

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

**State-Level Complaint 2023:570
Denver Public Schools**

DECISION

INTRODUCTION

On August 22, 2023, AdvocacyDenver (“Complainant”) filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”) on behalf of students with IEPs who, in the 2022-2023 school year, attended one of five specific District schools or programs (“Named Schools”).

The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the Individuals with Disabilities Education Act (“IDEA”)¹ and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

Due to the significant number of identified, affected students and the voluminous documentation required to resolve the Complaint’s systemic allegations, the SCO extended the 60-day investigation timeline due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (“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 August 22, 2022 through the present for the purpose of determining if a violation of IDEA occurred. Additional information outside this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to violations occurring after August 22, 2022.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

1. Failed to properly implement students' Individualized Education Programs ("IEPs") at Elementary School ("ES") for the entirety of the 2022-2023 school year in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide specialized instruction² as required by the students' IEPs; and
 - b. Failing to provide speech-language services as required by the students' IEPs.
2. Failed to properly implement students' IEPs at Charter School Network ("CSN") High School ("HS") for the entirety of the 2022-2023 school year in violation of 34 C.F.R. § 300.323, specifically by failing to provide speech-language services as required by students' IEPs.
3. Failed to properly implement students' IEPs at Middle School 1 ("MS 1") for the entirety of the 2022-2023 school year in violation of 34 C.F.R. § 300.323, specifically by failing to provide specialized instruction as required by students' IEPs.
4. Failed to properly implement students' IEPs at CSN Middle School 2 ("MS 2") from approximately November 18, 2022 through the end of the 2022-2023 school year in violation of 34 C.F.R. § 300.323, specifically by failing to provide specialized instruction as required by students' IEPs.
5. Failed to properly implement students' IEPs at a District school's multi-intensive autism center-based program ("Center Program") from approximately March 1, 2023 through the end of the 2022-2023 school year in violation of 34 C.F.R. § 300.323, specifically by failing to provide specialized instruction as required by students' IEPs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Complainant has alleged that students at each of the Named Schools did not receive the specialized instruction or speech-language services required by their IEPs due to a shortage of special education teachers and speech-language pathologists ("SLPs"). *Complaint*, pp. 2-8. As a remedy, Complainant has asked for the District to provide compensatory instruction and services. *Id.* at p. 10. The District has acknowledged that staffing vacancies resulted in an inability to provide required instruction and services at all five Named Schools for portions of the 2022-2023 school year. *Response*, pp. 1-5. The District does not specify exactly which students, for which time periods, were affected by the staffing shortages at the five Named Schools. *See id.*

² For purposes of this investigation, "specialized instruction" is defined as direct special education in mathematics, reading, writing, social-emotional skills, and executive functioning skills provided by a licensed teacher holding a special education endorsement.

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 County Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017). Each student’s IEP describes the specialized instruction and related services that a school district must provide as part of the student’s FAPE. 34 C.F.R. § 300.320. The IEP must be implemented in its entirety. *Id.* § 300.323(c)(2). School districts must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2).

A district’s partial implementation of an IEP may result in a denial of a FAPE, allowing remedies such as compensatory services. *Id.* § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP’s requirements results in a denial of FAPE. Only the omission of a “material,” “essential,” or “significant” provision of a student’s IEP amounts to a denial of a FAPE. See, e.g., *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE). “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*, 502 F.3d at 822.

Compensatory services are an equitable remedy designed to restore a student to the position they would be in had the violation not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). When awarded, compensatory services need not be an “hour-for-hour calculation.” *Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018). The amount and nature of compensatory services should be determined according to the purposes of the IDEA, which include providing an individualized FAPE to meet each child’s particular needs. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

This investigation concerns 290 students at the five Named Schools.³ The broad scope of this investigation falls within CDE’s general supervisory authority and its duty to consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. 34 C.F.R. § 300.151(b)(2). The U.S. Department of Education has emphasized that the state complaint procedures are “critical” to the state educational agency’s “exercise of its general supervision responsibilities” and serve as a “powerful

³ There were 76 potentially affected students at ES (some of whom were affected by the staffing shortages for both SLPs and special education teachers), 19 at HS, 112 at MS 1, 74 at MS 2, and 9 at Center Program. See Exhibits B, F, J, N, R, V.

tool to identify and correct noncompliance.” *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Upon consideration of these legal obligations and the available remedies, and after thorough and careful analysis of the entire Record,⁴ the SCO makes the following findings of fact and conclusions of law:

Conclusion to Allegation No. 1: The District did not fully implement the IEPs of 25 students at ES from February 17, 2023 to the end of the 2022-2023 school year because it did not provide necessary specialized instruction, in violation of 34 C.F.R. § 300.323. It did not fully implement the IEPs of 45 students from January 1, 2023 to the end of the 2022-2023 school year because it did not provide necessary speech-language services, in violation of 34 C.F.R. § 300.323.

A. Specialized Instruction at ES in the 2022-2023 School Year

Complainant is concerned that students at ES did not receive the specialized instruction required by their IEPs for all or part of the 2022-2023 school year. *Complaint*, pp. 2-3. Complainant’s concern arises from a report by parents of a fourth-grade student; the parents discovered that ES did not have a special education teacher in the 2022-2023 school year and had to hire a tutor to continue providing an education to their child. *Id.*

The District acknowledges that ES had a vacancy for one special education teacher for part of the school year but maintains that specialized instruction was provided, either by the original teacher or coverage teachers, to some students for some parts of the year. *Response*, p. 2. Specifically, the District states that third-grade students received instruction during the entire year, and fourth- and fifth-grade students missed instruction only from mid-February 2023 through the end of the year. *Response*, p. 2; *CDE Exhibit 1*.

Findings of Fact

The Record shows that ES had three special education teachers during the 2022-2023 school year, and only one teacher—ES Teacher 1—left her position. *Exhibit A*. ES Teacher 1, who was properly licensed and credentialed, provided specialized instruction from the beginning of the 2022-2023 school year until February 17, 2023. *Interview with ES Teacher 1; Exhibit A; Colorado Online Licensing Lookup*⁵ (“COLL”). She taught only two third-grade students. *Interview with ES Teacher 1*. The remainder of her caseload was ES’s fourth- and fifth-grade students in the special education program. *Id.* She taught 25 fourth- and fifth-grade students. *Exhibit B*. The other two special education teachers at ES provided services to students in kindergarten through third grade, which included ES Teacher 1’s two third-grade students after her departure, as well as students in ES’s Significant Support Needs program. *Interview with ES Teacher 1; Response*, p. 2. No

⁴ The appendix, attached and incorporated by reference, details the entire Record.

⁵ Available at <https://cool.randasolutions.com/Public/Search>.

teacher was hired to cover ES Teacher 1’s fourth- and fifth-grade caseload. See *Exhibit A*.

The District has not begun remedying the students’ missed instruction. *Interview with Senior Manager for Elementary Schools (“Elementary Manager”)*. Elementary Manager learned about the staffing gap at ES sometime during the 2022-2023 school year, although she does not know exactly when. *Id.* She does not know what the District did in response to the staffing gap. *Id.* She does not know if there has been any effort to calculate and provide compensatory education to the affected students. *Id.* She does not know who at the District level would be involved in auditing or monitoring elementary schools for staffing shortages prior to the issuance of a corrective order by CDE. *Id.* She does not believe any one person at the District level—such as the school’s assigned District-level special education coordinator, known as the Special Education Instructional Specialist (“SEIS”)—would oversee the compensatory education determination process. *Id.* She anticipates that CDE will tell the District what staffing or service gaps existed, and CDE will require the District to determine whether and how much compensatory education will be required. *Id.* The District has a compliance specialist who will oversee the compensatory education process following CDE’s investigation. *Id.*

Conclusions of Law

In light of these facts, the SCO finds and concludes that the District did not provide required specialized instruction to the 25 fourth- and fifth-grade students on ES Teacher 1’s caseload, from February 17, 2023 through the end of the school year. Because providing specialized instruction is an “essential element of the IEP,” and a months-long gap is “more than a minor discrepancy,” the SCO finds and concludes that the District’s lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Compensatory education is necessary to restore these students to the position they would be in had the violation not occurred, and the SCO has ordered appropriate remedies. *Reid*, 410 F.3d at 518.

B. Speech-Language Services at ES in the 2022-2023 School Year

Complainant is concerned that students at ES did not receive the speech-language services required by their IEPs for all or part of the 2022-2023 school year. *Complaint*, pp. 2-3. Complainant’s concern arises from a report by the same parents who said their fourth-grade student was not receiving specialized instruction. *Id.*

The District acknowledges that ES lacked an SLP following the January 2023 departure of ES SLP 1, who provided services for both the mild/moderate and multi-intensive severe (“MI-S”) special education programs. *Response*, p. 2. The District maintains, however, that speech-language services were provided to some students for part of the spring semester. *Id.* Specifically, the District states that ES SLP 2 provided speech-language services to students in ES’s MI-S program from January 5, 2023 through February 24, 2023, and then ES SLP 3 provided services to those students from February 24, 2023

until the end of the school year. *Id.* It states that the students in ES's mild/moderate special education program experienced "interruptions" during the spring semester. *Id.*

Findings of Fact

The Record supports the District's statements regarding the MI-S program but shows a complete lapse of services for the mild/moderate program in the spring semester. ES SLP 1 left employment on December 31, 2022. *Exhibit E.* ES SLP 2 and ES SLP 3, both tele-therapists properly licensed to provide speech-language services in Colorado provided coverage for the students in the MI-S program for the entire semester, and those students had no interruption to their services in the 2022-2023 school year. *Interview with SLP Manager; COLL; Exhibit E.* There were six students in the MI-S program. *Supp. Exhibits 2-A and 2-B.* The service logs reflect that there was no interruption for these students. *Compare Exhibit F with Exhibit H; see Supp. Exhibits 2-A and 2-B.*

The students in the mild/moderate program, however, received no speech-language services in the spring semester. *Interview with SLP Manager; compare Exhibit F with Exhibit H.* The Record shows that 45 students in the mild-moderate program had IEPs requiring speech-language services for at least some portion of the spring semester but did not receive services. *Exhibits F and H, and Supp. Exhibits 2-A and 2-B.*

In contrast to the District's lack of response to the special education teaching gap at ES, the District is aware of and has begun the process for determining compensatory education in response to ES's SLP gap. *Interview with SLP Manager.* In part, the District's response can be credited to a prior state complaint by Complainant, which resulted in a March 2023 finding by CDE that the District did not provide required speech-language services to over 1,000 students at District elementary schools. *Response, p. 2; Denver Public Schools, 123 LRP 11299, 2023:504 (Colo. SEA 2023).* But the District has also identified and tracked speech-language service lapses for students at ES who transferred in or otherwise became eligible for speech-language services after CDE's March 2023 decision. *Interview with SLP Manager; compare Exhibit G with Supp. Exhibit 2-C.*

The District has an internal process for identifying SLP staffing gaps across all the schools within the District, tracking the resulting gaps in students' services, and determining compensatory education for those students. *Interview with SLP Manager.* The District's SLP Manager has a workload calculator for SLPs. *Id.* The calculator is used to determine whether any particular SLP has too much work, and this data is used to assign coverage and make staffing recommendations to the District's executive leadership. *Id.* When an SLP leaves employment, this is also reported to SLP Manager. *Id.* Until the vacant SLP position can be filled, SLP Manager and a member of the District's compliance unit track the vacancy. *Id.* Using the workload calculator, SLP Manager assigns an SLP with capacity to provide coverage to cover IEP Team meetings for the affected students who were on the departed SLP's caseload. *Id.* She also ensures coverage for speech-language evaluations of students who have, or are suspected to have, a speech-language impairment. *Id.* If the SLP staffing vacancy remains open for more than two weeks, the affected students are identified as students who will require compensatory education. *Id.*

Once a new SLP is hired or assigned, the new SLP oversees the process for determining and providing compensatory education for the affected students. *Id.* This track-and-address process appears to be unwritten; the SCO requested any relevant policy, procedure, or similar document, but none has been provided.

Conclusions of Law

In light of these facts, the SCO finds and concludes that the District did not provide required speech-language services to 45 students in the mild-moderate program at ES in the spring semester of the 2022-2023 school year. Because providing speech-language services is an “essential element of the IEP,” and the semester-long lapse is “more than a minor discrepancy,” the SCO finds and concludes that the District’s lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Compensatory education is necessary to restore these students to the position they would be in had the violation not occurred, and the SCO has ordered appropriate remedies. *Reid*, 410 F.3d at 518.

Conclusion to Allegation No. 2: The District did not fully implement the IEPs of 18 students at HS from the beginning of the 2022-2023 school year until partway through the spring semester because it did not provide the speech-language services required by those students’ IEPs, in violation of 34 C.F.R. § 300.323.

Complainant is concerned that students at HS did not receive the speech-language services required by their IEPs during the 2022-2023 school year. *Complaint*, p. 4. Complainant’s concern arises from a parent’s report that staff at HS told her, in September 2022, that the school had no SLP, followed by correspondence with CSN staff discussing a lack of an SLP through mid-January 2023. *Complaint Exhibit 1*.

The District acknowledges that HS experienced a staffing shortage for SLPs for part of the school year but maintains that speech-language services were provided to some students for some parts of the year. *Response*, p. 3. Specifically, it states that the students in HS’s mild/moderate special education program received no speech-language services only from the beginning of the year until February 6, 2023, and the students in HS’s cross-categorical program received no speech-language services only from the beginning of the year until January 16, 2023. *Id.*

Findings of Fact

The Record shows that two tele-therapists, both properly licensed, began teaching at HS in the spring semester of the 2022-2023 school year. *Exhibit I; COLL*. HS SLP 1 began providing services to the seven students requiring speech services in the cross-categorical program on January 17, 2023. *Exhibit J*. HS SLP 2 began providing services to ten of the eleven students with speech-services in the mild/moderate program on March 7, 2023. *Id.*; *Supp. Exhibit 3-G*, p. 2. The eleventh student refused services from March 7 through the end of the year; she was eligible for services the entire year. *Exhibit J*.

The District learned of the SLP staffing gap and consequent lapse of the HS students' speech-language services prior to this Complaint being filed, due to the District's system for identifying and tracking SLP staffing issues (described above for Allegation 1). *Interview with SLP Manager, Response*, p. 3. The District states that it has entered settlements with some students' families and provided compensatory education to some students, although it has provided only one settlement agreement in support.⁶ *Response*, p. 3; *Exhibit L*, pp. 38-40. SLP Manager is unsure about the status of determining and providing compensatory education to the HS students, although she is certain that the affected students were identified last year as needing compensatory education determinations. *Interview with SLP Manager*. The Director of Special Education for CSN ("CSN Director") believes that the affected students' families have been contacted. *Interview with CSN Director*. CSN leaves SLP hiring and services to the District, because SLPs are directly hired and supervised by the District. *Id.* CSN does inform the District when an SLP leaves employment. *Id.* CSN asks District to "own" any SLP staffing gaps by contacting students' families and handling the compensatory education process. *Id.*

Conclusions of Law

The SCO finds and concludes that the District did not provide required speech-language services to 18 students at HS: seven students in the cross-categorical program from the beginning of the 2022-2023 school year until January 17, 2023, and eleven in the mild-moderate program until March 7, 2023. This lapse violates 34 C.F.R. § 300.323. Because providing speech-language services is an "essential element of the IEP," and the lengthy gap in services is "more than a minor discrepancy," the SCO finds and concludes that the District's lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Compensatory education is necessary to restore these students to the position they would be in had the violation not occurred, and the SCO has ordered appropriate remedies. *Reid*, 410 F.3d at 518.

Conclusion to Allegation No. 3: The District did not fully implement the IEPs of more than 41 students at MS 1 for the entire 2022-2023 school year because it did not provide necessary specialized instruction, in violation of 34 C.F.R. § 300.323.

Complainant is concerned that students at MS 1 did not receive the specialized instruction required by their IEPs during the 2022-2023 school year. *Complaint*, pp. 5-6. Complainant's concern arises from a parent's report that her sixth grader's special education teacher had resigned at some point during the school year, the school gave no notice of this fact, and it was only at a reevaluation meeting in June 2023 that school staff

⁶ That settlement agreement purports to release the District "from any and all claims, whether known or unknown, arising under any federal or state law." *Exhibit L*, p. 39. Functionally, the District removed a parent's right for the student to receive services and then offered to restore that right only if the parent agreed not to seek legal redress against the District for any past violation of any law, or for any other harm the District may have caused their child. This conflicts with the strong policy inherent in the IDEA and repeatedly emphasized by the Department of Education that the IDEA should not be used to deny parents their rights or those of their children. See, e.g., OSEP, Questions and Answers on IDEA Part B Dispute Resolution Procedures, No. 1-A (July 2013); *Dear Colleague Letter*, 65 IDELR 151 (OSERS/OSEP 2015); *Dear Colleague Letter*, 65 IDELR 241 (OSERS/OSEP 2015); 34 C.F.R. § 300.1. The SCO has considered this issue, otherwise unrelated to this investigation, in crafting the remedies for this Decision. CDE issued an addendum to clarify its authority to review settlement agreements through the state complaint procedure and to encourage the use of alternative dispute resolution.

said that students at MS 1 did not receive special education services for most of the 2022-2023 school year. *Id.* A second parent also reported that her child did not receive any required specialized instruction. *Id.* at p. 6.

The District acknowledges that there was no special education teacher for the sixth-grade mild/moderate program for the entirety of the school year, and that there was no special education teacher for the affective needs center program and the multi-intensive program in the spring semester. *Response*, p. 3. It states that the seventh- and eighth-grade students in the mild-moderate program did receive services through the entire year. *Id.*

Findings of Fact

The Record supports the District's statements.

MS 1 Teacher 1, who was the special education teacher for the sixth grade, resigned prior to the start of the school year; no substitute took her place, resulting in an inability to provide specialized instruction to the sixth graders for the entirety of the school year. *Interview with MS 1 Principal; see Exhibit M.* There were 41 sixth-grade students whose IEPs required specialized instruction in the 2022-2023 school year. *Exhibit N.*

MS 1 Teacher 2, who had been teaching in the affective needs center program, stepped down from that position after the fall semester, although she continued working for the District in a different capacity. *Id.* No substitute was found to take her place, resulting in an inability to provide services to those students in the spring semester. *Id.; Interview with MS 1 Principal.* The District did not provide lists of the students in the affective needs center program, and the school's principal did not know how many students were in that program during the 2022-2023 school year. *Interview with MS 1 Principal.* The District will identify these students as part of the remedies for this Decision.

MS 1 Teacher 3, who had been teaching in the multi-intensive program, resigned on January 3, 2023, no substitute was found, and so those students also received no services during the spring semester. *Exhibit N; Interview with MS 1 Principal.* The District has not provided lists of the students in the multi-intensive program, and the school's principal does not know how many students were in that program. *Interview with MS 1 Principal.* The District will identify these students as part of the remedies for this Decision.

Two other special education teachers worked at MS 1 all year, and they provided instruction to the seventh and eighth graders in the mild-moderate program—although, following their colleagues, they both left MS 1 after the end of the school year. *Id.* This means that every special education teacher who taught at MS 1 in the 2022-2023 school year left, either in January 2023 or after the school year in July 2023. *Exhibit M.*

MS 1's Principal explained the relationship between schools and the District in addressing the departure of a special education teacher. The school, rather than the District, is primarily responsible for hiring special education teachers. *Interview with MS 1 Principal.* The District-level SEIS knows about the staffing gap, but the District does not provide

coverage. *Id.* The District provides some logistical assistance. *Interview with MS 1 Principal.* For example, when a special education teacher leaves employment, the school collaborates with District-level finance and human resources partners to document the empty position and post it on a job board. *Id.* There is also a District-level talent coordinator who alerts the school to any job fairs. *Id.* The problem last year was that, despite the school’s best efforts to quickly interview any applicants from the job ad and job fairs, no qualified candidates permitted to work in the United States applied. *Id.* After a position has been posted for two weeks, the school is allowed to use an outside hiring agency to find a teacher; although the school did try using a hiring agency last year, the agency was not successful at finding a qualified new teacher. *Id.*

The District does not state that any effort has been made to determine or provide compensatory education for the affected MS 1 students. *See Response*, p. 3. The school’s principal, assistant principal, and senior team lead for special education do not know of any such effort, although “they’re focused on being in compliance for this [2023-2024] year.” *Interview with MS 1 Principal.*

Conclusions of Law

In light of these facts, the SCO finds and concludes that the District did not provide necessary specialized instruction to 41 sixth-grade students for the entire 2022-2023 school year and to all the students in the affective needs and multi-intensive programs for the spring semester, in violation of 34 C.F.R. § 300.323. Because providing specialized instruction is an “essential element of the IEP,” and these lengthy gaps are “more than a minor discrepancy,” the SCO finds and concludes that the District’s lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Compensatory education is required to restore these students to the position they would be in had the violation not occurred. *Reid*, 410 F.3d at 518. The SCO has ordered appropriate remedies. As part of this remedy, the District will need to identify which students were in the affective needs and multi-intensive programs, and provide lists to CDE.

Conclusion to Allegation No. 4: The District did not fully implement the IEPs of at least 19 students in the mild/moderate program at MS 2 from January 16, 2023 to the end of the school year, and it did not fully implement the IEPs of eight students in the Multi-Intensive Autistic program from the beginning of the school year to January 12, 2023, because it did not provide specialized instruction required by the students’ IEPs, in violation of 34 C.F.R. § 300.323.

Complainant is concerned that students at MS 2—which, like HS, is part of CSN—did not receive the specialized instruction required by their IEPs after Thanksgiving break in the 2022-2023 school year. *Complaint*, pp. 6-7. Complainant’s concern arises from a parent’s reports that her eighth grader stopped receiving instruction after Thanksgiving break and that a new special education teacher, who arrived at the end of February 2023, said that she would be performing evaluations but not providing instruction. *Id.*

The District acknowledges that it did not provide the specialized instruction required by the IEPs of some students at MS 2 for part of the year. *Response*, p. 4. It states that MS 2 Teacher 1 resigned from her position on February 8, 2023. *Id.* The District states that a special education teacher from CSN (“CSN Floater”) “was generally able to provide the services from [MS 2 Teacher 1’s] caseload” but that “it is possible that there were some gaps.” *Id.* The District also states that MS 2’s multi-intensive autism (“MI-A”) program had no full-time special education teacher from the time that MS 2 MI-A Teacher left in “late September” until a new full-time teacher began in “early January.” *Id.* However, the District does not acknowledge any gap in services for the MI-A program because “a combination of staff members,” including an unlicensed “support specialist” and three of the mild/moderate special education teachers, “provided interim coverage.” *Id.*

Findings of Fact

The Record does not support the District’s factual statements.

Regarding the mild/moderate gap: MS 2 Teacher 1 states that she provided specialized instruction to sixth, seventh, and eighth graders in the mild/moderate program. *Interview with MS 2 Teacher 1; see also Supp. Exhibits 3-E and 5-C.* She believes she had between 25 and 30 sixth, seventh, and eighth graders on her caseload. *Id.* The Record does not allow the SCO to determine exactly which students, and how many, that she taught: MS 2 Teacher 1’s recollection of her caseload does not match with the list of 19 students that the District provided at the SCO’s request for a list of her students. *Compare Interview with MS 2 Teacher 1 with Supp. Ex. 3-E.* That list does not match the District’s production of progress reports for her students. *Compare Supp. Ex. 3-D and Supp. Exhibit 3-E.* The list also does not correspond to the students on the coverage teachers’ service logs. *Compare Supp. Exhibits 3-D, 3-E, and 5-C.* Because the District will not take remedial action for these 2022-2023 violations until CDE issues this Decision, the SCO will not add to that delay with yet more supplemental document requests but instead will order the District to accurately identify MS 2 Teacher 1’s caseload as part of this Decision’s remedies.

MS 2 MI-A Teacher stopped teaching early in the fall semester, and MS 2 Teacher 1 began writing curriculum modifications and IEPs for the students in the MI-A program as well as managing her regular mild/moderate caseload, which was challenging. *Interview with MS 2 Teacher 1; see Exhibits R and S; see Supp. Exhibit 3-E.* MS 2 Teacher 1 announced she was resigning at Thanksgiving break but returned out of loyalty to her students for a shortened day before finally resigning after her last day on January 13, 2023. *Interview with MS 2 Teacher 1; Supp. Exhibit 1-C; see also Interview with MS 2 Teacher 2.* The only difference between her previous, normal workday and the shortened workday was that, on her shortened day, she was given no planning period and so needed to complete her planning and paperwork after hours, at home. *Interview with MS 2 Teacher 1.* She “did her best” to provide the specialized instruction required by her students’ IEPs, but “there were always things that came up,” such as student behavioral issues, that ate into her teaching time. *Id.*

Some coverage was provided for MS 2 Teacher 1's caseload following her departure in mid-January. *Interviews with MS 2 Teachers 1, 2, and 3, and CSN Floater*. Coverage was attempted by other MS 2 special education teachers, CSN Floater, and a teacher from a hiring agency ("Agency Teacher"). These teachers were properly licensed and credentialed. *COLL*.

Coverage was first attempted by the other MS 2 special education teachers. *Interviews with MS 2 Teachers 2 and 3*. The teachers struggled with the added workload. *Id.* MS 2 Teacher 1 had taken the most challenging students in the mild/moderate program. *Interview with MS 2 Teacher 2*. MS 2 Teacher 2 felt unqualified to handle the workload, there were scheduling conflicts, and she grappled with behavioral disruptions beyond her comfort zone to resolve. *Id.* She raised these concerns repeatedly with the school administrators, who responded by bringing in Agency Teacher in March. *Id.* MS 2 Teacher 3 took only one student from MS 2 Teacher 1's caseload. *Interview with MS 2 Teacher 3*. He had difficulty providing the required amount of specialized instruction even to his own classes due to staffing shortages and behavioral issues with students. *Id.* In addition to managing his special education caseload, he had to provide coverage for a general education teacher who left on maternity leave and never returned. *Id.*

From March 10 through the end of the school year, Agency Teacher provided specialized instruction in math and literacy to approximately eleven sixth graders on Mondays and Fridays through the end of the school year. *Supp. Exhibit 5-C*. Based on the days she taught, a student who attended all her classes would have received 1,305 minutes of literacy instruction and 1,065 of math over that 10-week period, both subjects inside the general education environment. *Id.* This did not fully meet the requirements of any of those students. *Compare Exhibit S with Supp. Exhibit 5-C*. This was more literacy instruction but less math instruction than required by five students whose requirements were 120 minutes of each subject per week, or 1,200 minutes total over the 10-week period. *Compare Exhibit S with Supp. Exhibit 5-C*. It was less than required for both literacy and math for two other students, one of whom should have received 150 minutes of each subject per week and the other 350 minutes of math and 500 of literacy. *Compare Exhibit S with Supp. Exhibit 5-C*. In addition, she provided specialized instruction outside of the general education environment to three or four other students, depending on enrollment that week, but it is unclear what subjects she taught. *See Supp. Exhibit 5-C*. Four sixth graders who appear on the District's list of MS 2 Teacher 1's students do not appear in Agency Teacher's service logs, and the Record does not indicate whether or how they were covered. *Compare Supp. Exhibit 5-C with Supp. Exhibit 3-E*.

Finally, from March 8 through the end of the school year, CSN Floater provided some coverage for some of MS 2 Teacher 1's eighth-grade students. *Interview with CSN Floater; see Supp. Exhibit 5-C*. She was unable, however, to provide all the minutes required for most of the students. *Compare Exhibit S with Supp. Exhibit 5-C*. Specifically, over the 10-week period of her teaching, she provided a total of 660 minutes of co-taught math instruction for one class, 420 minutes of co-taught math instruction for another class, and 420 minutes of co-taught literacy instruction to a third class. *Supp. Exhibit 5-C*. The students she taught required from 60 to 120 minutes per week for each subject. *Compare*

Exhibit S with Supp. Exhibit 5-C. Only one student, who required 60 minutes per week of both math and literacy, received the required number of minutes for his math instruction. *Compare Exhibit S with Supp. Exhibit 5-C.* Four of MS 2 Teacher 1's eighth-grade students did not, as far as the Record shows, receive their required specialized instruction in math, literacy, or both from any teacher. *Compare Supp. Exhibit 5-C with Supp. Exhibit 3-E.*

The District does not claim, and the Record does not show, that Agency Teacher or CSN Floater provided any coverage for instruction in topics other than literacy and math.

In sum, the SCO finds that no verifiable specialized instruction was provided to MS 2 Teacher 1's students from January 16, 2023 through March 7, 2023. The District, through Agency Teacher and CSN Floater, provided some math and literacy instruction to at least some of MS 2 Teacher 1's students from March 8 to the end of the semester. None of MS 2 Teacher 1's former students who required specialized instruction in social-emotional skill and executive functioning received instruction in those subjects after she left. MS 2 Teacher 1's exact caseload cannot be determined even after supplemental requests for an exact list of students and for additional documents, and the District will identify the affected students as part of the remedies for this Decision.

Regarding the MI-A program shortage: MI-A Teacher stopped teaching her caseload of eight students early in the fall semester; no more exact date can be determined from the Record, which provides a formal termination date but not the date when she stopped teaching. *Interviews with MS 2 Teachers 1, 2, and 3; Exhibit Q; Supp. Exhibit 3-F.* She left [due to injury]. *Interview with MS 2 Teacher 1.* Contrary to the District's Response, MS 2 Teachers 1, 2, and 3 did not provide any meaningful coverage. *Interviews with MS 2 Teachers 1, 2, and 3.* They all recall that the class was managed by paraprofessionals until a new teacher started on January 12, 2023. *Id.* MS 2 Teacher 1 took over much of the paperwork for the MI-A students, but she did not provide instruction. *Interview with MS 2 Teacher 1.* MS 2 Teacher 2 occasionally covered the classroom to supervise the children, but she also did not provide instruction. *Interview with MS 2 Teacher 2.* MS 2 Teacher 3 did not provide any coverage of any kind for the MI-A program. *Interview with MS 2 Teacher 3.* On January 12, 2023, a properly licensed and credentialed teacher joined MS 2 and began running the MI-A program. *Interview with MS 2 Teacher 2; Exhibit Q; COLL; Response, p. 4.*

Unlicensed teachers: MI-A Teacher was not, during her brief tenure at MS 2, properly licensed and credentialed. *COLL; Exhibit Q; Supp. Exhibit 3-G.* Her interim teaching license became effective on October 26, 2022, after she left. *Id.*

In addition to MI-A Teacher, another MS 2 special education teacher who is otherwise unrelated to this investigation taught the full fall semester and the beginning of the spring semester without proper licensure and credentials. *Id.* She was previously a special education teacher in [another state], and she was encountering a delay in processing her

interim license in Colorado. *Supp. Exhibit 3-G; accord [State] Certification Lookup.*⁷ Her interim license became effective on January 30, 2023. *COLL; Exhibit Q.* CSN, as a practice, allows otherwise qualified (in CSN’s assessment) unlicensed special education teachers to teach when the teachers are still in the process of obtaining an interim license. *Interview with CSN Director.* CSN staff track these teachers’ progress toward attaining their interim license and support them through the process. *Id.* The District, by contrast, does not have a policy allowing unlicensed and unauthorized teachers to teach. *Interview with Executive Director.*

Lack of remedial action: Neither the District nor CSN have attempted to identify or track exactly which MS 2 students, for which periods of time, did not receive the services required by their IEPs. *Interviews with CSN Director and District Senior Manager for Charter Schools (“Charter Manager”).* The District knew about CSN’s staffing shortage sometime during the 2022-2023 school year. *Interview with Charter Manager.* Although Charter Manager stated that District SEISs track special education vacancies at the charter schools, this statement is not supported by any other evidence in the record, and Charter Manager, Elementary Manager, and CSN Director all said that they are not aware of any effort to determine or provide compensatory education for the 2022-2023 MS 2 staffing shortages. *Interviews with Charter Manager, Elementary Manager, and CSN Director.* CSN Director said that she is “sure” there were some “potential” gaps following MS 2 Teacher 1’s departure. *Id.* When a special education teacher leaves, CSN “usually” updates the District SEIS, but CSN Director is unaware of what the SEIS does with that information. *Interview with CSN Director.* She does not know of any process to track teaching gaps that result from special education teacher vacancies. *Id.*

Conclusions of Law

In light of these facts, the SCO finds and concludes that the District did not provide all necessary specialized instruction to the students who received instruction from MS 2 Teacher 1 after she left, from January 16 through the end of the school year, in violation of 34 C.F.R. § 300.323. The SCO further finds and concludes that the District did not provide necessary specialized instruction to the eight students who received instruction from MI-A Teacher, from some point early in the fall semester through January 12, 2023, in violation of 34 C.F.R. § 300.323. Because providing specialized instruction is an “essential element of the IEP,” and these lengthy gaps in instruction are “more than a minor discrepancy,” the SCO finds and concludes that the District’s lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Compensatory education is required to restore these students to the position they would be in had the violation not occurred. *Reid*, 410 F.3d at 518. The SCO has ordered appropriate remedies. As part of this remedy, the District will need to identify which students received specialized instruction from MS 2 Teacher 1 before her departure.

The SCO also finds and concludes that CSN employed two special education teachers who were not licensed to teach in Colorado, in violation of 34 C.F.R. § 300.156(c) and

⁷ Available at [website for state database].

ECEA 3.04(1)(a). Given that this occurred twice at one school with CSN’s knowledge, and CSN has an open practice of allowing unlicensed teachers to teach pending Colorado licensure, the SCO further finds and concludes that this is a systemic concern within CSN schools, although not within the District. To comply with CDE’s duties as the supervisory agency under 34 C.F.R. § 300.151(b), the SCO will order the District to take remedial action to ensure that CSN does not allow unlicensed teachers to teach in the future.

Conclusion to Allegation No. 5: The District did not fully implement the IEPs of nine students at Center Program from March 1, 2023 through the end of the 2022-2023 school year because it did not provide necessary specialized instruction, in violation of 34 C.F.R. § 300.323.

Complainant is concerned that students at Center Program did not receive the specialized instruction required by their IEPs from March 1, 2023 through the end of the 2022-2023 school year. *Complaint*, pp. 8-9. Complainant’s concern arises from a report by a parent of one of the students in the autism program that the program had no teacher, as well as an email from the Center Program interim principal to an advocate that the program had no teacher after March 1, 2023. *Id.* at p. 8.

The District agrees with Complainant that the Center Program autism program had no special education teacher from March 1, 2023, when the program teacher went on leave, through the end of the year. *Response*, p. 4.

Findings of Fact

The Record supports Complainant and the District. Center Program’s current special education senior team lead for program explained that, after the program teacher went on long-term leave on March 1, 2023, the program paraprofessionals—who had worked with the students prior to the teacher’s departure—ran the classroom, along with some coverage from substitute teachers. *Interview with Team Leader*. There were three paraprofessionals and nine students. *Id.* An appropriately licensed and credentialed special education teacher began teaching the program from the first day of 2023-2024 school year. *Id.*; see *COLL*.

The District has not begun remedying the students’ missed instruction. *Interview with Team Leader*.

Conclusions of Law

The SCO finds and concludes that the District did not provide required specialized instruction to the nine students in the Center Program autism program from March 1, 2023 through the end of the 2022-2023 school year, in violation of 34 C.F.R. § 300.323. Because providing specialized instruction is an “essential element of the IEP,” and the months-long gap in instruction is “more than a minor discrepancy,” the SCO finds and concludes that the District’s lapse constituted a denial of FAPE. *Neosho R-V Sch. Dist.*,

315 F.3d at 1027. Compensatory education is required to restore these students to the position they would be in had the violation not occurred. *Reid*, 410 F.3d at 518.

Systemic IDEA Violations: This investigation demonstrates violations that are systemic and will likely impact the future provision of services for all children with disabilities in the District if not corrected. 34 C.F.R. § 300.151(b)(2).

In exercising this broad review of gaps in the provision of specialized instruction and speech-language services to children within the District, CDE has exercised its general supervisory authority over local educational agencies. 34 C.F.R. § 300.151(b)(2). CDE has fulfilled its duty to consider and ensure the appropriate future provision of services for all IDEA-eligible students in the District. *Id.*

The District should not, however, wait for CDE to act before the District tracks missed services, determines necessary compensatory services, and provides those services. *See id.* § 300.323. The SCO understands that the staffing shortages may have been out of the District's control. However, the IDEA does not excuse a District's failure to implement an IEP or other noncompliance based on staffing shortages. *See, e.g., In re: Student with a Disability*, 121 LRP 38674 (Kan. SEA Oct. 20, 2021) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage). The IDEA anticipates that school districts and IEP Teams will act immediately to correct any shortfalls, from whatever source, that threaten students' ability to make progress appropriate in light of their circumstances. *Id.* § 300.324(b).

Here, District staff—including supervisory and managerial staff—knew about these staffing shortages and gaps in the provision of students' specialized instruction and speech-language services in the 2022-2023 school year. The District's response to the SLP vacancies was very different than its response to the special education teacher vacancies. When each SLP left employment last year, the District identified the students receiving instruction from that SLP and tracked the length of time that those students missed instruction. As a result, the District is well positioned to determine the compensatory services necessary to remedy the gap and provide services once a new SLP is found. By contrast, when a special education teacher left employment, the District posted a job ad. And that was all it did. As a result, the students' families turned to an advocacy organization, which filed a state complaint with CDE. CDE, however, can only sift through the haphazard documents kept by each school and the fading memories of current and former educators. Determining basic information—such as the identities of the students who received instruction from MS 2 Teacher 1 or the exact dates that teachers started and stopped providing instruction—has now somehow become a herculean task.

The SCO finds and concludes that the District's lack of a process for tracking and addressing gaps in staffing for special education teachers has exacerbated the harm to the affected students at the Named Schools and will result in similar harm to District students in the future. The District cannot prevent a special education teacher from resigning, but it can at least write down the names of the students who received instruction

from that teacher, the subject, setting, and amount of that instruction for each student, the date that the teacher stopped providing instruction, and the date that a full-time replacement is found. This may not prevent staffing and instruction gaps, and it may not prevent state complaints, but it will establish basic tracking data to ensure that students who do not receive services due to staffing gaps can eventually be made whole.

Accordingly, to prevent this situation from recurring, the SCO will order the District to formalize and write down its procedure for tracking and addressing gaps in SLP staffing. The District must also develop a similar procedure to track and address gaps in staffing for special education teachers. The procedure for special education teachers must, like the procedure for SLPs, apply to staffing vacancies at both District-operated schools as well as charter schools.

REMEDIES

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

- a. Failing to fully implement the IEPs of students at the five Named Schools, in violation of 34 C.F.R. § 300.323; and
- b. Failing to ensure staff were appropriately licensed, in violation of 34 C.F.R. § 300.207 and ECEA Rule 3.04.

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

1. Corrective Action Plan

- a. By **Friday, February 16, 2024**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to students with disabilities for whom the 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 the District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. The individuals in the following roles must review this decision no later than **Friday, February 16, 2024**:
 - 1) Executive Director of Exceptional Student Services;
 - 2) Director of Special Education;
 - 3) Director of Special Services;

- 4) Senior Manager, Special Education (“SMSE”) Compliance;
 - 5) SMSE Early Childhood
 - 6) SMSE Elementary;
 - 7) SMSE Secondary;
 - 8) SMSE Centers;
 - 9) SMSE Charter & iZones;
 - 10) Senior Manager, Special Services;
 - 11) Program Manager of Speech-Language Team; and
 - 12) CSN Director of Special Education.
- b. If the District no longer has any of these roles, District may substitute the individual occupying the role or roles covering the same responsibilities.
- c. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, February 16, 2024**.

3. Procedures

- a. By **Friday, March 15, 2024**, the District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. § 300.323 across special education teacher staffing vacancies. At a minimum, the procedure must offer clear guidance on the following:
- 1) Which centralized District employee or team of employees (“Monitoring Team”) will be responsible for monitoring special education teacher staffing gaps;
 - 2) How Monitoring Team will be notified whenever a special education teacher in the District—including charter schools—ceases providing special education for any reason, including taking leave, for longer than eleven consecutive school days, whether or not coverage is provided for the teacher (“the departed teacher”);
 - 3) How the District will ensure that schools, including charter schools, comply with this notification requirement, such as by conducting a periodic audit of special education teacher FTEs across the District and comparing the results with Monitoring Team’s records;

- 4) How Monitoring Team will receive accurate information regarding the identities of the students who received special education from the departed teacher;
 - 5) How Monitoring Team will receive accurate information regarding the subject matter, setting, and amount of special education provided by the departed teacher to each identified student;
 - 6) How Monitoring Team will be notified of any coverage provided by the school for the departed teacher, such that this notification will include each coverage teacher's identity, licensure, and credentials; the identities of the students taught by that coverage teacher; the subject matter, setting, and amount of special education provided by that coverage teacher to each identified student; and the beginning and end dates of the coverage teacher's provision of special education to the departed teacher's students;
 - 7) How Monitoring Team will be notified when a resolution for the departed teacher's absence is implemented, such as the return of that teacher, the hiring of a new teacher, or the permanent reallocation of the departed teacher's students' instruction to other teachers;
 - 8) How Monitoring Team will ensure that the resolution complies with the ECEA and the IDEA, including compliance with licensure and credential requirements and the requirement that each student's IEP accurately reflect the student's education, services, and placement (including least restrictive environment) at all times;
 - 9) How Monitoring Team will ensure that, following resolution of the departed teacher's absence, compensatory services are determined for each of the departed teacher's students in accordance with the District's Process for Determining Compensatory Services;
 - 10) How Monitoring Team will track and ensure the provision of the compensatory services, similar to CDE's requirement for monthly updates from school districts regarding their provision of compensatory services pursuant to state complaint decisions.
- b. Also by **Friday, March 15, 2024**, the District must submit a written procedure or guidance describing its process for tracking and correcting SLP staffing vacancies and consequent speech-language service gaps. This written procedure or guidance should address essentially the same concerns as the guidance above for special education teachers.
 - c. The 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. By **Friday, March 29, 2024**, CDE will approve the District's draft procedures, approve them contingent upon the District's adopting CDE's revisions, or reject the procedures with guidance to the District on how they must be corrected.
- e. By **Friday, April 26, 2024**, the District must ensure that a copy of the approved procedures have been given to the individuals who must review this decision listed above in Remedies § 2(a); all District SEISs; all school and charter school principals (or the school's equivalent of a principal); all special education teachers, including special education teachers in charter schools; and all charter school network directors of special education.
- f. If CDE has not approved the District's draft procedures by March 29, 2024, CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this subpart, Remedies § 3, in CDE's sole discretion and according to CDE's interpretation of the purposes of this subpart.
- g. To verify that the District has implemented and is following this procedure, Monitoring Team will, by the **second Monday of each month**—beginning June 10, 2024 and continuing to and including January 13, 2025—submit monthly reports containing the information required to be tracked by Remedies §§ 3(a) and 3(b).

4. Compensatory Education

- a. By **Friday, February 16, 2024**, the District shall submit three lists:
 - 1) Students who were in MS 1's affective needs program in the 2022-2023 school year whose IEPs required specialized instruction;
 - 2) Students who were in MS 1's multi-intensive program in the 2022-2023 school year whose IEPs required specialized instruction; and
 - 3) Students who received specialized instruction from MS 2 Teacher 1 in the 2022-2023 school year—this list must be presented to the District's legal counsel with an explanation of how its accuracy was determined. District's legal counsel must review and approve the list prior to submission of the list to CDE. The explanation will not be submitted to CDE.
- b. The students on those lists, combined with the students listed on ***CDE Exhibit 1***, are referred to collectively as **Impacted Students**.

- c. By **Friday, March 1, 2024**, the District shall submit three lists:
- 1) A list of all the Impacted Students whose parents⁸ have reached a written settlement agreement with the District regarding the Impacted Student's missed special education. For each of these students, the District must submit a copy of the fully executed agreement. These Students are collectively referred to as Settled Students.
 - i. If the District's agreement contains a clause by which the parents release the District from "any and all claims, whether known or unknown, arising under any federal or state law," or similarly broad language, CDE will not consider the parent's student a Settled Student, and the District must present them as a Remaining Student, notwithstanding any other provisions or requirements of these remedies, unless the District also provides documentation proving that the District has fully performed all of its obligations under the agreement such that no further obligations remain, as well as an avowal by the District's legal counsel stating that counsel has reviewed the agreement and supporting documentation, determined that the District has fully performed all of its obligations under the agreement, and has a belief, grounded in state and federal law, that the agreement would be deemed enforceable in its entirety by state and federal courts.
 - 2) A list of all the Impacted Students who have agreed to compensatory service awards from the District without a written settlement agreement. For each of these students, the District must submit all relevant PWNs and proof of acceptance by parents. The District must also submit each student's service logs showing provision of the offered services. These students are collectively referred to as Accepted Students.
 - 3) A list of all the Impacted Students whose parents have neither reached a written settlement agreement nor accepted any other offer of compensatory services. These students are collectively referred to as Remaining Students.
- d. By **Friday, March 8, 2024**, the District shall submit to CDE, for review, a draft letter to be sent to the parents of the Remaining Students.

⁸ "Parents" for purposes of these remedies means a biological or adoptive parent of a child; a foster parent unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child (but not the state if the child is a ward of the state); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 34 C.F.R. § 300.519. 34 C.F.R. § 300.30.

- 1) This letter shall notify the parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student who will receive compensatory services because of a failure to provide the specialized instruction, speech-language services, or (where appropriate) both required by the student's IEP during the 2022-2023 school year due to staffing vacancies.
 - 2) This can be a form letter, but it must include an individualized section indicating the amount of services that the student should have received, the subject matter of the services, the amount of the services that the student actually received, and the amount of the missed services.
 - 3) The letter must provide a section for the parents to propose the amount of services that the student requires, in the parents' view, to be restored to the position the student would be in absent the violation.
 - 4) The letter must include a section asking parents to sign to acknowledge their receipt of the letter and include a self-addressed stamped envelope for the letter to be returned directly to the District. The letter must also provide an email address that parents may use as an alternative to postal mail. It must explain that parents may send an email to that address with their proposal for the amount of compensatory services, and it must state that sending the email acknowledges receipt of the letter.
 - 5) The District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- e. Also by **Friday, March 8, 2024**, the District will have submitted a revised version of the District's template "PWN of PROPOSAL of Compensatory Services," produced as Supp. Exhibit 3-B for this investigation and attached to the transmittal letter for this Decision.
- 1) The revised version will make clear that the District's proposed compensatory services are a recommendation to CDE that may be modified or rejected by CDE.
 - 2) The revised version will explain that the parents may submit their own proposal and any objections to the District's proposal, and provide, for the purpose of submitting counterproposals and objections, the contact information—including both postal and email addresses—to reach the District employee primarily responsible for overseeing the District's compliance with these remedies. This

explanation must request that parents submit their counterproposals and objections within two weeks of receiving the prior written notice (“PWN”). The District must, however, retain any proposals that arrive later than two weeks and submit all parents’ proposals received by the District in accordance with § 4(k) below.

- f. By **Wednesday, March 20, 2024**, CDE will approve the District’s draft letter and revised template PWN, approve them contingent upon the District’s adopting CDE’s revisions, or reject them with guidance to the District on how it must be corrected.
- g. By **Friday, March 29, 2024**, the District will have sent the approved letter described in subpart (d), above, to the parents. The District must submit a signed assurance to CDE that the approved letters were sent to the parents on time by **Wednesday, April 3, 2024**.
- h. If CDE has not approved the District’s draft letter, PWN, or both by March 20, 2024, CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this subpart, Remedies § 4, in CDE’s sole discretion and according to CDE’s interpretation of the purposes of this subpart.
- i. By **Friday, April 19, 2024**, the District will have determined—through a review of each Remaining Student’s parental input, provider/school team input, IEP, progress monitoring data, and all other relevant factors—its recommendation to CDE regarding the compensatory education service type, subject matter, amount, setting, and how the services will be provided. The District cannot recommend that a student’s compensatory education be less than 35% of the education time that was missed, or 25% if the compensatory education will be one-on-one.
 - 1) The District’s recommendation must be reviewed and approved by the pertinent SEIS, and the SEIS must provide a signed assurance that the SEIS reviewed the recommendation and underlying materials, and has determined that the recommendation will restore the student to the position the student would be in had the violation not occurred.
 - 2) Nothing in this subpart, Remedies § 4, should be viewed as preventing the District from beginning to calculate the Impacted Students’ missed services as soon as it learns of those missed services.
- j. By **Friday, May 3, 2024**, the District will have issued finalized PWNs to the parents of each Remaining Student using the template approved by CDE and described in subsection (e), above.

- k. By **Friday, June 7, 2024**, the District will submit to CDE, for each Remaining Student:
- 1) A copy of the finalized PWN sent to that Remaining Student's parents;
 - 2) A signed assurance from the pertinent SEIS, described in subsection (i)(1) above;
 - 3) That Remaining Student's current IEP;
 - 4) That Remaining Student's progress reports for the 2023-2024 school year;
 - 5) Any proposals, counterproposals, objections, or other information provided by the Remaining Student's parent regarding the compensatory education award.
- l. By **Friday, July 12, 2024**, CDE will submit to the District its final decision regarding its compensatory education recommendation for each Remaining Student based on the District's stated reasoning, the parents' reasoning, and CDE's independent review of that Remaining Student. CDE may fully accept the District's recommendation, fully accept the parent's recommendation, require the District to make an offer based on CDE's own determination, or require the District to take other further actions as necessary, in CDE's sole discretion to achieve the purposes of this subpart, Remedies § 4, according to CDE's interpretation of the purposes of this subpart.
- m. By **August 19, 2024**, the District will send a PWN to each Remaining Student's parent indicating CDE's final decision regarding the compensatory education to be given to that Remaining Student.
- n. Nothing in this remedy shall be construed to prohibit the District from providing compensatory services as soon as practicable, including during the summer of 2024, even prior to CDE's final decision. In fact, where appropriate, District is encouraged to provide services over the summer so that the Remaining Students can begin catching up as soon as possible.

5. Provision of Compensatory Education

- a. To verify that the Remaining Students receive the compensatory education required by this Decision, District must submit records of service logs for all Accepted Students and Remaining 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.

- b. These compensatory services shall begin as soon as possible and will be in addition to any services Remaining 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.
- c. These compensatory services must be provided outside of the regular school day (preferably on weekends or during school breaks) to ensure the Remaining Students are not deprived of the instruction Remaining Students are entitled to receive during the school day (including time in general education).
- d. All compensatory education will have been provided to the Remaining Students no later than **one year from the date of this decision**.
- e. If CDE determines, in its sole discretion, that additional information or action is necessary to verify or ensure that Remaining Students receive the compensatory education required by this Decision, it may require District to provide additional information, such as a student's IEP, class schedule, or other documentation, or to take any additional actions deemed necessary by CDE.

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance

Consultant

1560 Broadway, Suite 1100
Denver, CO 80202-5149

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; see also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 19th day of January, 2024.

A handwritten signature in black ink, appearing to read "Nicholaus Podsiadlik", written over a horizontal line.

Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-11

Response, pages 1-5

- Exhibit A: List of ES teachers
- Exhibit B: List of students
- Exhibit C: Student IEP requirements
- Exhibit D: Service logs
- Exhibit E: List of ES SLPs
- Exhibit F: List of students
- Exhibit G: Student IEP requirements
- Exhibit H: Service logs
- Exhibit I: List of HS SLPs
- Exhibit J: List of students
- Exhibit K: Student IEP requirements
- Exhibit L: Service logs
- Exhibit M: List of MS 1 teachers
- Exhibit N: List of students
- Exhibit O: Student IEP requirements
- Exhibit P: Service logs
- Exhibit Q: List of MS 2 teachers
- Exhibit R: List of students
- Exhibit S: Student IEP requirements
- Exhibit T: Service logs
- Exhibit U: List of Center Program teachers
- Exhibit V: List of students
- Exhibit W: Student IEP requirements
- Exhibit X: No exhibit—no service logs provided
- Supp. Exhibit 1-A: Email
- Supp. Exhibit 1-B: Calendar
- Supp. Exhibit 1-C: Calendar
- Supp. Exhibit 1-D: Calendar
- Supp. Exhibit 2-A: Email
- Supp. Exhibit 2-B: Secure communication
- Supp. Exhibit 2-C: List of students
- Supp. Exhibit 2-D: IEPs
- Supp. Exhibit 3-A: Letter
- Supp. Exhibit 3-B: District policy documents
- Supp. Exhibit 3-C: Progress reports
- Supp. Exhibit 3-D: Progress reports
- Supp. Exhibit 3-E: List of students
- Supp. Exhibit 3-F: List of students
- Supp. Exhibit 3-G: Email
- Supp. Exhibit 4: No exhibit—SCO retracted request for Supplemental Exhibit 4

- Supp. Exhibit 5-A: Email
- Supp. Exhibit 5-B: Email
- Supp. Exhibit 5-C: Service logs

Telephone Interviews

- MS 1 Team Leader: November 8, 2023
- ES Teacher 1: November 8, 2023
- MS 2 Teacher 2: November 9, 2023
- Charter Manager: November 10, 2023
- Elementary Manager: November 10, 2023
- SLP Manager: November 13, 2023
- MS 1 Principal: November 13, 2023
- CSN Floater: November 13, 2023
- MS 2 Teacher 1: November 14, 2023
- MS 2 Teacher 3: November 14, 2023
- CSN Director: December 4, 2023
- District Executive Director: December 6, 2023

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

**State-Level Complaint 2023:570
Denver Public Schools**

DECISION

Addendum

At the request of the District, the Colorado Department of Education (“CDE”) issues this addendum to State Complaint 2023:570 (“Complaint”) to clarify the Department’s authority to consider settlement agreements in state complaint investigations and to encourage the use of alternative dispute resolution options for resolving state complaints.

Clarification on the Consideration of Settlement Agreements in State Complaint Investigations

CDE strongly encourages the use of alternative dispute resolution, such as formal mediation through the IDEA or agreements formed between school districts and parents outside of the formal dispute resolution process. To that end, CDE will consider settlement agreements only as appropriate and in accordance with CDE’s duties as the State Education Agency (“SEA”) to fulfill the purpose of the IDEA.

CDE’s authority for considering settlement agreements is different, by necessity, depending on whether the state complaint involves a single student or a class of students.

Single-Student Complaints

For a state complaint filed on behalf of a single child, CDE will not investigate an allegation that is the subject of a binding settlement agreement, nor will it enforce or disturb the terms of the parties’ settlement agreement.

As explained in guidance by the Office of Special Education and Rehabilitative Services (“OSERS”), CDE may dismiss allegations in a state complaint that were addressed in a settlement agreement:

Question B-25: Can an SEA dismiss allegations raised in a State complaint that were addressed in a previous settlement agreement resulting from mediation or the resolution process?

Answer: If a State complaint alleges violations specific to the child who is the subject of a prior settlement agreement resulting from mediation or the resolution process, the SEA may determine that the settlement agreement is binding on the parties as to those issues and inform the complainant to that effect.

OSERS, [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (“Q&A”), No. B-25 (July 2013).

While a state may impose rules regarding the review and enforcement of settlement agreements, neither CDE’s state complaint procedures nor the ECEA explicitly do so. See *Id.* at No. C-20; [CDE State-level Complaint Procedures](#).

Accordingly, parties who resolve their concerns through IDEA mediation are bound by the written agreement, and “a parent cannot seek to change the terms of that agreement by filing a state complaint to alter that agreement.” Q&A, No. A-28. This means that parents are free to waive their claims through settlement agreements, which CDE will not disturb should a parent later file a state complaint on behalf of their child concerning matters that are subject to a binding settlement agreement.

When making determinations with respect to students whose parents are not active parties to a complaint (i.e., students impacted by a systemic complaint), however, CDE’s power to impose remedies comes from its own general supervisory authority under Part B of IDEA. As explained below, agreements between the district and parents who are not parties to the state complaint cannot constrain CDE’s statutory obligation to address a failure to provide appropriate services.

Systemic Complaints Concerning a Group of Children

For allegations concerning a *group of children*, federal regulations and guidance require CDE to resolve systemic allegations through its state complaint procedures—even when an allegation may have also been the subject of a previous settlement agreement for an individual child within the group. 34 C.F.R. § 300.151(b); Q&A, No. B-25.

When asked if the SEA could dismiss allegations raised in a state complaint that were also the subject of a previous settlement agreement, OSERS clarified when the state complaint “alleges systemic noncompliance or the State has reason to believe that the violations are systemic, it must resolve the allegations through its complaint resolution procedures.” Q&A, No. B-25. OSERS further explained that “[i]f the State finds systemic violations, it must *provide for appropriate remedies for all students covered in*

the complaint, which could include prescribing in its complaint decision remedies for the denial of appropriate services, including corrective actions to address both past violations and future compliance.” *Id.* (referencing 34 C.F.R. §§ 300.151(b) and 300.152(b)(2)(iii) as the basis of authority)(emphasis added). As a grantee of IDEA funds, CDE is expected to follow interpretations of IDEA requirements published by OSERS, and it does so here. [OSERS, State General Supervision Responsibilities Under Parts B and C of the IDEA \(“OSEP QA 23-01”\), No. B-2 \(July 2023\).](#)

Because this Complaint raised systemic allegations concerning a group of children, federal regulation and guidance required CDE to consider and provide appropriate remedies for all of the children impacted by the staffing shortage, including those for whom the District had entered into settlement agreements. To fulfill its statutory obligation for general supervision, CDE cannot dismiss individual students from the class or withhold remedies, at the decision stage, from individual students in the class based on a settlement agreement. Instead, CDE must ensure that these students are also afforded appropriate relief, a responsibility which necessarily entails: 1) a limited review of the settlement agreement to ensure the scope of the release includes the issue relevant to the Complaint, and 2) an assurance that the district has fulfilled any ripened terms of the agreement intended to remediate the issue relevant to the Complaint.

In conducting a limited review of settlement agreements, CDE will respect the autonomy of the parties to craft terms they agree will resolve their dispute, recognizing that parties may reasonably agree to waive claims under other state and federal laws, particularly those that frequently travel together, such as Section 504 and the Americans with Disabilities Act, to fully resolve the IDEA claims. While nothing in this Decision should be construed to prohibit a release of claims in a settlement agreement, CDE encourages parties to draft releases that are reasonably tailored to the circumstances and claims at issue.

CDE Encourages the Use of Alternative Dispute Resolution to Resolve State Complaints

CDE encourages the use of alternative dispute resolution, including facilitated IEP meetings and IDEA mediation, to resolve concerns or disputes about special education as soon as they arise. Once a state complaint is filed, CDE purposefully invites parties to consider mediation to resolve the complaint because parents and special educators know the child best and will be afforded the flexibility and autonomy to develop their own remedies through mediation, rather than have remedies determined unilaterally by a state complaints officer.

OSERS also recognizes the benefits of mediation for parents and schools, which include: 1) control over the process and decision making, 2) increased commitment and ownership of the agreement, and 3) remedies that are individually tailored and contain workable solutions. Q&A, No. A-3.

For these reasons, CDE strongly encourages alternative dispute resolution to resolve state complaints, and nothing in this Decision should be construed to discourage parties from its use.