

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 2023:588**  
**Larimer R-1, Poudre School District**

**DECISION**

**INTRODUCTION**

On October 3, 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 Larimer R-1, Poudre School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified five 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 October 3, 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 develop, review, and revise an IEP to provide special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to enable Student to advance appropriately toward attaining his annual typing and social-emotional wellness goals, from October 3, 2022 through the end of the 2022-2023 school year, in violation of 34 C.F.R. § 300.320(a)(4).

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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.

2. Failed to properly implement Student’s IEP from October 3, 2022 to the end of the 2022-2023 school year by failing to provide the 45 minutes per quarter of direct and 30 minutes per quarter of indirect “Orientation & Mobility” related services required by Student’s IEP, in violation of 34 C.F.R. § 300.323.
3. Failed to conduct a timely annual review of Student’s IEP on or about April 24, 2023, in violation of 34 C.F.R. § 300.324(b).
4. Failed to obtain Parents’ agreement before convening an IEP Team meeting without a required IEP Team member on or about February 24, 2023 and April 11, 2023, in violation of 34 C.F.R. § 300.321.
5. Failed to provide Parents with periodic reports on Student’s progress from October 3, 2022 to the end of the 2022-2023 school year as required by Student’s IEP, in violation of 34 C.F.R. §§ 300.320(a)(3)(ii) and 300.323.

### **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 fifteen years old and has attended a District high school (“School”) during the 2022-2023 and 2023-2024 academic years. *Exhibit A*, p. 108. At all times relevant to this investigation, he qualified for special education and related services under the Visual Impairment disability category. *Id* at pp. 1, 108.
2. Student is very intelligent, learns very quickly and has an impressive memory. *Interviews with Parents, Student’s Special Education Teacher (“Teacher”), Student’s Current Orientation and Mobility Specialist (“O&M Specialist”), and District Assistant Director of Integrated Services (“Assistant Director”)*. He excels academically and is very personable. *Interviews with Teacher and O&M Specialist*. He participates in Congressional debate at school and was recently recognized with an award for his performance. *Interviews with Parents and Teacher*.
3. Student is privately diagnosed with an eye condition that causes progressive vision loss. *Interview with Parents; Exhibit B*, p. 5. Student is legally blind in one eye due to retinal detachment, and due to his condition, at risk for detachment in the other eye. *Id*.
4. This investigation involves, in part, the development, review and revision of goals described in an IEP dated April 21, 2022 (the “2022 IEP”), which was in effect throughout the 2022-2023 academic year. *Exhibit A*, p. 1.

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

## B. The 2022 IEP

5. The 2022 IEP documents a wide range of academic and functional strengths, including verbal comprehension, ability to work independently, and proficiency with technology. *Id.* Student plans to pursue a career in architecture, finance, or law. *Id.*
6. The 2022 IEP's present levels of performance document outstanding academic performance across English, math, history, science, and physical fitness. *Id.* at p. 6. Student made progress on six goals from the previous school year, including one goal related to typing speed and accuracy. *Id.* at pp. 6-8.
7. Student's visual impairment "negatively affects his ability to access classroom materials and navigate his school environment." *Id.* at p. 11.
8. The 2022 IEP's Consideration of Special Factors section describes Student's use of a Learning Media Plan, his need for assistive technology, and his need for a health care plan. *Id.* at p. 14.
9. The 2022 IEP, as written on April 21, 2022, contained two self-determination goals, one vision goal, one reading goal, and one other goal. *Id.* at pp. 16-19. Relevant to this investigation, one of the self-determination goals ("Typing Goal") reads: "By April 20, 2023, given auditory access to typing material (i.e. screen reader software), a keyboard cover, and a screen cover, [Student] will be able to type 65 Words Per Minute (WPM) on a grade level typing test with 95% accuracy in 4/5 trials. Trials will occur every 2 weeks." *Id.* at p. 16.
10. The 2022 IEP lists 47 accommodations for all subjects. *Id.* at pp. 19-21.
11. The 2022 IEP identifies special education and related services. *Id.* at 25-26. Relevant here, it included 45 minutes per quarter of direct O&M services to be delivered outside general education, as well as 60 minutes per week of direct services outside of the general education classroom to address keyboarding skills through a combination of physical instructional practices such as hand placement and computerized typing instruction. *Id.* at pp. 25-26.
12. The IEP team determined that it was appropriate for Student to be in the general education classroom 87.2% of the time. *Id.* at p. 27.
13. An IEP Team amended the 2022 IEP at Parents' request following properly constituted meetings on September 30, 2022, November 15, 2023, and February 24, 2023. *Id.* at pp. 28, 55, 82; *Exhibit D*, pp. 1-2, 4, 7.
14. In the September 30, 2022 amended IEP, the typing goal was revised to state that Student would reach 65 words per minute at 85% accuracy, rather than the 95% accuracy described in the original goal. *Exhibit A*, p. 43. In addition, this amendment stated that Student would be assessed monthly rather than every two weeks. *Id.*

15. Additionally, one goal relevant to this decision, a social/emotional wellness goal (“Postsecondary Goal”), was added:

“In order to be successful accessing post-secondary options, [Student] will find three different opportunities within the college setting, school or community to participate in activities that include individuals with low vision impairments in order to gain access to individuals who have insight about access, accommodations and social emotional needs of individuals with similar needs.”

*Id.* at 45. In addition, the goal featured two objectives:

1. “Student will engage in two transition-focused conversations with college students with low vision impairments that include dialogue about access skills required for the college setting.” *Id.*
2. “Student will verbally identify three opportunities to take lessons about access in the college setting, and incorporate them into his high school learning environment.” *Id.*

This goal was to be measured via an interview with Teacher. *Id.*

16. The Service Delivery Statement was amended in this IEP, to include two hours per quarter of direct services outside general education to address transition goals. *Id.* at p. 105.

17. Neither of the two goals relevant to this investigation nor the O&M services were altered in the IEPs following the November 15, 2022, or February 24, 2023 IEP meetings. *Id.* at pp. 70-72, 79-80, 97-99, 105-106.

### **C. District’s Policies, Practices and Procedures**

18. District uses a comprehensive, two volume special education procedure manual, which describes its responsibilities to students under the IDEA and ECEA Rules. *Interview with District Executive Director of Integrated Services (“Director”); Exhibit I.* District also incorporates the CDE’s “IEP Procedural Guidance” document as an additional resource. *Interview with Director; CDE Exhibit 6.*

19. District works to ensure that staff members are knowledgeable about and compliant with the requirements of IDEA and ECEA Rules at multiple levels. *Interview with Director.* Each IEP team assigns a case manager to oversee the implementation of the IEP, and if building staff

are struggling with an IEP, they can reach out to one of the District's Assistant Directors of Integrated Services (District employees who oversee a set of schools which feed into the same high school). *Interviews with Director and Assistant Director.*

20. District notifies teachers and related service providers who will be working with a student on an IEP via Enrich, the school's educational data management platform. *Interview with Director.* Special education teachers and related service providers have ongoing access to Student IEPs through the Enrich system. *Id.*
21. In developing IEP goals, District strives to create an IEP that is appropriate for the student considering that student's individualized circumstances, establishing ambitious but not unattainable goals. *Id.* District's manual instructs staff that goals should be SMART: specific, measurable, ambitious and attainable, realistic, and time-bound. *Exhibit I, p. 26.*
22. The aim of the IEP is to provide meaningful progress for the student toward goals. *Interview with Director.* If a student falls short of the benchmark established by a goal, but is making meaningful progress toward the goal, the IEP team should continue pursuing that goal. *Id.* If progress appears to stall, the team should consider changes to the frequency, duration, and intensity of interventions. *Id.*
23. Director described District's responsibility to implement IEP services as core to its work. *Id.* District requires its staff to record services in service logs. *Id.* If District learns that a service has not been implemented, District should quickly approach the parents to offer compensatory services to address the failure as soon as possible. *Id.*
24. District has a responsibility to review IEPs annually. *Id.* There is "no wiggle room" on this responsibility, and teams should plan far ahead to ensure that there is no issue in scheduling the review in a timely fashion. *Id.* District's special education procedure manual contains a sample agenda for an annual review, and detailed instruction regarding proper scheduling of the annual review. *Exhibit I, pp. 14-16.*
25. The required composition of an IEP team includes the parent(s), a special education teacher, a general education teacher, a district designee, and an individual who can interpret evaluation results. *Interview with Director.* Related services personnel can be required members if the IEP meeting in question requires them to interpret evaluation results or the IEP team will be working on matters related to that service provider's work with the student. *Id.* District's manual discusses the required IEP team members and gives detailed instructions for how to seek parent consent for the excusal of a required team member if necessary. *Exhibit I, pp. 17-18.*
26. Director described the District's responsibilities to monitor progress as being key to the delivery of special education, stating that without measuring and reporting progress, District cannot claim to have effectively served the child. *Interview with Director.* All IEPs in the

District must report progress on the same schedule as grades are issued to students. *Id.* For some students, more frequent reporting is appropriate. *Id.* District's manual discusses both the frequency and content of progress reporting. *Exhibit I*, pp. 24-28.

#### **D. Student's Typing Goal**

27. Student's IEPs have included a typing goal since he was in sixth grade. *Interview with Parents.* Parents describe the presence of the typing goal as "essential" to his ability to participate in his education, and as the most important goal in his IEP. *Id.* Parents are concerned that the goal itself, and the efforts undertaken to support the goal, are insufficient. *Id.* Due to Student's vision impairment, his ability to type will allow him to capture information in a high school and postsecondary environment. *Interviews with Parents, Assistant Director, and Teacher; Consultation with CDE Specialists 1 and 2.*
28. During the 2022 IEP development process, Parents urged the IEP team to establish a speed goal of 80 words per minute. *Interviews with Parents and Assistant Director.* The IEP Team, after discussion, agreed to set the goal to 65 words per minute at 95% accuracy. *Id.; Exhibit A*, p. 16. Measuring not just a student's speed, but that student's accuracy, is essential to achieving the educational purpose underlying typing goals. *Consultation with CDE Specialist 1.*
29. A goal to achieve a typing speed of 80 words per minute like that proposed by Parents here, would be overly ambitious for a ninth-grade student. *Consultation with CDE Specialist 2.* A typing speed of 65 words per minute, like that set forth in Student's goal, would exceed the norms for general education students in 9th grade, but it can be appropriate for a student with a visual impairment to set a goal at a higher level due to the increased need for keyboarding skills relative to students without visual impairment. *Id.* Students with low vision impairments can sometimes struggle to improve their typing speed compared to students who experienced total vision loss since birth, due to having developed their typing skills using visual information. *Id.*
30. Teacher, with the assistance of computerized typing instruction programs, provides instruction to Student on typing skills, particularly identifying the placement of keys to promote more efficient typing. *Interview with Teacher.* In addition to direct instruction, Student regularly practices typing in nearly all his general education classes by taking notes and completing assignments. *Id.* Student also practices typing to participate in extracurricular activities including debate. *Id.*
31. While some typing skills can be taught, the regular use of typing in the general education classroom and extracurriculars is essential to reinforce those lessons and prevent skill regression. *Consultation with CDE Specialist 2.* General education and extracurricular typing practice would not appear in an IEP, as that is an educational activity all students access, but it remains important to the overall educational program. *Id.* A set of services that includes a

combination of physical typing instruction regarding hand and key placement, use of a computerized instruction program, and a large quantity of typing practice in the general education and extracurricular settings comports with best practices. *Id.*

32. During April and May of 2022, District staff worked with Student to establish a baseline for Student's typing speed and accuracy. *Exhibit A*, p. 16. In three trials, Student achieved a speed of 40 words per minute at 95% accuracy, and in one trial, Student achieved a speed of 45 words per minute at 95% accuracy. *Id.*; *CDE Exhibit 3*.
33. Over the course of the 2022-2023 academic year, Student's accuracy remained high, ranging from 90% to 98% accuracy, but his typing speed fluctuated. *Id.* During four trials administered in September via a Google Doc, he recorded speeds ranging from 5 words per minute to 26.5 words per minute, a significant drop from the baseline data. *Id.*
34. From October 2022 through February 2023, he began using a typing instruction program called Nitrotype, and his recorded speeds improved dramatically, ranging from a low of 43 words per minute during the first session of this period to a high of 52 words per minute. *Id.*
35. In March 2023, Student requested a more advanced typing program, and Teacher presented four options. *Exhibit A*, pp. 116-117. During the March 10, 2023 session, Student used a program called Keybr, and recorded a speed of 38.2 words per minute, but during the next two sessions, Student used a program called Typing Academy and recorded speeds of 54 words per minute (his highest average speed during the 2022-2023 school year) and 46.8 words per minute. *CDE Exhibit 3*.
36. During the 2023-2024 school year, Student has used the Keybr program, as well as another program called KeyPro, and has continued to record average speeds from the high 40s to the low 50s. *CDE Exhibit 4; Interview with Teacher*.
37. The KeyPro program allows Teacher to create custom typing lessons for Student to be completed in a Google Form, which is a program he uses frequently in the general education setting. *Interview with Teacher*. Teacher learned about KeyPro while helping Student to pursue his postsecondary goal as it was the program used by a local community college Student visited in order to work with students with low vision impairment and blindness. *Id.*
38. Fluctuations in typing speed are not uncommon as a student adapts to a new typing program. *Consultation with CDE Specialist 2*. Despite these fluctuations, a progression from a baseline of 40 words per minute to a speed ranging from the high 40s to the low 50s, without a loss in accuracy, represents meaningful progress. *Id.*
39. School staff indicate that Student is making progress on his typing goals. *Interviews with Teacher and Assistant Director*. Nevertheless, at an IEP meeting October 31, 2023, an IEP Team member suggested that if Student became unable to make progress in typing speed,

the team should consider auditory means to achieve the same educational benefits, such as speech-to-text and recording lectures. *Exhibit 3, 52:43.*

40. Parents, while maintaining that Student should continue to try to improve his typing speed, expressed openness to additional means to allow him to access class materials, noting that Student has an auditory processing speed of 320 words per minute. *Interview with Parents.*
41. Options like speech-to-text and audio recording lectures can, depending on the individual student, be an effective way to ensure access to classroom content. *Consultation with CDE Specialist 2.* Overreliance on passive notetaking, though, can lead to the omission of inferences and insights that might be included by active notetaking. *Id.* Still, a combination of active and passive notetaking may be a way to allow a student with lower typing speed to effectively access classroom content. *Id.*

### **E. Student's Postsecondary Goal**

42. Parents expressed concern that Student's postsecondary goal, and the efforts undertaken in support of the goal, are insufficient. *Interview with Parents.*
43. Student's postsecondary goal was added to his IEP during his ninth-grade year after Parents requested that Student's IEP goals be changed to more directly address his post-high school plans to attend college. *Interviews with Parents, Teacher, and Assistant Director.*
44. During discussions at the IEP meeting at which this goal was developed, Parents urged the team to adopt a goal that would promote Student's engagement with other high school students in District with visual impairment, but Assistant Director objected because it might violate the privacy rights of other students. *Interviews with Parents and Assistant Director.* In the end, the IEP Team came to consensus around a goal that would focus on conversations with college students with low vision impairment. *Id.*
45. Parents indicated that the intended educational benefit of this goal is to help Student prepare for success in postsecondary education by connecting him to the low vision impairment community in colleges. *Interview with Parents.* Assistant Director viewed this as primarily a social-emotional goal, designed to help him to be able to have positive interactions and build connections with others. *Interview with Assistant Director.* Teacher described both educational benefits, as well as an opportunity for him to identify new tools and accommodations to be implemented in the high school setting. *Interview with Teacher.*
46. The IEP requires Teacher to provide Student with two hours per quarter of direct services to address transition goals. *Exhibit A, p. 105.* During these service minutes, Student and Teacher would work together to identify organizations to reach out to build a network of contacts. *Interview with Teacher.* Teacher also kept notes regarding his activities in pursuit of this goal, which were reviewed to measure progress on this goal. *Exhibit E, pp. 14-22.*



47. During the 2022-2023 school year, Student visited a local university. *Exhibit G* at p. 31. He visited the Student Support Services office to discuss the supports that the university offers to students with disabilities. *Id.* Student also spoke to a staff member at the university's Disability Resource Center with low vision impairment about supports and services. *Id.*
48. Student also visited a local community college where he learned about the typing program the college uses for its students with low vision. *Interview with Teacher.* Teacher used this information to incorporate this program into Student's Typing Goal. *Id.*
49. Student and Teacher identified another individual with low vision impairment for Student to speak with, but the individual canceled the meeting shortly before it was to occur. *Interview with Teacher; Response*, p. 8.
50. While pursuing this goal, Student learned that many college students with low vision impairment are assigned a note-taker as an accommodation to help them access class materials. *Interview with Teacher.* Teacher reported that the school is exploring a way to implement that accommodation for Student. *Id.*
51. Teacher noted that when this goal was first implemented, Student would hang back and allow Teacher to lead conversations, but that more recently he has begun to take charge of conversations pursued under this goal. *Id.*
52. Student's progress report for the fourth quarter indicates that only one meeting had occurred out of the three meetings the goal intended. *Exhibit G*, p. 40. It stated that the IEP team would work to develop a list of contacts so that Student could be more successful in making contacts during the following school year. *Id.*
53. Following an IEP meeting on August 14, 2023, Student's new IEP contains a revised version of the Postsecondary Goal. *Exhibit A*, p. 125. The new goal requires that Student and Teacher work together to identify two individuals and engage in four transition-focused conversations with individuals with low vision impairments who are attending or have attended post-secondary education, with at least one conversation taking place per quarter. *Id.*
54. In October 2023, under the revised IEP goal, Student met a college student with low vision impairment at a local university. *Interview with Parents.* During that conversation, Student asked the college student how they were able to do college-level math with a visual impairment, and learned about a program called JAWS math editor, an assistive technology program that he now uses to complete his high school math work. *Id.*
55. The SCO finds that the Postsecondary Goal in the 2022 IEP, although vague on the intended educational benefit intended for Student, was specific, measurable, achievable, relevant and time bound. *Consultation with CDE Specialist 1.*

## F. Implementation of O&M Services

56. O&M services are designed to teach students with low vision impairment or blindness to become safe and independent people when traveling through their community. *Interview with O&M Specialist; Consultation with CDE Specialist 1.* A typical first O&M service with a student will start by helping the student to create a cognitive map of the school, so that they can safely navigate hallways and travel from class to class, with subsequent sessions exploring the community outside school. *Interview with O&M Specialist.* O&M services are also intended to train the student to use assistive devices such as canes or accessibility apps to better and more safely access the community. *Id.*
57. O&M services provide two main functions: safety and access. *Consultation with CDE Specialist 1.* Due to Student's eye condition, if he were not able to move safely in his environment, he could be at risk of suffering a second retinal detachment, which would result in total vision loss. *Id.* Without the tools and knowledge that O&M services are intended to provide, Student would be substantially diminished in his capacity to access his environment. *Id.*
58. Student's 2022 IEP required 45 minutes of O&M services per quarter as a related service. *Exhibit A, pp. 25-26.* During the first semester of the 2022-2023 school year, Student received O&M services from a specialist who no longer works for District ("Former O&M Specialist"). *Interviews with Parents and Assistant Director.* Former O&M Specialist was also Student's teacher for the visually impaired. *Id.*
59. In December 2022, there was a confrontation between Student and Former O&M Specialist that resulted in the two being unwilling to work with one another. *Id.* Over the next several months, Assistant Director attempted to engage Student, Parents and Former O&M Specialist in a restorative justice process to allow Student and Former O&M Specialist to resume work together, but this process was unsuccessful. *Id.*
60. In January, Student was assigned a new teacher for the visually impaired ("TVI"), who took over Former O&M Specialist's TVI duties but was not qualified as an O&M specialist. *Interview with Parents.* Former O&M Specialist was, at the time, the only qualified O&M specialist in the district. *Interview with Assistant Director.*
61. Starting in January, Assistant Director made efforts to find an O&M specialist who could provide the services required by the IEP over the course of the spring semester. *Id.* Assistant Director reached out to other districts, to CDE Specialist 1, and to local colleges to find an individual with the appropriate certification to provide services under contract with the District but was unsuccessful. *Id.*
62. It is extremely difficult to find qualified O&M specialists, and many districts have resorted to reimbursing Parents for finding private O&M services in the absence of being able to find their own specialist. *Consultation with CDE Specialist 1.*

63. In April 2023, District hired O&M Specialist as a permanent staff member, with the intention that she would relocate to Colorado and start working with students in Fall 2023. *Interviews with Assistant Director and O&M Specialist.*
64. In May 2023, Assistant Director identified an O&M specialist willing to provide services on contract with District (“Contract O&M Specialist”). *Exhibit C*, p. 3. On May 16, 2023, Assistant Director emailed Parents to provide five dates on which Contract O&M Specialist could provide Student O&M services. *Exhibit J*, p. 83. Over the next two days, Parents and Assistant Director attempted to schedule the services, but were unable to come to an agreement prior to an IEP meeting on May 22, 2023. *Id.* at pp. 75-83.
65. After the end of the May 22, 2023 IEP meeting, Parents and Assistant Director stayed behind to discuss the O&M services. *Interviews with Parents and Assistant Director.* They came to an agreement that it would be better for Student to receive O&M services at the beginning of the new school year from O&M Specialist rather than receive services at the end of the school year from Contract O&M Specialist, who would not be working with Student in the future. *Id.*
66. A Prior Written Notice dated May 30, 2023, details the agreement, acknowledging that District did not provide direct O&M services during quarters 3 or 4 and committing to provide 90 minutes of compensatory services in the fall of the 2023-2024 school year. *Exhibit C*, p. 3.
67. Based on the above facts, the SCO finds and concludes that District failed to implement 90 minutes of direct O&M services during the 2022-2023 school year.
68. Student’s IEP for the 2023-2024 school year continues to require 45 minutes of direct O&M services per quarter. *Exhibit A*, pp. 133-134.
69. To date, O&M Specialist has provided three O&M sessions to Student, which are recorded in her service logs. *CDE Exhibit 5.* The first session on August 15 provided 75 minutes of service and oriented Student to a new learning environment he would be accessing this school year. *Id.* The second session on October 10 involved O&M specialist working with Student for 60 minutes to help him learn to safely ride the bus between School and the new learning environment. *Id.* During the 53-minute session on November 13 Student and O&M specialist traveled from School to a local donut shop using Lyft, with Student learning to use the ridesharing app’s accessibility features, and walked back to School, navigating intersections, and developing a cognitive map of the surroundings of School. *Id.* The SCO finds that these three sessions amounted to 188 minutes, which exceeds the 180 minutes due to Student between Student’s ongoing IEP services and the 90 minutes of compensatory services owed.
70. District plans to deliver three additional sessions of O&M services to Student through the remainder of the 2023-2024 school year, including one additional compensatory session currently set to be delivered in December. *Interview with O&M Specialist.*

### **G. Attendance of an O&M Specialist at IEP Meetings**

71. Parents expressed concern that IEP meetings on February 24, 2023 and April 11, 2023 took place without an O&M Specialist. *Interview with Parents.*
72. Attendees at the February 24, 2023, IEP meeting included Parents, Student's general education teacher, Teacher, Assistant Director (designated as the District's designee under 34 C.F.R. § 300.321(a)(4)), TVI, and an assistive technology professional. *Exhibit D*, p. 9. No O&M specialist was listed on the signature page as an attendee. *Id.*
73. Attendees at the April 11, 2023, IEP meeting included Student, Parents, Student's general education teacher, Teacher, Assistant Director (designated as the District's designee under 34 C.F.R. § 300.321(a)(4)), TVI, and an assistive technology professional. *Id.* at p. 22. No O&M specialist was listed on the signature page as an attendee. *Id.*
74. Assistant Director stated that as a related service provider, an O&M specialist is only a mandatory IEP Team member if needed to interpret evaluation results. *Interview with Assistant Director.* O&M Specialist stated that while she tries to attend all IEP meetings to gain a better understanding of a student's needs, she does not feel that her presence is necessary unless changes to the O&M services are proposed. *Interview with O&M Specialist.* She added that for most discussions, a teacher for the visually impaired can provide effective expertise even in the absence of an O&M specialist. *Id.* A teacher for the visually impaired has training that would enable them to interpret an O&M evaluation and answer high-level questions, but when engaging with details of a student's O&M services, best practice would require the presence of a qualified O&M specialist. *Consultation with CDE Specialist 1.*
75. Student's most recent evaluation was performed on April 13, 2021, and no new evaluations were discussed at either the February 24, 2023 or April 11, 2023 IEP meetings. *Exhibit B*, pp. 4-18; *Exhibit D*, pp. 7-8.
76. At the time of the February 24, 2023, IEP meeting, the only O&M specialist employed by the district was Former O&M Specialist, who had been involved in a confrontation with Student, and was then the subject of a complaint by Parents to the U.S. Department of Education's Office for Civil Rights. *Interview with Assistant Director; Exhibit M*, p. 5.
77. In an email discussion between Parents and Assistant Director, each Parent individually raised objections to the potential attendance of Former O&M Specialist, stating that Student would not feel safe attending the meeting with her present. *Exhibit J*, pp. 67-68. One Parent agreed to excuse the Former O&M specialist from the meeting, but the other, while stating that District was forcing Parents to allow the Former O&M specialist to attend, also stated that he would not agree to excuse the Former O&M specialist. *Id.*

78. Assistant Director stated that because of the conflict between the District and the Parents in the wake of the December incident involving Former O&M Specialist, he offered the excusal form as a courtesy to the Parents, even though the individual was not a mandatory IEP team member. *Interview with Assistant Director.*
79. The IEP was amended at the February 24, 2023 meeting, but none of the changes adopted pertained to O&M. *Exhibit A*, pp. 137-138.
80. The April 11, 2023 IEP meeting was continued during additional IEP meetings on April 18, April 28, May 22, 2023 and August 14, 2023. *Exhibit D*, pp. 11-12, 14-15, 17-18, 21. During the second session, on April 18, 2023, Parents requested that O&M Specialist attend so that the team could discuss Student's O&M services. *Exhibit D-5.*
81. O&M Specialist, who was hired by District in April but had not relocated to Colorado, attended the April 28 and May 22, 2023 meetings remotely. *Exhibit D*, pp. 16, 19. She attended the August 14 meeting in person. *Id.* at 23. At these meetings she was able to discuss Student's orientation and mobility needs. *Interview with O&M Specialist.*

#### H. Progress Reports

82. Student's IEP provides that progress on annual goals will be reported as often as grades are for peers, and that Parents will receive reports every four school weeks. *Exhibit A*, p. 16.
83. To fulfill the requirement that progress be reported no less frequently than every four weeks, Assistant Director asked teachers and service providers to record Student's progress in a Google Sheet, access to which would be shared with Parents so that they could monitor progress in real time. *Interview with Assistant Director; CDE Exhibits 3, 4.* Two Google Sheets were made available to Parents: one containing progress monitoring for the 2022-2023 school year, and one containing progress monitoring for the 2023-2024 school year. *Id.*
84. Parents received progress reports on a quarterly basis at the end of the first, second, and third quarters of the 2022-2023 school year. *Exhibit G*, pp. 11-37. These progress reports were in a format typical of progress reports exported from Enrich. *Id.*
85. Parents stated that they were not provided with an adequate scheduled progress report for the fourth quarter of the 2022-2023 school year. *Interview with Parents.*
86. The IEP meeting that began on April 11, 2023, remained open in Enrich until it was finalized following the August 14, 2023 meeting. *Interview with Director.* Enrich will not allow for the export of progress reports while an IEP meeting in progress has not been finalized. *Id.*
87. Director asked Student's teachers and service providers to gather their data recorded in the 2022-2023 Google Sheet shared with Parents and compile it into a progress report that could

be shared with them in lieu of a progress report exported from Enrich. *Interviews with Director, Assistant Director, and Teacher.*

88. This progress report, though formatted differently from the three earlier reports, contained data on Student's progress toward each of his six annual goals. *Exhibit G*, pp. 38-41. Director emailed it to Parents on June 7, 2023. *Exhibit J*, p. 85.
89. Parents stated that they were able to access Student's real-time progress reporting via the two Google Sheets, but asserted in the Complaint and in interviews that progress reporting data was added to the 2022-2023 Google Sheet in September 2023 during their preparation to file the Complaint and was not available to them during the fourth quarter of the 2022-2023 school year. *Interview with Parents; Exhibit 2.*
90. District staff stated that progress monitoring was added to the Google Sheet contemporaneous to or within a few days of the progress being collected. *Interviews with Teacher and Assistant Director.*
91. The SCO was granted access to the Google Sheet for the 2022-2023 school year. *CDE Exhibit 7.* The Google Sheet's metadata indicates that it was last edited on June 6, 2023, four months prior to the Complaint being filed. *CDE Exhibit 2.*
92. Based on the above facts, the SCO finds that the 2022-2023 progress monitoring Google Sheet was not altered in September 2023.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District developed, reviewed, and revised an IEP to enable Student to advance appropriately toward attaining the Typing and the Postsecondary goals from October 3, 2022 through the end of the 2022-2023 school year, consistent with 34 C.F.R. § 300.320(a)(4). No violation was found.**

Parents' concern is that Student did not achieve the Typing and the Postsecondary goals during the 2022-2023 school year. (FF #s 27, 42.)

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. *Endrew 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**

The 2022 IEP was developed in April 2022, and the goals and services related to this investigation were last amended at a meeting in September 2022, outside the window of this Complaint. (FF #s 4, 14-17.) Thus, the SCO cannot consider the propriety of the events that occurred in April 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**

Parents' concern is that the 2022 IEP, including efforts to support the Typing and Postsecondary goals, was inadequate to allow student to make progress on these annual goals regarding typing speed and accuracy and meeting individuals in a postsecondary setting with low vision impairment. (FF #s 27, 42.)

An IEP is "the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Having already addressed the first prong above, we turn to the second prong.

An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F.*, 580 U.S. at 399. An IEP must include measurable goals and a statement of the special education and related services designed to "[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and any other educational needs that result from the child's disability. 34 C.F.R. § 300.320(a)(2). An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* § 300.320(a)(4).

*i. Student's Typing Goal*

The Typing Goal projected that by April 2023, Student would reach a typing speed of 65 words per minute at 85% accuracy in 4/5 trials. (FF # 14.) The SCO finds the pairing of a speed goal with an accuracy goal was an appropriate and effective way to assess Student's functional typing ability, and the SCO finds further that while a speed of 65 words per minute was an aggressive benchmark that many low-vision students might struggle to meet, it was appropriate for Student. (FF #s 28-29.)

The 2022 IEP requires 60 minutes of direct specialized instruction per week in keyboarding skills to support the Typing Goal. (FF # 11.) During that instructional time, Student is taught physical typing skills such as hand placement and the placement of keys on the keyboard, and undergoes computerized instruction designed to reinforce skills. (FF # 30.) In addition to this specialized instruction, Student practices typing throughout the general education curriculum, as well as in extracurricular activities. *Id.* This combination of specialized instruction and outside practice matches the standards described by CDE Content Area Specialist 2 as best practices for teaching typing to a student with low vision impairment. (FF # 31.)

Over the course of the 2022-2023 school year, Student demonstrated progress on his typing speed without loss of accuracy, moving from a baseline of 40 words per minute to consistently recording speeds in the high 40s and low 50s. (FF #s 32-36.) While this progress did not bring Student to his goal of 65 words per minute, CDE Content Specialist 2 described the 25% increase in typing speed without loss of accuracy as meaningful. (FF # 38.)

Although Student did not meet his annual goal for typing, the Typing Goal and related instruction and services were calculated to allow him to make progress (which he did). For these reasons, the SCO finds and concludes that Student's IEP was substantively adequate with respect to the Typing goal, and that no IDEA violation occurred.

*ii. Student's Postsecondary Goal*

The Postsecondary Goal projected that by April 2023, he would find three opportunities within a college setting to participate in activities including individuals with low vision impairment in order to learn about the supports and accommodations they use to succeed in that setting. (FF # 15.)

Here, the 2022 IEP provides two hours per quarter of direct services to address transition goals. (FF # 16.) During those times, Teacher and Student worked together to discuss postsecondary options and schedule meetings with individuals in a college setting who have low vision impairments. (FF # 46.) In pursuit of this goal, Student visited two postsecondary schools, learned about the supports and services that can be provided at the college level, and had a conversation with an individual with low vision impairments about the college experience for students with disabilities like his own. (FF #s 47-48.) These experiences led to Student being able to incorporate new accommodations and supports into his high school curriculum, including an assistive



technology option that has been incorporated into his typing goal. (FF #s 48, 50.) Teacher also reported that over the course of the pursuit of this goal, Student has become more confident and assertive in interacting with others. (FF # 51.)

As with the Typing Goal, Student did not achieve the benchmark set forth in the IEP but did make progress toward that goal. (FF # 52.) Notably, Student received substantial educational benefit through the implementation of this goal, improving his social-emotional skills and identifying tools and accommodations that can help him succeed not only in a postsecondary environment, but which can benefit him within the high school environment (FF #s 47-48, 50-51.) Although this goal could have been crafted more clearly by the IEP team, the SCO finds that it was measurable, achievable, relevant and time bound. (FF # 55.) For these reasons, the SCO finds and concludes that the Student's IEP was substantively adequate with respect to the postsecondary goal. No IDEA violation occurred.

**Conclusion to Allegation No. 2: District failed to properly implement Student's IEP during the 2022-2023 academic 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 implement the O&M services required by Student's IEP. (FF # 66.)

**A. IEP Implementation: Legal Requirements**

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

A district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and 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).

**B. IEP Accessibility and Responsibilities**

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Student's teachers and service providers had access to the IEP during the 2022-2023 academic year in District's data management system. (FF # 20). O&M Specialist accurately

described her duties under the IEP. (FF # 57). Assistant Director demonstrated that he was aware of the need for services but could not ensure that they were provided due to a lack of qualified staff. (FF #s 59-64.) District demonstrated its knowledge of the requirements of the IEP by offering compensatory services once a qualified specialist was found. (FF #s 65-66.) For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the 2022-2023 academic year were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

### **C. Implementation of O&M Services**

The SCO must determine whether District made special education and related services available to Student consistent with the IEP for the 2022-2023 academic year. 34 C.F.R. § 300.323(c)(2).

In this case, Student’s IEP required 45 minutes per quarter of direct O&M services. (FF # 11.) Here, District acknowledged via PWN that it did not provide those services to Student during the third or fourth quarter of the 2022-2023 school year. (FF # 66.) Accordingly, the SCO finds and concludes that District failed to implement the IEP during the 2021-2022 academic year, in violation of 34 C.F.R. § 300.323(c)(2).

### **D. Materiality of the Failure to Implement the IEP**

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. Appx. 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. District 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. Appx. 202, 205 (2d Cir. 2010).

“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, although District only failed to provide 90 minutes of O&M services these 90 minutes represented the entirety of the O&M services designated for Student for those two quarters. (FF # 11.) Moreover, these services represent a critically important component of Student’s IEP by allowing him to safely access the school and community environment. (FF # 56.) The Record does not reflect any personal safety incidents during the time Student was without O&M services, but the consequences of such an incident if it had occurred could have resulted in total vision loss for Student. (FF # 57.) Thus, the SCO finds and concludes that District’s failure to implement the IEP was material and resulted in a denial of FAPE.

#### **E. Compensatory Education**

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

Here, 90 minutes of O&M services were not delivered during the 2022-2023 school year. District agreed via PWN on May 30, 2023, to provide 90 minutes of compensatory services during the 2023-2024 school year. (FF # 66.) To date, District has provided 188 minutes of O&M services to Student during the 2023-2024 school year, 98 more minutes than the 90 required by this school year’s IEP. (FF # 69.) District plans to issue one additional 45-minute session in December 2023 as compensatory services. (FF # 70.) Given that District has fulfilled the undelivered 90 minutes from the 2022-2023 school year, the SCO finds and concludes that an order of compensatory services here would not be appropriate.

**Conclusion to Allegation No. 3: District conducted an annual review of the Student’s IEP in the year following April 21, 2022, in compliance with 34 C.F.R. § 300.324(b). No violation of IDEA occurred.**

Parents were concerned that District did not review Student’s IEP annually after developing one on April 21, 2022. 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 Student’s IEP on September 30, 2022, November 15, 2022, February 24, 2023, and April 11, 2023. (FF # 13.) Thus, the SCO finds and concludes that Student’s IEP was reviewed at least annually, consistent with the requirements of 34 C.F.R. § 300.324(b).

**Conclusion to Allegation No. 4: District convened meetings on February 24, 2023 and April 11, 2023, with all required IEP team members present, consistent with 34 C.F.R. § 300.321. No IDEA violation occurred.**

Parents' concern is that District convened IEP meetings on February 24, 2023 and April 11, 2023, without the required attendance of an O&M specialist and without their excusal. (FF # 71.)

i. Legal Requirements

Under the IDEA, an IEP Team must include:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) at least one special education teacher of the child;
- (4) a representative of the school district who:
  - i. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - ii. is knowledgeable about the general education curriculum; and
  - iii. is knowledgeable about the availability of resources of the public agency;
- (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6); and
- (6) at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (7) whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a). As such, the IDEA differentiates between mandatory and discretionary members of an IEP Team. *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). Discretionary members include others who have knowledge or special expertise regarding the child. 34 C.F.R. § 300.321(a)(6).

Under the IDEA, both the district and parents have discretion to invite "other individuals" with knowledge or special expertise about the child to the IEP meeting. 34 C.F.R. § 300.321(a)(6). "The determination of the knowledge or special expertise of any individual described in paragraph (a)(6) of this section must be made by the party (parents or public agency) who invited

the individual to be a member of the IEP Team.” 34 C.F.R. § 300.321(c). Additionally, mandatory IEP Team members may only be excused from attending IEP Team meetings if the parents and district both agree in writing. 34 C.F.R. § 300.321(e). However, consent and a written agreement is not necessary to excuse “individuals who are invited to attend IEP Team meetings at the discretion of the parent or public agency because such individuals are not required members of an IEP Team.” 71 Fed. Reg. 46675 (August 14, 2006).

ii. The February 24, 2023 IEP Meeting

The concern is whether an O&M specialist is a mandatory IEP Team member for this meeting. This meeting included Parents, Teacher (Student’s special education teacher), Student’s teacher for the visually impaired (another of student’s special education teachers), one of Student’s general education teachers, and Assistant Director (the designated representative for the school district). (FF # 72.)

District concedes that under some circumstances, an O&M specialist could be required to interpret evaluation results specific to their expertise. (FF # 74.) However, at this meeting, there were no new evaluations to interpret, and therefore no evaluation data specific to O&M. (FF # 75.) If there were a need to interpret evaluation data related to student’s low vision impairment, Student’s TVI was present at both meetings and would have been able to interpret that data. (FF # 76.) Moreover, neither District nor Parents invited any individual O&M specialist to the meeting. (FF # 77.)

For these reasons, the SCO finds and concludes that the February 24, 2023 meeting included all required members, consistent with 34 C.F.R. § 300.321(a). No IDEA violation occurred.

iii. The April 11, 2023, IEP Meeting

The concern is whether an O&M Specialist is a mandatory IEP Team member for this meeting. This meeting included Parents, Teacher, Student’s teacher for the visually impaired, one of Student’s general education teachers, and Assistant Director (as the designated representative for the school district) attended. (FF # 73.)

At this meeting, there were no new O&M evaluations to review or interpret. (FF # 75.) This meeting took place over five sessions, and during the second session, Parents requested the presence of O&M Specialist to discuss Student’s services. (FF # 80.) O&M Specialist attended, remotely or in person, the remaining three sessions. (FF #s 80-81.) During those portions of the IEP meeting that O&M Specialist attended, she discussed Student’s O&M needs, and answered any questions Parents had. (FF # 81.) Although O&M Specialist was not a required member of the IEP team, once Parents requested her attendance as a discretionary member, she attended and participated in the remainder of the meeting.

For these reasons, the SCO finds and concludes that the April 11, 2023, meeting included all required members, consistent with 34 C.F.R. § 300.321(a). No IDEA violation occurred.

Although Assistant Director sought excusal of a non-mandatory IEP Team member (O&M Specialist) in this case, there is no IDEA provision prohibiting a school district from seeking excusal of an individual who is not a required IEP Team member. 34 C.F.R. § 300.321. Nevertheless, to minimize confusion, the SCO cautions District to accurately and clearly communicate its position on whether a team member's attendance is required by IDEA.

**Conclusion to Allegation No. 5: District provided Parents with periodic reports on Student's progress during the 2022-2023 school year as required by Student's IEP, consistent with 34 C.F.R. §§ 300.320(a)(3)(ii) and 300.323.**

Parents' concern regards the provision of a fourth-quarter progress report, and the timely update of the progress monitoring Google Sheet. (FF # 85, 89.)

#### **A. Periodic Reports on Progress: Legal Requirements**

A parent's right to participate in the development of their child's educational program requires that they be regularly informed of progress toward IEP goals. *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017) ("[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*."). For that reason, 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). In light of *Andrew F.*, OSEP provided additional guidance concerning the importance of sharing progress monitoring data with parents:

Public agencies may find it useful to examine current practices for engaging and communicating with parents throughout the school year as IEP goals are evaluated and the IEP Team determines whether the child is making progress toward IEP goals. IEP Teams should use the periodic progress reporting required at 34 CFR §300.320(a)(3)(ii) to inform parents of their child's progress. Parents and other IEP Team members should collaborate and partner to track progress appropriate to the child's circumstances.

*Questions and Answers (Q&A) on U. S. Supreme Court Case Decision Andrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017).

#### **B. Student's Progress Reports**

Here, the IEP requires that progress on annual goals be reported as often as grades are for peers, and that Parents will receive progress reports every four school weeks. (FF # 82.) To fulfill the first component, District sends out progress reports quarterly. (FF # 84.) To fulfill the second

component, District provides a Google Sheet upon which teachers and service providers record Student's progress as it is measured. (FF # 83.)

Although the fourth-quarter progress report provided by the District to Parents on June 6, 2023 was differently formatted than previous quarterly progress reports, it provided adequate data on Student's progress on all six of his annual goals. (FF # 88.)

Parents expressed concern that the progress monitoring Google Sheet was altered while they were preparing to file the Complaint, which would indicate that the real-time progress reporting they received through the Google Sheet was not accurate or complete. (FF # 89.) District staff asserted that data was entered into the Google Sheet contemporaneous with the measurement of progress data. (FF # 90.) The SCO was granted access to the original Google Sheet and obtained evidence regarding the Google Sheet's edit history, which showed that it was last edited June 6, 2023, months before the filing of the Complaint and consistent with data being entered into it during the 2022-2023 school year. (FF # 91.)

Based upon these facts, the SCO finds and concludes that progress reports were provided to Parents consistent with Student's IEP, consistent with 34 C.F.R. §§ 300.320(a)(3)(ii) and 300.323. No IDEA violation occurred.

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

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

Here, nothing in the Record indicates that District's violation is systemic in nature. District provides staff with guidance regarding IEP implementation, and written procedures encourage the use of service logs to document IEP services. (FF # 23). District's failure here stems from the conflict between Student and Former O&M Specialist, and the difficulty inherent in securing a qualified replacement. (FF #s 59-63.) Assistant Director demonstrated knowledge of District's responsibility to ensure services were provided. (FF # 61.) When a contract provider was secured, District offered the services, but agreed with parents to postpone them to the next school year. (FF #s 64-65.) Those services have, at the time of this decision, already been delivered as compensatory education. (FF # 69.) For these reasons, the SCO finds and concludes that District's failure to implement the IEP is not systemic in nature.

## REMEDIES

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

- a. Failing to properly implement Student's IEP between October 2023 and the end of the 2022-2023 school year, in violation of 34 C.F.R. § 300.323.

To remedy this violation, District is ORDERED to take the following actions:

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

- a. By **Tuesday, January 2, 2024**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the failure to implement Student's IEP. 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. After the CAP is approved, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

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

- a. Special Education Director, Assistant Director, and Teacher must review this Decision. This review must occur no later than **Tuesday, January 2, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Tuesday, January 9, 2024**.

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 1st day of December, 2023.



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Nick Butler  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-11**

- Exhibit 1: Documents and correspondence related to Student's IEP
- Exhibit 2: Screenshots of progress monitoring

### **Response, pages 1-13**

- Exhibit A: IEPs and IEP Amendments
- Exhibit B: Evaluations
- Exhibit C: Prior Written Notices
- Exhibit D: Meeting Notices, Meeting Notes, Meeting Recordings
- Exhibit E: Schedule and Service Logs
- Exhibit F: Attendance Records
- Exhibit G: Report Cards, Progress Reports
- Exhibit H: School Calendar
- Exhibit I: District Policies
- Exhibit J: Correspondence
- Exhibit M: Class Schedule, OCR Complaint

### **Reply and Supplemental Reply, Pages 1-2**

- Exhibit 3A: Recording of October 31, 2023 IEP meeting
- Exhibit 3B: Timestamped annotations of October 31, 2023 IEP meeting

### **Complaint, pages 1-11**

- CDE Exhibit 1: Metadata for Exhibit 3
- CDE Exhibit 2: Metadata for 2022-2023 progress monitoring Google Sheet
- CDE Exhibit 3: Excel sheet exported from 2022-2023 progress monitoring Google Sheet
- CDE Exhibit 4: Excel sheet exported from 2023-2024 progress monitoring Google Sheet
- CDE Exhibit 5: O&M service logs updated 11/13/2023
- CDE Exhibit 6: CDE IEP Procedural Guidance
- CDE Exhibit 7: Email confirming access to Google Sheet

### **Telephone Interviews**

- Parents: November 6, 2023
- Assistant Director: November 7, 2023
- Teacher: November 8, 2023
- O&M Specialist: November 8, 2023
- Director: November 8, 2023