

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

State-Level Complaint 2023:550

Weld RE-4

DECISION

INTRODUCTION

On June 1, 2023, the parents (“Parents”) 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 Weld RE-4 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified 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.

On July 12, 2023, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in an impasse and, on July 14, 2023, the SCO resumed the investigation.

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 June 1, 2022 through the present for the purpose of determining if a violation of IDEA occurred. Additional information outside this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to violations occurring after June 1, 2022.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review, and revise an IEP tailored to Student's individualized needs between March 6, 2023 and present, in violation of 34 C.F.R. § 300.320 and ECEA Rule 2.51(1), specifically by:
 - a. Failing to include an accurate statement of Student's present levels of academic achievement and functional performance;
 - b. Failing to develop measurable annual goals designed to meet Student's needs and enable Student to be involved in and make progress in the general education curriculum;
 - c. Failing to develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments; and
 - d. Failing to include the special education and related services and supplementary aids and services necessary to allow Student to be involved in and make progress in the general education curriculum.
2. Failed to properly implement Student's IEP from February 2023 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide required services with a speech and language pathologist;
 - b. Failing to provide required paraprofessional support inside Student's general education classes;
 - c. Failing to provide required indirect, consultative services from a special education teacher; and
 - d. Failing to provide required accommodations and modifications in Student's general education classes.
3. Deprived Parents of meaningful participation in the development, review, and revision of Student's IEP in the IEP team meetings held on or about March 5, 2023, April 12, 2023, and May 1, 2, and 13, 2023, in violation of 34 C.F.R. § 300.324(a)(1)(ii).
4. Failed to provide Parents with periodic reports on Student's progress between March of 2023 and present, in violation of 34 C.F.R. § 300.320(a)(3)(ii).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Student attended tenth grade at a District school (“School”) during the 2022-2023 school year. *Exhibit A*, p. 39.
2. He is eligible for special education and related services under multiple disability categories, including Intellectual Disability, Other Health Impairment, and Speech or Language Impairment. *Id.*
3. He is seventeen years old, a positive and happy student who enjoys working with his hands and showing his family’s [animal] for judging through the 4-H organization. *Id.* at p. 6; *Complaint*, p. 4; *Interviews with Significant Support Needs (“SSN”) Teacher and Paraprofessional 2*. He has difficulty staying on task and performing work that he does not find interesting, and he is easily distracted by technology such as YouTube videos on his school laptop. *Exhibit A*, pp. 46, 48; *Complaint*, p. 4; *Reply*, pp. 1-3.
4. Parents allege that the District did not provide the accommodations and services required by Student's 2022-2023 IEP and that the IEP for the 2023-2024 school year is inadequate and does not reflect their input. *Complaint*, pp. 4-10; *Interview with Parents*. The District responds that the 2022-2023 IEP was fully implemented with the exception of speech-language services, and that the 2023-2024 IEP, which was revised several times to incorporate Parents’ input, is appropriately designed to meet Student’s needs. *Response*, pp. 8-15.

B. Student’s 2022-2023 IEP

5. On March 9, 2022, a properly composed IEP Team, including Parents and Student, met and developed the IEP (the “2022-2023 IEP”) that applied throughout Student’s tenth-grade year. *Exhibit A*, p. 3.
6. The IEP documented Student’s levels of academic achievement and functional performance. *Id.* at pp. 4-14. Due to his intellectual disability, Student was unable to perform at his grade level in reading, writing, and mathematics. *Id.* at pp. 10-14, 17. His intellectual disability and speech impairment resulted in challenges in asking for help and recognizing when to ask for help. *Id.* at pp. 11-12. He used a combination of visual tools and verbal communication to express himself, and he was doing well at initiating and maintaining conversations with both teachers and his peers, although he showed little interest in discussing academic topics. *Id.*

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

at p. 12. His teachers reported that he had difficulty maintaining his attention on topics he was not interested in and was shy during groupwork and class presentations. *Id.* at pp. 12-13.

7. Student's disabilities resulted in a need for supports and services that would allow him to improve his reading, writing, and mathematics skills, as well as supports to work through or around his speech-language impairment in order to better participate in the general education setting. *Id.* at pp. 17-18.
8. Student's postsecondary education goals were for him to live independently and manage his budget, attend a transition program for students aged 18 to 21 with intellectual or developmental disabilities, and to work part-time as he attended the program. *Id.* at p. 19. Student enjoyed animals and working with his hands, and he expressed a long-term interest in becoming a farmer or working in sports-related retail. *Id.* at p. 9; *Interview with SSN Teacher.*
9. The IEP set out a planned course of study for each year of high school to prepare Student for life after high school, including the specific courses that he would attend to help address his academic needs and allow him to explore potential career fields. *Exhibit A*, pp. 19-20.
10. The IEP provided instruction and services to address his needs relevant to postsecondary transition, i.e., reading, writing, math, and communication with academic support from a special education teacher, a speech-language pathologist, and paraprofessionals. *Id.* at p. 21. Student would also participate in community experiences, such as unified sports, and receive instruction in daily living skills such as communication through trips to local retail businesses with the speech-language instructor. *Id.* The IEP also listed the names and contact information for community and governmental organizations that provide vocational and other support for individuals with disabilities. *Id.* at pp. 22-23.
11. The IEP stated that Student's general education teachers would collaborate with his special education teacher to modify Student's curriculum. *Id.* at p. 21.
12. The IEP contained six goals. *Id.* at pp. 23-29. The first three goals targeted reading, writing, and mathematics. *Id.* at pp. 23-26. The fourth goal targeted self-determination, and its objective was for Student to independently complete a planner to track his assignments and schedule. *Id.* at pp. 26-27. The fifth goal targeted communication, and its objective was for Student to problem-solve social and academic situations by asking appropriate questions. *Id.* at pp. 27-28. The sixth goal also targeted communication, and its objective was for Student to use speech-enhancing strategies—such as slowing down, shortening sentences, and repeating himself—to express himself more clearly. *Id.* at pp. 28-29.
13. The IEP required the District to report Student's progress on these goals "at the end of each semester along with general education report cards." *Id.* at p. 23.

14. The IEP provided 33 accommodations to help him access the general education curriculum. *Id.* at pp. 29-30. These included the use of visual aids, pre-teaching vocabulary, providing notes and outlines ahead of class, giving extra time for tasks and class transitions, reading tests and assignments aloud to Student, and technological assistance through his school laptop such as word prediction, speech-to-text, and text-to-speech software. *Id.* at pp. 29-30.
15. The IEP provided the following services: (1) For reading, 212 minutes per week of direct specialized instruction; (2) For writing, 212 minutes per week of direct specialized instruction; (3) For speech and communication, 140 minutes per month of speech-language services by a speech-language pathologist; and (4) To assist in implementing accommodations and modifications during general education classes, paraprofessional support for 500 to 1,000 minutes per week³ depending on the needs of his general education classes. *Id.* at pp. 33, 36. The IEP did not specify the level of paraprofessional support, e.g., one-to-one or one-to-two support. *Id.*
16. The IEP does not require any “indirect” services wherein a special education teacher or other specialist works with a student’s general education teachers (rather than directly with the student) to make the general education curriculum accessible. *See id.* at pp. 33-36. Such collaboration is expected as a matter of course in the District, so students’ IEPs do not usually separately include indirect services or instruction. *Interview with Special Education Director.*
17. The IEP Team determined that Student’s “least restrictive environment” (“LRE”) was “80% or more,” meaning he would spend at least 80% of his time in general education. *Id.* at p. 37.

C. Implementation of the 2022-2023 IEP

Father’s Classroom Observation on March 17, 2023

18. Parents’ concerns arise largely, though not exclusively, from Father’s observation of Student’s agriculture class on March 17, 2023, where he felt that Student was excluded from the class. *Complaint*, p. 4; *Interview with Parents.*
19. Father recounts that, during his March 17 visit, Student spent the class coloring and listening to headphones connected to his school laptop while Paraprofessional 1 and Gen Ed Teacher 1 ignored him. *Complaint*, p. 4; *Exhibit 9; Interview with Parents.* Father also recalls that Gen Ed Teacher 1 called on Student to share his knowledge about rabbits—the day’s topic was rabbitry—and Student responded by shaking his head and staring at his desk. *Id.*; *accord Interview with Gen Ed Teacher 1.*

³ An IEP should state an ascertainable amount of services (e.g., “paraprofessional support for each of Student’s general education classes”) and not, as here, a range of minutes. Stating an unspecified amount, such as a range of minutes or “as needed,” may prevent Parents from participating in an informed way. *See* 34 C.F.R. § 300.503(b); *Denver Public Schools*, 78 IDELR 28, 2020:524 (Colo. SEA 2020). Here, because the investigation showed that School provided the maximum minutes for this service—that is, Student had paraprofessional support in each of his general education classes—the SCO provides this caution but does not find a violation. *See below*, FF #s 49-54.

20. Parents believe this means that Gen Ed Teacher 1 did not earn Student’s trust. *Interview with Parents*. His manner suggested, to Father, that he was accustomed to spending his class time coloring and listening to his laptop. *Interview with Parents; Supplemental Reply*, p. 3. Following that class, Father spoke with Gen Ed Teacher 1, Paraprofessional 1, and Principal, and Father recollects they admitted that special education staff provided little to no support to general education teachers and that exclusionary practices were prevalent in School. *Complaint*, pp. 5-6.
21. Principal, Paraprofessional 1, and Gen Ed Teacher 1 do not share these recollections: Principal sees “no pervasive issues” at School; Paraprofessional 1 remembers trying unsuccessfully to redirect Student, who seemed unusually withdrawn; and Gen Ed Teacher 1 states that Student’s subdued behavior that day was unusual, and she regularly included him in the class and in groupwork, although he was most engaged with the hands-on lab exercises. *Interviews with Principal, Paraprofessional 1, and Gen Ed Teacher 1*. Gen Ed Teacher 1, Gen Ed Teacher 2, Paraprofessional 1, and Paraprofessional 2 all report that they have collaborated with SSN Teacher, and her door is always open for specific issues or general brainstorming. *Interviews with Gen Ed Teacher 1, Gen Ed Teacher 2, Paraprofessional 1, and Paraprofessional 2*.
22. SSN Teacher states that she speaks with her students’ general education teachers at the beginning of the year, checks in regularly, and holds a “student spotlight” meeting with individual students’ teachers once a semester. *Interview with SSN Teacher*. She did these things with Student’s teachers beginning in the spring 2023 semester, when Student was first placed on her caseload. *Id.*
23. Parents allege that the failure by the teacher and paraprofessional to involve student on March 17 can be extrapolated along with evidence that Student accessed YouTube frequently during classes—see below, FF # 49—to conclude that the District has generally failed to implement Student’s IEP by failing to modify Student’s curriculum, provide the accommodations in his IEP, and provide paraprofessional support. *Complaint*, pp. 4-6, 8-11; *Reply*, pp. 1-3; *Interview with Parents*.

Accessibility of the IEP to Student’s Providers

24. To make sure Student’s teachers and paraprofessionals knew about Student’s IEP requirements, SSN Teacher checked in with them at the beginning of the semester and told them that she was available for questions and consultations. *Interviews with SSN Teacher, Gen Ed Teacher 1, and Gen Ed Teacher 2*.
25. SSN Teacher also held an orientation at the beginning of the semester with the paraprofessionals, who she supervised, to ensure that they understood their students’ IEP requirements. *Interviews with SSN Teacher, Paraprofessional 1, and Paraprofessional 2*.

26. Additionally, Student's IEP "snapshot" was electronically distributed at the beginning of the semester to his teachers and paraprofessionals. *Interviews with SSN Teacher, Gen Ed Teacher 1, Gen Ed Teacher 2, Paraprofessional 1, and Paraprofessional 2.* The snapshot is a condensed version of the IEP and shows Student's goals, standards, accommodations, modifications, and services. *Id.* Student's full IEP and snapshot are also both available to staff through School's computer system. *Id.*

Implementation of Curriculum Modifications

27. Parents have specifically alleged that Gen Ed Teacher 1 did not modify the curriculum of Student's agriculture class, based on Father's observation on March 17, 2023. *Complaint*, pp. 4-5, 9; *see above*, FF #s 18-23. They also allege that SSN Teacher has failed to collaborate with the general education teachers, based on Father's recounting of his conversation with Gen Ed Teacher 1, which she disputes. *See above*, FF #s 20-21.

28. According to Paraprofessional 2, who worked with Student in the agriculture class during the fall semester, she and Gen Ed Teacher 1 worked together to modify the curriculum so that Student got at least some of the substantive content of the course. *Interview with Paraprofessional 2.* For example, they combined 4-H activity materials with class activities to make a visual aid. *Id.* The aid contained diagrams, lists, posters, and charts that provided visually simplified representations of some of the relevant class material, such as animal anatomy and animal-derived products. *Id.*

29. Gen Ed Teacher 1 similarly explained that she modified that class's curriculum by identifying a subset of material and giving Student tests and quizzes only on that subset. *Interview with Gen Ed Teacher 1; accord Interview with Paraprofessional 1.* This was challenging because the class—part of a course of study that could result in a professional certification that would allow students to work in a veterinary clinic—was difficult for any student. *Id.* Student reads at a [lower] grade level and requires heavy prompting to write one to three sentences. *Exhibit A*, pp. 50-51.

30. Parents have fought to keep him enrolled in general education rather than more special education classes, although several teachers have said that special education classes would be more appropriate. *Interview with Parents.* Despite these challenges, Gen Ed Teacher 1 tried to break down material that was both key to the class's subject matter and potentially accessible to him, using visual aids when possible. *Interview with Gen Ed Teacher 1.*

31. Gen Ed Teacher 2 and Paraprofessional 2 stated that Student was given a modified curriculum in other classes as well. *Interviews with Gen Ed Teacher 2 and Paraprofessional 2.* Gen Ed Teacher 2, who taught him in Catering I and Child and Adolescent Development, identified priority areas within the course topics, and paraprofessionals worked with him visually and verbally so he could learn the simplified curriculum. *Id.* In English Composition, he similarly had a narrowed curriculum and used visual and verbal aids to learn the material. *Interview*

with Paraprofessional 2. He would produce written assignments with Paraprofessional 2's assistance as a scribe, although she made him write out his own words when there was enough time. *Id.* In each of these classes, Student would participate in labs and groupwork as a contributing member, although he was shy and always resisted standing in front of the class to give a presentation. *Interviews with Gen Ed Teacher 1, Gen Ed Teacher 2, and Paraprofessional 2.*

32. Gen Ed Teacher 1 and Gen Ed Teacher 2 took the lead modifying their own class curriculums, but they consulted with SSN Teacher as needed and kept her apprised of Student's learning and progress. *Interviews with Gen Ed Teacher 1 and Gen Ed Teacher 2.* Although Paraprofessionals 1 and 2 were not part of conversations between the general education teachers and SSN Teacher, they would also discuss Student's progress or challenges in his classes with SSN Teacher. *Interviews with Paraprofessional 1 and Paraprofessional 2.*
33. In light of this evidence, the SCO finds that Student's teachers provided a modified curriculum and that the general education teachers collaborated with SSN Teacher as needed and appropriate to make their classes accessible to Student.

Implementation of Accommodations

34. Parents have alleged a general failure to provide accommodations; they reason that, if all appropriate accommodations had been provided, then Student would be performing better academically, Student would not require the assistance of paraprofessionals, and Father would not have observed a lack of inclusion of Student in the March 17 class. *See Complaint, pp. 5, 8-9, 11; Interview with Parents.*
35. When asked, the staff interviewed by the SCO all said Student received the accommodations in his IEP, although implementing the accommodations could be challenging if the class material was particularly dense, high-level, or specialized. *Interviews with SSN Teacher, Gen Ed Teacher 1, Gen Ed Teacher 2, Paraprofessional 1, and Paraprofessional 2.*
36. SSN Teacher did not hear from the general education teachers or paraprofessionals that they encountered any obstacles providing Student's accommodations. *Interview with SSN Teacher.*
37. Gen Ed Teacher 1 stated that she provided Student's required accommodations. *Interview with Gen Ed Teacher 1.* As an example, she provided printed versions of the class notes throughout the year, and Student would work with his paraprofessionals to highlight, circle, and otherwise mark the notes throughout the corresponding lecture as a means of staying engaged with the lecture. *Interview with Gen Ed Teacher 1.* He was then allowed to use those notes for quizzes and tests, and he showed what he learned in assessments by working with the teacher directly, using pictures. *Id.*

38. Gen Ed Teacher 2 explained that she and Student’s paraprofessionals provided Student’s accommodations, including “chunking” his work into manageable pieces for Student, prompting him frequently to stay on task, giving him extra time and an opportunity to revise his answers, and seating him in a place in the classroom where he could see the teacher’s presentation and be near helpful peers. *Interview with Gen Ed Teacher 2.*
39. Paraprofessional 1 explained that Student had a visual schedule, received modified tests, and had text-to-speech and speech-to-text software on his laptop. *Interview with Paraprofessional 1.* Paraprofessional 1 would engage in pre-teaching Student when possible, although some classes such as English were better structured to allow for pre-teaching as opposed to lab-driven classes such as Veterinary Science. *Interview with Paraprofessional 1.* He would read homework or assessments aloud, and he would prompt Student to make sure he was following along. *Id.* When Paraprofessional 1 found a strategy that made it easier for Student to access class material, he would report it to SSN Teacher, and when he had a tough time getting Student’s engagement, he would get her advice. *Id.*
40. Paraprofessional 2 similarly recounted her practice of providing visual aids, reading aloud to him when necessary to make the material accessible, acting as a scribe, relocating to a quieter environment if necessary for assessments, and taking additional time for assessments. *Interview with Paraprofessional 2.*
41. In light of this evidence, the SCO finds that Student was provided the accommodations required by his IEP.

Implementation of Progress Reporting

42. Staff reported Student’s progress on his annual goals in a draft IEP sent to Parents on March 3, 2023. *Exhibit 2.* Parents allege that this reporting was insufficient because its lack of data made it “useless,” and it was generally “sloppily put together with no thought or detail of academic progress.” *Compare Complaint*, p. 6 with *Exhibit 2*, pp. 4-5.
43. SSN Teacher tracked progress daily. *Exhibit G*, pp. 9-10; *Exhibit O*, pp. 1-2; *Interview with SSN Teacher.* She filled in a table, which is part of the Record in Exhibits G and O, with each new day as a row and Student’s annual goals in the columns. *Id.* She recorded his reading, writing, and math progress as a number of successful attempts at a task out of a total number of tries along with the percentage of success, e.g., “2/12 17%.” *Id.* For his self-determination goal, she recorded the number of times, if any, that he spoke with a teacher regarding his tasks as required by that goal, and she wrote the teacher names in a separate “notes” column. *Id.*
44. The March 3 draft IEP reported this progress on four out of six goals—reading, writing, math, and communication—by stating the goal, its metric for progress, the number or percentage of times that Student could successfully complete the tasks used to measure his progress,

and a sentence describing his performance. *Exhibit 2*, p. 4. For example, Student's progress in math was reported as:

Goal 3 Math:

By the end of the IEP year, in order to be able to budget money independently that he earns as an employee, [Student] will be able to identify place value in order to identify dollar and cent amounts as measured by work samples with 100% accuracy.

Current Status: [Student] is 15% accurate when identifying dollars and cents amounts. With questioning and assistance, [Student] is 35% accurate when identifying dollars and cents.

Id.

45. Progress on the fifth goal, concerning Student's ability to engage in self-determination by using a planner, was reported as, "[Student] needs step-by-step reminders to use the [planner] app on his phone" and that "most of the time, he says it does not work, or his phone is dead." *Id.* at p. 4.
46. Progress on the sixth goal, concerning Student's ability to engage in conversations, was reported as "[Student's] speech intelligibility has been quite good this school year" and that, although he required some prompting, "his overall communication is easier to understand than previously," and, finally, that "[w]hen answering complex wh-questions ["who," "what," etc.], [his] accuracy falls around 50% with moderate to maximum prompting and choices between 2 and 4 options." *Id.*
47. This was the only formal report of Student's progress in the spring semester; although revised drafts of the IEP continued to be provided to Parents, the embedded progress report was not updated. *Compare Exhibit 3*, pp. 4-5 with *Exhibit M*, pp. 46-47 and *Exhibit A*, pp. 46-47. School did not issue a formal report with the end-of-year report card as required by Student's IEP. *Exhibit A*, p. 23; *Exhibit G*; *Interview with Special Education Director*. School did not issue the end-of-year report because staff had planned to finalize a revised IEP on March 6, 2023 and then report progress on the revised goals. *Interview with Special Education Director*. The IEP, however, was not finalized until after the semester ended. *Id.*; see *Exhibit A*, p. 39; *Complaint*, p. 6.
48. On July 7, 2023, SSN Teacher emailed Parents a belated report of Student's progress through the end of the school year. *Exhibit J*, p. 306; *Exhibit G*, p. 8. It showed that Student had made progress in his reading, writing, mathematics, and self-determination goals. See *Exhibit G*, pp. 3-8.

Implementation of Services – Paraprofessional Support

49. Parents have alleged that Student did not receive paraprofessional support, and they have two reasons for thinking so: First, after Father observed the agriculture class on March 17, he spoke with Paraprofessional 1 and learned that Student had not had paraprofessional support in that class since the fall semester. *Interview with Parents; Supplemental Reply*, p. 4. Second, Father downloaded Student’s YouTube history for the school year through March 17 and mapped the video access timestamps to a spreadsheet of his classes. *See Exhibit 5; Exhibit 6*. The spreadsheet shows he frequently accessed videos during certain classes. *Exhibit 6*. Parents reason that, if he had paraprofessional support, he could not be accessing YouTube videos so frequently. *Interview with Parents; Reply*, p. 1; *Supplemental Reply*, pp. 1-5.
50. On the first point, there may have been a miscommunication because SSN Teacher, Gen Ed Teacher 1, and Paraprofessional 1 have stated that Paraprofessional 1 did support Student in the agriculture class. *Interviews with SSN Teacher, Gen Ed Teacher 1, and Paraprofessional 1*. However, Student did not have one-on-one paraprofessional support in that class since the fall semester. *Id.* In the spring semester, he and another student with a disability shared support from Paraprofessional 1. *Id.* Paraprofessional 1 said that one-on-one support would allow him to better keep Student on task, although the 2022-2023 IEP does not specify the required level of support. *Interview with Paraprofessional 1; see Exhibit A*, p. 33. In response to Parents’ concerns, the District’s Special Education Director investigated and confirmed that students at School with paraprofessional support in their IEPs had paraprofessionals assigned to them, and she spoke with SSN Teacher to ensure that the paraprofessionals were aware of their responsibilities in the classroom. *Interview with Special Education Director*.
51. Regarding the YouTube spreadsheet, the District responds that many teachers allow students to listen to YouTube music on their laptops while working, notes that the timestamps show that Student sometimes accessed as many as 11 videos in a single minute, and observes that the problem of students being distracted by technology is a serious issue for students both with and without disabilities. *Supplemental Response*, pp. 1-3; *see Exhibit 5; accord Interviews with SSN Teacher and Gen Ed Teacher 1*. Parents have maintained that these explanations do not adequately account for the data showing just how much time Student expended on YouTube rather than classwork. *See Supplemental Reply*.
52. Student had an assigned paraprofessional—albeit sometimes in a two-to-one capacity—in all general education classes in the 2022-2023 year. *Interviews with SSN Teacher, Gen Ed Teacher 1, Gen Ed Teacher 2, Paraprofessional 1, Paraprofessional 2, and Special Education Director*.
53. Although Paraprofessional 1 sometimes had difficulty keeping Student on task, he did work with and support Student in the agriculture class, and Student’s conduct during Father’s observation—such as shaking his head and refusing to speak when called on—was not the norm. *Interviews with Gen Ed Teacher 1 and Paraprofessional 1*. Paraprofessional 2 also had challenges with technological distraction, which she eventually dealt with by telling Student

to keep his laptop closed while she substituted manually for the laptop's functions (such as scribing) or used her own phone to bring up online educational content. *Interview with Paraprofessional 2; accord Exhibit 6.*

54. In light of this evidence, the SCO finds that Student had assigned paraprofessionals in each of his general education classes.

Implementation of Services – Speech-Language Services

55. On May 18, 2023—the last day of the semester—the District sent a letter to parents whose students received speech-language services to inform those parents that their students had not received speech-language services since mid-February, when School's speech-language pathologist ("SLP") went on maternity leave. *Complaint*, p. 17.
56. The District concedes that it failed to provide speech-language services to Student and similarly situated students in the District from mid-February to the end of the 2022-2023 school year. *Response*, p. 12; *Interview with Special Education Director*.
57. In total across the District, thirty-six students—most at School, and the remainder at another high school—did not receive the speech-language services required by their IEPs. *Interview with Special Education Director*.
58. The District has scheduled compensatory services for these students in the 2023-2024 school year. *Id.* The District has scheduled the compensatory time on its own initiative—it is not requiring Parents to take any affirmative action. *Id.*
59. Of the students who graduated last May, all who had speech-language services on their IEPs are serendipitously enrolled in the District's postsecondary transition program for students aged 18 to 21, and they will receive their compensatory time in that program. *Id.* The SLP who went on leave is returning for the 2023-2024 school year, and the District has hired an additional part-time SLP to help provide the compensatory services. *Id.*
60. The District has agreed to give Student 600 minutes of compensatory speech-language services. *Response*, p. 7; *Exhibit E*, p. 1; *Interviews with Parents and Special Education Director*. This is more time than Student missed: Student should have received 140 minutes per month for February, March, April, and May, for a total of 560 minutes, minus 35 minutes provided on February 6, for a total of 525 missed minutes. *Compare Exhibit A*, p. 33 with *Exhibit E*, pp. 1-2.
61. The District provided 405 minutes of compensatory speech-language services to Student over the summer and plans to provide another 205 minutes during the 2023-2024 school year. *Interview with Special Education Director; Exhibit E*, p. 1.

D. Student's 2023-2024 IEP

Development of the 2023-2024 IEP

62. On March 6, 2023, a properly composed IEP Team, including Parents and Student, convened to review and revise his IEP. *Exhibit A*, pp. 39-41; *Interviews with SSN Teacher and Parents*.
63. At the meeting, SSN Teacher took close notes of Parents' concerns, including Parents' views of Student's strengths and needs, their desire to revise the goals and accommodations to add language of inclusivity, to use certain visual aids, to receive some guidance to help them pre-teach or reinforce Student's lessons at home, and to write the transition goals with thoughts for his interest in working in an animal shelter, in a sports retail store, or in food service. *See Exhibit D*, pp. 3-4. The IEP Team discussed progress, the results of new postsecondary transition assessments, and needs, goals, and services. *See id.* at pp. 3-7; *Exhibit A*, pp. 6-7.
64. In response to Parents' request for additional visual aids, an accommodation of "visual supports in form of lists, with picture supports if needed" was added to a revised draft sent to Parents on March 16th. *Compare Exhibit M*, p. 19 with *Exhibit A*, p. 83; *see Exhibit J*, p. 60.
65. That draft also contained revised goals, reflecting SSN Teacher's edits in response to feedback from Parents. *See Exhibit J*, pp. 54, 60.
66. The day after that draft was sent, Father conducted his observation of the agriculture class. *See above*, FF #s 18-23. After that observation, Parents indicated that School was intentionally relegating Student to the back of the classroom to color and listen to music with no social or educational benefit. *Interview with Parents*; *see Reply*, p. 2. At that point, their focus shifted from fine-tuning the IEP to obtaining private tutoring for Student and ensuring that his inclusion in the classroom was written into the IEP in as foolproof a manner as possible. *Interview with Parents*.
67. Staff from the School and District met with one or both Parents to discuss these concerns on March 20, March 24, April 12, May 2, and June 26. *See Reply*, pp. 2-3; *Exhibit A*, p. 56.
68. Although only the March 6 and June 26 meetings were formally IEP Meetings with all required members of the IEP Team, Student's education and IEP remained part of the discussions along with Parents' demands for private tutoring, a new teacher to replace SSN Teacher, and expansive training of School staff. *See, e.g., Complaint*, pp. 10, 18; *Exhibit D*, pp. 17-22; *Interviews with Special Education Director and Parents*. The Record contains staff's notes of Parents' input at the March 6, March 24, April 12, and June 26 meetings. *See Exhibit D*.
69. On April 12, Parents brought a list of nine fully written out annual goals that they wanted placed into Student's IEP. *Exhibit D*, pp. 17-22. The goals contained embedded strategies from

Student's accommodations and inclusion requirements such as "[Student] will also ask a peer first to proofread" or "[Student] will . . . show [his work] to the class." *Id.*

70. Following that meeting, SSN Teacher proposed another meeting, which took place on May 2, to discuss how Parents' proposed goals could be made to conform to the standards and expectations for IEP annual goals under the IDEA. *Exhibit J*, p. 95.
71. On May 17, SSN Teacher distributed a revised IEP draft that now had 11 goals, rather than the original 6, and incorporated much of Parents' proposals. *See Exhibit M*, pp. 60-81; *Exhibit J*, p. 190.
72. On June 8, 2023, SSN Teacher emailed Parents to ask whether the revised annual goals reflected Parents' goals for Student for the 2023-2024 school year. *Exhibit J*, p. 234. Parents proposed a full IEP Team meeting for June 26, 2023, to discuss the goals. *Id.*
73. On June 26, the IEP Team, including Parents, again met formally to review and revise the IEP. *See Exhibit D*, pp. 25-26. Parents explained that they wanted Student's accommodations included within each of the annual goals. *Id.* at p. 25. They also openly accused SSN Teacher of wanting to keep students with disabilities excluded from the general education environment. *Id.* at p. 26.
74. In response to Parents' concerns about SSN Teacher, the District assigned a new caseworker for Student. *See Exhibit N*, p. 11; *Interviews with Parents and Special Education Director*.
75. The District determined that Student's IEP as it stood on June 26—the fourth revised draft in total—was finalized for purposes of beginning the 2023-2024 school year, but has asked Parents to attend another IEP Team meeting early in the new school year, to be conducted by a neutral facilitator provided by the CDE. *Exhibit N*, pp. 1-2; *Interviews with Special Education Director and Parents*; *see Exhibit M*, pp. 7-42, 43-87, 88-121; *Exhibit A*, pp. 39-90.

Contents of the 2023-2024 IEP

76. The 2023-2024 IEP updated Student's levels of academic achievement and functional performance. *Exhibit A*, p. 46. This update drew from the following sources of information:
 - SSN Teacher's scores and narrative observations regarding Student's prior IEP goals based in part on her daily log tracking his performance on relevant tasks. *Id.* at pp. 46-47; *see Exhibit G*, pp. 9-10; *Exhibit O*, pp. 1-2; *Interview with Special Education Teacher*. Student's speech-language pathologist also added feedback regarding progress in his communication goals. *See id.* at p. 47. This report was current only to March 3, and SSN Teacher sent an updated report covering the spring semester to Parents on July 7. *See Exhibit G*, p. 8.

- Reports from general education teachers along with Student’s then-current grade in each class. *Exhibit A*, pp. 47-49.
- Postsecondary education transition assessment results from assessments completed in 2021, 2022, and 2023. *Id.* at pp. 49-54. These included the Arc’s Self-Determination Scale; the University of Northern Colorado Go On and Learn (“GOAL”) assessment, which included scores in reading, writing, mathematics, consumer technology, communication, personal care and independent living, safety and relationships, and a “personal data sheet” in the style of a generic job application; and the Picture Interest Career Survey. *Id.*

77. Standardized testing results were limited because Parents had denied consent to the District’s requests to administer most standardized testing since 2015, with only a records review for Student’s assessment in 2021, although Student did take STAR 360 “informal assessments” in 2020 and 2021. *See Exhibit B*, pp. 1- 12.

78. The IEP described Student’s needs resulting from his disabilities. *Exhibit A*, pp. 55-56. His needs were unchanged from the 2022-2023 IEP and again documented that his disabilities impeded his progress in reading, writing, and communication, which would impact both his access to the general education environment as well as his ability to enter postsecondary transition programs and find employment. *Id.* This section of the IEP included extensive input from Parents updated through June 2023. *Id.*

79. His postsecondary goals remained unchanged: He expressed interest becoming a farmer, working with animals, or working in sport-related retail, and he would attend a postsecondary transition program for students with intellectual disabilities, work part-time as a retail employee while he attended, live independently, and manage his household budget. *Id.* at pp. 45, 56; *Interview with SSN Teacher*.

80. His course of study to support his postsecondary goals remained unchanged: He would study reading and writing through both general and special education courses and take classes relevant to his career interests such as agricultural classes and physical education. *Exhibit A*, pp. 57-58.

81. The IEP’s description of the instruction and related services that would address Student’s postsecondary transition needs was also unchanged and included reading, writing, math, and communication with academic support from a special education teacher, a speech-language pathologist, and paraprofessionals. *Id.* at p. 59. It also still reflected that Student would participate in community experiences such as unified sports and gain experience in daily living skills by going to local retail businesses with the speech-language instructor. *Id.* It again listed the names and contact information for community and governmental organizations that provide vocational and other support for individuals with disabilities. *Id.* at pp. 60-61.

82. His annual IEP goals were updated and expanded from 6 goals to 11 goals. *Id.* at pp. 61-83. They incorporated Parents' feedback and aspects of their 9 proposed goals. *Compare id. with Exhibit D*, pp. 17-22. His goals and their criteria for measuring progress were as follows:

- Goal 1: Reading, to be measured by Student's success in summarizing a reading assignment with numeric milestones for increasing success over the course of the year (e.g., 40% accuracy by September and 80% accuracy by January). *Id.* at pp. 61-62.
- Goal 2: Writing, to be measured by a percentage of success on writing paragraphs with milestones for increased success. *Id.* at pp. 63-64. This goal embedded an inclusion requirement copied from Parents' proposed writing goal, stating that Student would "ask a peer to proofread his writing before turning it in to the teacher." *Id.* at p. 63; *see Exhibit D*, p. 19.
- Goal 3: Writing, to be measured by a percentage of success on writing sentences about keywords or concepts with milestones for increased success. *Exhibit A*, pp. 65-66. This goal embedded an inclusion requirement of peer collaboration similar to one proposed by Parents. *Id.*; *see Exhibit D*, p. 21.
- Goal 4: Writing, to be measured by a percentage of success on writing slides for a slide presentation, with milestones for increased success and a peer-interaction component. *Exhibit A*, pp. 68-69. This was similar to a "public speaking" goal proposed by Parents. *See Exhibit D*, p. 22.
- Goal 5: Mathematics, to be measured by a percentage of success on budgetary math problems, with milestones for increased success. *Exhibit A*, p. 70-71.
- Goal 6: Mathematics, to be measured by a percentage of accuracy on solving math problems with a calculator. *Id.* at pp. 72-73. This goal states that Student, after solving a problem, will "show it to the class." *Id.* at p. 73. The SCO finds, to the extent that other students do not need to show their work to the class, requiring Student to do so would ostracize him and be counterproductive to his involvement in the general education environment. *Consultation with CDE Content Specialist 1*.
- Goal 7: Self-Determination, to be measured by a percentage of success for accuracy as graded by his class teachers for using a daily planner to identify and record "three key concepts for each class," log his assignments, and have his teachers sign off on his planner, with milestones for increased success. *Id.* at pp. 74-75. This was very similar to the self-determination goal proposed by Parents. *See Exhibit D*, p. 19. The SCO finds that the requirement to record "three key concepts for each class" is not measurable because the term "key concepts" is vague and the goal rigidly assumes that each and every class will have three key concepts, which will not be true. *Consultation with CDE Content Specialist 1*.

- Goal 8: Self-Determination, to be measured by the “number of times [Student] independently participates,” with milestones for increased success based on his use of self-initiative to volunteer relevant information during class. *Exhibit A*, pp. 75-76. The goal requires Student to “participate in classroom discussions . . . by offering the images/words [*sic*] and providing information related to the current discussion.” *Id.* at p. 75. The SCO finds that the goal is not measurable because it does not explain what “the images/words” are. *Consultation with CDE Content Specialist 1*. The SCO also finds, to the extent that it requires Student to offer images or words when that is not part of class for other students, it would ostracize him and be counterproductive to his involvement in the general education environment. *Id.*
- Goal 9: Communication, to be measured by a percentage of success in asking follow-up questions to participate in reciprocal conversations. *Id.* at pp. 76-77.
- Goal 10: Communication, to be measured by Student’s percentage of success in using speech-enhancing strategies (e.g., slowing down and giving context), with milestones for increased success.
- Goal 11: Communication, to be measured by the number of times Student initiated conversations with his peers—“at least four times a day”—by showing them “pictures of his choice in the photo book” and logging his conversations on a tally sheet. *Id.* at pp. 82-83. The baseline data point is, “[Student] is shy with peers in his classes, he is less shy when attending lunch activities.” *Id.* at p. 82. This was only a slightly modified version of a goal proposed by Parents. *See Exhibit D*, pp. 19-20. The SCO finds that the goal is not measurable because it does not explain what “the photo book” is, where the conversations should happen, or whether they are social or academic. *Consultation with CDE Content Specialist 1*. The SCO also finds that, to the extent it requires Student to initiate a rigid number of conversations each day, particularly in class, it would ostracize him and be counterproductive to his involvement in the general education environment. *Id.*

83. Each of the goals was expressly tied to Student’s postsecondary transition plan. *See Exhibit A*, pp. 61-83. For example, his reading, writing, communication, and self-determination goals stated that they were written “[i]n order for Student to reach his goal of attending a higher-level transition program . . . and working as an employee in a retail store,” and his mathematics goals stated they were written to allow him to budget his money, track his earnings, and work in retail. *Id.*

84. The IEP provided 35 accommodations, an increase from the 33 accommodations in the prior year. *Id.* at pp. 83-84. The IEP Team added a “visual supports” accommodation and a statement (listed as an accommodation) that “[Student] enjoys working with peers in the general education classroom, when possible this is a preference for him.” *Id.*

85. The IEP again provided for a modified curriculum. *Id.* at p. 84. The 2023-2024 statement of modifications added that Student would be graded on a pass/fail system. *Id.*
86. Student’s services were unchanged: The IEP provides for 212 minutes each of literacy and mathematics specialized instruction, 140 minutes per month of direct speech-language services, and 500 to 1,000 minutes per week of paraprofessional support depending on the needs of Student’s particular general education classes. *Id.* at pp. 87-88.
87. The IEP Team again agreed to an LRE of 80% or more in general education. *Id.* at p. 89.

E. The District’s Responses to Parents’ Concerns

88. In addition to providing compensatory speech-language services to Student over the summer, *see above* FF # 61, the District responded to Parents’ concerns about Student’s lack of academic progress and his nonproductive use of technology by providing private tutoring, occupational therapy, and transportation over the summer—despite having no obligation to provide these services. *See Exhibit J*, pp. 191-92, 211; *Exhibit M*, p. 122; *Interviews with Parents and Special Education Director*.
89. Specifically, the District agreed to pay for 115 (one hundred and fifteen) hours of private tutoring in reading, writing, and math at a rate of \$75 per hour, after Parents rejected the District’s ESY services as inadequate. *Exhibit J*, pp. 191-92; *Exhibit M*, p. 122; *Interview with Parents*. The District also provided 15 hours of occupational therapy with a focus on teaching Student to use technology in a productive way. *Exhibit J*, pp. 208, 211. The District provided transportation for Student to get to the service providers. *See id.* at p. 239. When Parents complained that the services began too early in the day, the District worked to adjust the schedule. *See id.* at p. 299.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District failed to develop measurable annual goals that would enable Student to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320 and ECEA Rule 2.51(1). This resulted in a denial of FAPE.

An IEP is “the means by which special education and related services are tailored to the unique needs of a particular child.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). An IEP’s adequacy is analyzed according to 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 was developed in accordance 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.*

i. IEP Development Process

An IEP must be developed by a team that includes, at a minimum, the parents, a regular education teacher, a special education teacher, a district representative or designee with knowledge of and authority to provide available district resources, and a person with the ability to interpret evaluation results (who may be one of the other members of the team). 34 C.F.R. § 300.321(a). When an IEP Team develops an IEP, it must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” *Id.* § 300.324(a).

Here, Student’s IEP Team, including all necessary members, convened formally on March 6 and June 26, 2023. (FF #s 62, 73). They discussed Parents’ concerns, students’ strengths and needs, the results of his new assessments and evaluations, and his academic and functional deficits to be addressed in anticipation of his postsecondary transition plans. (FF #s 62-65, 68-75).

The SCO accordingly finds and concludes that the IEP Team complied with the procedural requirements of the IDEA in developing Student’s 2023-2024 IEP.

ii. Substantive Adequacy of the IEP

An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F.*, 580 U.S. at 399. However, it “is not a guarantee of a specific educational or functional result for a child with a disability.” U.S. Dept. of Educ., *Questions and Answers on Andrew F. v. Douglas County Sch. Dist. RE-1 (“Q&A”)*, No. 15, 71 IDELR 68 (2017).⁴

An IEP must include a statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum. 34 C.F.R. § 300.320(a)(1). It must include measurable goals and a statement of the special education and related services designed to “[m]eet the child’s needs that result from [the child’s disability to enable the child to be involved in and make progress in the general education curriculum]” and any other educational needs that result from the child’s disability. *Id.* § 300.320(a)(2). An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to attain the annual goals, be involved and make progress in the general education curriculum and participate in nonacademic activities. *Id.* § 300.320(a)(4). Beginning with the first IEP developed when the child is age 15, but no later than the end of ninth grade, the IEP must also include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and independent living skills, as well as

⁴ Available at <https://sites.ed.gov/idea/files/qa-andrewcase-12-07-2017.pdf>.

the transition services needed to assist the child in reaching those goals. ECEA Rules 2.51(1) & 4.03(6)(d).

Here, Parents have raised concerns about four substantive areas of the 2023-2024 IEP: (1) the statement of present levels of academic achievement and functional performance; (2) the annual goals; (3) the postsecondary goals; and (4) the provision of special education and related services.

Statement of present levels of academic achievement and functional performance: The 2023-2024 IEP describes Student's levels of academic achievement and functional performance. (FF #s 76-77). It draws on multiple sources of information: actual performance on his annual IEP goals, measured primarily by his rate of success on pertinent tasks; his parents' and teachers' narrative input regarding his abilities, proclivities, and progress; his grades for his classes; and assessments, although these lacked Student's scores for most standardized testing because Parents refused consent. (*Id.*). From these sources, the IEP Team concluded that Students' needs were in the academic areas of reading, writing, and mathematics, and that he also needed to improve his self-determination and communication skills to engage with the general education curriculum and prepare for his postsecondary transition plans. (FF # 78). Nothing in the Record suggests that these sources of information were inaccurate or inaccurately reported. Accordingly, the SCO finds and concludes that the IEP's statement of present levels of academic achievement and functional performance complied with the IDEA. See 34 C.F.R. § 300.320(a)(1).

Annual goals: The 2023-2024 IEP provides eleven goals, and each goal is tied to both Student's needs and his postsecondary transition plans. (See FF # 82). Many of these goals were added at Parents' request. (*Id.*). These goals address his areas of academic need—reading, writing, and mathematics—and the self-determination and communication skills he needs to improve to access the general education curriculum. (*Id.*).

Although the IEP Team provided metrics by which Student's progress in each annual goal would be tracked, the SCO finds, in consultation with CDE Content Specialist 1, that three of these metrics are not measurable. Goal 7 requires Student to record "three key concepts" in his planner for every class, but "key concepts" must be defined before it can be measured, and there will not always be three key concepts in every class. (*Id.*) Similarly, Goal 8 requires Student to offer "the images/words" in classes, but the goal must define "the images/words" and account for the fact that student participation is not always appropriate in every class. (*Id.*). And Goal 11, which requires Student to initiate conversations using his "photo book," must define the content of the photo book and explain where the conversations should happen. (*Id.*). Accordingly, the SCO finds and concludes that these goals are not measurable, in violation of 34 C.F.R. § 300.320(a)(2)(i).

Additionally, the SCO finds, in consultation with CDE Content Specialist 1, that three of these goals are not tailored to Student's needs and will be counterproductive to his involvement in the general education curriculum. Goal 6 requires Student to show his math work "to the class," which, to the extent that other students do not need to get up and show their work to the class, will be needlessly embarrassing to Student, who is shy, and put him on the spot in front of his

classmates, which will work toward his exclusion rather than inclusion. (FF #s 6, 31, 82). Goals 8 and 11 would similarly single Student out in the classroom by forcing him to offer words or images to the class when other students do not need to and without regard for the appropriateness of Student's participation in any given class. (FF # 82). Accordingly, the SCO finds and concludes that these goals are not "designed . . . to enable [Student] to be involved in and make progress" in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2)(i).

Postsecondary goals: The 2023-2024 IEP sets out Student's high-level postsecondary goals of attending a transition program while working part-time and being able to live independently while managing his household budget. (FF # 79). Each of his eleven annual IEP annual goals contains a statement explaining how the goal will also enable Student to achieve his postsecondary goals. (FF # 82). These goals target the same deficits in reading, writing, mathematics, communication, and independent living identified as Student's needs by postsecondary transition assessments. (*Compare* FF # 78 *with* FF # 82). Accordingly, because the IEP provides appropriate measurable postsecondary goals based upon age-appropriate transition assessments, the SCO finds and concludes that the goals comply with the IDEA and ECEA. *See* 34 C.F.R. § 300.320(b); ECEA Rules 2.51(1) and 4.03(6)(d). In consultation with CDE Content Specialists 1 and 2, however, the SCO cautions the District that Student's postsecondary goals must be written "taking into account the child's . . . preferences, and interests." ECEA Rule 2.51(1)(b). Student's career interest is farming or sports-related retail, and he enjoys animals and working with his hands. (FF #s 8, 79). Although Student's goal to attend a transition program is not contrary to his career interests, a better practice for writing Student's postsecondary transition plan would be to explain how his immediate postsecondary goals relate to his long-term preferences and interests. *See* ECEA Rule 2.51(1)(b).

Services: The 2023-2024 IEP provides specialized instruction in Student's areas of academic need—reading, writing, and mathematics—to enable him to make progress on his academic and postsecondary goals. (FF # 86). It also provides speech-language services based on his functional needs to enable him to make progress on his academic, functional, and postsecondary goals. (*Id.*). Nothing in the Record suggests that these services are inadequate to enable Student to make progress toward his goals. Accordingly, because the offered services are designed to enable him to advance toward his goals, make progress in the general education curriculum, and to be educated with his nondisabled peers, the SCO finds and concludes that the statement of services complies with the IDEA. *See* 34 C.F.R. § 300.320(a)(4).

iii. These Violations Resulted in a Denial of FAPE

In sum, Student's IEP Team followed the procedural requirements for convening and for reviewing the appropriate information to develop the 2023-2024 IEP. The resulting IEP identifies Student's individualized needs based on reliable sources of data and provides services to allow Student to make progress and access the general education environment despite his disabilities. Goals 6, 7, 8, and 11, however, do not comply with the IDEA's requirements because Goals 7, 8, and 11 are not measurable and Goals 6, 8, and 11 are not designed to enable Student to be

involved in and make progress in the general education curriculum, resulting in a violation of 34 C.F.R. § 300.320(a)(2)(i). This violation resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements). To address this violation, the SCO has ordered the IEP Team to convene and, as appropriate, revise Student’s IEP.

Conclusion to Allegation No. 2: The District failed to provide the speech-language services required by the IEPs of Student and similarly situated students from mid-February 2023 through May 2023, in violation of 34 C.F.R. § 300.323. This resulted in a denial of FAPE.

A. 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.” *Endrew F.*, 580 U.S. at 391 (2017). 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.* § 300.323(c)(2). To satisfy this 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.* § 300.323(d).

The failure to implement a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE supporting compensatory remedies. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). If the CDE finds a violation that is systemic in nature, the CDE must order a remedy to correct that noncompliance. *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

B. IEP Accessibility

The SCO must first determine whether the District satisfied its obligation to make Student’s IEP accessible to his teachers and providers. 34 C.F.R. § 300.323(d). Here, the Findings of Fact demonstrate that Student’s teachers and providers had access to Student’s IEP and were made aware of their responsibilities under the IEP. (*See* FF #s 24-26). As a result, the SCO finds and

concludes that the District made Student’s IEP available in compliance with 34 C.F.R. § 300.323(d).

C. Implementation of Student’s IEP

Parents have raised concerns about the implementation of five requirements of Student’s IEP: (1) speech-language services provided directly to Student by an SLP; (2) paraprofessional support in his general education classes; (3) indirect, consultative services by SSN Teacher to Student’s general education teachers; (4) Student’s accommodations; and (5) curriculum modifications.

Speech-language services: Student’s IEP required that he receive 140 minutes of speech-language services per month. (FF # 15). Because the SLP who served School and another high school took leave from mid-February through the end of the school year, Student and similarly situated students in the District—thirty-six students in all—did not receive the speech-language services required by their IEPs in the spring semester. (FF #s 55-61). The SCO finds and concludes that this failure to provide services violated 34 C.F.R. § 300.323(c). The District has, on its own initiative, calculated all students’ missed services from the beginning of February through the end of the 2022-2023 school year, hired a part-time SLP to assist the full-time SLP who is returning, and scheduled compensatory services for all affected students—including those who graduated—for the 2023-2024 school year. (*Id.*). Student has already received 405 of his 525 missed minutes, and the District will provide an additional 205 minutes of compensatory services in the 2023-2024 school year. (*Id.*). Because speech-language services are a “significant” provision of students’ IEPs, the SCO finds and concludes that this violation resulted in a denial of FAPE. *Van Duyn*, 502 F.3d at 822. Because the violation is systemic, as the District concedes, the SCO has ordered a remedy to correct the violation while taking account of the District’s self-correction.

Paraprofessional support: The 2022-2023 IEP provided 500 to 1,000 minutes per week of paraprofessional support in his general education classes. (FF # 15). It did not specify the level of support, e.g., one-to-one support. (*Id.*). As related in the Findings of Fact, Student did receive paraprofessional support. (FF #s 49-54). While Student may have better benefited from having one-to-one paraprofessional support in each of his classes, a school district is not required to furnish “every special service necessary to maximize each . . . child’s potential,” and an IEP “is not a guarantee of a specific educational or functional result for a child with a disability.” *Rowley*, 458 U.S. at 199; Q&A, No. 15. Accordingly, the SCO finds and concludes that the District implemented this provision of Student’s IEP.

Indirect, consultative services by SSN Teacher: The 2022-2023 IEP did not require indirect services or instruction, although SSN Teacher nonetheless checked in with Student’s general education teachers, ensured they understood Student’s IEP requirements, and provided consultations to Student’s general education teachers, who kept her apprised of Student’s learning and progress. (FF #s 16, 21-22, 24-26, 32, 39, 43). Because the IEP did not require the District to provide indirect services, the SCO finds and concludes that the District did not fail to provide indirect services.

Student's accommodations: The 2022-2023 IEP provided 33 accommodations to help Student access the general education curriculum. (FF # 14). As related in the Findings of Fact, nothing in the Record or investigation has shown that the District failed to provide these accommodations. (FF #s 34-41). Accordingly, the SCO finds and concludes that the District did not fail to implement Student's accommodations.

Student's curriculum modifications: The 2022-2023 IEP required that Student be educated with a modified curriculum in consultation with a special education teacher. (FF # 11). As related in the Findings of Fact, Student was educated using a modified curriculum and, although the general education teachers took the lead in modifying their own class materials, they consulted and coordinated with SSN Teacher as needed. (FF #s 27-33). Accordingly, the SCO finds and concludes that the District did not fail to provide a modified curriculum in consultation with a special education teacher.

D. Summary

In sum, the SCO finds and concludes that the District failed to provide speech-language services to Student and similarly situated students in the District, but the District did not fail to provide paraprofessional support, indirect services, accommodations, or modifications to Student. For the failure to provide speech-language services, the SCO has ordered CDE oversight of the District's self-initiated program of compensatory education.

Conclusion to Allegation No. 3: The District did not deny Parents meaningful participation in the development, review, and revision of Student's IEP. No IDEA violation occurred.

Parents' concern is that the District deprived them of meaningful participation by failing to take their concerns into account in developing the 2023-2024 IEP.

A. Requirement to Allow Parents to Participate

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful with careful consideration of a parent's concerns for enhancing the education of the child. See 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County Sch. Dist. RE-1*, 118 LRP 28108

(Colo. SEA 2018). However, parental participation must be more than “mere form.” *R.L. v. Miami-Dade County Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.* Evidence that a district “was receptive and responsive at all stages” to the parents’ position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Parents do not have “veto power” over IEP team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (Cal. SEA 2015). An IEP meeting “serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child.” *Letter to Richards*, 55 IDELR 107 (OSEP 2010). “The IEP Team should work towards a general agreement,” but “[i]f the team cannot reach agreement, the public agency must determine the appropriate services,” and parents may seek resolution through the IDEA’s dispute resolution procedures. *Id.*

B. Parents’ Participation in the Development of the 2023-2024 IEP

District and School staff met with Parents to discuss Parents’ objections and demands on March 6, March 20, March 24, April 12, May 2, and June 26. (FF #s 62-75). Staff took detailed notes of Parents’ input and recorded much of that input in the IEP itself. (*Id.*). And the District did far more than just listen; over the course of four drafts and six meetings, they responded to Parents’ input in at least the following ways:

- Added an accommodation for more visual supports as well as an “accommodation” stating that Student wants to interact with his peers, bringing the total number of accommodations in the IEP to 35. (FF #s 64, 84).
- Revised the annual goals once in mid-March. (FF # 65).
- Revised the annual goals again in May, with substantial verbatim incorporation from Parents’ proposed goals, bringing the total number of Student’s annual goals to 11. (FF # 82).
- Maintained Student’s LRE at 80% or more in the general education environment, despite his teachers’ concerns and the challenges of modifying difficult and professional-track course material to enable his participation. (FF #s 29-30).
- Switched Student from SSN Teacher to a new caseworker. (FF # 68).

For these reasons, the SCO finds and concludes that the District did not deny Parents meaningful participation in the IEP process. No IDEA violation occurred.

Conclusion to Allegation No. 4: The District failed to provide Parents with a progress report at the end of the school year as required by Student’s IEP, in violation of 34 C.F.R. § 300.323. This was not a denial of FAPE.

Parents’ concern is that the progress report embedded in the March 3, 2023 IEP draft failed to adequately report Student’s progress.

A parent's right to participate in the development of their child's educational program requires that they be regularly informed of progress toward IEP goals. See *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017) (“[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.”). For that reason, school districts must periodically give parents a report of their student's progress toward meeting annual goals, in accordance with the schedule described in the IEP. 34 C.F.R. § 300.320(a)(3).

The progress report embedded in the March 3 draft was created largely from SSN Teacher's daily tracking of Student's IEP goals based on his success completing the tasks pertinent to those goals. (FF #s 42-48). For each of Student's goals, the IEP recited his objective and the metric for measuring his progress, provided his progress as an average of his performance on the pertinent metric, and provided a brief narrative report regarding his behavior or attitude toward working on the goal. (FF #s 44-46). Although the fifth goal, regarding Student's use of a planner app on his phone, did not provide a numeric description of his success in using the planner, it explained that Student would not perform the task without “step-by-step reminders” and that “most of the time” he expressed that he could not even use the app. (FF # 45). The sixth goal, regarding his ability to engage in conversations, explained that he made progress but still required prompting and, specifically, ran into trouble with complex who-what-when-where-why questions. (FF # 46).

This reporting informed Parents of Student's performance. Nothing in the Record suggests that these reports were inaccurate. Accordingly, the SCO finds and concludes that this report complied with the IDEA's requirement for the District to report Student's progress on his goals, in compliance with 34 C.F.R. § 300.320(a)(3)(i).

Although the March 3 progress report is the focus of parents' concerns, it was not required by Student's IEP; instead, his IEP provided that Parents would receive a progress report with Student's report card at the end of the semester. (FF # 13). The March 3 report was sent to Parents several more times embedded in various draft IEPs through the end of the semester, but its contents were not updated. (FF # 47). Parents were given an updated report on July 7, after the semester ended. (FF # 48). Thus, the SCO finds and concludes that the District failed to report Student's progress as strictly required by his IEP, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 205-06. However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765 (concluding a procedural violation can cause

substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

Here, Parents received Student’s progress on March 3 after which one or both Parents met with one or more School staff at least six times—March 6, March 20, March 24, April 12, May 2, and June 26—to discuss Student’s needs, progress, and goals, and for Parents to demand private tutoring, which the District provided along with transportation despite having no obligation to do so. (FF #s 59, 65-66, 70, 86.) Further, SSN Teacher provided an updated formal progress report on July 7, 2023 showing that he had made progress on his goals. (FF # 48).

In light of these facts, the SCO finds and concludes that the failure to provide a report at the end of the semester did not impede Parents’ opportunity to participate in the decision-making process, impede Student’s right to a FAPE, or deprive Student of any educational benefit. Accordingly, this violation did not result in a denial of FAPE.

REMEDIES

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

- a. Failing to develop an IEP wherein all goals are measurable and designed to enable Student to make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).
- b. Failing to provide speech-language services to Student and similarly situated students as required by their IEPs, in violation of 34 C.F.R. § 300.320(c).
- c. Failing to provide a progress report on the schedule in Student’s IEP, in violation of 34 C.F.R. § 300.320(a)(2).

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

1. Corrective Action Plan

- a. By **Monday, October 2, 2023**, the 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 the District is responsible. The CDE will approve or request revisions that support compliance with the CAP. After the CAP is approved, the CDE will arrange to conduct verification activities to confirm the District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Special Education Director and Student’s caseworker for the 2023-2024 school year must review this Decision. This review must occur no later than **Monday, October 2, 2023**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Monday, October 9, 2023**.

3. IEP Team Meeting

- a. Student’s IEP Team must convene, at a mutually agreeable date and time, by **Friday, October 6, 2023**. Student’s IEP Team must review, and, as appropriate, revise Student’s IEP to enable ensure that the annual IEP goals are measurable and designed to enable Student to be involved in and make progress in the general education environment, consistent with of 34 C.F.R. § 300.320(a)(2).
- b. A copy of Student’s IEP and notes from the IEP meeting must be provided to CDE no later than **Friday, October 20, 2023**. CDE may determine, at its sole discretion, whether the IEP meeting complied with these requirements. If CDE determines that the meeting did not comply, then the IEP Team must convene again upon a timeline to be determined by CDE.
- c. However, if both parties agree that the violation of 34 C.F.R. § 300.320(a)(2), regarding Student’s annual goals, has already been addressed through IEP Team meetings or by written agreement of Parents, the parties do not need to meet again. Instead, the District may submit a signed, written agreement by both parties that an additional IEP Team meeting is unnecessary.

4. Compensatory Education Services

- a. By **Friday, October 20, 2023**, the District shall submit to CDE a spreadsheet with the following information: (1) The name of each District student (including Student) who did not receive the speech-language services required by their IEP between February 1, 2023, and the end of the 2022-2023 school year (“the affected students”); (2) The number of minutes of speech-language services required by each affected student’s IEP between February 1, 2023, and the end of the 2022-2023 school year; (3) The number of minutes provided to each affected student between February 1, 2023, and the end of the 2022-2023 school year; (4) The number of compensatory minutes awarded to each affected student by the District; (5) The number of compensatory minutes provided by October 20, 2023; and (6) The District’s anticipated date by which each affected student will have received the compensatory services.

- b. To verify that the affected students receive these compensatory services, the District must submit records of service logs showing the minutes of compensatory speech-language services provided for each of the affected students by the **second Monday of each month** until all compensatory services have been provided. 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.
- c. These compensatory services will be in addition to any services the affected students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. If for any reason, including illness, an affected student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents and notify the CDE of the change in the appropriate service log.
- d. All compensatory services must be furnished by the end of the 2023-2024 school year.
- e. If CDE determines, in its sole discretion, that additional information is necessary to ensure that each affected student has received the appropriate compensatory speech-language services, the CDE may request, and the District must provide, additional documentation including but not limited to prior written notices, progress reports, student class and service schedules, and IEPs. If CDE determines at any time that the affected students may not receive the appropriate compensatory speech-language services under the District's CAP, CDE may require additional steps or revisions to the CAP to ensure identified concerns have been addressed.

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. 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 1st day of September, 2023.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-21

- Exhibit 1: Notice of Meeting
- Exhibit 2: Draft IEP
- Exhibit 3: Draft IEP
- Exhibit 4: Draft IEP, Letter, and Emails

Response, pages 1-17

- Exhibit A: IEPs
- Exhibit B: Evaluations and Assessments
- Exhibit D: Meeting Notices and Meeting Notes
- Exhibit E: Service Logs
- Exhibit F: Attendance Records
- Exhibit G: Report Cards, Progress Monitoring
- Exhibit H: School Calendar
- Exhibit I: Policies and Procedures
- Exhibit J: Correspondence
- Exhibit M: Additional Records
- Exhibit N: Emails

Reply, pages 1-3

- Exhibit 5: Student's YouTube History
- Exhibit 6: Spreadsheet of YouTube History
- Exhibit 7: Emails
- Exhibit 8: Emails
- Exhibit 9: Classroom Observation Notes
- Exhibit 10: Emails
- Exhibit 11: Emails
- Exhibit 12: Emails
- Exhibit 13: Emails
- Exhibit 14: Emails

Supplemental Response, pages 1-3

Supplemental Reply, pages 1-5

CDE Exhibits

- Exhibit 1: Email

- Exhibit 2: Email

Telephone Interviews

- Paraprofessional 1: August 8, 2023
- Principal: August 8, 2023
- Special Education Director: August 8, 2023
- Gen Ed Teacher 2: August 8, 2023
- SSN Teacher: August 9, 2023 and August 29, 2023
- Gen Ed Teacher 1: August 10, 2023
- Parents: August 11, 2023
- Paraprofessional 2: August 15, 2023