

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 2023:555**  
**Charter School Institute**

**DECISION**

**INTRODUCTION**

On June 29, 2023, the Parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against the Charter School Institute (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified six allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from June 29, 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 conduct a reevaluation of Student at Parents’ request on or about May 1, 2023, in violation of 34 C.F.R. § 300.303.
2. Failed to convene an IEP team meeting at Parents’ request on or about September 28, 2022, to address Student’s anticipated needs, in violation of 34 C.F.R. § 300.324(b)(1).

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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.

3. Failed to provide an independent educational evaluation (“IEE”) at public expense without unnecessary delay, or file a due process complaint to show that the District’s evaluation was appropriate, following Parents’ requests for an IEE on or about April 3, 2023, and May 15, 2023, in violation of 34 C.F.R. § 300.502(b)(1)-(2).
4. Failed to develop, review, and revise an individualized education program (“IEP”) that was tailored to meet Student’s individualized needs from June 29, 2022 to present, specifically by:
  - a. Failing to conduct a timely annual review of Student’s IEP on or about August 16, 2022, in violation of 34 C.F.R. § 300.324(b);
  - b. Failing to document Student’s levels of academic achievement and how her disability affects her involvement and progress in the general education curriculum, including by failing to consider the concerns of Parents and all available relevant information regarding Student’s academic, behavioral, developmental, and functional needs, including the results of the most recent evaluation of Student, in violation of 34 C.F.R. § 300.320(a)(1);
  - c. Failing to include measurable annual goals designed to allow Student to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2);
  - d. Failing to include all the related services and supplementary aids and services required to enable Student to be involved in the educational setting and participate in extracurricular and nonacademic activities, in violation of 34 C.F.R. § 300.320(a)(4);
  - e. Failing to develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments and failing to include the transition services needed to assist Student in reaching those goals, in violation of 34 C.F.R. § 300.320(b) and ECEA Rule 2.51(1); and
  - f. Failing to determine that Student qualified for extended school year (“ESY”) services when such services were necessary to the provision of FAPE, on or about May 15, 2023, in violation of 34 C.F.R. §§ 300.106, 300.320, and 300.324.
5. Failed to implement Student’s IEP from June 29, 2022 to present, in violation of § 300.323, specifically by:
  - a. Failing to ensure that Student’s IEP was accessible to teachers and others;
  - b. Failing to provide Student with the accommodations required by her IEP; and

- c. Failing to provide Student with the special education and related services required by her IEP.
6. Failed to monitor Student's progress on annual IEP goals and failed to provide Parent with periodic reports on Student's progress from the beginning of the 2022-2023 school year to present, in violation of 34 C.F.R. § 300.320(a)(2)-(3).

### **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 17 years old and, during the 2022-2023 school year, was in 11th grade at a school ("School") authorized by District. *Exhibit A*, p. 26.
2. Student is eligible for special education services as a student with a specific learning disability ("SLD") in math. *Id.* at p. 31.
3. Student is kind and empathetic. *Interviews with Parent, geometry teacher ("Geometry Teacher") and former special education teacher and case manager ("Case Manager 1")*. She is a hard worker. *Interviews with Parent, Case Manager 1 and other former special education teacher and case manager ("Case Manager 2")*. She is also a talented artist. *Interviews with Parent and Geometry Teacher*.
4. She has dyscalculia and struggles with math calculation and problem solving. *Exhibit A*, p. 10. She struggles with executive functioning, including attention, working memory, task completion and organization. *Exhibit P*, p. 99. She also exhibits symptoms of depression and anxiety. *Id.*

#### **B. District Enforcement and Monitoring**

5. District is structured differently than a traditional district, and member schools have more autonomy. *Interview with District's Director of Special Education ("Director")*. District has adopted a special education manual ("Manual") that sets out minimum requirements for schools. *Id.*; see *Exhibit Q*, pp. 1-284.
6. District employs four coordinators, each of whom is responsible for a portfolio of about nine schools. *Interview with District's Assistant Director of Special Education ("Assistant Director")*.

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

Coordinators provide training and professional development for special education staff at their schools. *Id.*

7. District maintains a bank of training resources available to all staff on its website. *Id.* At the beginning of each year, District offers training to all new staff that covers procedural requirements under the IDEA. *Id.* Coordinators also provide additional site-specific professional development on an as needed basis. *Id.*
8. District has a coordinator handbook (“Handbook”) with steps to ensure IDEA compliance. *Interview with Director.* Coordinators review IEPs as they are finalized. *Interview with Assistant Director.* The Handbook includes a checklist for coordinators to review to ensure schools are complying with the IDEA. *Id.* For instance, coordinators are encouraged to ensure schools have the necessary licensed staff, including special education teachers and related service providers. *Id.*
9. Coordinators should also review evaluations for completeness and all IEPs for compliance. *Id.* The Handbook includes about 20 “look fors” that coordinators should be checking related to IEP development and implementation. *Id.* District is in the process of reviewing the Handbook and expects to add additional checks for compliance with progress monitoring. *Id.*

### **C. District’s IEP Development Process**

10. During IEP team meetings, District asks for parent input when they get to that section of the IEP and that is the only information recorded in this section. *Interview with District’s special education coordinator for School (“Coordinator”).*
11. District trains on IEP development and writing compliant IEP goals. *Interviews with Director and Assistant Director.* Goals should be developed to address an evidence-based need. *Id.*
12. Annual goals for elementary and middle school students are focused on educational needs like reading and writing. *Id.* District’s interpretation of CDE guidance is that once students enter high school, their goals must be tied to career and independent living skills goals instead of academics. *Id.* In District, for students over 15, the transition assessment and related transition goals drive the rest of the IEP, including the annual goals. *Interview with Coordinator.* Coordinator has told Student’s IEP teams that she cannot have academic goals tied to grade-level math and that instead the goals must be tied to her transition plans. *Interview with Parent.*
13. Per CDE guidance, postsecondary annual goals must be related to the student’s transition services and should be based on a “thorough understanding of the skills, knowledge and admission/job requirements for the specific postsecondary goal.” *CDE Exhibit 1*, p. 15. The goals must be measurable and linked to an academic standard. *Id.* Contrary to District’s interpretation, examples of appropriate postsecondary annual goals include improving

reading comprehension as measured by answering inferential questions and writing using conventional grammar, usage, punctuation, etc. *Id.* at p. 16.

#### **D. 2022 IEP**

14. At the start of the 2022-2023 school year, Student's then current IEP was from February 23, 2022 ("2022 IEP"). *Response*, p. 3; *Exhibit A*, pp. 1-25.
15. The Student Strengths, Preferences and Interests consists of an update from Student's prior special education teacher and case manager. *Exhibit A*, p. 3. Student likes art, reading, music and video games. *Id.* Student likes the social aspect of school as well as science, especially biology, and feels that English comes easily to her. *Id.*
16. The Present Levels of Educational Performance Summary ("Present Levels") includes grades from two points in time in February 2022, at which time Student had an A in chemistry but was failing English and algebra. *Id.* at p. 4. There is also a log of Student's excused and unexcused absences and missing assignments from her algebra course. *Id.* at pp. 4-6.
17. The Present Levels also includes summaries of a recent private evaluation and the evaluation from a prior district. Student's math achievement remained in the low average range and weaker than expected for her age, history of intervention and general intelligence. *Id.* at p. 6. She struggled with internalized emotion and surveys indicated some concerns about attention and executive functioning, although those results were inconsistent. *Id.*
18. Academic scores on the prior district's evaluation were generally in the average range, with math scores clustered in the low average range. *Id.* at p. 7. She also exhibited mild weaknesses in her "short-term memory for auditory information or working memory." *Id.* at p. 8.
19. Her disability impacts her ability to make progress in math, so she requires accommodations in math problem solving and calculation. *Id.* at p. 10. Difficulties with working memory also hinder her "ability to calculate, sort, categorize, conceptualize, draw conclusions, or interpret and condense complex ideas." *Id.* Difficulties with time-management, organization, large project management, personal finances and course completion were likely to impact her while pursuing her postsecondary goal of becoming a psychiatrist. *Id.*
20. Parents provided multiple evaluations and extensive, but unspecified, information regarding their concerns about Student's academic performance. *Id.* Student likes school but continues to struggle with math. *Id.* Parent was concerned that she would not pass all her classes. *Id.*
21. The 2022 IEP relies on a transition assessment from August 1, 2021, with the update that she "wants to go to school to be a psychiatrist." *Id.* at p. 9. She did not have the skills to get a job she wanted or take care of physical/mental health problems that may arise. *Id.* To live independently, she needs help with money management, transportation, and housing. *Id.*

22. The 2022 IEP includes three measurable post-school goals:

- Education/Training Goal: “After graduating from high school, [Student] will attend a four year College and study to be a psychiatrist.”
- Employment Goal: “[Student] will have a career and work as a psychiatrist.”
- Independent Living Skills Goal: “[Student] will live independently in University housing while in school studying to be a psychiatrists (sic) then in her own apartment or home while working as a psychiatrist.”

*Id.* at p. 10.

23. The 2022 IEP transition plan also includes a planned course of study which lists all the classes Student will take for graduation. *Id.* at p. 15-16.

24. To support Student in meeting her education goal, District would provide direct instruction from a special education teacher in study skills, self-advocacy skills and personal finance. *Id.* at p. 16. It would also provide high school courses with appropriate accommodations and tutoring from a general education teacher. *Id.*

25. To support Student in achieving her career goals, District would provide:

elective classes in various fields; a personal computer and tech support and instruction provided by the Advisor; specialized instruction in personal finance provided by a Special Education Teacher; career information provided by the Advisor and the College Counselor; opportunities to attend career fairs and to explore careers in field (sic) of Psychiatry coordinated by academic Advisors and Special Education Team.

*Id.* at p. 17.

26. For community experiences, Student would “acquire the necessary skills” including being able to locate places on a map, plan a route using different forms of transportation and list the necessary steps to arrive by a given time.” *Id.* She would also “seek out community experiences (like babysitting), volunteering or internships.” *Id.*

27. To prepare for independent living, District would provide specialized math instruction to “create a household budget, open and maintain a checking and savings account” and appropriate accommodations for general education. *Id.* No agency linkages were made. *Id.*

28. The 2022 IEP contained a self-advocacy goal for Student to “be able to explain her accommodations to others” as measured by number of occurrences, starting from a baseline of two out of five teachers. *Id.* at p. 18. This goal had three objectives:

- Student would practice postsecondary strategies including time management, test preparation, note-taking techniques, and stress reduction techniques.
- Student would “describe the accommodations available to them in postsecondary settings.”
- Student would schedule visits with the Disability Services Coordinator for at least two colleges to learn the available services.

*Id.*

29. It also contained a planning and organizing goal for her to “independently create a timeline or check list to correctly organize multi-step projects with multiple tasks in a logical sequence 4 (sic) out of 5 trials as measured by the number of correct occurrences.” *Id.* From a baseline of prioritizing 3-4 items independently. *Id.* The one objective was for her to “independently organize multiple steps to complete a task in the correct sequence in 4 out of 5 trials.” *Id.*

30. It also had an independent living, personal finance goal for her to “independently create and manage a household budget to include all necessary items based on a fictitious paycheck in 3 out of 5 trials as measured by number of occurrences.” *Id.* at p. 19. This was a new goal, but as a baseline, she could “prepare a partial list of what to include in a household budget.” *Id.*

31. The career planning goal was for Student to “research the qualifications, years of study and courses required to become a psychiatrist,” with no baseline. *Id.* The goal’s objectives are:

- A repeat of the third self-advocacy objective of planning visits with the Disability Services Coordinators.
- Student would “research the courses needed to become a Psychiatrist.”
- Student would interview at least two psychiatrists.

*Id.*

32. A fifth organizational, study skills goal was for her to “utilize effective (sic) up to 5 study and organizational skills to improve her test scores from 25% to 70% as measured by assessment scores.” *Id.* at p. 20. From a baseline of naming one strategy, notes. *Id.* The objective was to “develop and carry out a plan for making up work missed due to absence.” *Id.*

33. No Colorado academic standards were listed for any of the five goals. *Id.* at pp. 17-20. Progress on each of the goals was to be reported each semester. *Id.*
34. The 2022 IEP included 13 accommodations: Pre-notice of schedule changes, time and a half on all assignments and assessments, chunking of materials with check in dates to include smaller manageable due dates with multiple check ins for larger projects, preferential seating near instruction, visual check list for tasks such as first, next, then or timelines, access to graph paper and manipulatives, paper copies of electronic assignments when requested, “opportunity to demonstrate knowledge of mathematical concepts in a variety of ways” such as projects instead of tests or reteaching concepts on video, access to water and snacks, scheduled five minute brain breaks during each class, access to a mental health break with a social worker or health clinic for up to 20 minutes per day, access to quiet testing area and option to take a picture of the board or make a voice note at the end of class. *Id.* at p. 21.
35. Student did not qualify for extended school year services. *Id.*
36. Under the 2022 IEP Student was to receive the following services:
- Mental Health: 40 minutes per month (“MPM”) of direct support from a mental health care professional to be delivered for 20 minutes every other week outside the general education setting. *Id.* at p. 23. These services were to support advocacy skills to “describe the accommodations available to them in postsecondary settings. *Id.*
  - Case Review: 20 minutes per week (“MPW”) of indirect instruction from a special education teacher for “consultation with the general education teachers on accommodations and teaching strategies to support [Student] with tools to plan, organize, and prioritize her class work.” *Id.*
  - Direct Services: 60 MPW of direct instruction from a special education teacher inside the general education classroom to support Student’s “ability to independently organize multiple step projects and complete tasks on time as she prepares for her work as a psychiatrist.” *Id.*
  - No services are included for personal finance, career planning or study skills goals. *Id.*
37. A prior written notice indicates the team did not add additional special education and mental health services after reviewing the evaluations and hearing from one of Student’s private evaluators. *Id.* at p. 25. It also decided against direct instruction for executive functioning skills in a resource class “because [Parents] did not want a separate class.” *Id.* The team considered ESY predictive factors, but after reviewing grades, teacher feedback, attendance, parent/student input, classroom observations and missing assignments, there was no evidence of regression recoupment issues. *Id.* The IEP was developed in three meetings. *Id.*



### **E. Parent's IEP Team Meeting Request**

38. At the start of the 2022-2023 school year, School had a new special education teacher, Case Manager 1. *Exhibit O*, p. 4. On August 29, 2022, Parent told Case Manager 1 she had not agreed to finalize the 2022 IEP because it did not have real support for Student. *Id.* at p. 3. On August 31, Case Manager 1 asked if Parent would like an IEP meeting in early October. *Id.*
39. On September 4, Parent indicated that she wanted a meeting for Student because she had a new attention deficit hyperactivity disorder (“ADHD”) diagnosis and medication that needed to be added to her IEP. *Id.* at p. 2. Parent also wanted to clarify what support services School would be providing for Student in math and in relation to her migraines and ADHD. *Id.*
40. Head of School (“Head”) reminded Parents that the Communication Plan established by School directed them to communicate only with Head. *Id.* at p. 11. They were also invited to have bi-weekly meetings with Head that would not be “IEP development or modification sessions.” *Id.*
41. On September 16, Head asked if Parent was requesting “formal IEP meetings” with the entire IEP team or “informal IEP meetings.” *Id.* at p. 5. He explained that “not every meeting held to discuss the programming for a student with a disability” or their progress or lack thereof needs to be an IEP meeting. *Id.* “[I]n the ‘informal’ sense, [School] would still be subject to parental notice and participation.” *Id.*
42. On September 28, 2022, District issued a PWN (“September PWN”) proposing to change the provision of FAPE for Student through a meeting with Parents to discuss their “desired changes to the current IEP.” *Exhibit H*, pp. 1-2.
43. The action was proposed/refused because “Parents have requested changes and additions be made to [Student’s] current IEP.” *Id.* The action was proposed/refused based on “Parents statement they have additional information to aid in updating the current IEP.” *Id.*
44. A revision meeting and amendment meeting was considered and rejected because “all parties have not been made aware of or agreed upon the changes that are desired to be made.” *Id.* at p. 2. Other factors considered were “Student progress, teacher observations, and parent input.” *Id.* Form language on the September PWN indicates that Parents have procedural protections and directs Parents to contact Case Manager 1 to get a copy or for assistance understanding the September PWN. *Id.*
45. No IEP meeting was held for Student. *Response*, p. 2; *Interview with Parents*.

## **F. February 17, 2023 IEP Team Meeting**

46. Case Manager 1 left School January 24, 2023. *Interview with Case Manager 1*. Case Manager 2 started in late January 2023. *Interview with Case Manager 2*.
47. Parent, Student, Case Manager 2, Coordinator, Head, Geometry Teacher and Student's new school psychologist ("School Psychologist 2") met on February 17, 2023, to develop an IEP for Student. *Interviews with Parent and Case Manager 2*.
48. Prior to the meeting, Parents requested Student's records. *Exhibit A*, p. 44. Parent started the meeting with an ask for another meeting because she needed more time to review the records she had received. *CDE Exhibit 2*, p. 3; *Interview with Parent*. Coordinator indicated District would decide if another meeting was needed and issue a PWN. *CDE Exhibit 2*, p. 5.
49. The team reviewed the entire IEP. *Interviews with Parent and Case Manager 2; CDE Exhibit 2*, pp. 3-5. Parent requested progress monitoring data for the prior goals. *Id.* Coordinator said there should be two progress reports for each goal and Parent noted that no progress data was included. *Id.*
50. The team added an alternative for remote learning days because prolonged computer use could aggravate Student's migraines. *Id.* pp. 3-4; *Interview with Parent*. The team also agreed that she could demonstrate understanding through alternative means. *CDE Exhibit 2*, p. 4.
51. Parent requested ESY services. *Id.* Student was homeschooled by Parent, a licensed teacher, for several years. *Interview with Parent*. She struggled to retain math concepts from the start of a lesson to the end. *Id.* Regression was even more severe after breaks, so Parents used to provide tutoring over the summer to help her retain information. *Id.* Parent recalls similar conversations about needing data to consider ESY at meetings in 2022. *Interview with Parent*.
52. Case Manager 2 sent Parents an updated draft of the IEP on February 24, 2023 ("February Draft"). *Exhibit P*, p. 7. Scheduled breaks and a self-advocacy goal were removed because of her "improved strength regarding self-advocacy." *Exhibit P*, p. 126.
53. According to the embedded PWN, Parent had requested records and a continuation meeting because the requested records might inform the IEP. *Id.* No indication is given as to whether District agreed to a continuation meeting. *Id.* However, District acknowledges that the IEP was not finalized until after a continuation meeting was held. *Response*, p. 3.

## **G. Request for an Independent Educational Evaluation**

54. In Spring 2021, Student was initially evaluated by a prior district. *Exhibit P*, p. 92; *Exhibit 4*, pp. 1-31. Parent requested an IEE, after which the prior district found Student eligible. *Exhibit P*, p. 92; *Exhibit 3*, pp. 1-27.

55. District adopted these evaluations and developed an initial IEP for Student in August 2021. *Exhibit P*, p. 92; *Exhibit 1*, pp. 1-18. By March 27, 2023, Parents had retained counsel (“Parents’ Attorney”), who requested an IEE for Student. *Exhibit O*, p. 15.
56. On April 3, an attorney for School (“School’s Attorney”) responded that District was not granting an IEE because there was no legal basis for requesting it, since District never evaluated Student. *Id.* Instead, she indicated that District “would happily evaluate [Student].” *Id.* District never sought Parent’s consent for an evaluation. *Interview with Parent.*

#### **H. Parents’ Agenda for the May 3, 2023 Meeting**

57. On March 22, Parents’ Attorney requested CDE facilitation for future IEP meetings. *Exhibit O*, p. 29. After scheduling difficulties, an IEP meeting was eventually scheduled for May 3, 2023, with a facilitator. *Exhibit O*, pp. 98-106.
58. On April 26, the facilitator asked Parents and District to help develop the agenda by sharing their concerns for the meeting and what they hoped to get out of it. *Exhibit D*, p. 16.
59. District did not have agenda items. *Id.* at p. 24. Parents’ Attorney responded with an agenda form, including a “detailed list of items that will require full Team consideration” at the meeting, and requested that the agenda be shared with all IEP Team members. *Id.* at p. 23.
60. The first page of the agenda was the form provided by the facilitator. *Id.* at p. 26. Parent indicated that the purpose of the meeting was to complete Student’s annual IEP, which Parent said was due August 16, 2022.<sup>3</sup> *Id.*
61. Parents wanted answers to each of their concerns, a “data-based understanding of where [Student] stands academically,” real consideration of their input and a revision of the parent input section to include everything in their list. *Id.* They also requested that District issue a detailed PWN explaining why any of the requests were being denied. *Id.* at p. 31.
62. The rest of the agenda was a five-page document with over fifty concerns divided by section of the IEP. *Id.* at pp. 27-31. Regarding Student’s present levels, Parents requested additional academic data to include updates from Student’s math teacher (“Algebra Teacher”), grades and test data and Student’s progress towards graduation. *Id.* at p. 27.
63. Parents requested evaluations to address Student’s mental health diagnoses which had “severely impacted her education.” *Id.* The document also notes that she had health concerns including migraines and attention deficit disorder for which she took Adderall. *Id.* at p. 29.

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<sup>3</sup> Parents Agenda and this Complaint did not reference the 2022 IEP as it was not produced by District in response to Parent’s requests for records, so Parents’ Attorney was not aware of its existence. *Reply*, p. 11.

64. They requested rigorous academic goals, especially in math. *Id.* at p. 30. They raised concerns about how accommodations had been implemented in math and English. *Id.* at pp. 30-31.

**I. May 3, 2023 IEP Team Meeting**

65. Student, Parents, Head, School Psychologist 2, Coordinator, Algebra Teacher, and a special education teacher from another school in District (“Special Education Teacher”) met with a CDE facilitator to continue the annual review on May 3, 2023. *Exhibit D*, p. 15; *Interview with Special Education Teacher*. Special Education Teacher took notes but had never met or worked with Student. *Exhibit D*, pp. 44-52; *Interview with Special Education Teacher*.
66. Parent was concerned Student was not receiving special education services, even when School had a special education teacher. *Id.*, at p. 45. Coordinator acknowledged School did not have one and agreed to review records to see what services Student had received. *Id.*
67. Parent reiterated her request for progress monitoring data. *Id.* Coordinator admitted no one was monitoring the goals currently and agreed to look for a progress report from the prior semester. *Id.* Parent questioned how they could complete the IEP without data. *Id.*
68. Parent had no concerns with mental health, but wanted Student’s ADHD and related medication, Adderall, added to the IEP. *Id.* at pp. 48-49. Parent asked about adding a second area of eligibility around Student’s mental health diagnoses. *Id.* at p. 49. Coordinator agreed to add those diagnoses to the IEP. *Id.*
69. Parent reiterated concerns about ESY. *Id.* at p. 50. Neither Geometry Teacher nor Algebra Teacher observed Student to have difficulty retaining information after weekends or longer breaks. *Interviews with Geometry Teacher and Algebra Teacher*. Parents requested that all refusals of their requests be documented in a PWN. *Id.*
70. Parent received a final version of the IEP (“2023 IEP”) on May 11, 2023. *Complaint*, p. 4. The school year ended on May 16 (May 15 and 16 were reserved for final exams). *Exhibit J*. The 2022-2023 school year was 32 weeks. *Id.*

**J. Implementation of the 2022 IEP: Accessibility to Teachers**

71. District’s Manual requires each IEP to be accessible to each regular education teacher, special education teacher and related service provider responsible for its implementation. *Exhibit Q*, p. 102. This includes informing them of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications and supports that must be provided to the student as part of the IEP. *Id.* at pp. 102-103, 121.

72. The Manual requires that case managers send copies or summaries of the accommodations and modifications to all teachers and providers after an IEP team meeting. *Id.* at p. 121.
73. Coordinator advises special education teachers that IEPs are confidential, so they should not be provided to others in their entirety. *Interview with Coordinator.* Instead, they are advised to create “snapshots” with accommodations. *Id.* District’s data management system, that all teachers use, also flags students that have IEPs. *Id.* Clicking on the flag takes teachers to a list of the student’s accommodations. *Id.*
74. Students at School are also able to concurrently enroll in courses at local colleges. *Id.* IEPs do not apply at college, so families are directed to contact the college’s office of disability to get accommodations. *Id.* Student enrolled in college courses both semesters. *Exhibit F*, pp. 1-2.
75. At the start of the 2022-2023 school year, Case Manager 1 manually put together a list of Student’s goals and accommodations which she provided to all her teachers. *Interview with Case Manager 1.* She gave each teacher a physical copy of the list and emailed one to them. *Id.* She had teachers review the list to make sure they understood their responsibilities. *Id.*
76. Geometry Teacher received a list of Student’s accommodations at the start of the year, so she understood what Student needed but not why. *Interview with Geometry Teacher.* Algebra Teacher received a list of accommodations through School’s data management system. *Interview with Algebra Teacher.* He also had a brief conversation with Case Manager 1 about Student’s needs, after she gave him a paper copy. *Id.*
77. In August 2022, Head asked Case Manager 1 to touch base with Student’s math and science teachers to “provide them resources” to help her. *Exhibit P*, p. 8. In mid-November, he asked Case Manager to train teachers to better understand Student’s needs and disabilities, with a specific request to ensure math and science teachers understood her dyscalculia. *Id.* at p. 16.
78. When Case Manager 2 started, she created student “snapshots” and shared them with teachers. *Interview with Case Manager 2.* She also observed classrooms to help. *Id.* In early April, before she left, Case Manager 2 created an updated “snapshot” from the February Draft IEP because she wanted Student to start getting those supports. *Id.*

#### **K. Implementation of the 2022 IEP: Accommodations**

79. Parents are concerned that Algebra Teacher was not implementing all accommodations. *Interview with Parent.* In September 2022 and January 2023, teachers were advised to make note of any accommodations Student used, or chose not to use, in connection with all assignments, both completed and missing. *Exhibit P*, pp. 1, 157. Such logs were provided for several classes, including algebra. *Exhibit R*, pp. 3-16.

80. Student generally did not use extra time in algebra class, although it was offered. *Id.* at pp. 15-16. Toward the start of the semester Algebra Teacher often reduced Student's workload by assigning half the problems. *Id.* Exams were offered in a quiet place. *Id.*
81. Algebra Teacher only assigned two larger projects, during which he checked in with Student frequently, although he did not break the assignment down into smaller steps. *Interview with Algebra Teacher.* Student sat near the front of the room and Algebra Teacher provided all students with a spreadsheet listing all assignments with the corresponding due dates. *Id.* Student had graph paper in class as well as hard copies of all assignments and fill-in-the-blank notes. *Id.* She had access to food and water and was free to take breaks as needed. *Id.*
82. Algebra Teacher provided all students with a copy of the completed notes after the lesson. *Id.* He was unsure how to allow Student to demonstrate mastery in other ways because of the fast pace and because he was not sure how that would work for algebra. *Id.* He never spoke with a special education teacher about Student, except when he got her IEP and then at the facilitated IEP meeting. *Id.*

#### **L. Implementation of the 2022 IEP: Special Education Services**

83. School does not maintain service logs. *Response*, pp. 1 and 6. District emphasized service log documentation during its recent annual training and will be requiring Coordinators to audit those documents as part of the Handbook. *Id.* at p. 6.
84. Case Manager 1 provided most services in her resource class with around seven students. *Interview with Case Manager 1.* Most students with IEPs were in the class which met for 50 minutes four times per week. *Id.* She had planned lessons and helped students with their assignments, in addition to spending 20-30 MPW on goals. *Id.*
85. Case Manger 2 sat in on science and/or history class for 50 minutes two or three times per week. *Id.* She observed Student and supported other students to avoid singling her out. *Id.* She could not really work with her on budgeting or career planning in the middle of class. *Id.*
86. She would also touch base with Student's teachers to see how Student was doing and what supports they were offering. *Id.* They would talk during support meetings that occurred every other Friday, and she would check in with teachers less formally by email every week. *Id.*
87. Case Manager 2 sat in on some classes two or three times per week. *Interview with Case Manager 2.* To avoid embarrassing Student and others on IEPs, she would help the whole class with a special eye on her students. *Id.* After classes, she would email or talk with teachers about accommodations she saw or give suggestions of other ways to support students. *Id.*
88. She worked with Student on executive functioning and time management through text messaging and informal time together. *Id.* After the February IEP meeting, she tried meeting

with Student on Fridays, but Case Manager 2 was always remote on Fridays, so the sessions had to be virtual. *Id.* Student only showed up once or twice. *Id.* She tried finding different times to meet with Student, but it was hard to align their schedules. *Id.*

89. Case Manager 2 had unspecified leave at some point in March. *Exhibit P*, p. 143. She left School permanently before April 3, 2023. *Exhibit O*, p. 50. District was unable to fill her position before the end of the year, six weeks or 31 school days later. *Id.* at p. 141; *Exhibit J*.

#### **M. Implementation of the 2022 IEP: Mental Health Services**

90. Student was not meeting with a mental health professional during the first semester because they did not have anyone on campus in that role until December. *Interview with Case Manager 1*. A school psychologist who was helping School with testing (“School Psychologist 1”) met with Student a few times. *Id.*
91. The SCO was unable to interview School Psychologist 1, who was on leave from School. District did not produce service logs or progress reports from her time with School. *Response*, p. 1. Thus, the SCO credits District for providing 40 minutes of mental health services during the first semester.
92. School Psychologist 2 started January 9, 2023. *Exhibit P*, p. 86. Student and School Psychologist 2 agreed to start meeting at 10 a.m. on January 25, 2023. *Id.* at pp. 70-80. These sessions were virtual. *Id.* at p. 68.
93. School Psychologist 2 held 30 minutes per week to meet with Student. *Interview with School Psychologist 2*. Student frequently missed sessions because she forgot, had a migraine or had other work. *Exhibit D*, p. 48; *Exhibit P*, pp. 17-67. When Student did not log on, School Psychologist 2 would send reminders. *Id.*
94. She tried moving the session times around to find something that would work better for Student. *Interview with School Psychologist 2*. Ultimately, they had four 30-minute sessions. *Id.*; *Exhibit F*, p. 3. The SCO finds she received 120 minutes of mental health services during the second semester.

#### **N. Progress Monitoring**

95. District requires that progress reports be sent with the same frequency as report cards. *Exhibit Q*, p. 120. Staff are encouraged to collect data multiple times throughout the reporting period, and in multiple settings if necessary for the goal. *Id.* at pp. 120-121.
96. As a new teacher, Case Manager 1 was not sure what she was supposed to do to monitor progress. *Interview with Case Manager 1*. She tried to track data in a spreadsheet and

completed second quarter progress reports for other students. *Id.* Because Student was not in her resource class and would not meet with her, she could not monitor progress. *Id.*

97. Case Manager 2 gathered baseline data when she started because there was not progress monitoring data for Student. *Interview with Case Manager 2.* She had just finished the third quarter progress reports when she left. *Id.*
98. District produced one progress report for Student, with progress reported by School Psychologist 2 on just the coping skills goal. *Exhibit F*, p. 3. School Psychologist 2 notes that Student self-reported using coping skills three times per week, up from once per week at the start of the semester. *Id.* However, changes in medication might have impacted this outcome. *Id.* The SCO finds that this goal was from the 2023 IEP which not finalized until May 11, 2023.
99. District did not have progress monitoring data for Student from first semester. *Exhibit O*, p. 142. Data gathered by Case Manager 2 was included as baseline data in the 2023 IEP. *Id.* at p. 52. With the vacant special education teacher position, District also had no progress monitoring data after February. *Id.* at p. 142.

### **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 reevaluate Student pursuant to Parents' request, in violation of 34 C.F.R. § 300.303(a)(2). This violation resulted in a denial of FAPE.**

Parents' concern is that District did not conduct or otherwise respond to the reevaluation they requested on April 30, 2023. (FF #s 63, 68.)

Districts must ensure that a reevaluation of a child with a disability is conducted if "the child's parent or teacher requests a reevaluation." 34 C.F.R. § 300.303(a)(2). Reevaluations cannot occur more than once a year, unless the parent and district agree otherwise, and reevaluations must occur at least once every three years, unless the parent and district agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b). However, districts must honor a parental request to reevaluate a student where the most recent reevaluation is more than one year old. *G.W. v. Boulder Valley Sch. Dist.*, 2019 WL 4464130, at \*12 (D. Colo. Sept. 18, 2019) (holding that the district was obligated to reevaluate the student upon parental request because the most recent reevaluation was then one year old).

Here, Parents requested an evaluation on April 30, 2023. (FF # 63.) They asked District to consider all items in their agenda and document refusals in a PWN. (FF # 61.) They reiterated the requests to consider additional areas of eligibility and issue a PWN documenting refusals to grant their requests during the meeting. (FF #s 68, 69.) Student's last evaluation was completed more than a year ago, by a prior district in Spring 2021, enabling District to develop her IEP in August 2021. (FF #s 54-55.) To date, District has not sought consent to reevaluate. (FF # 56.)



For these reasons, the SCO finds and concludes that District failed to reevaluate Student pursuant to Parents' April 30 request, in violation of 34 C.F.R. § 300.303(a)(2).

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

Here, Parents requested a reevaluation on April 30 and the school year ended on May 16. (FF #s 63, 70.) No reevaluation would have been completed prior to the end of the year, so this violation did not result in a deprivation of educational benefit. However, a promptly initiated evaluation could have been completed over the summer, allowing Parents and District to develop an updated IEP before the new school year. Without an evaluation, Parents and District will not have the information to revise Student's 2023 IEP until the coming school year. Thus, the SCO finds and concludes that the failure to reevaluate resulted in a denial of FAPE for Student and significantly impeded Parents' opportunity to participate in the decision-making process.

**Conclusion to Allegation No. 2: District failed to carefully consider Parents' IEP Team meeting request, in violation of 34 C.F.R. § 300.324(b). District also failed to issue adequate PWN, in violation of 34 C.F.R. § 300.503(b), (c). These violations resulted in a denial of FAPE for Student.**

Parents' concern is that District did not convene an IEP team meeting pursuant to their September 4, 2022 request. (FF # 39.)

#### **A. IEP Meeting Requirements**

The IDEA contemplates that a student's IEP may need to be reviewed and revised more frequently than once a year to address changing needs or an unexpected lack of progress. *See* 34 C.F.R. § 300.324(a)(4)-(6), (b); *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (U.S. 2017). IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; *information about the child provided to, or by, the parent*; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1)(ii) (emphasis added). "Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time." Questions and Answers on *U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017). Consequently, a school district must carefully consider and appropriately respond to a parent's request to convene the IEP team. *Westminster Public Schools*, 118 LRP 50551 (SEA CO 11/14/2018).

Here, Parents requested an IEP team meeting on September 4, 2022, in writing, to address new diagnoses and medication as well as concerns about services. (FF # 39.) District initially offered an IEP meeting in October but changed course. (FF # 38.) First, District offered to have a bi-weekly meeting with Parent that would specifically not be for IEP development or modification. (FF # 40.) Second, District asked if it would be a “formal” or “informal” meeting. (FF # 41.) However, the IDEA makes no distinctions between “formal” and “informal” IEP meetings. 34 C.F.R. § 300.324. Finally, District did not hold an IEP meeting for Student. (FF # 45).

District was obligated to carefully consider and appropriately respond to Parent’s request for an IEP team meeting. *Westminster Public Schools*, 118 LRP 50551 (SEA CO 11/14/2018). A request for an IEP team meeting is, essentially, a request to change a student’s IEP and, therefore, the provision of a FAPE. Thus, if a district is not granting such a request, appropriately responding requires issuing PWN of the refusal to change the provision of a FAPE. 34 C.F.R. § 300.503(a).

### **B. PWN Requirements**

PWN must be issued a reasonable time before a district proposes or refuses to change “the educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district’s proposal or refusal. 34 C.F.R. § 300.503(b)(1-7). The notice must be “written in language understandable to the general public.” *Id.* at § 300.503(c).

Adequately identifying the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18).

Here, District issued the September PWN in response to Parents’ meeting request. (FF # 42.) The September PWN includes: (1) the basis for the decision, information from the Parents; (2) another factor considered and rejected, having a meeting; and (3) other factors considered by District, including Student progress and teacher observations. (FF #s 43, 44.) This is consistent with the requirements of 34 C.F.R. § 300.503(b)(3), (6) and (7).

However, the September PWN indicates that District is proposing to *change* the provision of FAPE for Student through a meeting with Parents. (FF # 42.) It indicates that an IEP meeting was rejected because “all parties have not been made aware of or agreed upon the changes that are

desired to be made.” (FF # 44.) The SCO finds and concludes that the September PWN is not written in language that is clearly understandable, in violation of 34 C.F.R. § 300.503(c), as it both indicates District is proposing to change the IEP through a meeting with Parents and refusing to meet with the Parents. Given this contradiction, the SCO also finds and concludes that the September PWN fails to include a description of the action proposed or refused by District or an explanation for why, in violation of 34 C.F.R. § 300.503(b)(1), (2).

Finally, the September PWN directs Parents to contact Case Manager 1 for a copy of their procedural safeguards or help understanding the document. (FF # 44.). However, Parents had just been told they were not permitted to contact anyone at School except Head. (FF # 40.) Thus, the SCO finds and concludes that the September PWN fails to include a means by which Parents could obtain a copy of their procedural safeguards or a source for Parents to obtain help understanding the requirements, in violation of 34 C.F.R. § 300.503(b)(4), (5).

Because the September PWN is not clear and does not meet the requirements of the IDEA, the SCO finds and concludes that District did not carefully consider and appropriately respond to Parents request for an IEP team meeting, in violation of 34 C.F.R. § 300.324(b).

### **C. Procedural Violation**

Again, procedural violations of IDEA are only actionable to the extent that they impede the child’s right to a FAPE, significantly impede the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10<sup>th</sup> Cir. 2008).

Here, these procedural violations impacted Parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Parents had concerns about the appropriateness of the 2022 IEP, which they could not address with the IEP team. Further, the failure to meet delayed the revision of Student’s substantively deficient IEP (discussed below in the legal conclusion to Allegation No. 4). As such, the failure to convene an IEP team meeting at Parents’ request impeded Student’s right to a FAPE. Thus, the SCO finds that the District’s procedural violations resulted in a denial of FAPE.

### **Conclusion to Allegation No. 3: Parents were not entitled to an IEE and thus no violation of 34 C.F.R. § 300.502 occurred.**

Parents’ concern is that District did not appropriately respond to a request for an IEE. (FF # 55.)

Parents have a right to seek an IEE at public expense if they disagree with an evaluation conducted by the school district. 34 C.F.R. § 300.502(b)(1). An IEE is an “evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” *Id.* § 300.502(a)(3)(i). After a parent requests an IEE at public expense, the district “must without unnecessary delay, either –(i) file a due process complaint to request a

hearing to show that its evaluation is appropriate; or (ii) ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.” 34 C.F.R. § 300.502(b)(2). The review of a transfer student’s records, including prior evaluations, might constitute an evaluation by the receiving district. *Herrion v. District of Columbia*, 83 IDELR 17 (D.D.C. 2023). However, a parent is entitled to only one IEE for each evaluation conducted by a district. 34 C.F.R. § 300.502(b)(5).

In this case, Student was evaluated by another district in Spring 2021 and found ineligible for special education. (FF # 54.) Parent disagreed with that evaluation and the other district provided Student with an IEE and thereafter found Student eligible. *Id.* District adopted these evaluations, including the IEE, and developed an initial IEP for Student. (FF # 55.)

On March 27, 2023, Parents’ Attorney sought an IEE. *Id.* However, Parents had already obtained an IEE in response to the last evaluation of Student. (FF # 54.) District had not subsequently evaluated Student (FF # 56). Therefore, the SCO finds and concludes Parents were not entitled to another IEE without a new evaluation. No violation of 34 C.F.R. § 300.502 occurred.

**Conclusion to Allegation No. 4: District failed to develop annual goals and special education and related services in the 2022 IEP that were reasonably calculated to enable Student to make appropriate progress, in violation of 34 C.F.R. § 300.320(a)(2), (a)(4). District also failed to include a required member of the IEP team when developing the 2023 IEP, in violation of 34 C.F.R. § 300.321(a)(3). These violations resulted in a denial of FAPE.**

Parent’s concern is that District failed to develop, review or revise IEPs that were appropriately tailored to meet Student’s individualized needs throughout the 2022-2023 school year.

The IDEA requires districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. If the answer to both questions is yes, then the IEP is appropriate under the law. *Id.*

#### **A. 2022 IEP Development Process**

As an initial matter, Parents were concerned that District did not review Student’s IEP annually after developing one in August 2021. Districts must review a student’s IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and revise the IEP as appropriate. 34 C.F.R. § 300.324(b)(1). Here, District reviewed and revised Student’s IEP in

February 2022, six months after developing her initial IEP. (FF #s 14, 37 and 55.) Thus, Student's IEP was reviewed at least annually, consistent with the requirements of 34 C.F.R. § 300.324(b).

The 2022 IEP was developed in February 2022, outside the window of this Complaint. (FF # 14.) Thus, the SCO cannot consider the propriety of the events that occurred in February 2022. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ 3(f). However, the SCO still has authority to consider the propriety of the IEP itself. A deficient IEP continues to violate the IDEA each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day the IEP is in effect. *Weld County Sch. Dist. 6*, 81 IDELR 239 (CO SEA April 24, 2022). Thus, the SCO will presume that the development process of the 2022 IEP complied with the procedural requirements of the IDEA. However, the SCO will separately consider below whether the 2022 IEP was substantively appropriate, complying with the second *Rowley* prong. *Rowley*, 458 U.S. at 207.

## **B. Substantive Adequacy of the 2022 IEP**

### *i. Present Levels*

Parents' concern is that the present levels section does not adequately document Student's level of academic achievement and how her disability impacts her in the general education curriculum.

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a)(1). An IEP must include a statement of the student's present levels of academic achievement and functional performance, including a statement explaining how the child's disability impacts the student's involvement and progress in the general education curriculum. *Id.* § 300.320(a)(1). Developing appropriately ambitious goals depends on first gathering and understanding the student's current performance, including prior rates of progress and information provided by the parents. *Questions and Answers on Endrew F. v. Douglas County School District. Re-1*, 71 IDELR 68 (EDU 2017).

The IDEA requires that parent participation be meaningful, to include carefully considering a parent's concerns for enhancing the education of the child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). However, the IDEA does not require a parent input section. *See, Id.* § 300.320. Instead, the IEP, considered in its entirety, must be reflective of meaningful participation. Meaningful 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 child. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Here, the 2022 IEP includes a statement of Student's strengths, including her enjoyment of art and science and the fact that English comes easily to her. (FF # 15.) It includes her current level

of academic performance. (FF # 16.) It also includes summaries of recent evaluations including results of academic testing and concerns with working memory and executive functioning. (FF #s 17, 18.) As a result of her disability, Student had trouble making progress in math classes and had difficulties with math problem-solving and calculation. (FF # 19.) She also had difficulty with condensing complex ideas, time-management, organization, and course completion. *Id.*

District's practice is to record only what parents say when the team gets to the parent input section. (FF # 10.) According to the parent input section, Parent provided multiple evaluations and extensive, yet unspecified, information about her concerns. (FF # 20.) The PWN notes that services outside the general education setting were removed at Parents' request. (FF # 37.) Further, parent input was considered in determining that Student did not require ESY. *Id.*

While it might be preferable for IEP teams to record an accurate reflection of parent's requests and concerns in the parent input section of an IEP, that is not what the law requires. Instead, the law requires just that the IEP team consider those concerns with an open mind and incorporate some requests, as appropriate, in the IEP. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Where parent concerns have been incorporated throughout the document, there is no requirement to list them in the parent input section. For these reasons, the SCO finds and concludes that the present levels section of the 2022 IEP was substantively appropriate.

#### ii. Annual Goals

Parents' concern is that the goals in the 2022 IEP are not appropriately ambitious and do not address all areas of Student's needs because there are no academic goals.

An IEP must include measurable goals designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. 34 C.F.R. at § 300.320(a)(2). To allow for the evaluation of a student’s progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff’d*, 38 IDELR 63 (6<sup>th</sup> Cir. 2003, *unpublished*). Appropriate goals should be clear enough that a stranger, or person unfamiliar with the IEP, would be able to implement the goal, monitor student’s progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

IEPs, and by extension IEP goals, must be reasonably calculated to enable Students to make appropriate progress in light of their circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (U.S. 2017). Annual goals must be aligned with state academic content standards for the student’s grade. *Dear Colleague Letter*, 66 IDELR 227 (OSERS/OSEP 2015). Transition goals must also be aligned to academic standards. *Writing Quality Secondary Transition IEPs that Include the Required Elements of Indicator 13*, (CDE May 2020) available at <https://www.cde.state.co.us/cdesped/qualitysecondaryiepgoals>.

Here, for high school students, District practice is to tie annual goals to career and independent living goals, instead of academics. (FF # 12.) Based on that, Coordinator does not allow for the development of academic goals in high school. *Id.* However, that practice conflicts with the IDEA and CDE guidance. Annual goals must be designed to enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. at § 300.320(a)(2). This does not change when students enter high school.

Further, for children like Student, whose transition goals include attending college and even pursuing post-graduate degrees, appropriate transition planning requires goals designed to improve their academic and functional needs to facilitate their move to postsecondary education. 34 C.F.R. § 300.43(a). Thus, transition IEPs can, and often must, continue to include academic goals. Consistent with these federal requirements, CDE guidance states annual goals for transition IEPs must be tied to academic standards and written in consideration of the skills and requirements for the postsecondary goals, including attainment of a degree. (FF # 13.) As such, CDE guidance proffers examples of appropriate academic goals for transition IEPs. *Id.*

Student has a SLD in math. (FF # 2.) The 2022 IEP contains five goals, but none are linked to academic standards or appropriate grade level standards. (FF # 33.) None address her ability to participate in grade level math or address difficulties with math problem solving and calculation. (FF #s 19, 28-32.) The self-advocacy goal had three objectives, but none had baselines and only one had an identified goal. (FF # 28.) The planning goal sought to have Student correctly organize multi-step projects from a baseline of prioritizing three to four items independently. (FF # 29.) However, the goal does not indicate how many items she will be able to prioritize when she has mastered this goal, impeding its measurability. *Id.* The career planning goal has no baseline, making it impossible for anyone to determine if she has made progress. (FF # 31.) The study skills goal is to increase study skills utilization from one skill to five, in order to increase her test scores from 25% to 70%. (FF # 32.) But it is not clear where she was getting test scores of 25% or if the goal would be measured based on test scores or self-reported use of study skills. *Id.*

Also, the baseline for the personal finance goal is vague as it is not clear how preparing a partial list relates to the goal of creating and managing a budget in three out of five trials. (FF # 30.) Thus, it is unclear what would constitute progress on this goal. Further, the SCO, in consultation with CDE Content Specialist, finds that this goal is too vague to pass the stranger test. Another teacher would not be able to implement this goal consistently, without additional information. In addition, the SCO, in consultation with CDE Content Specialist, finds that this goal is not appropriately ambitious for Student, given her intellectual and academic abilities.

For these reasons, the SCO finds and concludes that the goals in the 2022 IEP were not reasonably calculated to enable Student to receive an educational benefit, violating the IDEA's substantive requirements related to the development of an IEP at 34 C.F.R. § 300.320(a)(2). This 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).

*iii. Services and Supplementary Aids and Services*

Parents' concern is that the 2022 IEP did not include the special education and related services Student required to make progress in the general education setting.

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). An IEP must "include information about the services that will be provided to the child, so that the level of the agency's commitment of resources will be clear to parents and other IEP Team members." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006). All IEP goals should be supported with the delivery of an appropriate special education or related service. *See, e.g., Burlington Sch. Dist.*, 20 IDELR 1303 (SEA VT 1994) (finding that a district failed to offer a FAPE where it did not include services to address needs in the IEPs goals.)

Here, the 2022 IEP included 60 MPW of direct instruction from a special education teacher inside general education to support task completion and organization of multistep projects. (FF # 36.) It also included 20 MPW of indirect consultation from a special education teacher to support implementation of accommodations and help teachers support her with tools for planning and organizing. *Id.* Finally, it included 40 MPM of support from a mental health provider to support Student's self-advocacy skills. *Id.* There are no services to support the budgeting goal, the career planning goal, or the study skills goal. *Id.* Case Managers 2 and 3 in fact did not work on those goals or know how to implement them inside the general education setting.

Because the 2022 IEP did not include special education and related services to support each of the goals, the SCO finds and concludes that it was not reasonably calculated to allow Student to make progress on annual goals and to be involved and make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(4). This 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).

*iv. Transition Planning*

Parents' concern is the 2022 IEP did not include an appropriate postsecondary transition plan.

Beginning with the first IEP developed at age 15, but no later than the end of ninth grade, an IEP is required to include a transition plan. ECEA Rule 4.03(6)(d). Such plan must identify "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills," as well as the transition services, including a course of study, the student needs to reach those goals. *Id.*; *see also* 34 C.F.R. § 300.320(b). As defined in the IDEA, "transition services" refers to:



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

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

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

Here, the 2022 IEP contained three transition goals (education, career, and independent living skills). (FF # 22.) The education and career goals focus on Student's ability to attend college and eventually gain employment as a psychiatrist. (FF #s 21, 22.) The independent living skills goal is for her to live independently. (FF # 22.) All goals were developed based on appropriate transition assessments. (FF # 21.) During the assessment, Student identified concerns about her ability to take care of physical and mental health problems, as well as to manage money and housing. *Id.* To support meeting her transition goals, District was to provide direct instruction in study skills, self-advocacy, and personal finance. (FF # 24.) District would also provide career information and support from an advisor and college counselor and opportunities to explore her chosen field, including career fairs. (FF # 25.) District also agreed to provide instruction in math to create a budget and open and maintain checking accounts to support independent living. (FF # 27.) The transition plan also included a detailed course of study listing all the courses she would take to graduate. (FF # 23.) The transition plan indicated she would be responsible for seeking out community experiences like internships and acquiring skills to navigate around town. (FF # 26).

For these reasons, the SCO finds and concludes that the 2022 IEP included all the required components of an appropriate transition plan. 34 C.F.R. § 300.320(b). The SCO also finds and concludes that, considered in its entirety, the transition plan in the 2022 IEP was based on Student's needs and reasonably calculated to facilitate her movement to postsecondary education, consistent with the requirements of 34 C.F.R § 300.43. Thus, the SCO finds and concludes that the transition plan in the 2022 IEP was reasonably calculated to enable Student to receive an educational benefit, consistent with IDEA's substantive requirements related to the development of an IEP in 34 C.F.R. § 300.320(b). No violation occurred.

v. ESY

Parents' concern is that District inappropriately determined that Student did not qualify for ESY.

A school district must provide ESY services when a child's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2). ESY services cannot be limited to a particular category of disability or unilaterally limited in the type, amount, or duration of those services. 34 C.F.R. §300.106(a)(3). ESY services are not intended or required to maximize a student's educational benefit. *Cordrey v. Euckert*, 17 IDELR 104 (6th Cir. 1990), cert denied, 499 U.S. 938 (1991). Instead, ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10th Cir. 1990); *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010).

There are factors, other than regression and recoupment, that may be analyzed to determine whether ESY is a necessary component of FAPE. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10th Cir. 1990). These include: a child's degree of regression suffered in the past, the exact time of past regression, the ability of parents to provide educational structure at home, a child's rate of progress, a child's behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with nondisabled children, the areas of a child's curriculum that need continuous attention, a child's vocational needs, and whether the requested services are extraordinary for the child's condition as opposed to an integral part of a program for populations of students with the same disabling condition. *Id.*

An IEP meeting itself "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 provide parents with prior written notice of the offer. . . ." *Id.*

Here, Parent, a licensed teacher, previously homeschooled Student. (FF # 51.) During that time, she observed that Student struggled to retain concepts from the start of a lesson to the end. *Id.* She experienced even more severe regression after longer breaks. *Id.* Based on that experience, Parent indicates she requires ESY services. (FF # 51.) However, the 2022 IEP team determined she did not qualify for ESY. (FF # 35.) The IEP team reviewed the predictive factors and considered grades and attendance, teacher feedback, parent input and classroom observations. (FF # 37.)

Parents and District could not agree about ESY services. The IEP Team ultimately decided that ESY services were not appropriate for Student and notified Parents of that decision through the embedded PWN. In addition, neither of Student's math teachers this year observed her to have difficulty retaining information after weekends or long breaks. (FF # 69.) Thus, the SCO finds and

concludes that the 2022 IEP reasonably reflected that Student did not require ESY, consistent with IDEA's substantive requirements at 34 C.F.R. § 300.106(a)(2). No violation occurred.

### **C. 2023 IEP Development Process**

“Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of . . . FAPE to the child, participate in the child’s IEP Team meeting.” *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011). The IDEA therefore differentiates between mandatory and discretionary IEP Team members. See *Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include parents, at least one regular education teacher, at least one special education teacher, a district representative with knowledge of the district’s available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). The special education teacher need not be the student’s current special education teacher, but it must be a special education teacher who has worked with the student. *R.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007); See also, *New York City Dep’t of Educ.*, 45 IDELR 236 (SEA NY 2005); *Toledo Pub. Schs.*, 121 LRP 34535 (SEA OH 08/06/21).

Here, the 2023 IEP was developed at meetings on February 17 and May 3, 2023. (FF #s 47, 65.) There was an appropriately convened IEP team at the February meeting. (FF # 47.) However, there was not a properly convened IEP team on May 3, as the only special education teacher, Special Education Teacher, had never worked with Student. (FF # 65.) Thus, the SCO finds and concludes that the May 3 IEP Team did not include a special education teacher who had worked with Student, in violation of 34 C.F.R. § 300.321(a)(3). Because the 2023 IEP was not developed by an appropriately convened IEP team, the SCO finds and concludes that the development process for the 2023 IEP did not comply with IDEAs requirements. *Rowley*, 458 U.S. at 206.

Again, procedural violations of IDEA are only actionable to the extent that they impede the child’s right to a FAPE, significantly impede the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10<sup>th</sup> Cir. 2008).

Here, the 2023 IEP was finalized three days before the year ended (two of those days were finals). (FF # 70.) It was never implemented and could not have impeded Student’s right to a FAPE or resulted in a deprivation of educational benefit. However, the failure to include a special education teacher who had worked with Student meant there was no one at the May 3 meeting to answer questions about Student’s present levels or progress on prior goals. (FF # 65.) This significantly impeded Parents’ opportunity to participate in the decision-making process. Parents lacked information to determine if the proposed goals and services were appropriate for Student’s current needs. Thus, this failure resulted in a denial of FAPE.

Since the development process for the 2023 IEP was not appropriate and it was never implemented, the SCO will not turn to the question of whether the 2023 IEP was substantively adequate. *Rowley*, 458 U.S. at 207.

**Conclusion to Allegation No. 5: District failed to implement Student’s IEP throughout the 2022-2023 school year, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.**

Parents’ concern is that District failed to ensure teachers had access to Student’s IEP and provide her with the accommodations and special education and related services required by her IEP.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

An IEP must identify the special education and related services and supplementary aids and services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” 34 C.F.R. § 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 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).

**A. Applicable IEP**

The SCO must first determine what IEP was in effect. Although an IEP meeting was held on February 17, 2023, District did not issue a final IEP for Student until May 11, 2023. (FF #s 47, 70.) Parents requested a continuation meeting for time to review the records they requested. (FF # 48.) Coordinator indicated District would determine if another meeting was appropriate and then issue PWN of its determination. *Id.* The embedded PWN in the February Draft IEP acknowledges Parents’ request but does not indicate whether another meeting would be granted. (FF # 53.)

District admits the IEP was not finalized until later. *Id.* District issued a final IEP on May 11, three days before the end of the year. (FF # 70.) As there was no consensus reached and District did not decide and issue PWN of its decisions, the SCO finds that the 2022 IEP remained the operative IEP for Student until May 11, 2023. As there was only one day of school left, plus finals, and no concerns were raised about the implementation of accommodations during Student’s finals, this Decision analyzes implementation of the 2022 IEP through May 11, 2023. (FF # 70.)

As part of the program at School, Student also enrolled in college courses through a local community college. (FF # 74.) College courses do not fall within the definition of a FAPE, which applies to preschool, elementary school, and secondary school. *Mountain Board of Cooperative Educational Services*, 54 IDELR 334 (SEA CO 2010). Accordingly, while a student might still be entitled to accommodations under a Section 504 Plan, they are not entitled to services under the IDEA while enrolled in a college course. As such, the SCO finds and concludes that Student’s 2022 IEP did not apply to her college courses and thus will not analyze implementation in this respect.

### **B. Knowledge of Student’s 2022 IEP**

The SCO starts by determining whether District satisfied its obligation under 34 C.F.R. § 300.323(d) to ensure that teachers were aware of their responsibilities under the 2022 IEP.

Here, District advises case managers to provide all teachers with a list of students’ accommodations. (FF #s 71-73.) Case Manager 1 gave all of Student’s teachers a list of her accommodations and goals at the start of the year. (FF # 75.) She also spent time with teachers ensuring they understood the accommodations. *Id.* She was repeatedly directed to ensure math and science teachers understood Student’s needs. (FF # 77.) Both math teachers were aware of her accommodations from the start of the semester, and Case Manager 1’s practice was to discuss accommodations with teachers when she provided them. (FF #s 75, 76.) Thus, the SCO finds and concludes that District ensured Student’s teachers were aware of their responsibilities under the 2022 IEP, consistent with 34 C.F.R. § 300.323(d).

### **C. Implementation of the 2022 IEP: Accommodations**

Parents’ concern is that Algebra Teacher was not consistently implementing accommodations.

The 2022 IEP’s accommodations included extra time, chunking of assignments with manageable due dates and multiple check ins, visual check list for tasks, access to a quiet testing space and an “opportunity to demonstrate knowledge of mathematical concepts in a variety of ways.” (FF # 34.)

In algebra Student was offered extended time and quiet space for testing. (FF # 80.) She sat near the front and got a running list of assignments with due dates. (FF # 81.) During large projects, Algebra Teacher checked in with her frequently but did not help break them down into smaller steps. *Id.* He also did not know how to allow her to demonstrate mastery in alternative ways

because he did not know how it would work in math. (FF # 82.) Thus, the SCO finds and concludes that Algebra Teacher was not implementing all accommodations, in violation 34 C.F.R. § 300.323.

#### **D. Implementation of the 2022 IEP: Special Education Services**

Parents' concern is that Student did not receive required special education services. Per the 2022 IEP, Student should have received 60 MPW of direct services from a special education teacher inside general education and 20 MPW of indirect support from a special education teacher to consult with general education teachers on accommodations and teaching strategies. (FF # 36.)

Here, School has not historically maintained service logs. (FF # 83.) The IDEA does not require service logs, but districts must be able to show that services were provided. Case Manager 1 was Student's special education teacher from the start of the school year until January 24, 2023. (FF # 46.) Case Manager 2 was her special education teacher from late January through April 2, with unspecified leave during that time. (FF #s 46, 89.) School did not have a special education teacher from April 3 until the end of the year, 31 school days later. (FF # 89.)

Case Manager 1 supported Student in science or history for 100-150 minutes per week. (FF # 85.) She observed Student and tried to help her, as well as many other students, to avoid drawing attention to Student. *Id.* She could not work with her on budgeting or career planning goals during class. *Id.* She was not sure how to work on goals since Student was not in the resource class. (FF # 96.) Case Manager 2 similarly sat in on some of Student's classes a few times per week to help Student and her peers. (FF # 87.) She sent Student a few messages to help with executive functioning and time management. (FF # 88.) She tried to set up meetings with Student, but these were virtual sessions. *Id.* However, due to migraines, Student had a hard time with prolonged computer use, including virtual sessions. (FF # 50.) They ultimately met once or twice, but the 2022 IEP required support inside the general education setting. (FF #s 36, 88.)

There is no evidence to support that either case manager was working with Student on her annual goals. Further, the SCO, in consultation with CDE Content Specialist, finds that checking on students in class is not the same as providing direct instruction. Thus, the SCO finds that Student did not receive any direct services inside the general education setting from either case manager. School then went without a special education teacher for six weeks, during which time the SCO finds no one was providing Student with direct special education services. Since the school year was 32 weeks, the SCO finds that Student should have received 1,920 minutes during that time.

Case Manager 1 checked in with Student's teachers every week either via email or during a bi-weekly meeting. (FF # 86.) After observing classrooms, Case Manager 2 would talk with teachers about what was working and how they could better support students. (FF # 87.) Neither case manager supported her in math classes. (FF #s 85, 87.) Algebra Teacher never heard from a special education teacher about how to support her except when he got a copy of the IEP at the start of the semester and attended an IEP meeting in May 2023. (FF # 82.) Thus, the SCO finds that teachers were consulting only with the teachers whose classes they observed. This is

especially concerning given that she has a SLD in math. (FF # 2.) Since they were consulting with some teachers, the SCO credits District with half of the consultation services for when a special education teacher was employed. The SCO finds that no consultation services were provided for the six weeks School lacked a special education teacher. Since she was entitled to 20 MPW of indirect services, the SCO finds that District failed to provide 380 minutes of indirect services.

For all these reasons, the SCO finds and concludes that District failed to implement direct and indirect special education services for Student, in violation of 34 C.F.R. § 300.323.

#### **E. Implementation of the 2022 IEP: Mental Health Services**

Parents' concern is that Student did not receive all required direct mental health services.

Under the 2022 IEP, Student should have received 40 MPM of direct services from a mental health care provider to work on her self-advocacy skills. (FF # 36.) With 32 weeks, or eight months, in the school year, Student should have received 320 minutes of mental health services. (FF # 70.) District does not have service logs for mental health services. (FF # 83.) Student met with School Psychologist 1 a few times during the first semester and School Psychologist 2 four times during second semester. (FF #s 90, 94.) The SCO finds that she received 160 minutes of mental health services during the year. (FF #s 91, 94.)

School Psychologist 2 offered to meet with Student regularly, but these sessions were virtual. (FF #s 92, 93.) Student required alternatives to remote learning because virtual services could trigger migraines. (FF # 50.) Although Student missed sessions for a variety of reasons, because virtual services were not appropriate for Student, the SCO does not credit District for any of the missed services with School Psychologist 2. (FF # 93.) Thus, the SCO finds that District failed to implement 160 minutes of mental health services for Student, in violation of 34 C.F.R. § 300.323.

#### **F. 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 to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, District failed to implement all direct special education services for the year, more than half of indirect special education services, and half of her mental health services. The failure to implement indirect services also contributed to District's failure to implement Student's accommodations in math, the area in which she has an identified disability.

These violations—even taken independently—amount to more than a minor discrepancy between the services Student received and those required by her IEP. For this reason, the SCO finds District's failure to implement Student's IEP to be material, resulting in a denial of a FAPE. Given the degree to which a FAPE was denied, Student is entitled to compensatory education, which will be addressed at the end. *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

**Conclusion to Allegation No. 6: District failed to provide Parents with regular progress reports, in violation of 34 C.F.R. § 300.320(a)(3). This violation resulted in a denial of FAPE.**

Parents' concern is that District failed to monitor Student's progress and provide them with periodic reports on Student's progress on her annual goals.

IEPs must include a description of how a child's progress towards their annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3).

Here, Student's 2022 IEP required that District provide Parents with a report on Student's five goals each semester. (FF # 33.) Case Manager 1 was not sure how to monitor progress, and she did not monitor Student's progress. (FF # 96.) Case Manager 2 gathered baseline data for Student's 2023 IEP. (FF # 97.) District produced one progress report for Student with progress on one goal from the 2023 IEP, which was not finalized until May 11, 2023. (FF # 98.) District did not have any other progress reports or progress monitoring data for Student for the whole year. (FF # 99.) Neither Case Manager 1 nor Case Manager 2 ever really worked on Student's annual goals, and School did not have a special education teacher for six weeks. (FF #s 85-89.)

Parents did not receive progress reports for the 2022 IEP but received a progress report for one goal from the 2023 IEP which should not yet have been implemented. In most cases, no one was monitoring progress. Thus, the SCO finds and concludes that District failed to provide periodic reports on Student's progress, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).



Again, procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Sytsema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10<sup>th</sup> Cir. 2008).

Here, since no one was monitoring the 2022 IEP goals, Parents were not provided with reports on Student's progress before the February 17 or May 3 IEP team meetings. Instead, they were provided with baseline data for the proposed new goals. (FF # 97.) This meant Parents did not have data to consider when advocating for different goals and additional services in the 2023 IEP, significantly impeding their ability to participate in the decision-making process regarding the provision of FAPE to Student. In addition, the entire IEP Team lacked data as to whether Student was making appropriate progress on her annual goals with the existing services. (FF # 67.) The lack of data meant District could not convene an IEP Team to revise the IEP, if necessary, to address a lack of appropriate progress or develop appropriately ambitious goals for the 2023 IEP. As a result, the SCO finds and concludes that this procedural violation resulted in a denial of FAPE.

**Compensatory Education: This investigation demonstrates a need for compensatory services.**

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

Here, District developed a 2022 IEP that did not include appropriate annual goals and services and refused to convene an IEP team meeting to revise that IEP. District also failed to implement the accommodations and services in the 2022 IEP. Finally, because District was not monitoring and reporting on Student's progress on her annual goals, there was no consideration of whether she was making appropriate progress on her goals. Thus, the SCO finds that Student is entitled to an award of compensatory services.

District failed to implement 1,920 minutes (32 hours) of direct specialized instruction inside the general education setting, 380 minutes (6.33 hours) of indirect specialized instruction and 160 minutes (2.66 hours) of mental health services. Considering Student's strong grades and migraine triggers, the SCO, in consultation with CDE Content Specialist, finds an award of all the missed minutes to be overly burdensome. Instead, the SCO orders District to provide Student with: (1) 1200 minutes (20 hours) of direct instruction from a special education teacher in math and executive functioning; (2) 160 minutes (2.66 hours) of indirect support from a special education teacher to support implementation of her accommodations and generalization of skills; and (3) 120 minutes (2 hours) of mental health services to support development of coping skills.

**Systemic IDEA Violations: This investigation demonstrates violations that are systemic in nature 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. 46,601 (Aug. 14, 2006).

Here, the SCO is concerned that District’s failure to develop appropriate annual goals for Student was systemic in nature and likely to impact the future provision of services to IDEA-eligible students in District. Specifically, based on a misunderstanding of CDE guidance, District routinely develops IEPs for high school students that lack necessary and appropriate academic goals. (FF # 12.) Although annual goals should be related to a student’s transition services and postsecondary goals, they still need to be related to an academic standard and, depending on the needs and postsecondary goals of the student, may need to be tied to making progress in grade-level curriculum. (FF # 13.) The concern for the SCO is that other IDEA-eligible students in District, whose transition plans include attending postsecondary degree programs, may not have appropriate academic goals and services to support them in attaining those goals. Therefore, the SCO will order remedies intended to ensure this does not impact the future provision of services to students in District.

The SCO is also concerned that the failure to implement Student’s special education services is systemic in nature, as School did not have a special education teacher for six weeks. (FF # 89.) The concern is that all other IDEA-eligible Students at School also did not receive direct or indirect services in that period. Thus, the SCO will order remedies intended to address this systemic issue. Although Student did not receive direct special education services while School had a special education teacher, the SCO does not find that violation to be systemic in nature. Instead, this violation appears to stem from the misalignment between Student’s annual goals and services, and Case Managers 2 and 3’s uncertainty about how to support a student with no special education minutes outside the general education setting. This similarly appears to explain District’s failure to monitor Student’s progress and provide Parents with regular progress reports. Case Managers 2 and 3 did not know how to work on Student’s goals, but both completed progress reports for other students during their time at School. (FF # 96 and 97.)

Finally, nothing in the Record suggests that the other violations—failure to reevaluate, failure to convene an IEP team meeting at Parents’ request, failure to include appropriate goals and services in Student’s IEP, and failure to include a required member of Student’s IEP team when developing the 2023 IEP—are systemic in nature. Instead, the SCO finds that these violations

were likely the result of School's contentious relationship with Parents. The SCO thus finds that these violations are unlikely to impact the future provision of services in District.

### **REMEDIES**

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

- a. Failing to reevaluate Student, in violation of 34 C.F.R. § 300.303(a)(2);
- b. Failing to carefully consider Parents' IEP Team Meeting request, in violation of 34 C.F.R. § 300.324(b);
- c. Failing to issue adequate PWN, in violation of 34 C.F.R. § 300.503(b), (c);
- d. Failing to develop an IEP that was appropriately tailored to Student's needs, in violation of 34 C.F.R. § 300.320(a)(2), (a)(4);
- e. Failing to include a required member of the IEP team, in violation of 34 C.F.R. § 300.321(a)(3);
- f. Failing to properly implement Student's IEP, in violation of 34 C.F.R. § 300.323; and
- g. Failing to provide Parents with progress reports, in violation of 34 C.F.R. § 300.320(a)(3).

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

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

- a. By **Thursday, September 28, 2023**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

#### **2. Final Decision Review**

- a. Director, Assistant Director, Coordinator, all District coordinators, and District's new Head of School must review this decision, as well as the requirements of 34

C.F.R. §§ 300.303(a), 300.320(a), 300.321(a), 300.323, 300.324(b), and 300.503. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Thursday, September 21, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Thursday, September 28, 2023**.

### **3. Training**

- a. Director, Assistant Director, Coordinator, all District coordinators, School's new Head of School, and all special education teachers at School must attend and complete training provided by CDE on IEP development and implementation, including transition planning for students over 15. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.320 and 300.323 and the related concerns addressed in this Decision.
- b. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.
- c. Such training shall be completed no later than **Tuesday, October 31, 2023**. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **November 7, 2023**.

### **4. Procedures**

- a. By **Friday, November 17, 2023**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. § 300.320(a)(2).
- b. At a minimum, the procedure must offer clear guidance on developing appropriate annual goals for students in high school.
- c. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. District must ensure that all special education providers in District receive a copy of the procedure no later than **Friday, December 15, 2023**. Evidence that the

procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Friday, January 5, 2024**.

## **5. Determination of Compensatory Education Services for Students**

- a. By **Friday, October 20, 2023**, District shall submit to CDE for review, a draft letter to be sent to the parents of all IDEA-eligible students at School who did not receive special education services from April 3, 2023 through the end of the year (“Students”). This letter shall notify parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student who might require compensatory services because of a failure to implement IEP services.
  - i. This can be a form letter, but it must include an individualized section indicating the services the student should have received during the period at the end of the 2022-2023 school year during which there was no special education teacher at School.
  - ii. The letter must invite parents to meet with the student’s IEP team to determine the student’s need for compensatory services, if any, and indicate that the IEP team will meet to assess the student’s need for compensatory services, whether or not parents participate.
  - iii. The letter must include a section requiring parents to sign, acknowledging their receipt of the letter and understanding of its contents. The letter can be signed in advance or at the IEP team meeting required in Remedy 5(b).
  - iv. The letter must be sent by District to parents and CDE no later than **November 3, 2023**.
    1. If the student no longer attends School but still attends a District school, the letter must be sent to parents by November 3, 2023.
    2. If the student no longer attends any District school, the letter must be sent to the parents’ last known address and District must make reasonable attempts to reach them, including contacting the student’s last known AU of residence.
    3. If District is unable to reach parents whose student no longer attends a school in District, District will be excused from determining or delivering compensatory services for that student, provided that District diligently attempts to reach parents and documents such efforts. A determination that District diligently

attempted to meet with parents, and should thus be excused from providing compensatory services, rests solely with the CDE.

- v. District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- b. By **Wednesday, January 10, 2024**, at a mutually agreeable time and place, District must convene IEP teams for all Students to determine how they were impacted by this violation and what, if any, compensatory services they require to put them in the position they would have been in, but for District's violation. Upon request and agreement by both parents and District, CDE offers impartial facilitators for IEP team meetings. CDE encourages the use of IEP facilitation here.
- i. A representative from District, like Assistant Director or the coordinator responsible for School, should be included in every IEP team meeting.
  - ii. If parents are unwilling to meet with District, the IEP team may convene without parents, provided District made diligent efforts to include the parents and documented those efforts. A determination that District diligently attempted to include with parents, and should thus be permitted to meet without them, rests solely with the CDE.
  - iii. In determining whether Students require compensatory services and, if so, how much, the IEP team must consider the factors laid out in the following state and federal guidance. While the guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.
    - 1. OSEP's Guidance: *Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act*, 79 IDELR 232 (OSERS 2021), Questions D4-6.
    - 2. CDE's Guidance: *Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at [https://www.cde.state.co.us/cdesped/special\\_education\\_faqs#compensatory](https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory).
- c. After the IEP meetings, and no later than **Wednesday, January 31, 2024**, District must issue, to parents and CDE, a detailed prior written notice ("PWN") for all Students. The PWN must detail the type and amount of services the student did not receive. It must include the IEP team's determination and rationale regarding

the needed compensatory education services. It must include information about Students' progress on IEP team goals and in the general education curriculum.

- i. If, by February 21, 2024, CDE determines that a PWN is not consistent with the services offered, District may be required to provide additional information or reconvene the Student's IEP team to reconsider.

## **6. Provision of Compensatory Education Services for Students**

- a. By **Friday, March 1, 2024**, District shall schedule all compensatory services in collaboration with parents. 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 **Tuesday, March 5, 2024**. If District and parents cannot agree to a schedule for any student by March 5, 2023, the CDE will determine that Student's schedule for compensatory services by **Friday, March 22, 2024**.
  - i. The parties shall cooperate in determining how compensatory services will be provided. If parents refuse to meet with District within this time, District will be excused from delivering compensatory services, if District diligently attempts to meet with parents and documents such efforts. A determination that District diligently attempted to meet with parents, and should be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parents may opt out of some or all the compensatory services if they wish.
- b. Monthly consultation between the provider(s) delivering compensatory services and Director, Assistant Director or a District coordinator shall occur to evaluate Students' 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 occurred for each Student **by the second Monday of each month**, once services begin, until compensatory services have been completed for that Student. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- c. To verify that Students receive the services required by this Decision, District must submit records of service logs for all Students to the CDE by the **second Monday of each month** until all compensatory education services for that student 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.

- d. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. If for any reason, including illness, a 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 parents and notify the CDE of the change in the appropriate service log.
- e. All compensatory services must be completed by **Wednesday, July 31, 2024**.

## **7. Reevaluation and Review of IEP**

- a. District must provide Parents with consent for a reevaluation of Student by **September 11, 2023**. The reevaluation may include a review of records but must include an assessment of how all of Student's diagnosed disabilities are impacting her in the classroom setting.
  - i. If Parents refuse to sign consent for evaluation within 30 days of receipt, District will be excused from conducting the reevaluation, provided District diligently attempts to resolve disagreements about the scope of the evaluation and secure signatures and documents such efforts. A determination that District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student, rests solely with CDE. Regardless, District must still convene Student's IEP team in accordance with 7(b) below.
- b. District must convene Student's IEP Team, at a mutually agreeable date and time, within 30 days of the eligibility determination or Parents' refusal to sign the consent and no later than **December 8, 2023**. In consideration of the reevaluation and Student's current academic performance, the IEP Team must review and, as necessary, revise Student's current IEP, in accordance with 34 C.F.R. § 300.320, to address Student's unique needs and the concerns identified in this Decision.
- c. By **January 25, 2024**, District must provide copies of the signed consent for reevaluation, evaluation report, notice of the IEP meeting, and finalized IEP to the CDE Special Education Monitoring and Technical Assistance Consultant.

## **8. Compensatory Education Services**



- a. Student shall receive **1,200 minutes (20 hours) of specialized instruction.** At least five hours of this instruction must be in math and at least five hours of this instruction must be in executive functioning. The remaining 10 hours shall be appropriately allocated to address the goals developed to address the needs identified in the evaluation ordered in Remedy 7(a). As such, this instruction shall not start until after Student's new IEP is developed. This instruction must be provided by an appropriately licensed special education teacher. These services must target Student's identified needs. All 1200 minutes must be completed by **Wednesday, July 31, 2024.**
- b. Student shall receive **160 minutes (2.66 hours) of indirect support from a special education teacher.** This instruction must be provided by an appropriately licensed special education teacher working in Student's school of attendance for the 2023-2024 school year. These services shall be used to address Student's identified deficits and support implementation of Student's accommodations and coordinating with any other providers of compensatory services. All 160 minutes must be completed by **Friday, May 24, 2024.**
- c. Student shall receive **120 minutes (2 hours) of mental health services to support development and implementation of coping skills.** This instruction must be provided by an appropriately licensed mental health care provider such as a social worker or school psychologist. These services must target Student's identified mental health needs. All 120 minutes must be completed by **Wednesday, July 31, 2024.**
- d. **By Friday, December 15, 2023,** District shall schedule compensatory services in collaboration with Parents. 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 CDE no later than **Tuesday, December 19, 2023.** If District and Parent cannot agree to a schedule by December 19, 2023, CDE will determine the schedule for compensatory services by **January 5, 2024.**
  - i. The parties shall cooperate in determining how compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parents may opt out of some or all the compensatory services if they wish.

- e. Monthly consultation between the provider(s) delivering compensatory services and Director or Assistant Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. 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.
- g. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance her toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents and notify the CDE of the change in the appropriate service log.

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

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

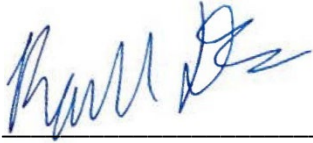
**NOTE:** Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

### **CONCLUSION**

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

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

Dated this 28th day of August, 2023.



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Rachel Dore  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-12

- Exhibit 1: IEP
- Exhibit 2: IEP
- Exhibit 3: Evaluation
- Exhibit 4: Evaluation
- Exhibit 5: PWN
- Exhibit 6: PWN
- Exhibit 7: Parents' Agenda
- Exhibit 8: Email Correspondence
- Exhibit 9: Letter to Parents
- Exhibit 10: Proof of Delivery to District
- Exhibit 11: Draft IEP

### Response, pages 1-7

- Exhibit A: IEPs
- Exhibit B: None
- Exhibit C: None
- Exhibit D: Meeting Documentation
- Exhibit E: None
- Exhibit F: Report Cards
- Exhibit G: None
- Exhibit H: PWNs
- Exhibit I: NOM
- Exhibit J: School Calendar
- Exhibit K: School Policies
- Exhibit L: Email Correspondence
- Exhibit M: Staff Contacts
- Exhibit N: Proof of Delivery to Parents
- Exhibit O: Email Correspondence
- Exhibit P: Email Correspondence
- Exhibit Q: District Procedures
- Exhibit R: Grade Logs

### Reply, pages 1-22

- Exhibit 12: Parents' Agenda
- Exhibit 13: Email Correspondence
- Exhibit 14: Email Correspondence
- Exhibit 15: Email Correspondence

- Exhibit 16: Email Correspondence
- Exhibit 17: Email Correspondence

### **Telephone Interviews**

- Special Education Teacher: July 26, 2023
- Parent: August 2 and 4, 2023
- Case Manager 1: August 2, 2023
- Geometry Teacher: August 3, 2023
- Case Manager 2: August 3, 2023
- Director and Assistant Director: June 28 and August 3, 2023
- Algebra Teacher: August 4, 2023
- School Psychologist 2: August 7, 2023
- Coordinator: August 7, 2023

### **CDE Exhibits**

- CDE Exhibit 1: CDE Guidance
- CDE Exhibit 2: Meeting Notes