

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

State-Level Complaint 2023:507
Larimer R-2J, Thompson School District

DECISION

INTRODUCTION

On January 30, 2023, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Larimer R-2J, Thompson School District (“District”). On February 6, 2023, Parent requested to amend the Complaint and raise additional allegations. Because the additional allegations were closely related to the original allegations, the State Complaints Officer (“SCO”) allowed the amendment and gave District additional time to submit its Response.² 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 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 30, 2022 to present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

² 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).

1. Failed to develop, review, and revise an IEP from January 30, 2022 to present that was tailored to meet Student’s individualized needs, specifically by:
 - a. Failing to consider Student’s functional needs, including Student’s health needs and activities of daily living, in violation of 34 C.F.R. §§ 300.320 and 300.324; and
 - b. Failing to include all the related services and supplementary aids and services required to enable Student to be involved in the educational setting and participate in extracurricular and nonacademic activities, in violation of 34 C.F.R. § 300.320(a)(4).
2. Failed to properly implement Student’s IEP, in violation of 34 C.F.R. §§ 300.34 and 300.323, specifically by:
 - a. Failing to provide all the special education and related services and supplementary aids and services required to enable Student to be involved in the educational setting and participate in extracurricular and nonacademic activities from January 30, 2022 to present, including physical therapy, one-on-one support from a paraeducator, and supplementary aids and services necessary to maintain Student’s health and safety at School; and
 - b. Failing to provide transportation to and from School as required by his IEP in December of 2022.

FINDINGS OF FACT

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

A. Background

1. Student is 17 years old and, during the 2022-2023 school year, attends high school at a District school (“School”). *Exhibit A*, p. 37. Student and his family currently reside within the boundaries of District. *Reply*, p. 1.
2. Student is eligible for special education services as a student with multiple disabilities, including autism spectrum disorders (“ASD”), orthopedic impairment and other health impairment. *Exhibit A*, p. 1.
3. Student is a happy, giggly kid who likes routines. *Interviews with Parent, special education teacher and case manager (“Case Manager”) and nurse at School (“Nurse”)*. He is very engaged in his classroom. *Interviews with Case Manager and Nurse*. Student can

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

independently use his wheelchair to move around the building. *Interviews with Nurse and physical therapist at School (“PT”).*

4. Student is mostly nonverbal and primarily communicates through “eye contact, facial expressions, physical touch, vocalizations and a speech-generating device” (“AAC Device”). *Exhibit A*, p. 39. Student has difficulties with bowel and bladder incontinence and requires intervention to fully empty both. *Interview with Parent*. Student also has cognitive impairments which hinder his ability to learn. *Interview with Parent and Case Manager*.
5. Prior to the 2022-2023 school year, Student was enrolled in another district in the area. *Exhibit A*, p. 1. Over the summer prior to the 2022-2023 school year, Parent enrolled Student and his sibling, also a student at School, in District, where they were now residing. *Interview with Parent*. At the time of enrollment, Student had an IEP dated March 15, 2022 (“March IEP”) from his prior district for multiple disabilities including autism spectrum disorder, orthopedic impairment and other health impairment. *Exhibit A*, p. 1.
6. Parent and Student met with Nurse on August 15, 2022. *Interview with Nurse; Exhibit F*, p. 2. Nurse and Parent discussed Student’s needs and Parent’s concerns. *Id.* Parent provided Nurse with Student’s seizure plan from his doctor and a dose of emergency medication to have on hand in case of a prolonged seizure. *Interview with Nurse; Exhibit D*, p. 1. Parent also showed Nurse how she catheterizes Student. *Interview with Nurse; Exhibit E*, p. 2.

B. Student’s Attendance

7. As of February 10, 2023, per District records, Student had missed 240 class periods, the majority of which were noted to be related to illness or medical needs. *Exhibit H*, pp. 1-4.
8. Attendance logs note that Student was absent on August 16, 2022 and August 18, 2022 and left at 1 p.m. on August 17, 2022. *Exhibit H*, p. 4. However, catheter logs indicate that Student was catheterized by Nurse or a paraeducator at 9 a.m., 11 a.m. and 1 p.m. on August 16, 2022, but was picked up before they did so at 3 p.m. *Exhibit E*, p. 2. Student was then absent on August 17, 2022, catheterized at 9 a.m. and 11 a.m. on August 18, 2022 and 9 a.m., 11 a.m. 1 p.m. and 3 p.m. on Friday, August 19, 2022. *Id.*
9. Catheter logs are filled out daily by the individual who performs each catheterization, with notes on the condition of Student’s skin and urine. *Interview with Nurse*. Neither Case Manager nor Nurse knew why there would be inconsistencies between the attendance records and the catheter logs. *Interviews with Case Manager and Nurse*.
10. Parent recalls that on several occasions after picking Student up at the end of the school day, she got automated calls incorrectly notifying her that Student had been absent for part or all of the day. *Interview with Parent*.

11. To the extent there are discrepancies between the catheter logs and attendance records, the SCO finds the catheter logs, created contemporaneously by individuals working directly with Student, to be the most accurate record of when Student attended school. As a result of these inconsistencies, the SCO finds that Student’s attendance data is not entirely accurate.
12. Nevertheless, Parent notes that Student is frequently ill and has missed a lot of school. *Complaint*, p. 3. Parent regularly informed Case Manager she would be keeping Student home. *See, e.g., Exhibit L*, pp. 9, 20, 25, and 34. He also leaves school early on Wednesday and Thursdays for outside therapies, including speech, occupational therapy, and physical therapy. *Interview with Parent*. Based on the catheter logs, Student had missed seven full days and eight half days by September 23, 2022. *Exhibit E*, p. 2-7. Therefore, while the exact number of missed periods is unclear, the SCO finds that Student has missed a substantial amount of school.
13. On February 3, 2023, Parent notified Case Manager that Student would be absent the entire following week to accommodate medical testing and appointments. *Exhibit L*, p. 50. On February 9, 2023, Parent initially said Student would return the following week. *Id.* at p. 53. Later that morning Parent notified Case Manager that she had made the decision to keep Student home for monitoring “[b]ecause of how his health has been since he has been at [School].” *Id.* at p. 55. She wanted to know if Student was still on track to graduate and offered to send Student to school once a week. *Id.*
14. After February 3, 2023, Student did not return to School until March 6, 2023. *Interviews with Parent and Case Manager*.
15. District has a policy that allows all seniors who have met graduation requirements to have a shortened school day for their final semester. *Response*, p. 10. This is not a special education policy, so Director of Special Education (“Director”) is not familiar with the specifics. *Interview with Director*. However, students with disabilities are allowed to take advantage of this privilege. *Id.*
16. Student and his sibling both qualified to take advantage of this option during the spring semester of the 2022-2023 school year. *Interview with Parent and Case Manager*. Starting January 5, 2023, when Student has attended school, he has left at lunch. *Id.*

C. District’s Transfer IEP Procedures

17. When students transfer into District with an IEP from another district in the state, District does its best to gather any relevant records. *Interview with Director*. The IEP team then reviews the records and decides whether the IEP can be implemented as written in District. *Id.* If it can be, District creates a transfer document stating that it will be implementing the existing IEP. *Id.*

18. If it is determined the IEP from the prior district cannot be implemented as written, District writes up a plan to provide comparable services. *Id.* District may “tweak” how or where services are provided but avoids changing the student’s least restrictive environment (“LRE”) or making any other significant changes. *Id.* Parents are included in conversations about comparable services. *Id.* District then gets parental consent for an evaluation. *Id.* After conducting an evaluation, the IEP team meets to develop a new IEP. *Id.*
19. The practice is the same whether students transfer in during the school year or over the summer. *Id.* District shares this practice with special education staff during training but has not developed standard operating procedures or other written guidance on the topic. *Id.* District trains staff using the “IEP Procedural Guidance” published by CDE and does not have written policies or procedures beyond that. *Id.* CDE’s IEP Procedural Guidance specifies that IDEA’s transfer provisions do not apply to Students who transfer over the summer. *CDE Exhibit 1*, p. 52.

D. Transfer IEP

20. District acknowledges that it did not have an IEP in effect for Student at the start of the school year. *Response*, p. 2. On August 22, 2022, a school psychologist for school (“School Psychologist”) drafted a “Prior Written Notice & Consent for Initial Provision of Special Education and Related Services” form indicating that Student was eligible for special education services based on a “[r]ecord review, prior IEP information, prior assessment data, prior educational records.” *Exhibit B*, p. 1. Parent signed the form and returned it to District on September 1, 2022. *Id.* Student does not receive any services from School Psychologist or any other mental health provider. *Exhibit A*, p. 55.
21. On August 22, 2022, School Psychologist also completed the form for an in-state transfer student with an IEP (“Transfer IEP”). *Exhibit A*, p. 36. The form indicates that the March IEP is not adopted, and District will hold an IEP meeting on September 22, 2022. *Id.* In the meantime, Student would receive comparable services. *Id.*
22. According to the March IEP, Student received the following services:
- Speech and Language Services: 120 minutes per month (“MPM”) to be provided directly, outside of the general education setting, to improve his communication abilities.
 - Occupational Therapy: 100 minutes per year (“MPY”) to be provided indirectly to “maximize support for classroom and school access.”

- Special Education Instruction:
 - 1,272 minutes per week (“MPW”) to be provided directly, outside of the general education setting, by a special education teacher or a paraprofessional under the supervision of a special education teacher.
 - Student would also be supported by a paraprofessional under the direct supervision of a special education teacher during all general education classes. Although included in the service delivery statement (“SDS”), these services are not reflected in the service grid.
- Physical Therapy: 30 MPM to be provided directly, inside the general education setting, to “address mobility, safety, and endurance” and “train staff as needed in mobility to help [Student] walk as often as possible to increase endurance with walking.”

Id. at pp. 31-33.

23. The Transfer IEP called for the provision of the following services:

- Special Education Instruction: 1,100 MPW to be provided directly in an “intensive learning center.”
- Speech and Language Services: 120 MPM to be provided directly in a resource setting, or outside the general education setting.
- Physical Therapy: 30 MPM to be provided directly, outside the general education setting.
- Occupational therapy: 10 MPM to be provided indirectly.

Id. at p. 36.

24. Although not listed, Student continued to get paraprofessional support in all general education classes. *Interview with Case Manager.*

25. The March IEP included six total goals, one each in reading, writing, mathematics, independent living skills, vocational/career skills, and communication. *Exhibit A*, pp. 19-27.

26. The Transfer IEP did not include any goals. *Id.* at p. 36. However, Student continued to work on the goals from the March IEP. *Interview with Case Manager.*

27. There was no meeting to discuss these comparable services. *Interviews with Case Manager and Parent*. Parent was not part of any meetings or conversations to discuss Student's IEP or services prior to a September 23, 2023 IEP team meeting. *Interview with Parent*.

E. September IEP

28. Parent, Case Manager, Nurse, Student's gym teacher, another special education teacher at School, Student's guidance counselor and an assistant principal from School ("IEP Team") met on September 23, 2022. *Exhibit C*, pp. 6-7. Together, the IEP team reviewed and updated Student's IEP, creating a new IEP ("September IEP"). *Id.* at pp. 4-6. The meeting occurred on the twenty-seventh school day. *Exhibit J*. Case Manager acted as both the special education teacher and the District representative. *Exhibit C*, p. 7.

29. The speech and language pathologist ("SLP") working with Student was invited but unable to attend. *Id.* at pp. 4, 8. She provided a brief update on Student and his present levels and ongoing concerns, which was functional communication. *Id.* at p. 8. No occupational therapist or physical therapist was invited to the meeting, and neither attended. *Id.* at 4 and 6-7.

30. Student remained eligible as a child with multiple disabilities and other health impairment. *Exhibit A*, p. 37. According to the September IEP's Strengths, Preferences and Interests statement, Student is funny and happy, and loves being engaged in school. *Id.* at p. 38. He puts in "100 percent effort into all of his classes" and "loves to move around the room" to grab activities he wants to do. *Id.*

31. The Present Levels of Educational Performance Summary includes an updated summary from SLP. *Id.* at p. 39. Student's present levels for academics is pulled verbatim from the March IEP, including the updates on Student's prior goals. *Compare, Id.* at pp. 9 and 39. Student's disability impacts his cognitive and fine motor skill development as well as his progress in all educational areas, inside and outside of general education. *Id.* at p. 39. Student requires adult support "throughout his day with eating, drinking, and bath-rooming needs." *Id.*

32. The health update includes a list of all of Student's diagnoses. *Id.* This list includes his need for catheterization every two hours. *Id.* The list also notes that Student has "seizures that last about 20 seconds" and notes Student's seizure care plan and need for rescue medication if seizures last more than five minutes. *Id.*

33. The Student Needs and Impact of Disability Statement is very similar to the March IEP. *Compare, Id.* at pp. 14 and 40. The September IEP notes that Student requires support throughout his day with eating, drinking and bathroom needs and will require supported employment to help him stay on task and complete daily living skills. *Id.* at p. 40. The September IEP explores how Student's needs will impact him after school when he seeks employment and notes that Student can use his AAC device to communicate wants and needs. *Id.*

34. The Parent Input statement is also updated, noting that Student is happy and loves being at school. *Id.* at p. 40. Parent wanted Student to participate in transition programming through District. *Id.* Parent also reminded District that Student gets sick easily and needs to drink a lot of water throughout the day. *Id.* The September IEP includes transition services, including goals. *Id.* at p. 41.
35. Like the March IEP, the September IEP notes that Student has unique communication needs and requires assistive technology including his AAC device, a touch screen, a wireless mouse, and an adaptive keyboard. *Compare, Id.* at pp. 15 and 41. Student is noted to have limited English proficiency because he understands English and Spanish and “uses some gestures to communicate.” *Id.*
36. Student also requires a health care plan, which is located in the classroom and health office. *Id.* at 42. Unlike the March IEP, the September IEP concludes that Student does not require special transportation. *Id.*
37. The September IEP includes six goals: a reading goal, a writing goal, a mathematics goal, an independent living skills goal, a vocational/career skills goal and a communication goal. *Id.* at pp. 45-50. These goals all target the same skills as the goals in the March IEP, with the same objectives, although in many cases the overarching goal was modified. *Compare, Id.* at pp. 14-27 and 45-50.
38. The September IEP includes all 31 accommodations from the March IEP, including around seating, communication, and visual supports. *Id.* at pp. 27-28 and 51. The list also includes accommodations related to Student’s mobility needs:
- “Direct supervision/assistance for all mobility, transfers, toileting, transportation, and emergency procedures for personal safety”
 - “Provide opportunities for ambulation with supervision within classroom/school setting with adult assistance/supervision as needed with the use of KAFOs (leg braces)”
- Id.*
39. The September IEP includes modifications, like grading Student on a pass/fail basis, to allow him to participate in general education to the maximum extent possible. *Id.* at pp. 51-52. Student qualifies for extended school year services and will take alternate assessments with several accommodations. *Id.* pp. 52-53. Student receives instruction on extended evidence outcomes as he exhibits a significant cognitive disability. *Id.*
40. The September IEP includes the following special education and related services:

- Speech/Language Services: 120 MPM to be delivered directly, outside of the general education classroom “to focus on improving receptive and expressive language skills.”
- Severe Needs: 1,272 MPW of services “from the significant supports needs teacher or a paraprofessional under the direct supervision of the Special Education teacher.” Student will also “be supported by the paraprofessional under the direct supervision of the Severe needs teacher during all general education classes.”
- Physical Therapy: 30 MPM of direct services to “address mobility, safety, and endurance.” “PT will also continue to train staff as needed in mobility to help [Student] walk as often as possible to increase endurance with walking.”
- Occupational Therapy: The SDS and the grid do not match for this provider. According to the SDS Student will receive 100 MPY of indirect occupational therapy services “to maximize support for classroom and school access.” According to the service grid, Student will receive 100 MPM of indirect consultative services and 30 MPM of direct services outside of the general education setting.

Id. at pp. 54-55.

41. The September IEP concludes that Student’s LRE is general education 40%-79% of the time. *Id.* at p. 55. The IEP team considered the advantages and disadvantages of that environment. *Id.* These advantages and disadvantages are copied verbatim from the March IEP. *Id.* at p. 34.
42. The prior written notice (“PWN”) is copied verbatim from the March IEP. *Compare, Id.* at pp. 34 and 56.

F. IEP Team Discussion and Special Transportation

43. IEP teams are responsible for determining if students require special transportation. *Interview with Director.* If a student requires special transportation, the case manager is responsible for working with the transportation department to have the student added to a bus route. *Id.* District’s special education department and transportation department use a shared spreadsheet to keep track of all students with transportation needs. *Id.* Once a student is added to the spreadsheet, transportation can immediately begin working on routing. *Id.* The spreadsheet only includes students who need to be added to a bus route. *Id.*
44. District does not offer any written procedures or guidance to help teams make transportation decisions. *Id.* However, IEP teams are expected to consider various factors like whether the student can access regular transportation options and whether the student has been placed somewhere other than a neighborhood school. *Id.* Historically, IEP teams were advised to

select that a student does not require transportation and document the decision if the parent is choosing to provide transportation. *Id.*

45. Going forward, District is advising IEP teams to mark yes if a student is eligible for transportation, regardless of whether they will be accessing it. *Id.* If parents are providing transportation, the IEP should document that discussion including how the student can access special transportation if the parent changes their mind. *Id.* Director is talking to transportation about creating a second spreadsheet to track eligible students who have turned down transportation, so that it is easier to monitor that group. *Id.*
46. Student's IEP team meeting was noticeably short compared to Parent's prior experiences in other districts, so much so that she commented on it during the meeting. *Interview with Parent.* Members of the IEP team told her that every district runs things differently. *Id.* Parent felt as if she had to accept whatever District was offering because she had enrolled her children, including Student, just that summer. *Id.*
47. During the meeting, the IEP team decided that Student qualified for special transportation based on his needs. *Response*, p. 11; *Interviews with Parent, Case Manager and Nurse.* However, Student and his sibling would not be allowed to ride the same bus if Student had special transportation. *Interviews with Parent and Case Manager.*
48. Parent did not want to separate her children, as they had previously taken the bus together. *Interview with Parent.* Parent told the team she preferred to drive Student and his sibling if they would not be able to ride the bus together. *Interviews with Parent and Case Manager.* Because Parent was choosing to transport Student, the September IEP notes that he does not require transportation. *Response*, p. 11; *Interview with Case Manager.*
49. There was no conversation about changing Student's occupational therapy services. *Id.*
50. During the meeting, Parent shared Student's health needs and the IEP team reviewed the health care plans from the prior district. *Id.* Student's needs, and therefore plans, stayed the same. *Id.*
51. Parent does not remember talking about goals or services at all during the meeting. *Interview with Parent.* The IEP team agreed to keep all of Student's goals from the March IEP because Student had not made a lot of progress yet and they remained relevant. *Interview with Case Manager.* There was no discussion about changing the goals. *Id.*
52. On October 14, 2022, District issued a standalone PWN that was a proposal to change the evaluation of Student. *Exhibit B*, p. 2. According to the PWN, "the team discussed [Student's] services" and progress on goals and proposed the change because he "is in high school now and working on goals that are more functional." *Exhibit B*, p. 2. The PWN notes that they decided not to keep all of Student's goals the same because Student "is in a different school

now where his goals should be shifted.” *Id.* at p. 3. Case Manager is not sure why the PWN was written three weeks after the meeting, but indicates it was a summary of the IEP team discussion.⁴ *Interview with Case Manager.*

G. Accessibility of IEPs to Student’s Providers

53. In District, case managers are responsible for ensuring all teachers and relevant special service providers have a copy of a student’s IEP and understand their responsibilities. *Interview with Director.* Each building handles this differently, and there is no District-wide process or written procedure for ensuring IEPs are shared with the necessary providers. *Id.* The expectation is that IEPs are shared any time there are changes to the IEP or to the student’s schedule, as when high school students change classes for second semester. *Id.*
54. Case Manager is a first-year teacher. *Interview with Case Manager.* She links each teacher or service provider to a student’s IEP in the data management system. *Id.* It is her understanding that when she links a team member, the system sends them an email. *Id.* She then follows up with an in-person visit to the student’s teachers to explain the student’s needs and talk about how to support them with modified work. *Id.*
55. Case Manager repeats this process at the start of a new semester, when classes change, or when there are significant changes to the student’s IEP. *Id.* If the changes are less significant, she just notifies the relevant teachers or providers and tells them to reach out with any questions. *Id.*
56. Case Manager does not visit related service providers to notify them of new IEPs as they generally move between schools. *Id.* If necessary, she links them in the data management system, but related service providers are usually already linked when she gets a new student. *Id.* If the service provider is already linked, Case Manager does not follow up. *Id.*
57. When new students require PT’s services, case managers let her know, usually by email, and PT then adds them to her caseload. *Interview with PT.* PT is not usually notified of new students by District’s data management system. *Id.* PT’s caseload in District’s system only includes the students she adds herself. *Id.*
58. Case Manager notified Student’s general education teachers about his needs and accommodations at the start of the year, after the September IEP team meeting and at the start of the new semester. *Interview with Case Manager.* Case Manager did not notify SLP or

⁴ Although beyond the scope of this investigation, the SCO is concerned by the contents of this PWN. Because the purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards, adequately identifying the specific action being proposed or refused is essential. See *Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18). The SCO cannot ascertain if this PWN was intended to note a change in evaluation or if it is related to the September IEP, let alone what changes were proposed or refused. The SCO reminds District that PWN must comply with the requirements of 34 C.F.R. § 300.503.

PT as the related service providers were already linked in the system. *Id.* However, SLP stopped by Case Manager's classroom to let her know that she had Student's IEP. *Id.*

59. At the start of the year, District did not have an occupational therapist to provide services for any students. *Id.* Therefore, Case Manager did not invite one to the September IEP team meeting or notify one of Student's needs and services. *Id.; Exhibit C, p. 4.*
60. Case Manager understood that PT was already linked in District's data management system. *Id.* Case Manager did not notify PT of Student's IEP or needs at the beginning of the year or after the September IEP was finished. *Id.* She also did not invite PT to the September IEP team meeting. *Id.; Exhibit C, p. 4.*
61. PT did not receive any emails, automated or otherwise, notifying her that Student had been added to her caseload. *Interview with PT.* He was also not on her caseload in District's data management system. *Id.* PT was not aware that Student required physical therapy services until February 15, 2023. *Id.*

H. Student's Physical Therapy Services

62. District acknowledges Student did not receive any direct services from PT prior to March 10, 2023. *Id.; Response, p. 8.* As a result, as of February 21, 2023, Student had missed about 180 minutes or three hours of direct services. *Response, p. 8.* He has not practiced walking while at School. *Interviews with PT and Case Manager.*
63. Student does not have a goal to work on with PT. *Interview with PT.* Usually PT would recommend indirect services if she were not supporting a goal. *Id.*
64. Had she known Student was on her caseload, PT would have had a discussion with Parent about the support Student needs to walk. *Id.* She also would have trained staff at School to work with Student on walking on a regular basis, likely in gym class. *Id.* PT would also observe Student's transfers from wheelchair to changing table and his movement throughout the building to provide training and monitor for safety. *Id.*
65. The only time Student stands at school is to transfer to the changing table, which is closely supervised. *Interview with Case Manager.* Student is supported by a special education teacher or paraprofessional throughout his day and always within an adult's line of sight. *Id.*
66. About a week after becoming aware of Student, PT attempted to see Student but was informed that Parent was not sending him to school. *Id.* PT then reached out to Parent with a release to allow PT to speak with Student's private physical therapist. *Id.* Parent did not sign the release, saying Student was not returning to School. *Id.* However, Student returned to School on March 6, 2023. *Interviews with Parent, Case Manager and PT.*

67. PT was able to observe Student for the first time on March 10, 2023. *Interview with PT*. His transfers were safe and appropriate, and Student was able to move throughout the building safely. *Id.* Thus, the main impacts of not having her services are that Student has not practiced walking and District has not collaborated with Student's private provider. *Id.*
68. Moving forward, PT intends to try to see Student weekly to make up for those missed services. *Id.* She will also recommend moving Student to indirect physical therapy services if he continues into District's 18-21 program. *Id.*

I. December Transportation Needs

69. Parent was involved in a minor car accident and had to take her car in for repairs. *Reply*, p. 4. In late November of 2022, two weeks before she was scheduled to bring the car in, Parent called District's transportation department to arrange a bus for when she could not drive Student or his sibling. *Interview with Parent*. Someone in the transportation office explained what bus Student's sibling could take but said Parent would need to contact someone else in the office, a router, for Student since he is in a wheelchair. *Id.* Parent called the router and left several messages, but never heard back. *Id.*
70. On Monday, December 5, 2022, Parent emailed Case Manager to let her know that, starting the following day, the family's car would be in the shop for repairs after an accident. *Reply*, p. 4. As she would not be able to drive Student, she asked if she could keep him home. *Id.*
71. Case Manager offered to find a way to get Student to school. *Interview with Case Manager*. She has since learned that District's transportation department cannot reroute buses quickly enough to accommodate requests of that nature. *Id.*
72. Later that day, December 5, 2022, Case Manager and Parent emailed about Student's health as he was having more bowel movements than normal, not eating much, and had discolored urine due to antibiotics. *Reply*, pp. 9-10. Parent arranged to come pick Student up and planned to keep him home. *Id.*
73. Student left early due to illness on December 5, 2022. *Exhibit H*, p. 2. Student did not return to School that week or most of the following week, which was the final week of the semester. *Id.* at pp. 1-2. District classified all nine days as an excused absence for medical reasons. *Id.* Because of finals, all students in Case Manager's class were free to leave after lunch the week of December 12 through December 16. *Exhibit L*, p. 36.
74. Parent got her car back on December 14, 2022. *Exhibit 3*, p. 1. Student returned to School on December 15, 2022, but Parent kept him home again on December 16, 2022. *Id.* at pp. 1-2. Although attendance records show Student was absent on December 15, 2022, because the SCO previously found those records to have inaccuracies, the SCO finds that Student did attend on December 15, 2022. *See FF # 11.*

J. Student's Seizure Plan

75. For students with a history of seizures, District practice is to follow the seizure plan written by the student's physician. *Interview with Nurse*. Nurse also translates the doctor's plan into "layman's terms" as part of the District's health care plan. *Id.* The doctor's orders can be too complicated for paraeducators to follow quickly, so the District health care plan simplifies exactly what to do. *Id.*
76. Student's health care plan addresses his history of seizures. *Exhibit D*, pp. 4-5. Student has "seizures that last about 20 seconds." *Id.* at p. 4.
77. District's health care plan includes his doctor's "Seizure Emergency Care Plan and Medication Orders for School Childcare Settings" ("Seizure Plan"), which sets out how to respond to seizures, when to call 911 and when to administer rescue medication. *Id.* at p. 1. The instructions in the District plan mirror the Seizure Plan, with added instructions on when to contact the health office and what to do if health office staff are not available. *Id.* at p. 5. The Seizure Plan instructs responders to turn Student on his side and protect his head, to time the seizure, and to administer rescue medications if the seizure lasts longer than five minutes. *Exhibit D*, pp. 1 and 5.
78. The Seizure Plan directs responders to call 911 if Student is injured or has difficulty breathing. *Exhibit D*, p. 1. This is standard language on the form that doctors resisted removing for liability reasons. *Interview with CDE Content Specialist 1*. However, when someone is having a seizure, they do not breath normally. *Interviews with Nurse and CDE Content Specialist 1*. When the student continues breathing and breathing difficulties resolve quickly, there is no need to call emergency services. *Id.* Nurse would call 911 if a student stopped breathing. *Interview with Nurse*.
79. During the night of October 3, 2022 or the early morning of October 4, 2022, Student had a seizure at home. *Exhibit L*, p. 20. Parent called an ambulance and Student had another seizure in the ambulance on the way to the hospital. *Id.* Parent planned to keep him home for two days so he could rest, consistent with medical advice. *Id.* at pp. 20-22. Attendance records indicate he was out the whole week. *Exhibit H*. p. 3.
80. On October 24, 2022, Student had a seizure in gym class. *Exhibit F*, p. 2. Staff moved him onto his side on the ground. *Id.* Staff with Student called Case Manager and sent a classmate to Nurse's office. *Interview with Case Manager*. Case Manager called Parent and Nurse before heading to the gym. *Id.* The seizure lasted less than 30 seconds. *Id.*
81. When Nurse arrived, Student was no longer seizing, and his color began to improve within minutes. *Exhibit F*, p. 2. Staff helped Student back into his chair, at his request. *Id.* Parent then arrived and took him to urgent care to be assessed. *Id.*

82. Nervous about the wellbeing of her children, Parent usually stayed near School during the day. *Interview with Parent*. As a result, she was able to arrive quickly when called. *Id*.
83. Student had another seizure in the special education classroom on November 28, 2022. *Exhibit F*, p. 3. Staff moved him to the floor and protected his head, and a paraeducator called Nurse. *Interview with Case Manager*. When Nurse arrived, Student was stiff, his eyes were fixed, and he was not breathing normally. *Exhibit F*, p. 3. Within four minutes of when the seizure started, Student began breathing normally and his vital signs improved. *Id*. At no point did Student stop breathing. *Id*.
84. Parent was called after Nurse arrived. *Interview with Case Manager*. Student was tired after the seizure and left with Parent. *Interviews with Nurse and Parent*. Parent is concerned that District did not contact 911 when Student was having difficulty breathing. *Interview with Parent*.

K. Student's Catheterization Plan

85. District staff cannot catheterize students without specific doctor's orders. *Interview with Nurse*.
86. Nurses can delegate the authority to perform certain procedures to other staff members by providing specific training. *CDE Content Specialist 1*. Per the Nurse Practitioner Act, after delegating, nurses should observe those they have trained "frequently" to ensure that they are performing the procedure correctly. *Id*. Frequently is not defined and best practice varies depending on the nature of the procedure. *Id*. With invasive procedures like inserting a catheter, observations should be more frequent. *Id*. It is also best practice to increase the frequency of observations if any concerns have been raised. *Id*.
87. On August 16, 2022, Parent and Nurse agreed on instructions for clean intermittent catheterization of Student ("Catheter Instructions"). *Exhibit D*, p. 2. Nurse also agreed to fax Student's doctor to get the medical orders needed to perform catheterization at school. *Interview with Nurse; Exhibit E*, p. 2.
88. The Catheter Instructions, which are included in Student's health care plan, call for Student to be catheterized at 9 a.m., 11 a.m., 1 p.m. and 3 p.m., as well as any time he asks to use the bathroom. *Exhibit D*, p. 5. The Catheter Instructions list all the necessary supplies which Parent will provide. *Id*. They also include clear, step-by-step directions to perform the catheterization safely and cleanly. *Id*.
89. At the start of the school year, Nurse trained five other District employees ("delegates") on the Catheter Instructions for Student. *Id*. at p. 3. Nurse trains each delegatee separately and then watches them perform the procedure. *Interview with Nurse; Exhibit D*, p. 3.

90. After they are trained, delegates call the Nurse for support if they have difficulties or concerns about Student's skin. *Interview with Nurse*. As a result, she observes Student being catheterized about once every three weeks. *Id.* Based on these observations, Nurse is confident delegates were catheterizing Student appropriately and on time. *Id.*
91. Initially Case Manager created calendar alerts to remind delegates to catheterize Student at appropriate times. *Interview with Case Manager*. The process is now routine, and they have no trouble remembering to catheterize Student at the required times. *Id.* District was only late once and has never missed a required procedure. *Id.* If Student's briefs are wet, delegates still use the catheter. *Interview with Case Manager and Nurse*.
92. Catheter logs for August 16, 2022 through October 12, 2022 are initialed by individual delegates at the time of the procedure and include notes about the condition of Student's skin and urine. *Exhibit E*, pp. 2-10. The logs show Student was catheterized on schedule whenever he was present. *Id.* After that, delegates started entering the records in a Medicaid system, which tracks the total time but does not generate a separate, timed, entry for each procedure. *Id.* at p. 1; *Interview with Nurse*.
93. Although not required, it is best practice to continue maintaining contemporaneous paper logs that stay with the student. *Interview with CDE Content Specialist 1*. This ensures that all providers can easily confirm when the procedure was last performed and allows for easy confirmation if there are concerns after the fact. *Id.*
94. Parent provides School with all catheter supplies at the beginning of each month. *Interviews with Parent and Case Manager*. Supplies are stored in the classroom bathroom, next to the changing table. *Interview with Case Manager*. Supplies for another student are also stored in that bathroom. *Id.* Near the beginning of the year, there was confusion among the delegates, and Student was occasionally dressed in briefs belonging to the other student. *Id.* Case Manager spoke with the team and resolved the confusion, and it has not happened since. *Id.*
95. Student was occasionally dressed in clothing belonging to other students after his clothes were soiled. *Interview with Parent and Nurse*. Parent sent Student with a backpack containing extra clothes in case of accidents. *Interview with Parent*. Parent indicated School temporarily misplaced the bag, causing them to rely on other students' clothing. *Id.* Nurse indicated Student did not have sufficient clothes that were appropriate for the current weather, causing School to put Student in other clothes. *Interview with Nurse*.
96. Student has a history of urinary tract infections ("UTIs"), normally getting one about every six months. *Interview with Parent*. Parent is concerned that Student has had more UTIs than usual since starting at School, suggesting that District has not been following the Catheter Instructions. *Id.*; *Exhibit 3*, p. 7.

97. The SCO finds that Student had at least two UTIs this year. *Exhibit 3*, pp. 3-4. However, frequent use of catheters can introduce bacteria, leading to UTIs, even when done correctly. *Interview with CDE Content Specialist 1*.

L. District's Field Trip Procedures

98. District has a policy titled "Chaperones and Tag-along Parents/Guardians on Field Trips" ("Chaperone Policy") explaining the distinction between a chaperone and a tag along. *Exhibit K*, p. 1. Chaperones must volunteer, pass a background check, and wear a volunteer name badge on the trip. *Id.* A tag along does not have to register or pass a background check but cannot ride the bus or be left in charge of other students. *Id.*
99. The Chaperone Policy acknowledges a third set of parents who might attend field trips with students with significant health conditions who have a "504 ADA accommodation stating that parents or a specifically trained health staff is required on the field trip." *Id.* These parents are neither chaperones nor tag-along parents. *Id.* Like chaperones, they can ride the bus, but they do not need to register. *Id.*
100. District also has a "Nursing Protocol for District Sponsored Out-of-School Educational Trips and Activities" ("Nursing Protocol"). *Id.* at p. 3. This notes that "reasonable steps must be taken to ensure student wellbeing during" field trips and students with disabilities "must be provided reasonable accommodations so that they can equally participate." *Id.* To ensure access to medical services and emergency facilities are considered, the sponsoring school or group must notify the nurse or health aide in a timely fashion. *Id.* That way accommodations, training/delegation and/or qualified caretakers can be arranged in advance. *Id.*
101. Sponsoring teachers must notify their health office at least two weeks prior to any trip. *Id.* Parents or guardians "must be involved in the extensive health-planning required for an Out-of-School Trip/Activity." *Id.* A procedure addressing the student's care during any trips should be included when developing a health care plan. *Id.* at p. 4. Prior to a specific trip, the "nurse shall ensure that the procedure is appropriately edited/revised with the assistance of the student's Parent/Guardian." *Id.*
102. Case Manager does not know if any planning happens before field trips for students with health needs. *Interview with Case Manager*. However, there is always a nurse present on field trips to handle student needs. *Id.* She is not familiar with the Chaperone Policy. *Id.*
103. Student health care plans include field trip instructions if the plans for a field trip would diverge from what they do in the classroom. *Interview with Nurse*. If everything would be the same on a field trip, nothing is written into the plan. *Id.*

104. At the beginning of the 2022-2023 school year, Parent told Nurse that she would go on any field trips and catheterize Student, so Nurse did not think Student required specific field trip plans. *Id.*

M. The Field Trip

105. On Friday, January 6, 2023, Case Manager notified Parent that Student's class would be going on a field trip for an event in conjunction with Special Olympics. *Exhibit 3*, p. 10. The event would be a full day, but Student and his sibling, who were attending school for half the day, were still invited. *Id.*

106. Parent offered to go with them and wait in her car and do Student's "care." *Id.* There was no response from Case Manager. *Id.* Parent followed up twice more, explaining that she was happy to drive but has anxiety when she is too far from Student and promising to stay in her car. *Id.* at pp. 11-12.

107. The following Monday, January 9, 2023, Case Manager said she would ask to make sure it was ok for Parent to come. *Id.* Parent reiterated that she would need to stay in her car with the dogs but would be willing to help change Student. *Id.* There was no further response from Case Manager. *Id.* On the day of the trip, Parent did eventually get a schedule and map of where to park. *Interview with Parent; Exhibit 3*, p. 13.

108. Parent indicated she had to beg for permission to follow in her car and be available to help. *Interview with Parent.* Neither Nurse nor Case Manager contacted Parent about planning for Student's needs on the trip or what supplies he would need. *Id.* Parent sent Student's sibling with a backpack full of supplies for Student. *Interview with Parent.*

109. Case Manager does not know if there was any planning around Student's health needs before the trip. *Interview with Case Manager.* Case Manager thought Parent would be coming in to help catheterize Student at the required times. *Id.* After a conversation with Case Manager, Nurse thought Parent would be taking care of Student's needs and there was no further planning. *Interview with Nurse.*

110. Case Manager expected Parent to send supplies but brought supplies for one procedure. *Interview with Case Manager.* School had been told in advance that it was a wheelchair accessible event that would have handicap accessible bathrooms. *Id.* In reality, the event was not accessible for many of its students. *Id.*

111. Parent emailed again the morning of the trip, January 17, 2023, stating that she had sent Student with a bag of catheter supplies but no rescue medication for seizures. *Exhibit 3*, p. 14. She again offered to help catheterize Student. *Id.* Case Manager confirmed that the nurse was bringing rescue medications but did not respond about Parent helping. *Id.* at p. 13. Nurse did not attend the field trip, but her delegated health aid did. *Interview with Nurse.*

112. In a follow-up email, Parent noted that it can be hard to catheterize Student in public places and asked who would be doing it. *Id.* Case Manager did not know who would be catheterizing Student. *Id.* Parent had given Student extra fluids that morning because he was showing signs of a UTI. *Interview with Parent.*
113. The bus left for the field trip at 8:50 a.m. on January 17, 2023 and arrived at 9:30 a.m. *Response*, pp. 4-5. No one catheterized Student before they left. *Id.* When they arrived at their destination, delegates took Student to the restroom to catheterize him. *Id.* They were surprised to find there was no adult changing table or large bathroom stall where they could lay Student down for the procedure. *Id.*
114. Student's sibling tried to go into the bathroom with Student's supplies. *Interview with Parent.* Delegates took some wipes but no other supplies and sent the sibling away. *Id.* Without sufficient space, delegates opted to perform a sitting catheterization, which is not contemplated by the Catheter Instructions. *Response*, p. 5. They did not contact Nurse prior to conducting the seated procedure. *Interview with Nurse.* They used the supplies brought by Case Manager for this procedure. *Response*, p. 5. Although she was outside, no one contacted Parent or asked for supplies or her help. *Interviews with Parent and Case Manager.*
115. Delegates again catheterized Student in a seated position at 11 a.m. *Response*, p. 5. Because Case Manager only brought one extra brief for Student, they used an alternate. *Id.* When he got home, the brief was on backwards and inside out, and not properly covering Student, and his urine was very dark, like he was dehydrated. *Interview with Parent; Exhibit 3*, p. 9.
116. After the field trip, on January 19, 2023, Parent requested an emergency IEP team meeting in response to concerns about the field trip. *Exhibit L*, p. 1. School attempted to schedule a meeting, but Parent kept rescheduling and then opted to continue without a meeting. *Id.* at pp. 46-51.
117. Nurse apologized for not calling Parent to plan before the trip and asked to see how Parent performs a seated catheterization so that she could train delegates on that as well. *Id.* at p. 1. She also planned to retrain all the delegates to ensure they were following proper procedures. *Id.*
118. On January 26, 2023, Nurse retrained three delegates on Student's intermittent catheterization procedures. *Exhibit D*, p. 8. Two of those delegates regularly perform the procedure, and she observed them in addition to reviewing procedure. *Id.* After the observation, Nurse had no concerns about how delegates were catheterizing Student. *Interview with Nurse.*
119. On February 1, 2023, Student's urologist sent a note requesting that Student continue to be catheterized every two hours to help prevent UTIs. *Exhibit 2.*

120. Student's health care plan does not contemplate a seated catheterization, but the procedures are substantially the same. *Interview with CDE Content Specialist 1*. Although catheterizing in a seated position reduces output, it is a medically appropriate procedure. *Id.* Best practice would have been to call ahead to the venue to arrange for where they could perform the procedure as usual. *Id.* However, given the circumstances, the SCO, in consultation with CDE Content Specialist 1, finds that catheterizing Student 30 minutes late once and in a seated position was neither unsafe nor inappropriate. *Id.*

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 have an IEP in place for Student at the start of the school year and amended the March IEP without parental consent, in violation of 34 C.F.R. §§ 300.323(a) and 300.324(a)(6). These violations did not result in a denial of FAPE. District failed to develop an IEP that was reasonably calculated to allow Student to access his special education services, in violation of 34 C.F.R. § 300.320(a)(4). This violation resulted in a denial of FAPE.

Parent's concern is that District failed to adequately consider Student's needs around toileting and seizures generally, and to enable Student to participate in extracurricular and nonacademic activities like field trips, when developing his IEP. In this case, District developed two IEPs for Student: Transfer IEP and September IEP.

A. Transfer IEP

To ensure the delivery of a FAPE, "[a]t the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in 34 CFR 300.320." 34 CFR § 300.323(a). If a student has an IEP and moves to a new school district in the same state *within the same school year*, the new school district (in consultation with parents) must provide comparable services until the new school district: (1) adopts the IEP developed by the old school district or (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(e) (emphasis added). If a student with an IEP transfers from another district in the same state over the summer, the new district must implement the prior IEP as written until it develops a new IEP at a properly convened IEP team meeting. *Ute Pass Bd. of Coop. Educ. Servs.*, 114 LRP 31981 (SEA CO 06/11/14).

In this case, Student enrolled in District over the summer with an IEP from his prior district, March IEP. (FF # 5.) Accordingly, the SCO finds and concludes that, because Student enrolled over the summer, the transfer provisions of 34 C.F.R. § 300.323(e) do not apply. Instead, District needed to implement the March IEP until the IEP team could meet and develop a new IEP. *Ute Pass Bd. of Coop. Educ. Servs.*, 114 LRP 31981 (SEA CO 06/11/14).

District acknowledges that it did not have an IEP in effect for Student at the start of the school year. (FF # 20.) Therefore, the SCO finds and concludes that District failed to have an IEP in effect for Student at the start of the school year, in violation of 34 C.F.R. § 300.323(a).

On August 22, 2022, a week after school started, School Psychologist, who does not work with Student, created Transfer IEP for Student. (FF #s 20-21.) Because the transfer rules did not apply, in creating the Transfer IEP, District effectively amended the March IEP. *Ute Pass Bd. of Coop. Educ. Servs.*, 114 LRP 31981 (SEA CO 06/11/14). An IEP may be amended at a properly constituted IEP team meeting or in writing, outside of a formal IEP team meeting, if the parent and district agree a meeting is not necessary and the child's IEP team is informed of those changes. 34 C.F.R. § 300.324(a)(4), (6). In this case, the March IEP was amended unilaterally by District. There was no IEP team meeting and Parent was not consulted about the changes. (FF # 27.) Thus, the SCO finds and concludes that District amended Student's IEP, in violation of 34 C.F.R. § 300.324(a)(6).

i. Inconsistent Application of the IDEA's Transfer IEP Regulations

Although District mistakenly applied the requirements of 34 C.F.R. § 300.323(e) in this case, the SCO notes that District did not comply with these requirements either. Again, if a student has an IEP and moves to a new school district in the same state within the same school year, the new school district (*in consultation with parents*) must provide comparable services until the new school district: (1) adopts the IEP developed by the old school district or (2) develops, adopts, and implements a new IEP. 34 C.F.R. § 300.323(e) (emphasis added).

If the district opts to provide comparable services, those services must be "similar" or "equivalent" to those services described in the child's IEP from the old school district, as determined by the IEP Team at the new school district. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46681 (Aug. 14, 2006). The requirement to provide "comparable" services also includes a duty to provide "temporary goals" that align with the annual goals described in the child's prior IEP. *Letter to Finch*, 56 IDELR 174 (OSEP Aug. 5, 2010).

In this case, there was no meeting or conversation with Parent prior to the creation of the Transfer IEP. (FF # 27.) The Transfer IEP does include services that are similar to the services in the March IEP. (FF #s 22-23.) The speech and physical therapy services are identical. (*Id.*) 100 MPY of occupational therapy spread evenly over a school year is equivalent to 10 MPM. (*Id.*) However, special education services were reduced from 1,272 MPW to 1,100 MPW. (*Id.*) This 172 minute or nearly three-hour reduction amounts to a 13.5% decrease in special education services. The SCO finds that to be too significant of a decrease to constitute similar services. The SCO cautions District that, had the transfer provisions applied here, the SCO would have found further IDEA violations that may have led to a denial of FAPE.

ii. **Procedural Violations**

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

In this case, District failed to have the March IEP in place (i.e., implement the March IEP) for 26 school days before holding an IEP team meeting. (FF # 38.) However, Student missed the equivalent of 11 school days during that period, meaning he attended 15 school days. (FF # 12.) In the interim, District was still providing Student with most of the services from his March IEP and working on the March IEP goals. (FF #s 22-26.) Because Student was still receiving most of his services and these procedural violations impacted the equivalent of 15 school days, or about three weeks, the SCO finds and concludes that the violations did not impede Student's right to a FAPE or cause a deprivation of educational benefit. The SCO recognizes that amending the IEP without Parent's input impeded her opportunity to participate in the decision-making process. However, because of the small size of and short duration of the change, the SCO finds and concludes that the violations did not *significantly* impact her participation in the decision-making process (emphasis added). As such, the SCO finds and concludes that these procedural violations did not result in a denial of FAPE.

B. **September IEP**

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.

i. **IEP Development Process**

An IEP is "the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a)(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).

In addition to other required components, an IEP must contain measurable annual goals designed to: (1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student's other educational needs that result from his or her disability. *Id.* at § 300.320(a)(2). Along with measurable goals, 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). Among other things, related services include transportation "required to assist a child with a disability to benefit from special education." *Id.* at § 300.34.

"Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs and ensure the provision of . . . FAPE to the child, participate in the child's IEP Team meeting." *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011).

The IDEA therefore differentiates between mandatory and discretionary IEP Team members. See *Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include: parents, at least one regular education teacher, at least one special education teacher, a district representative with knowledge of the district's available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). The IDEA allows for another member of the IEP team to act as the district representative, provided they meet the requirements. 34 C.F.R. § 300.321(d).

Here, the September IEP was developed at an IEP team meeting with Parent, Case Manager, and a general education teacher (gym teacher) in attendance. (FF # 28.) Case Manager acted as both special education teacher and District representative. (*Id.*) SLP, PT, or an occupational therapist was not in attendance. (FF # 29.) While the presence of PT might have helped prevent some of the concerns described in the conclusion to Allegation No. 2, below, there were no evaluation results to interpret, so none of those individuals were required members of the IEP team. 34 C.F.R. § 300.321(a)(1)-(5). The IEP team also did not consider changes to Student's related services. (FF #s 49 and 51.) Thus, the SCO finds and concludes that the September IEP was developed by a properly constituted IEP team.

Additionally, the September IEP includes a description of Student's present levels and the impact of his disability, a consideration of the special factors, six measurable goals and a description of the supplementary aids and services that would be provided to Student. (FF # 30-41.) Therefore, the SCO finds and concludes that the development process for the September IEP complied with IDEA's procedures. *Rowley*, 458 U.S. at 206. The SCO turns next to the question of whether the September IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

ii. **Substantive Adequacy of the IEP**

Functional Needs

Parent's concern is that the September IEP failed to adequately consider Student's functional needs, specifically for toileting and those related to his history of seizures.

The September IEP notes that Student requires catheterization every two hours and has a history of seizures. (FF # 32.) It notes that he requires a health care plan which is located in both the classroom and the health office. (FF # 36.) The September IEP adopts the same health plans from Student's prior IEP. (FF # 50.) This included the seizure plan written by his physician and a simplified plan for non-health office staff. (FF #s 75 and 77.) The health care plan also includes the Catheter Instructions for catheterizing Student every two hours at 9 a.m., 11 a.m., 1 p.m. and 3 p.m. (FF #s 88.) Neither the September IEP nor the health care plan include specific instructions for extracurricular activities like field trips. (FF # 104.) However, Nurse only includes such plans if procedures would change. (FF # 103.) Nurse also understood Parent would be caring for Student on any trips. (FF # 104.)

For these reasons, the SCO, in consultation with CDE Content Specialist 1, finds and concludes that the September IEP and related health care plans were based on Student's functional needs and designed to allow Student to be involved in the general education curriculum and participate in nonacademic activities, consistent with 34 C.F.R. § 300.320(a)(4).

Special Transportation

Parent's concern is that District failed to provide Student with required special transportation in December of 2022. District's Response noted that Student's IEP did not include special transportation. (FF # 48.)

The September IEP indicates that Student does not require special transportation. (FF # 36.) District acknowledges that the IEP team determined that Student required special transportation. (FF # 47.) However, the IEP team checked that he did not because Parent indicated that she would drive him. (FF # 48.) Parent's choice to drive Student does not change his need. The IEP team determined that, due to his disability, Student required special transportation to access his education, and thus special transportation was required to be included in his IEP. 34 C.F.R. § 300.320(a)(4).

Because the September IEP does not include the special transportation that the IEP team determined that Student needed, the SCO finds and concludes that it was not reasonably calculated to allow Student to access his special education services, in violation of 34 C.F.R. § 300.320(a)(4). Thus, it violated the IDEA's substantive requirements related to the development of an IEP, resulting 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). To remedy this violation, District must amend the IEP, consistent with the requirements of 34 C.F.R. § 300.324(a)(6), to be consistent with the decision of the IEP team.

Conclusion to Allegation No. 2: District failed to properly implement Student’s IEP from August of 2022 until February 15, 2023, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

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).

An IEP must identify the special education and related services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* at § 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 September 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). Here, Case Manager met with Student’s teachers individually to explain his needs and discuss how to support him at the start of the year. (FF #s 54 and 58.) She also shared the September IEP and notified any new staff at the start of the semester. (FF # 58.) However, Case Manager relied on District’s data management system to notify Student’s related service providers, and District did not have an occupational therapist to notify until November. (FF #s 56, 58-61.) SLP was aware of Student and sought out Case Manager, but PT was not aware of Student or his need for physical therapy services until February 15, 2023. (FF #s 58 and 61.)

District relies on case managers to notify teachers and related service providers of their responsibilities under IEPs. (FF # 53.) However, District does not have written guidance directing

how this happens or ensuring that it does. (*Id.*) Without such guidance, Case Manager, a first-year teacher, relied on mistaken assumptions about District's data management system to notify Student's related service providers. (FF # 56-58.)

For these reasons, the SCO finds and concludes that District failed to ensure Student's related service providers were aware of all their responsibilities with respect to Student, in violation of 34 C.F.R. § 300.323(d).

ii. **Implementation: Health Care Plan – Catheterization**

Parent's concern is that District did not consistently follow the Catheter Instructions for Student.

The September IEP incorporates, by reference, Student's health care plan which includes the Catheter Instructions. (FF #s 36 and 88.) The Catheter Instructions include detailed directions on how to catheterize Student at designated times every two hours. (FF # 88.) Nurse and five others from School are trained to perform the catheterization procedure. (FF # 89.) Nurse observed the delegates about once every three weeks, leaving her confident they were appropriately following the Catheter Instructions. (FF # 90.) The delegates who regularly perform the procedure were doing so correctly when observed and retrained by Nurse in January. (FF #118.) Contemporaneous logs from the first two months of School indicate that Student was catheterized on schedule, consistent with Case Manager's recollection that the procedure was performed consistently. (FF #s 91-92.) Although Student was occasionally dressed in briefs or clothes belonging to other students, the SCO, in consultation with CDE Content Specialist 1, finds that neither constitutes a failure to implement the Catheter Instructions. (FF #s 94-95.) The SCO also finds, in consultation with CDE Content Specialist 1, that UTIs are a natural consequence of frequent catheterization and not necessarily indicative of improper practices. (FF # 97.)

Parent is particularly concerned that District did not implement the Catheter Instructions during the field trip on January 17, 2023. District's Nursing Protocol requires advance planning to ensure that students with health needs can participate in field trips. (FF # 100.) In this case, Parent offered to help with Student's care on the trip, as is permitted under District's Chaperone Policy. (FF #s 99 and 106-107.) However, neither Nurse nor Case Manager talked to Parent about what support Parent would provide. (FF #s 106-112.) Neither made plans to allow for Student's care on the field trip. (FF # 109.) The SCO recognizes Parent's frustration with the lack of planning and communication around the field trip. The SCO finds District did not follow its own policies. However, while better communication in advance could have assuaged Parent's concerns, failure to follow these policies does not constitute a violation of the IDEA.

District's obligation under the IDEA was to ensure Student was provided with the special education supports and services required by the September IEP. 34 C.F.R. § 300.323(c)(2). Indeed, although they were 30 minutes late for one catheterization, on the day of the field trip, delegates did catheterize Student twice. (FF # 113-115.) When the restrooms did not offer the space they required, they made arrangements to still catheterize Student and allow him to

remain on the field trip. (FF #114.) The SCO, in consultation with CDE Content Specialist 1, finds that District's actions on the field trip were neither unsafe nor inappropriate. (FF # 120.)

For these reasons, the SCO finds and concludes that District implemented the Catheter Instructions, and therefore the September IEP, consistent with 34 C.F.R. § 300.323.

iii. Implementation: Health Care Plan – Seizures

Parent's concern is that District did not implement Student's Seizure Plan because they did not call 911 when Student had seizures in October and November of 2022.

The September IEP incorporates, by reference, Student's health care plan which includes the Seizure Plan written by Student's doctor. (FF #s 36 and 77.) Per the Seizure Plan, when Student has a seizure, District should turn Student on his side and protect his head, time the seizure and administer rescue medications if the seizure lasts longer than five minutes. (FF # 77.) Student had two seizures at School, on October 24, 2022 and November 28, 2022. (FF #s 80-84.) During both, staff followed the Seizure Plan, timing the event, moving Student to the ground, and protecting his head. (FF #s 77, 80 and 83.) Nurse was called to respond to both events. (FF #s 80 and 83.) Both seizures resolved in under five minutes and no rescue medications were administered. (FF #s 80-84.) During the second seizure, Nurse noted that Student was having trouble breathing, but it resolved in under five minutes. (FF # 83.) Because difficulty breathing is standard with a seizure and Student's breathing returned to normal within five minutes, the SCO, in consultation with CDE Content Specialist 1, finds and concludes that District implemented the Seizure Plan, and thus the September IEP, consistent with 34 C.F.R. § 300.323. (FF # 78.)

iv. Implementation: Transportation Services

Parent's concern is that District did not provide Student transportation to and from School in December of 2022. As noted above in the conclusion to Allegation No. 1(B)(ii), the SCO found that this was an issue of IEP development rather than IEP implementation because the September IEP did not include special transportation. (FF # 36.) The violation of 34 C.F.R. § 300.320(a)(4) has already been addressed. The SCO finds and concludes that District did not violate 34 C.F.R. § 300.323 with respect to the provision of transportation.

v. Implementation: Paraprofessional Support

Parent's concern is that Student did not get the one-on-one paraprofessional support required by his IEP.

However, none of Student's IEPs included one-on-one paraprofessional support. (FF #s 22, 23 and 40.) Instead, the March and September IEPs specified that Student would be supported by a paraprofessional during all general education classes. (FF #s 22 and 40.) As an accommodation, both IEPs also included "Direct supervision/assistance for all mobility, transfers, toileting,

transportation and emergency procedures for personal safety.” (FF # 38.) Although Student required constant adult supervision and support, the SCO finds that the IEPs did not require the support be one-to-one. Throughout his time in District, Student has always had paraprofessional support in general education classes. (FF #s 24 and 65.) He is also closely supervised during transfers to the changing table and is always within line of sight of adult support. (FF # 65.)

For these reasons, the SCO finds and concludes that District did not violate 34 C.F.R. § 300.323.

vi. Implementation: Physical Therapy Services

Parent’s concern is that Student did not receive his physical therapy services at School during the 2022-2023 school year consistent with his IEP.

Here, both the March IEP and the September IEP call for 30 MPM of direct PT services. (FF #s 22 and 40.) District acknowledges Student did not receive direct PT services until March 10, 2023. (FF # 62.) Neither IEP includes a goal for PT to work on with Student. (FF #s 25, 37 and 63.) Instead, they include an accommodation to provide Student with opportunities to practice walking. (FF # 38.) The purpose of PT’s services was to help increase Student’s endurance for walking. (FF # 40.) Student has not practiced walking at School. (FF # 62.)

For these reasons, the SCO finds and concludes that District did not implement Student’s physical therapy services or the accommodation to allow Student to practice walking, in violation of 34 C.F.R. § 300.323.

C. 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.*

In this case, Student did not receive 30 MPM of direct physical therapy services from August 15, 2022 until March 10, 2023, or approximately seven months. (FF #s 40 and 62.) This amounts to approximately 210 minutes or about three and a half hours. District began trying to provide services in February, but Student was not attending school. (FF # 66.) Thus, the SCO finds that District is only responsible for failing to provide six months or 180 minutes (three hours) of physical therapy services. District also did not implement Student's walking accommodation for seven months. (FF # 62.) In a 10-month school year, the SCO finds this is more than a minor discrepancy from the services outlines in the March and September IEPs. Thus, the SCO finds and concludes that this constitutes a material failure to implement, resulting in a denial of FAPE.

D. Compensatory Education

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

In this case, PT's services were not tied to a goal, so there is no progress monitoring to compare. (FF # 63.) Student also receives physical therapy services outside of school. (FF # 12.) This makes it difficult to ascertain exactly how the lack of services impacted him. The SCO also takes into consideration that Student's frequent absences mean he likely would have missed some or all the services, had they been offered. (FF # 12.) Thus, the SCO, in consultation with CDE Content Specialist 2, awards 60 minutes (1 hour) of direct physical therapy services.

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).

Written procedures are essential to ensuring school staff understand their responsibilities and provide special education services consistent with ECEA Rules, the IDEA, and school district policy. Here, District does not have any internal written procedures or guidance for special education staff, instead relying on the IEP Procedural Guidance published by CDE. (FF # 19.)

A. IEP Implementation

District does not have any District-wide process or written guidance explaining how to share IEPs or ensuring that IEPs have been shared with necessary providers. (FF # 53.) Instead, District relies on the IEP Procedural Guidance published by CDE. (FF # 19.) However, the SCO finds that state-level guidance, such as the IEP Procedural Guidance, cannot contain the necessary level of detail, such as how an individual district's data management system works. Without written guidance, Case Manager, a first-year teacher, did not understand how to ensure all related service providers were aware of their responsibilities under the March IEP or the September IEP. (FF #s 54-61.) As a result, Student did not receive any physical therapy services for seven months. (FF # 62.) The concern for the SCO is that without written guidance, other new teachers or teachers new to District may continue to make similar mistakes.

B. Transfer IEPs

IDEA's transfer provisions do not apply to students who enroll over the summer. 34 C.F.R. § 300.323(e). However, District practice is to treat students who transfer over the summer the same as other transfers, even though the difference is clearly specified in the IEP Procedural Guidance they have adopted. (FF # 19.) In addition, when incoming IEPs are not accepted, District intends for staff to include parents in conversations about comparable services. (FF # 18.) However, District does not have any standard operating procedures or other written guidance on the topic, to help ensure staff follow procedure. (FF # 19.) In this case, Parent was not consulted about the comparable services that were mistakenly offered to Student. (FF # 27.) The concern for the SCO is that without more specific, internal written guidance, District may continue to handle summer enrollments inappropriately or fail to include parents in conversations about offers of comparable services.

C. Special Transportation

District practice has been to mark that students do not require special transportation if parents indicate that they would decline that service, even if the IEP team has determined that the student requires it. (FF # 44.) Although Parent was able to begin driving Student again after seven school days, the concern for the SCO is that other students may be unable to attend school for much longer if transportation is not included as a necessary service and a parent becomes unwilling or unable to continue transporting them for any reason. Going forward, District has

changed its advice, telling IEP teams to mark yes if a student is eligible for transportation, regardless of whether they will be accessing it. (FF # 45.) The concern for the SCO is that, without new written procedures, IEP teams will not be made aware of this change in a timely manner.

Overall, as the lack of internal procedures or guidance contributed to the violations in this case, this investigation raises concerns about the appropriate future provision of services for all IDEA-eligible students in District. Accordingly, the SCO will set forth specific remedies consistent with IDEA to ensure procedures are in place and designed for the appropriate provision of services for all IDEA-eligible students in District.

REMEDIES

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

- a. Failing to have an IEP in effect at the start of the school year, in violation of 34 C.F.R. § 300.323(a);
- b. Improperly amending Student’s IEP, in violation of 34 C.F.R. § 300.324(a)(6);
- c. Failing to include related transportation required to allow Student to access his special education services, in violation of 34 C.F.R. § 300.320(a)(4);
- d. Failing to ensure that Student’s related service providers were aware of all their responsibilities under Student’s IEP, in violation of 34 C.F.R. § 300.323(d); and
- e. Failing to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Monday, May 1, 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 CAP must, at a minimum, provide for the following:
 - i. Director and Case Manager must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.320(a)(4), 300.323, and 300.324(a)(6). This review must occur no later than **Thursday, June 1, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, June 30, 2023**.

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

2. Written Procedures

- a. By **Friday, September 1, 2023**, District must submit the following written procedures to CDE Special Education Monitoring and Technical Assistance Consultant:
 - i. Written procedures for handling enrolling students with existing IEPs from another district. This procedure must be consistent with the requirements of 34 C.F.R. § 300.323 and, at a minimum, provide instructions to IEP teams in the event of enrollment over the summer, enrollment during the school year from another district in the state, and enrollment from another state;
 - ii. Written procedures for determining the need for specialized transportation, consistent with the requirements of 34 C.F.R. §§ 300.34 and 300.320(a)(4), including what to do if parents decline transportation; and
 - iii. Written procedures for ensuring that all providers, including teachers and related service providers, are aware of their responsibilities in all relevant IEPs, consistent with the requirements of 34 C.F.R. § 300.323.
- b. By **Friday, September 29, 2023**, CDE will either approve the procedures or provide feedback on what is required to be consistent with the IDEA.
- c. By **Friday, October 27, 2023**, District must submit finalized written procedures and a plan for distributing them to staff within four weeks of when they are finalized.

3. IEP Amendment

- a. By **Friday, May 5, 2023**, District must either convene Student's IEP Team at a mutually agreeable date and time or amend the September IEP, in writing, consistent with the requirements of 34 C.F.R. § 300.324(a)(4) to ensure the IEP reflects the decision of the IEP team with respect to Student's need for specialized transportation.
 - i. To evidence that District appropriately tailored Student's IEP, District shall provide a copy of Student's final IEP, or the PWN explaining the decision not to change the IEP, to CDE by **Friday, May 12, 2023**.

- ii. If Parent refuses to meet with District within this time or to amend the IEP in writing, District will be excused from making this change, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from making this change, rests solely with the CDE.

4. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive one hour of specialized physical therapy services. This instruction must be provided by an appropriately licensed physical therapist. These services must be designed to increase Student's endurance with walking. This hour must be provided by **Friday, July 28, 2023**.
- b. If District has already provided Student with compensatory services prior to May 1, 2023, it may submit a log of the services provided to date along with the CAP. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log. The log must distinguish between compensatory services and services required by the September IEP. A determination of whether some or all of Student's compensatory services have already been provided rests solely with the CDE.
- c. By **Friday, May 12, 2023**, District shall schedule any remaining compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Friday, May 19, 2023**. If District and Parent cannot agree to a schedule by May 19, 2023, the CDE will determine the schedule for compensatory services by **Friday, June 9, 2023**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parent may opt out of some or all of the compensatory services if they wish.

- d. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- e. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance him toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

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 31 day of March, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Amended Complaint, pages 1-15

- Exhibit 1: Correspondence
- Exhibit 2: Doctor's Note

Response, pages 1-13

- Exhibit A: IEP
- Exhibit B: PWN
- Exhibit C: Meeting Notes
- Exhibit D: Health Care Plan
- Exhibit E: Cath Logs
- Exhibit F: Service Logs
- Exhibit G: None
- Exhibit H: Attendance
- Exhibit I: Progress Monitoring
- Exhibit J: District Calendar
- Exhibit K: District Policies
- Exhibit L: Correspondence
- Exhibit M: None
- Exhibit N: Verification of Delivery

Reply, pages 1-15

- Exhibit 3: Correspondence

Telephone Interviews

- Parent: March 8, 2023
- Director: March 8, 2023
- Case Manager: March 9, 2023
- Nurse: March 9, 2023
- PT: March 10, 2023

CDE Exhibits

- CDE Exhibit 1: IEP Procedural Guidance