

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

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**State-Level Complaint 2023:517**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On February 21, 2023, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 21, 2022 to the 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. Failed to implement Student’s IEP from August of 2022 to present by failing to provide Student with the speech language pathology (“SLP”) minutes required by his IEP, in violation of 34 C.F.R. § 300.323.

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

## FINDINGS OF FACT

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

### **A. Background**

1. Student is seven years old and, during the 2022-2023 school year, is attending first grade at a District elementary school (“School”). *Exhibit A*, p. 12. Student and his family reside within the boundaries of District. *Id.*
2. Student is identified as a child with a speech or language impairment (“SLI”). *Id.*
3. Student is kind and enjoys playing and interacting with peers. *Interviews with Parent and classroom teacher (“Teacher”).* He is a hard worker who is good at following classroom rules and expectations. *Id.* He loves math and enjoys asking for additional challenge problems. *Id.*
4. Student struggles with expressive language and articulation, making it hard for others to understand him. *Exhibit A*, p. 15. He also speaks very quietly, so he is hard to hear in the classroom. *Interview with Teacher.* He has difficulty expressing himself and may become frustrated when others do not understand. *Interview with Parent and Teacher.* This year, Student is also struggling with reading, performing about a year behind his peers on phonemic awareness and phonics, which negatively impacts his comprehension. *Interview with Teacher.*

### **B. 2022 IEP**

5. Student enrolled at School for first grade. *Response*, p. 1. At the time of enrollment, his most recent IEP (“2022 IEP”) had been completed on February 8, 2022 by his prior school, also in District. *Exhibit A*, p. 1. The 2022 IEP was completed after District conducted a reevaluation in February of 2022. *Id.* at p. 3.
6. According to the 2022 IEP, Student has many strengths. *Id.* He is good at listening and retains information well and had shown great improvement in his speech. *Id.* Student had limited English proficiency and his primary language was Spanish. *Id.* at pp. 1, 3.
7. Based on the evaluation, Student was determined to have needs in articulation and expressive language. *Id.* at p. 3. Although Student had made great progress, he continued to require support to “accurately and clearly produce speech sounds in unstructured conversation” and to “accurately ask/answer questions in conversation, use grammatically correct sentences, and remain on topic.” *Id.* He specifically struggled with “producing /r/ blends, /ch/, /d/, /l/ /th/ and multisyllabic words.” *Id.*

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

8. Receptive language was a strength for Student, who “can follow routines” and “needs mild support understanding questions/stories.” *Id.* Student had been receiving SLP services, targeting articulation, for 180 minutes per month (“MPM”) in a small group setting outside of the general education classroom. *Id.* at p. 4.
9. Student had made progress on his prior goal around articulation and met both objectives. *Id.*
10. According to the 2022 IEP, Student’s SLI “impacts his ability to clearly communicate academic knowledge, engage in discussions, and be understood during structured and unstructured play and tasks.” *Id.* at p. 5.
11. Parent wanted Student to continue to grow in his speech and academic skills and to learn strategies for avoiding frustration when he is not understood. *Id.* The 2022 IEP notes that Student likes playing games, earning stickers, and listening to stories. *Id.*
12. According to the 2022 IEP, Student was not yet proficient in English and received English language development (“ELD”) services inside the general education setting for 45 minutes per day (“MPD”). *Id.* Student qualified for both ELD services and special education services, and a decision about special education would be based on his “disability-related needs, not [his] English proficiency.” *Id.* ELD services and SLP services for expressive language can look very similar, as both aim to teach a language. *Interview with CDE Content Specialist.*
13. The 2022 IEP included two goals. *Exhibit A*, p. 6. Parent would be informed of progress three times per year. *Id.*
14. Student had one communication goal. *Id.* Student would “improve his speech sound production skills by clearly and accurately producing /r/ blends, multisyllabic words, and /l/ in sentences during structured conversations from 1/5 trials independently to 4/5 trials independently during small group activities as measured” using informal data collection. *Id.* This goal had three objectives, each targeting one of the skills: /r/ blends, multisyllabic words, and the /l/ phoneme. *Id.*
15. Student had one language goal. *Id.* Student would “improve his expressive language skills by asking and answering basic WH questions (who, what, where) using a grammatically correct (subject, verb, object) sentence related to a story he has heard read aloud from 0/5 trials independently to 4/5 trials independently” as measured through informal data collection during small group, structured tasks. *Id.* The goal had two objectives, one focused on asking questions and the other on answering them. *Id.* at p. 7.
16. Student had five accommodations and no modifications in the 2022 IEP. *Id.* The accommodations include the use of visuals to “assist with answering and asking questions,” the use of sentence stems, getting Student’s attention before giving directions or new information, and providing cues to slow down or increase volume as needed. *Id.*

17. To address his needs, Student was to receive the following special education and related services, to be provided “for the school year only excluding school breaks, summers, holidays and non-student contact days:”

- 120 MPM of direct speech and language therapy, from an SLP or a speech and language pathology assistant (“SLPA”), outside of the general education classroom “to provide a small group, structured environment for explicit skill instruction.”
- 180 minutes per year (“MPY”) of indirect consultative services provided by the SLP and/or SLPA to allow for “team collaboration, creation of visual supports, scheduling and coordinating services, team meetings, parent communication and IEP development.”

*Id.* at p. 9

18. The 2022 IEP determined that Student’s least restrictive environment (“LRE”) was general education at least 80% of the time, specifically 98.7% of the time. *Id.* at p. 10. This LRE would allow for “more access to classroom routines, peer models, authentic peer interactions and grade level curriculum.” *Id.* Accommodations and consultations were intended to mitigate the potential disadvantage of “reduced access to explicit skill instruction.” *Id.*

19. According to the embedded prior written notice (“PWN”), the IEP team decided to reduce Student’s direct services from 180 MPM to 120 MPM because Student had been making great growth and the team wanted to try providing Student with more time in general education. *Id.* The meeting was held virtually, and the IEP team considered Student’s attendance and overall progress and the fact that he would be attending a new school. *Id.* at p. 11.

### **C. SLP Services Provided to Student**

20. School started the 2022-2023 school year with an SLP (“Former SLP”) on staff. *Interviews with Teacher and Former SLP.* Former SLP met with Student in a small group on Thursdays. *Interview with Former SLP.*

21. During sessions, Former SLP worked with Student on “wh” questions, using complete sentences and articulation. *Id.* Student was getting better with basic “wh” questions but needed support to produce grammatically correct sentences and to ask questions. *Id.*

22. Former SLP met with Student for 30 minutes each on the following dates: September 1, 2022; September 8, 2022; September 15, 2022; September 29; October 6, 2022; and October 20, 2022. *Exhibit E*, pp. 1-2.

23. On September 22, 2022, Student was absent. *Id.* at p. 2. School was closed for fall break on October 13, 2022. *Id.* Former SLP did not see Students on October 27, 2022, as she was completing paperwork prior to transitioning to a new school. *Id.*
24. Former SLP did not log any consultations about Student. *Id.; Interview with Former SLP.* Former SLP and Teacher would sometimes touch base when Former SLP picked Student up from his classroom or he would come up when they were consulting about other students. *Interview with Former SLP.* Teacher and Former SLP had informal check ins about Student, including his goals, how to provide accommodations and how he was progressing in the classroom. *Interview with Teacher.*
25. Former SLP recorded notes about her services. *Interview with Former SLP.* She also entered her services in a log. *Exhibit E*, pp. 1-2. Former SLP e-signed her entries in the log, usually within a week of when the services were provided. *Id.* Thus, the SCO finds that the service log is a reliable, contemporaneous record of what services were provided.
26. Parent was told School did not have an SLP at the start of the year and she did not hear from Former SLP until several weeks into the year. *Interview with Parent; Exhibit 1.* Because the SCO found that Former SLP's service logs were a reliable record of services provided, the SCO finds that Former SLP started providing Student with services on September 1, 2022, during the second week of school. *Exhibit H*, p. 2.

#### **D. Student's Missed SLP Services**

27. District uses an electronic caseload calculator to monitor SLP caseloads. *Interview with District's manager of SLPs ("SLP Manager").* The calculator factors in direct and indirect services, evaluations and screenings, and complicating factors that increase workload such as the number of center-based students, multilingual students, AAC users, and case management. *Id.* District reviews caseloads three times a year. *Interviews with SLP Manager and Former SLP.*
28. In October of 2022, during a regular workload review, it was determined that Former SLP's caseload was too high. *Interview with Former SLP.* As a result, Former SLP's assignment at School was terminated and she was reassigned elsewhere to keep her caseload reasonable. *Id.* She did not provide Student with any services after October 20, 2022. *Exhibit E*, p. 2.
29. Due to a shortage of SLPs, School was unable to hire a replacement. *Response*, p. 2. As a result, District admits that Student did not receive most of his SLP services during the 2022-2023 school year. *Id.*
30. A new SLP started working with students at School on March 20, 2023. *Interview with Teacher.* She met with Student for the first time on March 21, 2023. *Id.* She was not providing services during this first meeting, just getting to know the students. *Id.*

31. School has 169 school days over about nine months. *Exhibit H*, p. 2. It had a four-day fall break in October. *Exhibit H*, p. 2. It was also closed for one week in November for Thanksgiving and two weeks in December for winter break. *Id.* Finally, School was closed for a one-week spring break in March. *Id.* As of March 8, 2023, Student had been absent for 21 school days. *Exhibit F*, p. 1.
32. Overall, the SCO finds that Student was provided with 120 minutes of SLP services in September and 60 minutes in October. Because services were only to be provided during the school year, excluding breaks, the SCO finds that Student missed 30 minutes of SLP services during the month of October. *Exhibit A*, p. 9.
33. With no SLP assigned to School, the SCO finds that Student received no services in November, December, January, February, or March. Factoring in vacations, the SCO finds that Student was entitled to 90 minutes in November, 60 minutes in December, 120 minutes in January, 120 minutes in February and 90 minutes in March. In total, the SCO finds that Student missed out on 510 minutes (8.5 hours) of SLP services.
34. With no entries in the service log, the SCO credits District for 30 minutes of indirect, consultative services for Former SLPs informal conversations with Teacher.

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

35. Other than general service notes, Former SLP did not gather any beginning of the year data. *Interview with Former SLP*. Before leaving School, Former SLP generated an October 2022 Progress Report for Student. *Id.*
36. Former SLP noted that Student had made progress on his communication goal, including all three objectives. *Exhibit G*, pp. 1-3. Specifically, he produced three or four syllable words in 3/5 opportunities and produced /l/ and /r/ blends in 50% of opportunities. *Id.* at p. 1.
37. At the end of the 2021-2022 school year, Student was “clearly and accurately producing /r/ blends” in conversations in 2/5 or 2/4 opportunities, or roughly 50% of the time. *Id.* As of October 31, 2022, Student was doing so in 5/10 opportunities, or 50% of the time. *Id.*
38. At the end of the 2021-2022 school year, Student was “clearly and accurately producing multisyllabic words” during structured conversations in 2/3 or 3/6 opportunities, or 50-66% percent of the time. *Id.* at p. 2. As of October 31, 2022, Student was accurately producing multisyllabic words in 3/5 opportunities, or 60% of the time. *Id.*
39. At the end of the 2021-2022 school year, Student was “clearly and accurately producing /l/ in structured conversations” in 2/5 to 3/7 opportunities, or slightly less than 50% of the time. *Id.* at p. 3. By October 31, 2022, he was doing so in 5/10 opportunities, or 50% of the time. *Id.*

40. Former SLP also reported on Student's progress on his language goal about asking and answering "wh" questions. *Id.* at pp. 3-5. Overall, Student was answering "wh" questions in 7/10 opportunities but needed models to "use a grammatically correct sentence." *Id.* at p. 3. He also benefitted "from cues and models to ask questions of peers and adults." *Id.* She did not offer an opinion on whether progress had been made. *Id.*
41. At the end of the 2021-2022 school year, Student was asking basic "wh" questions "using a grammatically correct (subject, verb, object) sentence related to a story he has heard read aloud" in 3/5 or 2/5 opportunities, or 40-60% of the time. *Id.* at p. 4. When Former SLP left, he was doing so in 4/10 opportunities, or 40% of the time. *Id.*
42. At the end of the 2021-2022 school year, Student was answering basic "wh" questions about stories he had heard read in 3/6 or 3/5 opportunities, or 50-60% of the time. *Id.* As of October 31, 2022, Student was answering questions in 6/10 opportunities, or 60% of the time. *Id.*
43. Former SLP was not sure why Student was performing about the same in October of 2022 as he had been at the end of the prior school year. *Interview with Former SLP.* Since the data was collected by two different SLPs, it is possible she was measuring things differently than the SLP at his prior school. *Id.* With the change in denominators, Former SLP was likely providing Student with a greater number of opportunities, indicating increased endurance if not increased accuracy. *Interview with CDE Content Specialist.*
44. On March 21, 2023, a bilingual SLP from District ("Bilingual SLP") met with Student to gather progress data. *Exhibit A*, p. 16. At that time, Student had made progress on his communication goal, including all three objectives. *Id.*
45. Student was producing /r/ blends within sentences with 80% accuracy. *Id.* He produced "target multisyllabic words within sentences with 100% accuracy." *Id.* Finally, Student produced the /l/ phoneme with 90% accuracy. *Id.*
46. Bilingual SLP did not provide updated quantitative data on Student's language goal and did not offer an opinion on whether Student had made progress. *Id.* at pp. 16-17.
47. Student "produced on-topic, relevant answers to all wh- questions" in structured reading and spontaneous conversation. *Id.* at p. 16. On topic answers mean Student understood the purpose of different "wh" questions. *Id.* at p. 17. However, the answers included "numerous syntax and grammar errors." *Id.*
48. Student also struggled to ask questions, leaving questions unfinished or inverting auxiliary and pronoun "as in 'I can go back to class now?'...with an appropriate interrogative voice pattern." *Id.* The latter could have been the result of crosslinguistic influence from Spanish where questions follow the pronoun-verb order. *Id.*

49. Bilingual SLP also noted that Student struggled with “a low volume of voice” and had near constant vocal fry creating a “low-pitch, creaking vocal quality.” *Id.* This made Student hard to understand in noisy environments like a hallway. *Id.*
50. Overall, Bilingual SLP found that Student made great progress despite not having received direct SLP services for several months. *Interview with Bilingual SLP.* However, with SLP services it is possible Student would have eliminated all errors with /r/ blends and the /l/ phoneme. *Id.* An SLP providing services to Student might also have identified Student’s difficulties with volume and begun addressing that sooner. *Id.*

#### **F. Student’s Classroom Performance**

51. Student has positive peer relationships at school. *Interview with Teacher.* In general, Student’s class is very understanding and supportive of each other. *Id.* Although Student can communicate and build relationships right now, Teacher is concerned that Student’s difficulties expressing himself may impact him more as he gets older. *Id.*
52. Student initially struggled to share with Teacher when he had conflicts with peers. *Id.* However, this has improved since Teacher and Parent discussed it. *Id.*
53. Student talks very quietly in the classroom and rarely volunteers to participate. *Id.* When he does participate, he usually struggles to express himself. *Id.* Because Student talks quietly, it can be hard to understand him in the classroom. *Id.*
54. Teacher provides sentence stems for Student and model sentences. *Id.* The classroom participates in a lot of “call and response” where students repeat what Teacher says. *Id.* She also gets Student’s attention before giving directions. *Id.* Teacher starts by reminding the class “eyes on me” and follows up with a specific cue to Student if he does not respond. *Id.*
55. Teacher uses a lot of visuals, including putting vocabulary words and examples on the board. *Id.* Teacher and her paraeducator also remind Student to speak up or use “strong voice” when he is too quiet in the classroom. *Id.*
56. Student also struggles with reading. *Interviews with Parent and Teacher.* Student struggles with phonemic awareness and phonics, both building blocks for reading. *Interview with Teacher.* He is about one year behind where she would expect a first grader to be. *Id.* Student requires a lot of one-on-one and small group support throughout the day to support his reading. *Id.*
57. Student specifically has difficulty blending sounds together and often leaves off the first sound when reading a word. *Id.* For example, Student might read “at” instead of “cat,” which hinders his comprehension when reading independently. *Id.*



58. Teacher notes similarities between Student’s challenges and his 2022 IEP goals and suspects some of these difficulties may be tied to his disability. *Id.* She would have liked the opportunity to consult with an SLP around how to support Student. *Id.*
59. Depending on the nature of the reading difficulties and the speech disability, students with a SLI may struggle with reading. *Interview with Former SLP and CDE Content Specialist.* For instance, a teacher may perceive a reading issue when a student drops or mispronounces certain sounds. *Interview with CDE Content Specialist.*
60. However, based on the concerns described by Teacher and the nature of Student’s difficulties, it is more likely that Student’s reading challenges are unrelated to his articulation challenges. *Id.* Nevertheless, difficulties with expressive language, and particularly answering “wh” questions, may be impacting Student’s ability to answer reading comprehension questions. *Id.* During his time with Bilingual SLP, Student did not drop any initial consonants during conversation, so this difficulty is likely to be literacy based and not related to Student’s SLI. *Interview with Bilingual SLP.*

#### **G. District’s SLP Coverage Team**

61. District has a small team of coverage SLPs (“Coverage Team”) who have worked to ensure IEPs and evaluations at schools without an SLP remain timely. *Interview with SLP Manager.* The intent is that keeping paperwork current will allow new hires to begin providing services more quickly. *Id.*
62. For students in District whose primary disability is SLI, the assigned SLP is also the case manager, responsible for paperwork and IEP team meetings. *Id.* For students who would be case managed by an SLP, the Coverage Team is also responsible for handling communication to schedule meetings or get parental consent for evaluations. *Id.*
63. The Coverage Team has a shared document to keep track of events that require coverage, like upcoming IEP team meetings and triennial reevaluations. *Interview with Bilingual SLP.* Members of the Coverage Team add themselves to the spreadsheet to cover upcoming events, considering when the event is due and any relevant multidisciplinary factors. *Id.*
64. Most of the events Bilingual SLP covers are listed in this spreadsheet. *Id.* However, sometimes the Coverage Team Coordinator (“Coordinator”) emails and asks for someone to cover specific events. *Id.* This usually happens when someone at a school reaches out to Coordinator about a need that is not listed in the shared document. *Id.* Often this is because a student transferred schools and data was not in District’s data management system when the shared document was created at the start of the year. *Id.* Bilingual SLP has covered about four events this year that were not in the spreadsheet. *Id.*

65. Student's annual IEP meeting was due on or before February 7, 2023. *Exhibit A*, p. 1. Coordinator emailed the Coverage Team to have someone handle Student's annual IEP on March 14, 2023. *Interview with Bilingual SLP*. Bilingual SLP reached out to Parent to schedule Student's annual IEP meeting that week. *Interviews with Parent and Bilingual SLP*.

#### H. 2023 IEP

66. Parent, Bilingual SLP and Teacher met virtually on March 22, 2023, to develop Student's new IEP ("2023 IEP"). *Interviews with Parent and Teacher*.

67. According to the 2023 IEP, Student's strengths remained similar. *Exhibit A*, p. 14. He has shown great improvement in his speech sound production skills and interacts well with others. *Id.* Student "enjoys playing with his peers and engaging in group activities." *Id.*

68. The 2023 IEP includes communication data from the 2022 IEP. *Id.* at p. 15. It also includes the results of Student's English proficiency testing in the spring of 2022, which showed that "crosslinguistic influences between Spanish and English are likely to continue to be present in his language skills." *Id.* Progress data from the October of 2022 progress report is also included. *Id.*

69. Bilingual SLP met with Student on March 21, the day before the IEP team meeting, to gather updated progress data. *Id.* The updated progress data, described in Section E of these findings, is also included. *Id.* at pp. 16-17.

70. According to the Student Needs statement, a seven-year-old first grader is expected to be 100% intelligible and to "ask and answer age- and grade-appropriate questions." *Id.* at p. 17. Student's reduced intelligibility, disordered answers and difficulty asking questions was expected to "negatively impact his ability to participate in school-based activities, both in academic and social contexts." *Id.*

71. Parent explained that Student would be undergoing surgery to address an airway obstruction. *Id.* Bilingual SLP suspected that Student's breathing difficulties contributed to his difficulties with volume, requiring "ongoing attention." *Id.*

72. Parent agreed with Bilingual SLP's description of Student and his conclusion that Student's difficulties were related to both his voice and speech errors. *Id.* It felt like Bilingual SLP had worked with Student for a long time as he identified the same challenges Parent sees at home. *Interview with Parent*.

73. The present levels indicate that Student preferred to participate in English with Bilingual SLP and concludes that English was his primary language. *Id.* at pp. 14, 16. However, the 2023 IEP notes that Student has limited English proficiency and that Spanish is his primary language.

*Id.* at p. 12. Student’s limited English proficiency was also a special factor considered by the IEP team. *Id.* at p. 18. Student continues to receive ELD services for 45 MPD. *Id.*

74. The 2023 IEP includes three communication goals, for which progress reports will be sent home with report cards. *Id.*

75. The first goal targets the same skills as his prior communication goal, accurately producing /r/ blends, the /l/ phoneme and multisyllabic words. *Compare, Id.* at pp. 6, 18. The 2023 IEP aims for Student to *maintain* those skills at 80%, 100% and 90% accuracy. *Id.* at p. 18.

76. The second goal targets the same skills as his prior language goal, asking and answering “wh” questions using appropriate grammar and syntax. *Compare, Id.* at pp. 6, 7, 19. However, the baselines for the goal and the two related objectives are increased from 0 and the goal is changed from 4/5 to 8/10. *Id.*

77. The March 2023 includes a third, new, communication goal targeting Student’s ability to produce “audible and intelligible sentences in noisy environments.” *Id.* at p. 19. The goal will be measured using a rubric of “mostly unclear – somewhat unclear – mostly clear – completely clear.” *Id.* The goal, with two progressing objectives aims to get Student from mostly unclear to “completely clear” by the end of the year. *Id.*

78. The 2023 IEP has four accommodations and no modifications. *Id.* at p. 20. The accommodations include the use of visuals to “assist with answering and asking questions;” the use of sentence stems, including interrogative sentence models; getting Student’s attention before giving directions or new information, and providing cues to increase volume as needed. *Id.* There is no accommodation to remind Student to slow down as needed. *Id.*

79. Student was to receive the following special education and related services:

- 120 MPM of direct speech and language therapy, provided outside of the general education classroom individually or in a small group.
- 180 MPY of indirect services dedicated to “preparation of therapy materials, implementation of strategies in the classroom, consultation and collaboration with the general education teacher, progress monitoring and documenting, preparation of and attendance to meetings and other IEP-related tasks.”

*Id.* at p. 22

80. Student’s LRE in the 2023 IEP remained general education at least 80% of the time, specifically 98.7% of the time. *Id.* at pp. 10, 23. The IEP team determined that Student enjoys learning and would benefit from peer speech models and “needs to be in the general education

classroom as much as possible.” *Id.* at p. 23. The disadvantage of this setting was “less opportunity for pull-out services” which Student did not appear to need. *Id.*

81. According to the embedded PWN, the IEP team considered reducing Student’s SLP services but determined that Student would still benefit from “30 minute long weekly sessions to target his speech and language difficulties.” *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 implement Student’s IEP from October 27, 2022 through March 21, 2023, by failing to provide him with the SLP services required by the 2022 IEP, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.**

Parent’s concern is that Student did not receive SLP services at School during the 2022-2023 school year.

#### **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).

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). The IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

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.” 34 C.F.R. § 300.323(d).

## **B. Implementation of the 2022 IEP**

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

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). There is no indication here that providers at School were unaware of their responsibilities under Student's 2022 IEP. Teacher is aware of Student's needs and provides him with the accommodations required by the 2022 IEP. (FF #s 16, 30, 33 and 34.) While Former SLP worked at School she provided Student with 30 MPW of direct services focused on his goals. (FF #s 21-23.) The issue here is instead that for months School did not have an SLP who could provide the services in the 2022 IEP. (FF # 29.) Thus, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. § 300.323(d).

The SCO next considers the implementation of Student's direct and indirect SLP services.

### *ii. Implementation of Direct SLP Services*

The 2022 IEP requires that Student receive 120 MPM of direct SLP services outside the general education classroom. (FF # 17.)

Student received 180 minutes of direct SLP services in September and October of 2022. (FF # 32.) District did not provide Student with some or all of his SLP services in October, November, December, January, February and March. (FF #s 32-33.) In total, the SCO finds and concludes that District failed to provide Student with 510 minutes (eight and a half hours) of direct SLP services, in violation of 34 C.F.R. § 300.323. (*Id.*)

### *iii. Implementation of Indirect SLP Services*

Annually, the 2022 IEP requires that Student receive 180 minutes (three hours) of indirect, consultative support from an SLP. (FF # 17.) Before leaving her position at School, Former SLP provided 30 minutes of consultative services to Teacher. (FF # 34.) Teacher has concerns that Student's reading challenges are connected to his SLI, and she wanted to consult with an SLP on how best to support him. (FF # 58.)

The SCO finds that Student was provided with only 30 minutes of his annual indirect SLP services over the course of seven months from September of 2022 through March of 2023. (FF #s 24 and 34.) That amounts to 1/6 or 16% of the 180 minutes included in his IEP. Although the new SLP may provide some of the remaining 150 minutes in April and May, the SCO finds and concludes that the provision of just 30 of the required 180 minutes of indirect services over seven months amounts to a failure to implement Student's indirect SLP services, in violation of 34 C.F.R. § 300.323.

For these reasons, the SCO finds and concludes that District failed to implement the direct and indirect SLP services in Student’s 2022 IEP, 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, District failed to provide Student with 510 minutes (eight and a half hours) of direct SLP services and 150 minutes (two and a half hours) of indirect SLP services. (FF #s 22-34.) Student received no services for five months in a nine-month long school year. (FF # 33.) During that time, Student made some progress on articulation. (FF # 45.) He continued to struggle with expressive language. (FF #s 47 and 48.) Student also remained hard to hear in noisy environments, like a classroom. (FF #s 49 and 53.) Teacher was unable to consult with an SLP about her ongoing concerns about Student’s reading. (FF # 58.) The SCO finds that this was more than a minor discrepancy from the services outlined in the 2022 IEP. Thus, the SCO finds and concludes that this constitutes a material failure to implement Student’s 2022 IEP, 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 in, if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets

the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

In this case, with the limited data collected between October 31, 2022 to present, it is hard to ascertain how this lack of services impacted Student. (FF #s 35-50.) As of October 31, 2022, Student was performing at about the same level as he had been at the end of the prior year. (FF #s 36-43.) Without beginning of the year data, the SCO cannot determine if Student rapidly recovered skills that were lost over the summer or failed to make progress for two months, even with services. (FF # 35.) Bilingual SLP concluded that Student had made substantial progress without services, but that was from just one data collection opportunity. (FF #s 44-50.) More information is also required to understand the impact, if any, of Student's SLI on his reading difficulties. (FF #s 58-60.)

Taking into consideration Student's apparent progress without services and frequent absences, at least 21 of 169 school days, the SCO now explains a compensatory education package to help place Student in the same position with respect to making progress on IEP goals if not for the violation. The SCO finds and concludes that an award of 300 minutes (five hours) of direct SLP services and 45 minutes (.75 hours) of indirect consultative services to be appropriate.

**Conclusion Regarding Annual IEP Review: District failed to review Student's IEP at least annually, in violation of 34 C.F.R. § 300.324(b). This violation did not result in a denial of FAPE.**

Based on the investigation, the SCO is concerned that Student's annual IEP was not reviewed and revised at least annually. This concern was not raised by Parent but came to the attention of the SCO while reviewing the records in this investigation. Because it relates to the lack of an SLP at School, this concern is closely related to the allegation raised in Parent's Complaint. It could also be resolved with documentation already submitted by the District. Nevertheless, on March 27, 2023, District was given the opportunity to submit an additional written response to this concern.

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

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b).

#### **B. Review of Student's 2022 IEP**

In this case, for students whose primary area of disability is SLI, SLPs are responsible for case management, including holding IEP team meetings. (FF # 62.) When there is no SLP, District relies

on Coverage Team to hold timely IEP team meetings. (*Id.*) Student's 2022 IEP was completed on February 8, 2022. (FF # 5.) Student's IEP was due for an annual review on or before February 7, 2023. (FF # 65.) District did not contact Parent to schedule Student's IEP team meeting until after March 14, 2023, and the meeting was held March 22, 2023. (FF #s 65-66.)

Accordingly, the SCO finds and concludes that District failed to timely review and revise Student's IEP, in violation of 34 C.F.R. § 300.324(b)(1).

### **C. Procedural Violation**

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parent's 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 (10<sup>th</sup> Cir. 2008).

In this case, Student's annual IEP review was conducted six weeks late. (FF #s 65-66.) However, once it was held, Parent was able to participate in the meeting and the decisions about Student's future services. (FF #s 66-81.) The delay also did not change the services or accommodations Student was receiving. The 2023 IEP has four of the five accommodations from the 2022 IEP. (FF # 78.) The only accommodation that was removed was reminding Student to slow down as needed, which teacher did not report using. (FF #s 54, 55 and 78.) Teacher provided Student with the four accommodations all year. (FF #s 54 and 55.) At the time, School did not have an SLP, so even if the review had been held in a timely manner, Student still would not have been receiving SLP services. (FF #s 28-30.)

Thus, the SCO finds that the failure to timely review and revise Student's 2022 IEP did not result in a denial of FAPE.

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

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).



### **A. IEP Implementation**

This investigation is unique, as another state complaint investigation has already carefully considered the systemic impact of District’s shortage of SLPs. *Denver Public School District*, 123 LRP 11299 (SEA CO 3/18/23). That investigation determined that District’s failure to implement SLP services for numerous students in elementary schools was systemic. *Id.* As a result, that investigation included remedies intended to address those systemic concerns. *Id.* As any such concerns are already being addressed, this investigation does not consider whether the implementation violation is systemic.

### **B. Review and Revision of IEPs**

This investigation reveals a violation that is systemic in nature and will likely impact the future provision of services to IDEA-eligible students in District. District has a system, a shared spreadsheet, for tracking upcoming annual IEP reviews and triennial evaluations that need to be covered by a member of District’s Coverage Team. (FF #s 61-64.) However, this spreadsheet did not include Student’s annual review. (FF #s 64-65.) Other students, including those who have transferred schools, are also left off the spreadsheet. (FF # 64.) Although Student transferred to School at the start of the year, he had been there for two months when Former SLP left. (FF #s 5 and 28.)

The SCO cannot conclusively determine if Student was left off the spreadsheet because he transferred at the start of the school year or because the shared spreadsheet was not updated when Former SLP left in October of 2022. Either way, this investigation raises concerns about the other students who are not on the spreadsheet currently as well as those who may not end up on the spreadsheet after enrolling in new schools next year. Accordingly, the SCO will set forth specific remedies consistent with the IDEA to ensure District continues to review and revise IEPs in a timely fashion, regardless of staffing shortages.

### **REMEDIES**

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

- a. Failing to implement Student’s 2022 IEP, in violation of 34 C.F.R. § 300.323.
- b. Failing to revise Student’s 2022 IEP at least annually, in violation of 34 C.F.R. § 300.324(b)(1).

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

## 1. Corrective Action Plan

- a. By **Monday, May 22, 2023**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

## 2. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **five (5) hours of specialized speech/language services to be provided directly, outside the general education classroom**. This instruction must be provided by an appropriately licensed SLP or an SLPA under the supervision of an appropriately licensed SLP. These services must be designed to support Student’s progress on his IEP goals.
  - a. Sessions must be spread out such that Student does not receive more than 60 MPW of direct SLP services. Thus, sessions during the school year shall be limited to no more than 30 MPW in addition to the services required by Student’s 2023 IEP. Sessions over the summer or during breaks shall be limited to no more than 60 MPW.
  - b. All five hours must be provided by **Friday, December 15, 2023**.
- b. Student’s future teacher(s) shall receive **45 minutes of specialized speech/language consultation services to be provided in the first two months of the 2023-2024 school year**. These consultations must be provided by an appropriately licensed SLP or an SLPA under the supervision of an appropriately licensed SLP. These services must be designed to support Student’s progress on his IEP goals.
  - a. These compensatory services must be provided in addition to any indirect services included in Student’s 2023 IEP and must be spread over at least two sessions.
  - b. All 45 minutes must be provided **between August 21, 2023 and Friday, October 20, 2023**.
- c. **By Tuesday, May 23, 2023**, District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and

the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Thursday, May 25, 2023**. If District and Parent cannot agree to a schedule by May 23, 2023, the CDE will determine the schedule for compensatory services by **Friday, June 23, 2023**.

- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parent may opt out of some or all of the compensatory services if she wishes.
- 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. Monthly consultation between the provider(s) delivering compensatory services and SLP Manager or an SLP who is also a team lead shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance him toward IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). 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.

### **3. Process for Ensuring Timely Annual Reviews**

- a. By **Monday, June 26, 2023**, District must provide CDE with a written explanation of the process District uses to ensure the provision of timely annual reviews and triennial reevaluations for students whose primary disability is SLI who are at schools without an SLP.
- b. This process must also include a written explanation of all steps District is taking to update the list to ensure all impacted students are included, including those who transfer to new schools or whose SLPs leave midyear.

### **4. Other Remedies**

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

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

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

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

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process

Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 21 day of April, 2023.



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Rachel Dore  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-8

- Exhibit 1: Email

### Response, pages 1-2

- Exhibit A: IEPs
- Exhibit B: Evaluation
- Exhibit C: None
- Exhibit D: Notice of Meeting
- Exhibit E: Service Logs
- Exhibit F: Attendance
- Exhibit G: Progress Reports
- Exhibit H: Calendars
- Exhibit I: District Policies
- Exhibit J: None
- Exhibit K: District Contacts

### Telephone Interviews

- SLP Manager: February 28, 2023
- Parent: March 22, 2023
- Former SLP: March 23, 2023
- Teacher: March 23, 2023
- Bilingual SLP: April 4, 2023