that Student made insufficient progress on both of his social skills goals. *Id.* at pp. 55-57. With one probe, Student had reduced blurting out in a 10-minute period from 19 interruptions to 17. *Id.* at p. 55. However, he was only able to demonstrate on-task behaviors 50% of the time, down from a baseline of 60%. *Id.* at p. 56. With more time, School Psychologist anticipates that Student would have met these goals. *Interview with School Psychologist*.

### **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 implement the Transfer IEP, in violation of 34 C.F.R. § 300.323. This violation did not result in a denial of FAPE.**

Parents' concern is that District did not provide Student with the related services required by his IEPs, including direct physical therapy, occupational therapy, speech and language therapy, and mental health counseling services.

#### **A. Legal Requirements for IEP Implementation**

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children

. . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

To satisfy its implementation obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* at § 300.323(d).

## **B. Implementation of The Transfer IEP**

### **i. IEP Accessibility to Student’s Teachers**

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). There is no indication that the providers at Middle School were unaware of their responsibilities under the Transfer IEP. Instead, it seems likely that the failure to provide Student with all his related services stemmed from Student’s very short enrollment. (FF #s 26-30.) However, because the Transfer IEP was an interim plan and did not have all the goals from the 2021 IEP, PT and OT were confused about their responsibilities at the start of the 2022-2023 school year. (FF #s 23, 54, 58 and 60.) As a result, they did not begin working with Student until the fourth and fifth weeks of school, respectively. (FF #s 46 and 58.) Therefore, the SCO finds and concludes that District did not ensure that all teachers and related service providers were informed of their responsibilities under the Transfer IEP, in violation of 34 C.F.R. § 300.323(d).

### **ii. Services Required by Transfer IEP**

Student’s Transfer IEP included 30 MPW each of occupational therapy and physical therapy and 120 MPM of counseling from a mental health provider. (FF # 21.) Student’s 2021 IEP also included 30 MPW of speech therapy. (FF # 9.) District practice is to include comparable services, meaning “similar or equivalent,” in transfer IEPs. (FF #s 14 and 15.) District contends that speech services were accidentally left off the Transfer IEP, and SLP started serving Student immediately after he started, on May 10, 2022. (FF #s 22 and 30.) The SCO finds and concludes that dropping speech services was a clerical error, so Student was also entitled to 30 MPW of speech therapy. None of the services were required to be provided in a private or one-on-one setting. (FF #s 21-22.)

### **iii. Implementation of Transfer IEP at Middle School**

Based on Student reports, Parents do not believe Student was receiving his related services. (FF # 27.) Student attended Middle School for 13 days, or two and a half weeks. (FF # 26.)

At 30 MPW, Student was entitled to 75 minutes each of occupational, physical and speech therapies. *Id.* At 120 MPM, Student was entitled to 75 minutes of mental health/counseling

services. *Id.* The SCO finds and concludes that District failed to provide Student with 15 minutes of physical therapy and 30 minutes of speech therapy. (FF #s 28 and 30.) The SCO found no evidence that Student received occupational therapy or mental health counseling services. (FF # 29.) Though the IDEA does not require service logs, District staff need to be able to show that a student's services were provided. With no evidence that services were provided, the SCO finds and concludes that District failed to provide Student with 75 minutes each of occupational therapy and mental health services. (FF # 29.)

Thus, the SCO finds and concludes that District failed to implement Student's Transfer IEP during the 2021-2022 school year, in violation of 34 C.F.R. § 300.323.

#### **iv. Implementation of Transfer IEP at School**

School was implementing the Transfer IEP for two weeks in August, four weeks in September, four weeks in October and two weeks in November 2022. (FF # 103.) During that time, Student was entitled to 30 MPW of occupational therapy, physical therapy, and speech therapy and 120 MPM of mental health services. (FF # 21.) The SCO finds that 30 MPW or 120 MPM result in the same amount of required services. Thus, the SCO finds that, from each provider, Student should have received one hour (60 minutes) in August, two hours (120 minutes) each in September and October, and one hour (60 minutes) before the 2022 IEP was finalized on November 14, for a total of six hours (360 minutes).

School Psychologist provided whole group instruction to Student's classes in August. (FF # 39.) Although not reflected in her logs, the SCO finds that these services equaled 60 minutes. (*Id.*) She also provided Student with seven hours of direct services in September, six hours in October and four hours before November 14, 2022, or a total of seventeen hours. (FF # 43.) Therefore, the SCO finds and concludes that District implemented Student's mental health services.

PT did not work directly with Student in August 2022. (FF # 46.) PT provided Student with 125 minutes of direct services in September and 105 minutes in October. (FF # 51.) She met with Student for 30 minutes in November and attempted to meet with him again, so the SCO credits District with a total of 60 minutes of physical therapy in November before the 2022 IEP was finalized. (FF #s 52 and 53.) Thus, the SCO finds that District failed to provide 60 minutes of PT services in August and 15 minutes in October 2022. However, PT provided 30 minutes of compensatory services in December, in addition to the five extra minutes in September. (FF # 123.) Therefore, the SCO finds and concludes that District failed to provide 40 minutes of direct physical therapy services during the 2022-2023 school year.

OT did not meet with Student in August 2022. (FF # 58.) OT provided Student with two hours of direct services in September and two hours and 20 minutes in October 2022. (FF #s 58 and 59.) She also provided 30 minutes of direct services in November, before the 2022 IEP was finalized. (FF # 59.) Thus, the SCO finds that District failed to provide 60 minutes of occupational therapy in August and 30 minutes in November 2022. However, because OT provided 20 extra minutes in

October, the SCO finds and concludes that District failed to provide Student with 70 minutes of occupational therapy services during the 2022-2023 school year.

Finally, SLP provided Student with 60 minutes of direct services in August 2022, 180 minutes in September, 105 minutes in October and 95 minutes in November, before the 2022 IEP was finalized. (FF #s 64-67.) Although District provided Student with less than two hours of direct SLP support in October, because of the extra minutes provided in September and November, the SCO finds and concludes that District implemented Student's speech therapy services.

Because District did not fully implement Student's physical and occupational therapy services, the SCO finds that District failed to implement the Transfer IEP during the 2022-2023 school year, in violation of 34 C.F.R. § 300.323.

#### **v. Materiality of Failure to Implement**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App'x 202, 205 (2d Cir. 2010).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

Here, under the Transfer IEP at Middle School, District failed to implement 15 minutes of physical therapy, 30 minutes of speech therapy and 75 minutes each of occupational therapy and mental health services. (FF #s 28-30.) At School, District failed to implement 40 minutes of physical therapy and 70 minutes of occupational therapy. (FF #s 45-61.) In total, the SCO finds that District failed to implement 75 minutes of counseling services, 55 minutes of physical therapy, 145 minutes of occupational therapy and 30 minutes of speech and language therapy. Student should have received 75 minutes of each service in May 2022 and six hours before the implementation



of the 2022 IEP, for a total of seven hours and 15 minutes (435 minutes) during that time. (FF #s 26 and 103.)

The failure to implement 30 minutes, or one week's worth, of SLP services is a minor deviation. *L.C. and K.C.*, 125 Fed. App'x at 260. This is consistent with Student having met his language goal. (FF # 68.) The failure to provide 75 minutes of mental health services is more significant. However, School Psychologist already provided Student with substantially more services in the 2022-2023 school year than Transfer IEP required. (FF #s 21, 38, and 43.) Although quantitative data was not reported, Student also made progress on several aspects of his social skills goal by October 2022. (FF # 44.) Therefore, the SCO finds and concludes that the failure to implement speech and mental health services was not material.

Although District failed to implement 55 minutes of Student's 435 physical therapy minutes, Student still met two of the three objectives in his physical therapy goal by October 2022. (FF # 56.) The failure to implement 145 minutes of occupational therapy services out of 435 minutes means District only implemented two thirds of Student's services in that area. Nevertheless, Student made progress on his occupational therapy goal. (FF # 61.) Student did not wear shoes with laces, but he could independently take his shoes on and off and had met one and a half of his remaining two occupational therapy goals, although he still could not write his name in cursive with 75% legibility. *Id.* In addition, Student could independently move through the school environment and manage his self-care needs and materials at school. (FF #s 80-81.) As will be discussed further in the conclusion to Allegation No. 2, Student did not require the support of an occupational therapist or a physical therapist to access School or benefit from his special education program. Thus, the SCO finds and concludes that the failure to implement physical and occupational therapy was not material.

For these reasons, the SCO finds and concludes that the failure to implement the Transfer IEP did not result in a denial of FAPE.

### **C. Implementation of 2022 IEP**

#### **i. IEP Accessibility to Student's Teachers**

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). There is no indication that the providers were unaware of their responsibilities under the 2022 IEP. In fact, they were all involved in drafting the document and present when it was finalized on November 14, 2022. (FF #s 91, 95 and 103.) Therefore, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. § 300.323(d).

#### **ii. Implementation of 2022 IEP at School**

Under the 2022 IEP, Student was to receive 90 MPM of direct speech services, 30 MPM of direct mental health counseling and 30 MPM each of indirect physical therapy and occupational

therapy. (FF # 113.) Considering Thanksgiving and Winter breaks, the 2022 IEP was implemented for two weeks in November, two weeks in December, three weeks in January, and one week in February before Student stopped attending, for a total of eight weeks or two months. (FF # 117.) Thus, the SCO finds that Student should have received three hours (180 minutes) of direct services from SLP, one hour (60 minutes) of direct services from School Psychologist, and one hour (60 minutes) each of indirect consultative services from PT and OT.

Student received 315 minutes (over five hours) of direct services from SLP while District was implementing the 2022 IEP. (FF # 119.) Student also received 14 hours of direct services from School Psychologist under the 2022 IEP. (FF # 121.) PT provided Student with one hour of consultative services while District was implementing the 2022 IEP. (FF # 123.) OT provided Student and his team with 90 minutes of consultative services while District was implementing the 2022 IEP. (FF # 124.)

Thus, the SCO finds and concludes that District implemented the 2022 IEP, consistent with 34 C.F.R. § 300.323. No violation occurred.

**Conclusion to Allegation No. 2: District failed to develop an IEP that was tailored to meet Student’s individualized needs, in violation of 34 C.F.R. §§ 300.114(a)(2)(ii) and 300.320(a)(4). This violation resulted in a denial of FAPE.**

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**

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)(1). 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.* § 300.320(a)(1)(i). An IEP must also 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. *Id.* § 300.320(a)(2). Also, an IEP must include the special education and related services and 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.* § 300.320(a)(4).

Here, the 2022 IEP was developed at properly constituted IEP team meetings on November 7 and 14, 2022. (FF #s 91 and 95.) The 2022 IEP includes a statement of the impact Student’s cognitive impairment and language impairment have on his ability to access the general education curriculum. (FF # 108.) It includes input from the Parents. (FF # 109.) It also contains 10 annual goals to address Student’s academic and functional needs, developed in consultation with Parents. (FF #s 92-94 and 111.) In addition, it includes 15 accommodations to help Student access the curriculum. (FF # 112.) Finally, it includes a description of the special education and related services to be provided to Student. (FF # 113.) Thus, as to the first prong of the *Rowley* standard, the SCO finds and concludes that the development process for the 2022 IEP complied with IDEA’s procedures. The SCO turns next to the question of whether the 2022 IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

## **B. Substantive Adequacy of the IEP**

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. 34 C.F.R. § 300.324(a)(2). Thus, 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); *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999).

### **i. Related Service Minutes**

Parents’ concern is that the 2022 IEP reduced all of Student’s services as compared to the 2021 IEP and the Transfer IEP. (FF #s 9, 21, and 113.)

An IEP must include the special education and related services and 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. 34 C.F.R. § 300.320(a)(4). An IEP must “include information about the services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

This statement, commonly known as a service delivery statement, must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to

provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017) (noting that “Parents can’t make an informed decision on whether to accept a proposed IEP if the document includes only a vague description of the student’s services”); see also *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18). The service delivery statement must clearly specify the amount and type of services that will be provided to a student. *Adams 12 Five Star Schs.*, 75 IDELR 86 (SEA CO 2019). This includes describing the setting in which a particular service will be provided. See, e.g., *S.H. v. Mount Diablo Unified Sch. Dist.*, 70 IDELR 98 (N.D. Cal. 2017) (finding that the district violated the IDEA when it failed to spell out whether the 40 minutes of speech and language services would be delivered to the student individually or in a group setting).

Related services mean supportive services, including speech and language pathology, psychological services and physical and occupational therapy, that “are required to assist a child with a disability to benefit from special education.” 34 C.F.R. § 300.34. Related services must be included in a student’s IEP when they are necessary for the student to benefit from special education. See *In re: Student with a Disability*, 65 IDELR 160 (SEA ID 2015) (holding that an IEP need not include a one-to-one aide where other options are available for facilitating communication between school and home).

a. Mental Health Services

Here, although School Psychologist was providing Student with two hours per week of direct support, she recommended reducing her services from 120 MPM to 30 MPM in the 2022 IEP. (FF #s 21, 38 and 98.) Considering his goals targeting social interaction, she wanted to focus on providing push-in support inside the general education setting. (FF # 98.) School Psychologist does not include push-in services when drafting IEPs. (*Id.*) Although the 2022 IEP adopted her recommendation of 30 MPM of direct mental health services, she continued to provide Student with two hours per week of direct service. (FF #s 113 and 120.)

Because the 2022 IEP did not include the mental health supports District was providing inside the general education setting, the SCO finds that the 2022 IEP did not include a clear statement of the services District was committed to providing Student. See 71 Fed. Reg. 46667. Leaving out 7.5 hours of the monthly services District was providing to Student prevented Parents from making an informed decision about whether to agree with the 2022 IEP’s services. Thus, the SCO finds and concludes that the 2022 IEP was not reasonably calculated to allow Student to make progress on his annual goals and to be involved and make progress in the general education curriculum in this respect, as required by 34 C.F.R. § 300.320(a)(4).

b. Speech and Language Therapy

Here, although SLP was providing 45 MPW of direct speech services, she recommended reducing her services from 30 MPW to 90 MPM in the 2022 IEP. (FF # 9, 62 and 113.) Consistent with Coordinator’s understanding, she indicated services in the IEP reflected the minimum for a

student. (FF # 118.) Although the 2022 IEP ultimately included her recommendation of 90 MPM, SLP continued to meet with Student for 45 MPW. (FF #s 113 and 118.)

Indeed, 45 MPW amounts to 180 MPM, or twice what was included in the 2022 IEP. Because the 2022 IEP included only half the speech services District intended to provide, the statement of services was unclear and prevented Parents from making an informed decision about the 2022 IEP's services. See 71 Fed. Reg. 46667. Thus, the SCO finds and concludes that the 2022 IEP was not reasonably calculated to allow Student to make progress on his annual goals and to be involved and make progress in the general education curriculum in this respect, as required by 34 C.F.R. § 300.320(a)(4).

c. Physical and Occupational Therapy

The 2021 IEP and the Transfer IEP include 30 MPW of direct services from both a physical therapist and an occupational therapist. (FF #s 9 and 21.) PT and OT initially recommended discontinuing services altogether. (FF # 87.) However, after Parents raised concerns about Student, including that he was bumping into furniture at home, they both changed their recommendations to 30 MPM of indirect, consultative services to allow them to monitor Student and provide any needed support to Student's other providers. (FF # 97.) The 2022 IEP accurately includes 30 MPM each of indirect occupational therapy and physical therapy. (FF # 113.)

However, Parents did not agree with discontinuing direct physical and occupational therapy. (FF # 101.) District's Evaluation, though, found that Student was able to independently access the school environment and his self-care needs throughout the day. (FF # 97.)

Parent wanted Student to continue receiving direct physical therapy to maintain his strength considering the external rotation of his hips. (FF # 101.) However, PT observed that Student could independently access the school environment without difficulty, despite the external rotation of his hips. (FF # 81.) The SCO finds no evidence Student required physical therapy services to access the school environment.

Parent wanted Student to continue receiving direct occupational therapy to work on skills like keeping letters a consistent size, tying his shoes, and safely identifying if objects are hot. (FF # 101.) However, Student was able to independently take his shoes on and off. (FF # 61.) While OT agreed that Student required cueing to write smaller, he responded to visual cues to do so. (FF #s 58 and 61.) While Student may require support with independent living skills, including kitchen safety, the SCO, in consultation with CDE Content Specialist, finds that Student could work on those skills without the direct support of an occupational therapist. Overall, the SCO finds no evidence that Student required direct occupational therapy to access school or benefit from special education.

Thus, the SCO finds and concludes that the 2022 IEP was reasonably calculated to allow Student to be involved in the general education setting and make progress on his annual goals in this respect, consistent with 34 C.F.R. § 300.320(a)(4).

ii. LRE and Location of Services

Parents' other concern is that the 2022 IEP's services needed to be provided in a private, one-on-one setting based on the recommendations of a prior district. (FF #s 100 and 101.) They also indicated it was not appropriate for Student to spend additional time in a general education setting. (FF # 100.)

"Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116. An IEP must include, among other things, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section." *Id.* § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* The school district must educate a student in accordance with the LRE described in the IEP. *Id.*

Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." *Id.* § 300.114(a)(2)(ii). For instance, if a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008). However, a student should not be removed from general education classes solely because of the need for modifications of the curriculum. 34 C.F.R. § 300.116(e). In considering placement in general education for students with cognitive disabilities, IEP teams can consider educational benefits beyond academic achievement, including interaction with nondisabled peers, social development and self-care. *Oberti v. Bd. of Educ. of the Borough of Clementon Sch. Dist.*, 19 IDELR 908 (3d Cir. 1993).

a. Private, One-on-One Services

Here, Student was making progress on several goals despite receiving services in a mix of general education classes and small group settings. (FF #s 36, 44, 56, 61, 68, and 128-132.) District observed him to be excelling in those settings. (FF # 102.) Even if Student required one-on-one services previously, his needs may have changed based on the progress he has made. The SCO finds nothing in the Evaluation or the Record to suggest that Student requires private, one-on-one services (i.e., a very restrictive setting) to make progress.

Learning in small group settings and general education classes allowed Student to work on skills like social interaction and communication, as required by his social emotional and speech goals. During the first quarter of the 2022-2023 school year, he made progress on his social emotional goal and met his speech goal. (FF # 44 and 68.) At the end of the semester, he had made progress on his two new speech goals. (FF # 131.) Although he made insufficient progress on his new social skills goals, School Psychologist is confident that would have changed with more time working on the very new goals. (FF #s 127 and 132.) Again, students must be educated in the least restrictive setting where they can make *appropriate* progress, not the setting where they can make the *most* progress. *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d at 976 (emphasis added).

Thus, the SCO finds and concludes that the 2022 IEP was reasonably calculated to allow Student to be involved in the general education setting and make progress on his annual goals in this respect, consistent with 34 C.F.R. §§ 300.114, 300.116 and 300.320(a)(4).

b. LRE

Here, the 2022 IEP halved Student's special education minutes, contemplating that he would have one additional general education class at the start of second semester. (FF #s 96, 113, and 114.) All of Student's special education classes had multiple teachers and paraprofessionals supporting students. (FF # 125.) In addition, 14 students with disabilities in his gym class had the support of a special education teacher and three paraprofessionals while seven students with disabilities in his art class had the support of School Psychologist and two paraprofessionals. (FF # 126.) His new astronomy class, where he was the only student with a disability, had the support of one paraprofessional. (*Id.*)

However, the 2022 IEP only requires adult support for academics, safety, and transitions, with no further details. (FF # 113.) The 2022 IEP does not specify how much adult support Student requires in which settings. Thus, the SCO finds and concludes that, in reducing his special education services outside the general education setting without including the supplementary aids and services necessary to allow him to participate in the general education setting, the 2022 IEP was not reasonably calculated to allow Student to be educated in his LRE, in violation of 34 C.F.R. § 300.114(a)(2)(ii).

**C. Remedies**

Overall, the SCO finds and concludes that the violations related to the 2022 IEP resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements). Specifically, the SCO concluded that the 2022 IEP violated the substantive requirements of the IDEA because it did not include all the speech and language services, mental health counseling and supplementary aids and services that were required to allow Student to participate in the general education curriculum and make progress on his annual goals.

To remedy this denial of FAPE, the SCO would have ordered that District convene an IEP team meeting to review and revise the IEP. However, in this case, Student has since enrolled in another district, so no further meeting is required. (FF # 117.) Additionally, because Student was actually receiving the services that were not included in the 2022 IEP, the SCO finds and concludes that no compensatory services are warranted.

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

#### **A. IEP Implementation**

Nothing in the Record suggests that the implementation violations in this matter are systemic or have impacted other students. Rather, the SCO finds that the confusion in this case stemmed from the fact that Student transferred to District at the very end of the 2021-2022 school year and then started at School with Transfer IEP, which included less detail than the 2021 IEP. (FF #s 24-26.) For these reasons, the SCO finds and concludes that the violation is not systemic in nature.

#### **B. IEP Development**

The SCO finds that the IEP development violations are systemic and likely have impacted other students, at least at School. Coordinator indicated IEPs must only include a recommended minimum of services, rather than reflecting all the services a student requires to receive a FAPE. (FF # 116.) Further, multiple providers failed to include the services Student was receiving inside the general education setting. (FF #s 113, 120 and 126.) In fact, the 2022 IEP does not have any space for providers to indicate that services are being provided inside the general education setting. (FF # 113.) It is unclear to the SCO how any team can effectively support a student or implement their IEP if the IEP does not accurately reflect all the services the student is receiving to make appropriate progress. Further, in the event students transfer between schools or districts, their new team will have no way to know what services they require. In addition, if the IEP does not reflect all the services District intends to offer the student, parents cannot make an informed decision about whether to agree with the IEP. Because these misunderstandings about what services must be reflected in an IEP are pervasive, at least at School, the SCO finds that this violation is systemic in nature and raises concerns about the appropriate provision of services to



all 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 future provision of appropriate services to all IDEA-eligible students in District.

### **REMEDIES**

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

- a. Failing to ensure all of Student’s teachers and related service providers were informed of their responsibilities under Student’s Transfer IEP, in violation of 34 C.F.R. § 300.323(d);
- b. Failing to implement Student’s Transfer IEP, in violation of 34 C.F.R. § 300.323;
- c. Failing to include all the necessary related services in Student’s 2022 IEP, in violation of 34 C.F.R. § 300.320(a)(4); and
- d. Failing to include all of the required supplementary aids and services required to allow Student to be educated in his LRE, in violation of 34 C.F.R. § 300.114(a)(2)(ii).

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

#### **1. Corrective Action Plan**

- a. By **Wednesday, June 14, 2023**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. 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. Final Decision Review**

- a. Director, Facilitator, Coordinator, Case Manager, School Psychologist, SLP, OT and PT must review this decision, as well as the requirements of 34 C.F.R. §§ 300.114(a)(2)(ii), 300.320(a)(4) and 300.323. This review must occur no later than **Friday, August 11, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, August 18, 2023**.

### 3. District Procedures

- a. By **Friday, July 14, 2023**, District must submit written procedure(s) or guidance to ensure compliance with 34 C.F.R. §§ 300.114 and 300.320(a)(4).
- b. At a minimum, the procedure(s) must offer clear guidance on developing IEPs that include *all* the special education and related services a student requires and clarify that treating IEPs as a minimum could result in violations of LRE requirements.
- c. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. District must ensure that all special education providers in District receive a copy of the procedure(s) no later than **Friday, September 1, 2023**. Evidence that the procedure(s) was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Friday, September 8, 2023**.

### 4. Training

- a. Attendance and completion of training provided by CDE on IEP development, including special education and related services and LRE. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114 and 300.320(a) and the related concerns noted in this Decision.
- b. 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.
- c. This training is mandatory for Director, Facilitator and all other District special education facilitators, Coordinator, Case Manager, School Psychologist and SLP. Such training shall be completed no later than **Friday, September 1, 2023**.
- d. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, September 8, 2023**.

### 5. File Review

- a. Following the required training, District will cooperate with a student file review by CDE to evaluate whether this area of noncompliance has been addressed and

to inform further corrective action and available technical assistance and support from CDE. By **Friday, March 8, 2024**, District shall provide CDE with a list of 40-50 IDEA-eligible students at School for whom IEPs were developed between September 1, 2023 and December 15, 2023. For each student, the list must include, at a minimum: a) the student's name, b) the student's grade, c) the student's eligibility category, d) a complete list of the services included in the student's IEP, and e) a corresponding accounting of the actual special education and related services that were provided to the student after the IEP was finalized. If there are not at least 40 students at School who meet these requirements, District shall work with CDE Special Education Monitoring and Technical Assistance Consultant to identify alternative criteria.

- b. From this list, by **Friday, March 15, 2024**, CDE Special Education Monitoring and Technical Assistance Consultant shall randomly select not more than 10 students for a file review. For the selected students, by **Friday, March 29, 2024**, District shall provide CDE with a) a copy of the IEP, b) a copy of all service logs or other records of services provided, c) a description of all adult support routinely provided to the student, if not captured in service logs, and d) a copy of all progress reports from the 2023-2024 school year. District must provide requested documentation and access to records and staff as necessary for CDE to complete a thorough and complete review of School's IEP development process, at CDE direction and request. This review will be completed **no later than May 3, 2024**. CDE will then conduct follow-up and verification activities as necessary.

## **6. Other Remedies**

- a. Based on the outcomes of the other remedies, CDE may require additional training, technical assistance, or revision of policy, procedure, or practice to address identified areas of concern. CDE may also request additional records to ensure identified concerns have been addressed.
- b. Any additional findings of noncompliance identified through these remedies must be corrected consistent with 34 C.F.R. § 300.600(e).

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 12 day of May, 2023.



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Rachel Dore  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-8

### Response, pages 1-7

### Supplemental Response, pages 1-4

- Exhibit A: IEPs
- Exhibit B: Evaluation
- Exhibit C: PWNs
- Exhibit D: Meeting Notices
- Exhibit E: Service Logs
- Exhibit F: Attendance
- Exhibit G: Progress Data
- Exhibit H: District Calendar
- Exhibit I: District Policies
- Exhibit J: Correspondence
- Exhibit K: Staff Contacts
- Exhibit L: Verification of Delivery to Parents
- Exhibit M: Verification of Supplemental Response to Parents

### Telephone Interviews

- Parents: April 18 and 24, 2023
- School Psychologist: April 19, 2023
- OT: April 19, 2023
- PT: April 19, 2023
- Case Manager: April 20, 2023
- SLP: April 21, 2023
- Director: April 21, 2023
- Coordinator: April 25, 2023