

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA) and
the Protection of Individuals from Restraint and Seclusion Act (PPRA)

State-Level Complaint 2024:519
Academy School District 20

DECISION

INTRODUCTION

On February 15, 2024, the parents (“Mother,” “Father,” or collectively “Parents”) of two students (“Student A,” “Student B,” or collectively “Students”) identified as children with disabilities under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Academy School District 20 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)² and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”).³ Therefore, the SCO has jurisdiction to resolve the Complaint.

The SCO extended the 60-day investigation due to exceptional circumstances on April 15, 2024 and May 15, 2024 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 noncompliance that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to February 15, 2023 and later for the purpose of determining noncompliance under the IDEA. Additional information prior to February 15, 2023 may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to noncompliance occurring after February 15, 2023.

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.

² The Protection of Individuals from Restraint and Seclusion Act, C.R.S. § 26-20-101 *et seq.*, was previously titled the Protection of Persons from Restraint Act and referred to as the “PPRA.” This acronym lives on despite amendment of the Act’s title.

³ The Rules are codified at 1 C.C.R. 301-45.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly evaluate Students in the fall 2023-2024 semester in violation of 34 C.F.R. § 300.304, specifically by:
 - a. Failing to provide and administer the evaluation assessments and other evaluation materials in Students’ primary language, Spanish;
 - b. Failing to comprehensively evaluate Students to identify all their special education and related needs, particularly:
 - i. Health and medical needs;
 - ii. Social and emotional needs; and
 - iii. Fine and gross motor abilities.
2. Failed to properly develop an IEP tailored to Students’ individualized needs in violation of 34 C.F.R. §§ 300.321, 300.322, and 300.324, specifically by:
 - a. Failing to provide Parents a meaningful opportunity to participate as members of the IEP Team; and
 - b. Failing to address Students’ health and medical needs.
3. Failed to ensure that Students’ special education teachers possessed required certifications and licenses since the beginning of the 2023-2024 school year, in violation of 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.
4. Failed to properly implement Students’ IEPs from August 14, 2023 to December 15, 2023 in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to have an IEP in effect at the beginning of the 2023-2024 school year;
 - b. Failing to make Students’ IEPs accessible to teachers or service providers responsible for implementing the IEPs;
 - c. Failing to provide Students with the specialized education and related services required by their IEPs;
 - d. Failing to implement the curriculum modifications required by their IEPs; and

- e. Failing to monitor Students’ progress on annual IEP goals and to provide Parents with periodic reports on Students’ progress as required by their IEPs since the beginning of the 2023-2024 school year.
5. Failed to educate Students in their Least Restrictive Environment (“LRE”) from the beginning of the 2023-2024 school year to December 15, 2023—including at lunch, recess, and at a field trip on or about September 28, 2023—in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323(c).
6. Failed to protect the confidentiality of Students’ personally identifiable information (“PII”) and disclosed Students’ PII to other parties without Parents’ consent—specifically by disclosing details of Students’ mother’s employment in the course of providing student schedules and CORA-requested emails to another parent in or about October through December 2023, in violation of 34 C.F.R. §§ 300.622-623.

Additionally, I have determined that the Complaint raises the following allegation subject to my jurisdiction under the Protection of Individuals from Restraint and Seclusion Act, C.R.S. § 26-20-101 *et seq.*, C.R.S. § 22-32-147, and the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”), 1 C.C.R. 301-45, 2620-R-2.07:

7. Whether the District improperly secluded Students in the SSN room’s “sensory area” on or about November 7, 2023, specifically by:
 - a. Secluding Students in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
 - b. Secluding Students without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of Rule 2620-R-2.01(1)(b);
 - c. Secluding Students without continually monitoring them, in violation of Rule 2620-R-2.02(2)(e)(iii); and
 - d. Failing to comply with the documentation and notification requirements for seclusion, in violation of Rule 2620-R-2.04.

RELATED DECISIONS

This investigation is the third recent investigation into School’s Significant Support Needs (“SSN”) program, and some of Parents’ concerns were addressed in the first two investigations.

The first investigation (“First Investigation”) ended with a decision issued on March 22, 2024 that is attached as CDE Exhibit 1.⁴ That investigation disclosed staffing issues that affected all the students in the SSN program, including Students. Accordingly, that investigation made several

⁴ That decision is also available online at <https://www.cde.state.co.us/spedlaw/sc2023-613>.

findings of fact and conclusions of law applicable to all the students. Those findings and conclusions will not be reconsidered or repeated at length in this Decision, and are, where appropriate, incorporated by reference.

The second investigation (“Second Investigation”) ended with a decision issued on May 10, 2024 that is attached as CDE Exhibit 2.⁵ The complainant in the Second Investigation alleged that the District improperly disclosed students’ PII. *CDE Exhibit 2*, pp. 8-9. This Complaint contains the same allegation, copied almost verbatim. *Compare id. with Complaint*, pp. 23-24.⁶ The Second Investigation found that this disclosure of PII was not compliant with the IDEA, and the issue will not be reconsidered or discussed at length in this Decision.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁷ the SCO makes the following findings of fact (“FF”):

A. Background

1. Student A, a seven-year-old who loves music and songs, and Student B, who is also seven years old and “happy, active, and curious,” both transferred from a different Colorado school district into District over the summer of 2023 and attended first grade in School’s SSN program from the beginning of the 2023-2024 school year through December 14, 2023, one day before the end of the semester. *Exhibit A-1*, p. 2; *Exhibit A-2*, p. 50; *Response*, p. 6. Parents stopped sending them to School after that date, citing concerns that the SSN program was inadequately staffed, that Students were being physically isolated, and that Students’ behaviors had drastically worsened since they began attending the SSN program. *Interview with Parents; Exhibit D-2*, p. 174.
2. The SSN program is intended to serve students with significant support needs, and the students in the SSN program were eligible for special education under the categories of Intellectual Disability, Autism Spectrum Disorder, Multiple Disabilities, and Other Health Impairment. *CDE Exhibit 1*, p. 3. Some students in the program were nonverbal, and some students required assistance or supervision using the bathroom, with diaper changes, physically moving, and receiving nutrition. *Id.*
3. Students, who are both nonverbal, are eligible for special education and related services under the categories of Autism Spectrum Disorder and Speech or Language Impairment. *Exhibit A-1*, pp. 2, 7; *Exhibit A-2*, pp. 50, 55.

⁵ Available online at <https://www.cde.state.co.us/spedlaw/sc2024-515>.

⁶ Parents filed separate complaints for Student A and Student B; however, the two complaints are nearly identical, and for convenience citations to “Complaint” will be to the complaint for Student A unless otherwise noted.

⁷ The appendix, attached and incorporated by reference, details the entire Record, except that the SCO has also relied on interviews conducted in the First Investigation, recorded in that decision’s appendix. See *CDE Exhibit 1*, p. 50.

B. Students' IEPs

4. A high-level overview of Students' IEPs in the 2023-2024 school year will provide context for an in-depth discussion of the IEPs:
5. First, Students came to the District with IEPs dated March 2023 from their prior school district. *See Exhibit A-1, p. 32; Exhibit A-2, p. 83.*
6. The District chose not to develop new IEPs over the summer. *Interviews with Director and District Floater; Exhibit A-2, p. 82; Exhibit D. Supp. 3, p. 1.* Under District policy, Students were to receive services "comparable" to the services in their prior IEPs until new IEPs could be developed. *Interview with Director.* "Comparable" under the District's policy meant "as close to the same services as [the District] can get." *Id.*
7. In anticipation of developing new IEPs, the District special education teacher ("District Floater") who acted as the caseworker for the students in the SSN program from the beginning of the 2023-2024 school year through October 10, 2023, when a full-time teacher was hired, invited Parents to meet on September 12, 2023. *Interview with District Floater.* The purpose of the meeting was to discuss Students' educational needs. *Id.*
8. In November 2023, the District conducted evaluations of Students, resulting in IEPs dated November 28, 2023. *See Exhibits A-1, A-2, C-1, and C-2.* This Decision refers to these IEPs as the "November 2023 IEPs." However, the IEPs were not finalized until December 14, 2023, one day before the end of the semester and Students' last day at School. *Exhibit N-1, p. 390.*

Students' March 2023 IEPs

9. Each Student had an IEP dated March 22, 2023 from their prior school district. *Exhibit A-1, p. 32; Exhibit A-2, p. 83.*
10. Students' March 2023 IEPs were very similar; Students shared challenges from autism spectrum disorder, developmental delay, and speech language impairment. *Compare Exhibit A-1, pp. 32-48 with Exhibit A-2, pp. 83-99.* They had each been evaluated in the areas of academics (reading, writing, and mathematics), life skills, social-emotional behavior, fine motor skills, and communication. *Exhibit A-1, pp. 32-48; Exhibit A-2, pp. 83-99.*
11. Students both had delayed development in their cognitive functioning and motor skills compared to their same-age peers, and they were working to improve their abilities to draw lines and use scissors. *Id.* Both were still using diapers and learning to use the bathroom. *Id.*
12. Both had significantly delayed receptive, expressive, and pragmatic language skills and communicated through minimal eye contact, body movements, physical manipulation, and vocalizations. *Id.* Both were able to sign a few words in ASL. *Id.* Both could also make limited use of AAC (Alternative and Augmentative Communication) devices, such as an iPad, to communicate using picture symbols. *Id.*

13. The primary language spoken in Students' home was Spanish, and Students had been enrolled, in their prior district, in a dual language school with instruction in both English and Spanish. *Id.*
14. Their IEP Teams recorded that neither Student required a health care plan. *Id.*
15. Students each had goals in mathematics, reading, fine motor skills for writing, and communication. *Id.* Their objectives and measurements for progress were the same. *Id.*
16. Their IEPs provided each of them with the same twenty-six accommodations, including one-to-one support, a food journal for their meal time and food intake, and assistance with their personal hygiene and toileting. *Id.*
17. The IEPs stated that Students' curriculums would be modified under alternate academic achievement standards by collaboration of the general education and special education teachers. *Id.*
18. Students each received the same services:
 - a. Specialized instruction: 75 minutes direct per week inside the general education classroom, 400 minutes direct per day outside, and 120 minutes indirect per month. *Id.*
 - b. Occupational therapy: 120 minutes direct per month.
 - c. Psychological services: 30 minutes indirect per month.
 - d. Speech-language therapy: 240 minutes direct per month and 30 minutes indirect per month.

Id.

19. The IEP Team determined that both Students should be in the general education environment less than 40% of their time in school. *Id.* They were in an SSN program. *Id.*
20. Students each had a behavior intervention plan. *Id.*

September 12, 2023 Meeting

21. Parents have alleged that they were not given proper notice of a September 12, 2023 meeting to discuss Students' education. *Interview with Parents; Complaint, p. 8.*
22. On September 7, 2023, District Floater emailed Parents: "My name is [District Floater]. I am a Special Education Generalist with [District] and am helping out in the SSN classroom at [School] while they are without a permanent teacher. . . . I want to offer a time for you to come to [School] and have a team meeting with us to discuss [Students'] needs, their current

IEP, schedules with ABA, etc. Are you able to come on Tuesday 09/12 from 12:00-1:00? Please let me know as soon as you are able so that I can make sure all necessary team members are in attendance!" *Exhibit D. Supp. 2, p. 1.*

23. The email did not identify who from the School and District would be attending the meeting or explain that Parents could bring other individuals with knowledge or special expertise regarding Students. *See id.*
24. Parents attended the meeting on September 12, 2023 along with Students' private BCBA therapist. *Interview with Social Worker.*
25. District Floater, Social Worker, and SLP attended, asked Parents to share their thoughts about Students, and discussed Students' behavioral and communication needs. *Interviews with District Floater, Social Worker, and SLP.* Participants in the meeting state credibly that Parents were able to voice their concerns and share information about Students with Students' providers. *Id.*

Students' Evaluations for the November 2023 IEPs

26. In October 2023, District and School staff, with Parents' consent, administered assessments and recorded their observations for evaluation reports dated November 7, 2023 for both Students. *See Exhibits C-1 and C-2.* Parents have alleged that the evaluations were not comprehensive because they did not identify Students' health and medical needs, social and emotional needs, and fine and gross motor abilities. *See Complaint.* Parents also allege that the evaluations should have been conducted in Spanish. *See Complaint.*
27. The District evaluated both Students in the areas of cognitive functioning, adaptive behavior, social-emotional behavior, executive functioning, communication, academics (reading, writing, and math), physical health, and physical motor ability for fine motor skills. *See Exhibits C-1 and C-2.* They were not evaluated for gross motor abilities or adapted physical education. *See id.*
28. The psychologist who administered a cognitive assessment for Student A was the only evaluator who spoke Spanish. *Interview with Psychologist A; see Exhibit C-1, pp. 111-112.* She administered an assessment that was primarily nonverbal. Student A's behaviors made it difficult to administer the assessment. *Id.* Using a reward system with a tablet device and snowmen, Psychologist A managed to get through the primarily nonverbal cognitive assessment, noting that the assessment was likely not a true reflection of Student A's cognitive abilities but did reliably indicate Student's cognitive needs for her education, including direct and repetitive instruction as well as signs that her working memory was a relative strength. *Id.*
29. Psychologist A also evaluated Student A for social responsiveness, social-emotional functioning, cognitive development, executive functioning, and adaptive behavior (life skills), but she relied on observations, existing documentation, and reports. *Id.*

30. The psychologist who evaluated Student B for cognitive functioning, social-emotional/behavioral functioning, executive functioning, and adaptive behavior did not speak Spanish, but she also found that Student B's behaviors were such that her first assessment could not be reliably completed. *Interview with Psychologist B*. She instead administered assessments based on observations, existing documentation, and reports from District Floater and Mother. *Id.*; see *Exhibit C-2*, p. 134.
31. The other evaluators—the speech-language pathologist (“SLP”), OT, School Nurse, Social Worker, and special education teacher—did not speak Spanish or conduct their evaluations in Spanish, although Students’ evaluation reports incorrectly state that some of the evaluations were conducted in Spanish. *Interviews with SLP, OT, and Social Worker*.
32. SLP had spoken with Parents and understood that they preferred she speak English to Students. *Interview with SLP*. However, Parents also stated that Students were more responsive to Spanish than English. *Exhibit C-1*, p. 5; *Exhibit C-2*, p. 6.
33. SLP conducted a SWAAC (Statewide Augmentative Alternative Assistance Communication) evaluation to determine whether Students would benefit from assistive technology. *Id.* The assistive technology discussed for the evaluation used English. See *id.*
34. OT initially attempted to administer a standardized assessment in English, but she found that Students’ behavioral challenges prevented her attempt. *Id.* She instead gathered data from Students’ occupational therapy records, their classwork, her own observations, and consultation with school staff. *Id.*; see *Exhibit C-1*, p. 116-17; *Exhibit C-2*, p. 139.
35. School Nurse documented Students’ health needs, which she obtained by reviewing Students’ records and a health questionnaire filled out by Parents. *Exhibit C-1*, p. 116; *Exhibit C-2*, p. 138. School Nurse wrote that Students could not yet use the toilet on their own and they each were to be given two bottles of Pediasure, a nutritional drink for children, per day. *Id.*
36. Social Worker, in addition to Psychologists A and B, documented Students’ social, emotional, and behavioral needs, which she determined by taking a social history from Parents, SSN program staff, and making her own observations of Students in the SSN classroom. *Exhibit C-1*, p. 118-19; *Exhibit C-2*, p. 140-46.
37. New SSN Teacher assessed Students’ academic abilities based on their mathematics ability to understand and arrange numbers, their reading ability to identify and produce letter sounds, and their writing ability to trace letters and their names. *Exhibit C-1*, p. 115-16; *Exhibit C-2*, pp. 137-38.
38. The District’s policy is to rely on a student’s IEP Team to determine whether the student should be evaluated in their native language, and the IEP Team has discretion to administer an evaluation in a language other than the student’s native language. *Interview with Director*. District Floater—who acted as Students’ case manager until a full-time teacher started

working in the SSN room on October 10, 2023—had been coordinating with an English language teacher to act as an interpreter during Students’ evaluations, and she does not know why that did not happen. *Interview with District Floater.*

Students’ November 2023 IEPs

39. Parents have alleged that Students’ IEPs did not sufficiently address their needs for assistance with nutrition, with hygiene and toileting, and for adapted physical education. *Complaint*, pp. 16-18, 21.
40. Students’ IEP Teams used the evaluations to develop IEPs dated November 28, 2023, when the IEP Teams first met. *See Exhibit A-1*, pp. 2-27, *Exhibit A-2*, pp. 50-74. Despite being dated November 28, the IEPs were not finalized for transmittal to Parents until December 14, 2023, the last day that Students attended School. *Exhibit N-1*, p. 390.
41. Like the IEPs from their prior school district, Students’ November 2023 IEPs were very similar to each other. *See Exhibit A-1*, pp. 2-27, *Exhibit A-2*, pp. 50-74. Their IEP Teams came to similar conclusions as the IEP Teams from the previous district: Students faced challenges from autism resulting in difficulty with communication and social interactions as well as with fine motor control, activities of daily living such as using the bathroom, and academics. *Id.*
42. Students’ IEPs noted that they had limited English proficiency. *Id.*
43. They each had goals in writing, math, social skills, reading, and communication. *Id.* Their objectives were mostly the same, although Student B had slightly less challenging objectives in mathematics and communication. *See id.*
44. Their IEPs provided each Student with twenty-nine accommodations, which were the same for each Student except that Student B had one additional accommodation, “use timers and/or visuals.” *Id.* Their accommodations included adult assistance with toileting and nutrition. *Id.*
45. Students’ schoolwork was to be modified under alternate academic achievement standards through the collaboration of their special education and general education teachers. *Id.*
46. The IEPs stated that Students would receive the following services:
 - a. Specialized instruction: 2,040 minutes direct per week outside the general education classroom, and 60 minutes indirect per week, for both Students.
 - b. Occupational therapy: 40 minutes direct per month for Student A, and 60 minutes direct per month for Student B.
 - c. Mental health services: 40 minutes direct per month, for both Students.

- d. Speech-language therapy: 120 minutes direct per month and 60 minutes indirect per month, for both Students.

Id.

47. The IEP Team determined that both Students should be in the general education environment less than 40% of their time in school. *Id.* Students' IEP Teams did not intend them to spend *no* time in the general education classroom, however, because the IEPs state, "Accessing accommodations within the general education classroom as implemented by the classroom teacher in collaboration with the case manager will help to facilitate [Student's] ability to access the general classroom environment and instruction to the best of [Student's] ability." *Id.*
48. As with their March 2023 IEPs from the previous school district, Students each had a behavior intervention plan and neither had a health care plan. *Id.* The District implemented Students' prior functional behavior assessments and behavior intervention plans, although by the end of the fall 2023 semester New SSN Teacher determined that the plans were inadequate and proposed conducting new FBAs to develop new behavior intervention plans. *Exhibit B-1; Exhibit B-2; Exhibit N-1*, p. 360.

Lack of Adapted Physical Education in the November 2023 IEPs

49. Parents have alleged that Students should have received specially designed instruction in physical education, i.e., adapted physical education. *Complaint*, p. 9. Neither Student was assessed for gross motor ability impairments, assessed for adapted physical education, or provided adapted physical education by either their prior school district, in their March 2023 IEPs, or by District in their November 2023 IEPs.
50. Students did attend their general education physical education class at least once. *Interview with Physical Education Teacher*. Each Student had a paraprofessional who attempted to provide one-to-one support. *Id.* Yet, for the entirety of the class, one Student screamed and the other ran around without following instructions. *Id.*
51. Physical Education Teacher also saw them occasionally during her lunch hour. *Id.* She allowed the SSN staff to bring the SSN program students to the gymnasium during that time for an additional recess. *Id.* She observed that Students were "physically very capable," "agile," could "move well," and would frequently run and throw balls. *Id.*
52. Students frequently attempted to elope by running quickly away from staff. *Interviews with Paras 1, 2, 3, and 4; see, e.g., D. Supp. 1*. They enjoyed running and jumping. *Exhibit A-1*, pp. 8, 10; *Exhibit A-2*, pp. 56, 58. The paraprofessionals had great difficulty catching up with Students when they eloped. *Interview with Paras 3 and 4*.

53. Given these facts, the SCO finds that Students' unmet behavioral needs, rather than a physical or intellectual impairment, prevented them from participating in the general education physical education class.

C. Implementation of Students' IEPs

Having IEPs in Effect at the Beginning of the 2023-2024 School Year

54. The District knew "sometime in April or May" 2023 that Students were transferring in from their prior school district to attend District in the 2023-2024 school year. *Interview with Director.*

55. As noted above, the District chose not to develop new IEPs for Students over the summer. *Interviews with Director and District Floater; Exhibit A-2, p. 82; Exhibit D. Supp. 3, p. 1.* The District intended to provide services comparable to those Students received under the March 2023 IEPs from their old school district until a new IEP could be developed. *Interview with Director.* This intention was reflected in Students' "IEP at a Glance Snapshots," which stated Students' goals, accommodations, and services from their March 2023 IEPs. *Interview with Director; Exhibit A-1, pp. 29-31; Exhibit A-2, pp. 79-81.*

56. The District developed and finalized new IEPs for Students only on the last day of the fall 2023 semester. *Exhibit N-1, p. 390.*

57. Accordingly, because the District did not develop new IEPs over the summer, the SCO finds that the District did not have IEPs in effect for Students at the beginning of the 2023-2024 school year.

Accessibility of IEPs to Staff

58. The District informed staff of Students' prior IEPs' goals, accommodations, services, and other information via "IEP at a Glance Snapshots." *See Exhibit A-1, pp. 29-31; Exhibit A-2, pp. 79-81.* Students' providers were given either the actual March 2023 IEP or the Snapshot, and the providers viewed the March 2023 IEP responsibilities as their responsibilities toward Students. *Interviews with District Floater, OT, and SLP.*

59. Although staff were made aware of the requirements of Students' *prior* IEPs, this does not change the fact that the District did not develop new IEPs over the summer. Accordingly, the SCO finds that the District could not make Students' IEPs accessible to staff because Students did not have IEPs in effect.

Providing Specialized Instruction

60. The First Investigation also discussed the SSN program's severe staffing shortage. *Id.* at pp. 7-18, 26-27. That investigation described the District's inability to employ properly licensed and endorsed teachers to provide specialized instruction in the SSN program for the periods of

November 1, 2022 through February 20, 2023, and then from the beginning of the 2023-2024 school year to February 13, 2024, which was the outer limit of the investigation. *See id.* It also described other staffing issues that created an environment, in the SSN program, that made it impossible for any student within that environment to receive specialized instruction consistent with an IEP. *See id.*

61. The First Investigation determined that, due to the lack of properly credentialed teachers, the lack of staff to provide individualized attention to each Student's work, and other staffing-related issues, the District did not provide specialized instruction to the students in the SSN program, including Students, from November 1, 2022 through February 20, 2023, and from the beginning of the 2023-2024 school year to February 13, 2024. *See id.*
62. Student A and Student B were especially impacted by the consequences of the District's inability to staff the SSN program; their individual opportunities to learn were diminished in three ways:
63. First, as discussed below regarding Parents' allegation of seclusion under the PPRA, both Students were repeatedly isolated from the rest of the class because one or the other would be placed in a "sensory area" separated from the classroom by a wall and a makeshift barricade. (FF #s 82-94.)
64. Second, they were frequently made to wear soiled diapers. This was credibly raised by Paraprofessionals 1 and 2 during the First Investigation. *Interviews with Paras 1 and 2; see CDE Exhibit 1*, pp. 16-17. Mother also reported that the private ABA providers who picked up Students from School told her that her children often had unchanged diapers. *Interview with Mother; see CDE Exhibit 1*, p. 17. For this investigation, the supervisor for that ABA program has confirmed that he personally saw Students arrive at the program on "3-4 days of a 5-day school week" with soiled diapers—"soaked through." *CDE Exhibit 3*, p. 1. ABA Supervisor estimated the diapers had not been changed for several hours based on the 20-minute transportation time from School to the ABA program (which is confirmed by Google Maps) and Supervisor's personal knowledge of Students' toileting needs based on the ABA program's 30-45 minute toileting schedule, which was necessary to meet Students' needs. *CDE Exhibit 3*, p. 1.
65. Finally, they were not being assisted with nutrition as they should have been: School Nurse recorded in Students' evaluations that they were to be given two bottles of Pediasure each day, and Students' IEPs—from both March 2023 and November 2023—provided accommodations to ensure adults assisted Students in receiving nutrition. *Exhibit C-1*, p. 116; *Exhibit C-2*, p. 138; *Exhibit A-1*, pp. 21, 41; *Exhibit A-2*, pp. 69, 92. Yet Paraprofessionals 1 and 2 have stated that Students were not given the Pediasure that Parents sent with Students, Mother has stated that she found the Pediasures unopened at the end of the day, and ABA Supervisor has confirmed that, when the ABA program staff would open Students' backpacks, Students' snacks "would barely have been touched" and the Pediasures would still be in the backpacks, unopened. *CDE Exhibit 3*, p. 1. The ABA program spent the first hour of every session toileting and then feeding Students. *Id.* Although Students' March 2023 IEPs stated

that a food journal would be maintained, no such journal was maintained while Students were at School. *Interview with Parents; see Exhibits T-1 and T-2.*

66. Accordingly, the SCO finds that Students did not receive the specialized instruction required by their IEPs during the time they attended School.

Modifying the Curriculum

67. The First Investigation determined that the SSN program's staffing shortage meant that no student in the program could benefit from consistent and sustained attention to their individual work over time—a necessary condition for thoughtfully modifying a student's curriculum—because there was a constant rotation of paraprofessionals and instructors. *CDE Exhibit 1, p. 8.*

68. Accordingly, the SCO finds that Students were not instructed with a modified curriculum.

Providing Related Services

69. Students' providers of occupational therapy, speech-language therapy, and mental health services all tracked their provision of services in service logs, which the District provided for this investigation. *Interviews with OT, SLP, and Social Worker; see Exhibits Q-1, Q-2, and D. Supp. 1; Response, p. 6.*

70. The service logs at Exhibits Q-1, Q-2, and District Supplement 1 show that Student A received the following services from the beginning of the 2023-2024 school year through the end of the fall semester:

- a. Occupational therapy: 190 minutes
- b. Mental health: 290 minutes
- c. Speech-language therapy: 420 minutes

71. And the service logs show that Student B received:

- a. Occupational therapy: 190 minutes
- b. Mental health: 180 minutes
- c. Speech-language therapy: 420 minutes

72. In light of this evidence, the SCO finds that the District did provide these minutes to Students despite the staffing challenges that affected other areas of Students' education.

Progress Monitoring and Reporting

73. As discussed and determined in the First Investigation, the SSN program's staffing shortage resulted in an inability to monitor the SSN program's students' IEP goal progress through at least October 24, 2024. *CDE Exhibit 1*, p. 23.
74. Each Student has one report card for fall 2023, and the report card constitutes all the progress reporting that was done. *See Exhibits H-1 and H-2*.
75. The metrics of progress on the report cards have no relationship to Students' goals and metrics of progress in either their March 2023 or November 2023 IEPs. *See Exhibit A-1*, pp. 15-20, 38-40; *Exhibit H-1*; *Exhibit A-2*, 63-68, 89-91; *Exhibit H-2*.
76. Accordingly, the SCO finds that Students' progress was not fully monitored or reported from the beginning of the 2023-2024 school year through Students' last day at School on December 15, 2023.

Educating Students in Their LRE

77. The District's Response makes clear that the District intended Students to spend *some* time in the general education environment. The Response states that "the District prioritized Students' inclusion into the general education environment" and that the District provided unspecified "interventions" that "facilitate[d] Students' meaningful participation in the general education setting, reinforcing the District's adherence to the LRE principle." *Response*, pp. 34-35. The Response asserts that "the educational records reveal a consistent effort to accommodate and support Students' learning and inclusion in the LRE" such that "[t]he evidence indicates that the District has not only complied with but has actively embraced the principles of the LRE." *Id.* at p. 35.
78. The Response further states: "Through individualized planning, the provision of appropriate aids and services, and a commitment to inclusion, the District ensured that Students were afforded the opportunity to learn and grow alongside their nondisabled peers to the maximum extent appropriate. The contention that the services and support provided are inadequate is contradicted by the individualized strategies implemented by the District, illustrating its compliance with the LRE requirement for Students." *Id.* at pp. 35-36.
79. The First Investigation found that the SSN program's staffing shortage resulted in an inability to include the program's students, including Students, in the general education environment for more than a minimal amount of time. *CDE Exhibit 1*, pp. 19-20.
80. Further investigation for this Complaint has bolstered that conclusion: Students had different general education teachers, and both teachers said they had not interacted with Students at all because Students had not been in their classrooms. *Exhibit C-1*, p. 119; *Exhibit C-2*, p. 141. Also, as noted above, Students could not participate in physical education with their class, even with one-to-one paraprofessional support, because their behavioral needs were unmet.

81. Accordingly, the SCO finds that Students' LRE was intended to include meaningful inclusion in the general education classroom, but their actual inclusion was minimal to none.

D. Alleged Seclusion

82. The SSN classroom has a space at one end that is mostly walled off; the enclosing wall ends with a gap of four or five feet, but if the wall were extended or a door installed across that gap, the area would become a second room at one end of the main SSN classroom. *CDE Exhibit 4; Exhibit R-1*, pp. 969-70. There is an exterior window in this area that looks out onto the parking lot. *Id.* There is a grab bar immediately under the windowsill that runs the length of the windowsill, about three feet off the ground. *Id.* The District calls this area the "sensory area." *Response*, p. 40.

83. Parents have alleged that, on November 7, 2023, SSN program staff placed Students in the sensory area, barricaded the gap with chairs and mats, and left them unsupervised. *Complaint*, p. 13.

84. Parents base their concern on two pieces of evidence, which were also provided in the First Investigation:

85. First, Paraprofessionals 1 and 2 have separately stated that, at different times on the same day, they found the wall gap in the sensory area barricaded with chairs and mats, with SSN program staff standing nearby. *Interviews with Parents, Para 1, and Para 2*. Each of them, when they found this situation, removed some chairs and mats, upon which Students ran out from behind the barricade and ran into the main SSN classroom. *Id.*

86. Second, Mother was standing in the parking lot—which can be seen from the window in the sensory area—and saw one of Students standing on the windowsill inside the window. *Interview with Parents*. She took a photograph of the Student in the window. *Exhibit 1*. It would have been easy for a child to use the grab bar to climb onto the windowsill, which was large enough for a child to stand on. *See Exhibit R-1*, p. 970.

87. Further investigation for this Complaint has shown that Students were regularly placed in the sensory area behind chairs and mats. *Interviews with District Floater, Para 1, Para 2, and Para 3; see Interview with Para 4*.

88. As established in the First Investigation, and confirmed again for this investigation, the SSN program was staffed, at least through part of October 2023, with as few as two or three adults, on some days, to provide for thirteen children with significant needs for behavior, supervision, hygiene, and nutrition. *CDE Exhibit 1*, pp. 13-15; *see also Exhibit N-1*, p. 597; *Interviews with District Floater and Para 3*.

89. Student A and Student B, when not separated, would trigger each other's behaviors, including climbing, screaming, jumping, and eloping, and the SSN program staff found it very challenging to deescalate and manage those behaviors. *Interviews with Paras 1, 2, 3 and 4*.

The few staff working in the program resorted to regularly separating Student A and Student B by placing one or the other in the sensory area, blocking the gap to the sensory area with chairs and mats, and dedicating a paraprofessional to watch that Student. *Interviews with District Floater, Para 3, and Para 4.* This was the normal arrangement through at least part of November 2023: either Student A or Student B would generally be placed in the sensory area to keep the two separated. *See id.*

90. Given the high needs of the children and the low staffing levels, it was inevitable that, at times, the paraprofessional watching the sensory area would need to temporarily take eyes off the Student in the sensory area to deal with a health or safety issue in the main classroom. *Interviews with District Floater and Para 3.*
91. Staffing numbers began to improve and became more stable after New SSN Teacher began on October 10, 2023; with increased staffing and continued work to teach Students more positive behaviors, by “about November or December” the staff no longer needed to separate Students. *Interview with Para 4.*
92. The District has not provided any documents in response to the SCO’s request for “all documentation regarding any restraint or seclusion of Students” and “any and all behavior logs and all records of disciplinary incidents,” instead stating only that no seclusion occurred and that both Students had “no behaviors.” *See Exhibits F-1, F-2, I-1, and I-2.*
93. Over spring break in the last week of March 2024, School built a window into the wall that creates the sensory area. *Interview with Para 5.* The window is about the size of a large screen TV, perhaps 60 inches by 40 inches, and was added for “additional safety so anyone else in the classroom could see what the para [in the sensory area] was doing.” *Interviews with Para 5 and New Principal.*
94. In sum, the SCO finds that Students were regularly placed in the sensory area through at least part of November; that one or the other Student would generally be placed there as a means of separating the two; that egress from the sensory area was blocked by mats and chairs; that on some occasions the Student in the area would be left unmonitored due to insufficient staffing and exigent safety or health needs in the main classroom; and that no seclusion paperwork was created for Students.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: Students were not evaluated in their native language of Spanish as required by 34 C.F.R. § 300.304(c)(1)(ii). Students’ evaluations were not sufficiently comprehensive to identify their social needs, specifically their needs relating to communication, as required by 34 C.F.R. § 300.304(c)(6). This noncompliance resulted in a denial of FAPE.

A. Requirement to Evaluate in Native Language

Parents have raised concerns that Students' evaluations were conducted in English rather than Spanish, the language used in their home.

Assessments and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis. 34 C.F.R. § 300.304(c)(1)(i). When conducting an evaluation, school districts must provide and administer assessments and other evaluation materials "in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer." 34 C.F.R. § 300.304(c)(1). "Native language" means "with respect to an individual who is limited English proficient . . . [t]he language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child" unless the child normally uses another language at home or in the learning environment. *Id.* § 300.29(a).

Here, the District knew that Parents spoke Spanish at home. (FF # 13.) The District also recognized that Students had limited English proficiency and had been enrolled in a dual language school in their prior school district. (FF #s 13, 42.) Accordingly, the District was required to administer all assessments and evaluation materials in Students' native language, Spanish. 34 C.F.R. § 300.304. The only evaluator who spoke Spanish was the psychologist who administered a mostly nonverbal cognitive assessment for Student A. (FF # 28.) Accordingly, the District did not comply with 34 C.F.R. § 300.304 because it did not evaluate Students in their native language.

B. Comprehensive Evaluation

Parents have alleged that the District's evaluation of Students was insufficiently comprehensive to identify their health and medical needs, their social and emotional needs, and their fine and gross motor abilities.

Evaluations must be sufficiently comprehensive to identify all the child's special education needs, whether or not commonly linked to the disability category with which the child has been identified. 34 C.F.R. § 300.304(c)(6). The evaluation also must gather all relevant information that may assist in determining "the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum." *Id.* § 300.304(b)(1)(ii).

Here, with the exception of Students' evaluations for their communication needs, the District's reevaluations were sufficiently comprehensive to identify Students' areas of needs. The District evaluated Students in the same areas as Students' prior school district: academics, adaptive behavior (life skills), social-emotional and behavior, cognitive functioning, executive functioning, fine motor skills, and communication. (FF #s 10, 27.) The District additionally evaluated Students' physical health through a record review and questionnaire completed by Parents. (FF #s 35.) The District implemented the prior district's functional behavior assessments and behavior intervention plans for Students, which was reasonable considering that the prior district's IEP had

been recently written, in March 2023. (FF # 48.) The only potential “missing” category of evaluation is gross motor skills, but nothing in the Record suggests that Students had any impairment in their gross motor skills that impeded their education. (See, e.g., FF #s 26-38.)

Further, and again with the exception of the area of communication, the evaluators administered assessments that adequately gathered all relevant information regarding Students’ needs. (See *id.*) Although Students’ behavioral challenges led the evaluators to conduct comprehensive assessments using records, observations, and questionnaires with Parents and SSN program staff, these assessments were, with the exception of the area of communication, appropriate under the circumstances. (*Id.*) This was appropriate for each area of need except communication. See, e.g., CDE, *Guidelines for the Determination of Eligibility for a Child with an Intellectual Disability or Multiple Disabilities (“Guidelines”)*, pp. 16-17 (Sept. 2013) (discussing the use of observational and records-based information for students who pose challenges to direct assessments).⁸

In consultation with a CDE speech-language specialist, the SCO concludes that Students’ communication needs could not be comprehensively assessed without attempting to communicate with them in Spanish. Parents stated that Students were more responsive to Spanish than English. (FF #s 26-38.) Yet the SLP, as well as the assistive technology provided during the evaluation, used English. (*Id.*) Students’ communication needs could be assessed only by observing Students’ receptive and expressive abilities. If their receptive ability was superior for Spanish, then their education would need to be individualized to account for that fact. The District’s decision not to determine whether Students responded differently to Spanish, or whether their use of the assistive technology would have been more effective if the technology used verbal or written Spanish, meant that the evaluations for Students’ communication needs were inappropriately limited.

Accordingly, the SCO finds and concludes that the District’s evaluations of Students’ communication needs were not sufficiently comprehensive to identify Students’ needs as required by 34 C.F.R. § 300.304.

C. This Noncompliance Resulted in a Denial of FAPE

Procedural noncompliance of the IDEA may result in compensatory remedies only to the extent that they (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); see *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, the SCO finds that the decision not to evaluate Students in Spanish resulted in a denial of FAPE. Students were evaluated for their psychological, cognitive, emotional, educational, and health needs based on indirect information such as observations, prior records, and

⁸ Available at https://www.cde.state.co.us/cdesped/guideliensfordeterminationeligibility_id_md.

questionnaires filled in by Parents and Students' teachers. (FF #s 26-38.) This was not inappropriate for these areas of need, under the circumstances. *See Guidelines.*

For Students' communication needs, however, they should have been evaluated in their native language of Spanish, which was the language used at home and, according to Parents, the language to which Students were most responsive. Because the decision not to evaluate Students in Spanish for their communication needs impeded their right to a FAPE, the SCO finds and concludes that this noncompliance resulted in a denial of FAPE. *See Knable*, 238 F.3d at 765-66.

As a remedy for Students, the SCO will order that they be reevaluated using assessments and other evaluation materials provided and administered in Spanish, as required by 34 C.F.R. § 300.304(c)(1)(ii).

This noncompliance also signals the need for a remedy to address the appropriate future provision of services for all children with disabilities in the District. 34 C.F.R. § 300.151(b)(2). The District's policy allows an IEP Team to determine that an evaluation may be conducted in English even if the student's native language is Spanish. (FF # 38.) The IDEA does not give IEP Teams such discretion. IEP Teams may not understand the cultural differences that could act as a barrier even if a student understands English. Here, the impact on Students' education was minimal only because their behavioral challenges superseded any issues of language or culture, forcing the evaluators to rely primarily on observations and reports from Students' teachers and families. But this recourse was not the evaluators' first choice and should not be encouraged. Accordingly, the SCO has ordered training regarding evaluations and IEP writing for multilingual learners.

Conclusion to Allegation No. 2: Parents did not receive proper notice of the September 12, 2023 meeting as required by 34 C.F.R. § 300.501. This did not result in a denial of FAPE. The District did not develop an IEP that was tailored to meet Students' individualized health and nutrition needs from November 2023 to present as required by 34 C.F.R. § 300.324. This resulted in a denial of FAPE.

A. Participation in the September 12, 2023 Meeting

Parents allege that they were denied their right to participate in the September 12, 2023 meeting because they did not receive proper notice of the meeting.

School districts must allow parents an opportunity to participate in meetings regarding the provision of FAPE to their child. 34 C.F.R. § 300.501. Prior to any such meeting, a district must give parents notice early enough to ensure that they will have an opportunity to attend. *Id.* § 300.322(a). The district must schedule the meeting at a mutually agreed upon time and place. *Id.* The district must also provide certain information; as relevant here, it must tell parents who will be in attendance at the meeting and that parents may bring individuals with knowledge or special expertise regarding their children, including related services personnel. *Id.*

Here, District Floater’s email to Parents on September 7, 2023 made clear that the meeting concerned the provision of FAPE to Students, because the subject of the meeting was “to discuss [Students’] needs, their current IEP, schedules with ABA, etc.” (FF #s 21-25.) Yet her email did not meet all of the IDEA’s requirements for a notice of meeting because the email did not identify who from the School and District would attend the meeting or explain that Parents could bring individuals with knowledge or special expertise regarding Students. (*Id.*)

Parents attended the meeting with their private BCBA therapist, voiced their concerns about Students, and shared information about Students with District Floater. (*Id.*) Nothing in the Record indicates that the lack of compliant notice impeded Students’ right to a FAPE, significantly impeded Parents’ opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765-66. Accordingly, the SCO does not find that this noncompliance caused a denial of FAPE.

B. Substantive Adequacy of IEPs

Parents contend that Students’ IEPs did not adequately address Students’ needs for assistance with nutrition, with hygiene and toileting, and for adapted physical education.

A substantively adequate IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F.*, 580 U.S. at 399. The IEP must identify the special education and related services and supplementary aids and services that will be provided to allow the child to (1) advance appropriately toward the IEP’s annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in extracurricular and nonacademic activities. *Id.* § 300.320(a).

This obligation extends to a student’s individualized school health service needs, when addressing those needs is necessary to provide a FAPE. *See* 34 C.F.R. § 300.34(a)(13). Further, School districts are also obligated to provide specialized instruction in the area of physical education when necessary to provide a FAPE, just as with any other area of the general education curriculum. *See id.* § 300.39.

Assistance with nutrition: The March 2023 IEP provided an accommodation requiring staff to monitor Students’ meal time and food intake using a journal, and this accommodation was reflected in Students’ “IEP at a Glance Snapshots,” which were used by SSN program staff. (FF #s 16, 65.) The November 2023 required only adult assistance with nutrition. (FF # 44.) The District did not implement either, as evidenced by fact that Students’ ABA program staff, who took Students after their regular school day, usually found their snacks almost untouched and their Pediasures unopened. (FF # 65.) Given the fact that Students are nonverbal and the unfortunate reality that staff might regularly neglect to provide necessary nutritional assistance, the SCO finds that the March 2023 IEP’s requirement for a food journal was necessary to enable Students to make effective progress at school given their individualized needs, and the District’s November 2023 IEP was deficient by omitting that accommodation.

Assistance with hygiene and toileting: Both the March 2023 and November 2023 IEPs provided an accommodation requiring staff to assist Students with hygiene and toileting. (FF #s 16, 44.) To the extent that the District implemented this accommodation, the accommodation was insufficient because Students' ABA program staff found, on "3-4 days of a 5-day school week" that their diapers were soiled and "soaked through." (FF # 64.) The ABA program maintained a 30-45 minute toileting schedule, which was the necessary diaper change interval. (*Id.*) Because Students needed a 30-45 minute diaper change interval to remain minimally clean—a prerequisite for learning in the classroom—the SCO finds that the November 2023 IEP's accommodation for assistance was too indeterminate to ensure Students' needs would be met.

Adapted physical education: Neither the March 2023 nor the November 2023 IEP provided adapted physical education. Neither of the Students had physical impairments preventing their participation in the physical education class. (FF #s 49-53.) Instead, Students were unable to participate because of behavioral issues that could not be managed even with one-to-one paraprofessional support. (*Id.*) Adapted physical education is specially designed instruction that will allow a student with physical or cognitive disabilities to participate in and make progress in physical education. If a student cannot participate in physical education because of behavioral issues, however, they must be given sufficient positive behavioral interventions, possibly with consideration of a different placement. *See, e.g.*, 34 C.F.R. §§ 300.114(a)(2)(ii), 300.324(2)(i). The District did not need to offer adapted physical education to meet Students' needs.

For these reasons, the SCO finds and concludes that Students' IEPs did not sufficiently address their needs for nutrition, hygiene, and toileting, and so were not reasonably calculated to enable Students to receive an educational benefit as required by 34 C.F.R. § 300.324. This resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

Conclusion to Allegation No. 3: The District did not ensure that SSN program staff possessed the required licensure as required by 34 C.F.R. § 300.156 and ECEA Rule 3.04. This resulted in a denial of FAPE.

Parents allege that the District did not staff the SSN program with properly licensed and endorsed teachers from the beginning of the 2023-2024 school year to Students' last day of December 15, 2023.

Only properly licensed and endorsed teachers may provide specialized instruction under the ECEA and IDEA. 34 C.F.R. §§ 300.156(c); ECEA Rule 3.04; *Denver Public Schools*, 122 LRP 39748 (Colo. SEA Sept. 30, 2022). As discussed and determined in the First Investigation, the District did not employ properly licensed and endorsed teachers to provide specialized instruction in the SSN program from, as relevant here, the beginning of the 2023-2024 school year through February 16, 2024. *CDE Exhibit 1*, pp. 26-27.

Accordingly, the SCO finds and concludes that the District did not employ properly licensed and endorsed teachers as required by 34 C.F.R. § 300.156 and ECEA Rule 3.04.

Noncompliance with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if the noncompliance (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable*, 238 F.3d at 765-66.

Because the District’s staffing of the SSN program with unqualified individuals resulted in impediments to Students’ right to a FAPE and caused a deprivation of educational benefit, this noncompliance resulted in a denial of FAPE. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765-66.

In the First Investigation, the District was ordered to provide 64 hours of summertime compensatory specialized instruction to all students who were enrolled in the SSN program at any time between December 1, 2022 and October 24, 2023. *Id.* at pp. 30-31, 43-44. That remedy addressed both the lack of properly credentialed staff as well as the related lack of instruction for the SSN program students. *See id.* Accordingly, because that remedy encompassed and included this noncompliance, no additional remedy is ordered. *See id.*

Conclusion to Allegation No. 4: Students’ IEPs were not made accessible to staff as required by 34 C.F.R. § 300.323(d). The District did not have an IEP in effect at the beginning of the school year, did not provide specialized instruction and related services, did not provide a modified curriculum, and did not monitor and report Students’ progress as required by Students’ IEPs, as required by 34 C.F.R. § 300.323. This noncompliance resulted in a denial of FAPE.

Parents have alleged that the District did not have an IEP in effect for Students at the beginning of the 2023-2024 school year, did not make Students’ IEP accessible to their providers, and did not provide a FAPE because it did not provide specialized instruction, related services, a modified curriculum, and progress monitoring and reporting.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 580 U.S. at 391 (2017). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2).

A. Requirement to Have an IEP in Effect

School districts must have an IEP in effect for each child with a disability within the district or otherwise within the district’s jurisdiction. 34 C.F.R. § 300.323(a).

The District knew in April or May 2023 that Students were transferring in from their prior school to attend the SSN program in August 2023. (FF # 54.) Yet the District did not develop new IEPs

until well after the beginning of the school year. (FF #s 4-8.) Indeed, new IEPs were not finalized until December 14, 2023, Students' last day of attendance at School. (*Id.*)

Although the District attempted to provide a FAPE by providing services comparable to those required by Students' prior IEPs, providing comparable services is not the same as having IEPs in effect. The IDEA regulations say that a student who has transferred from one school district to another "had" an IEP at the prior school and must receive "services comparable to those described in the child's IEP from the previous public agency" until the new school district either "[a]dopts the child's IEP from the previous public agency" or "[d]evelops . . . a new IEP." 34 C.F.R. § 300.323(e). If providing comparable services was the same thing as having an IEP, then the regulations would not distinguish between the two.

Because the District did not develop new IEPs prior to the beginning of the school year, the SCO finds and concludes that the District did not have an IEP in effect for Students at the beginning of the school year, as required by 34 C.F.R. § 300.323(a).

B. IEP Accessibility

A school district must ensure that every student's IEP is accessible to the student's teachers and providers. 34 C.F.R. § 300.323(d).

Although Students' "IEP at a Glance Snapshots" contained the requirements of Students' prior IEPs, the District chose not to develop new IEPs over the summer. (FF #s 4-8.) The District did not finalize new IEPs for Students until December 14, 2023. (*Id.*) Because Students did not have IEPs, the SCO finds and concludes that it was impossible for the District to make Students' IEPs accessible. This resulted in a noncompliance with 34 C.F.R. § 300.323(d).

C. Specialized Instruction

As noted above in the discussion for Allegation 3, only properly licensed and endorsed teachers may provide specialized instruction. 34 C.F.R. §§ 300.156(c); ECEA Rule 3.04; *Denver Public Schools*, 122 LRP 39748 (Colo. SEA Sept. 30, 2022). As discussed and determined in the First Investigation, the District did not employ properly licensed and endorsed teachers to provide specialized instruction in the SSN program from, as relevant here, the beginning of the 2023-2024 school year through February 16, 2024. *CDE Exhibit 1*, pp. 26-27. Further, the SCO also determined that the staffing and conditions of the SSN program during this period resulted in a lack of individualized attention to the program's students and a consequent inability to provide their specialized instruction. *Id.* at p. 27.

Accordingly, the SCO finds and concludes that the District did not implement Student's IEP because it did not provide the specialized instruction required by her IEP, as required by 34 C.F.R. § 300.323(c). Because the First Investigation awarded 64 hours of compensatory instruction over the summer as the remedy for this noncompliance, no further remedy is ordered.

D. Related Services

The District's duty to provide a FAPE continued even without an IEP, and it was required to provide services comparable to what Students received in their prior school district, reflected in the March 2023 IEPs. *Denver Public Schools, 2023:525* (Colo. SEA Aug. 27, 2023) (citing CDE, *IEP Procedural Guidance*, p. 111 (Rev. July 2017)). "Comparable" means "'similar' or 'equivalent' to those that were described in the child's IEP from the previous" school district. OSEP, *OSEP Policy Support 22-02*, p. 6 (Nov. 10, 2022).⁹

The SCO calculates the District's duty to provide related services as follows: From the beginning of the 2023-2024 school year until Student's last day of December 14, 2023, which was also the end of the fall semester, the District was required to provide services comparable to those in the March 2023 IEPs from Students' prior school district. In accordance with the First Investigation, on these extraordinary facts the SCO will ignore Students' absences and award compensatory services through February 16, 2024, the outer limit for which the First Investigation found the SSN program was incapable of providing a FAPE. *See CDE Exhibit 1*, p. 29. For the period from January 1, 2024 through February 16, 2024, the SCO will apply the schedule of services from Students' November 2023 IEPs, which were finalized only on the last day of the fall 2023 semester.

For the fall semester, which was five months or seventeen weeks, *see Exhibit L-1*, Students were each owed the following direct services:

- Occupational therapy: 600 minutes
- Speech-language therapy: 1,200 minutes

(FF # 18.)

And from the beginning of the spring semester until February 16, 2024, which was one-and-a-half months or six weeks, *see Exhibit L-1*, Students were each owed:

- Occupational therapy: 60 minutes for Student A and 90 minutes for Student B
- Speech-language therapy: 180 minutes
- Mental health services: 60 minutes

(FF # 46.)

In total, then, Students were owed:

⁹ Available at <https://sites.ed.gov/idea/files/Letter-to-State-Directors-of-Special-Education-on-Ensuring-a-High-Quality-Education-for-Highly-Mobile-Children-11-10-2022.pdf>.

- Occupational therapy: 660 minutes for Student A and 690 minutes for Student B
- Speech-language therapy: 1,380 minutes
- Mental health services: 60 minutes

(See FF #s 18, 46.)

As shown by the Findings of Fact, Students received:

- Occupational therapy: 190 minutes
- Speech-language therapy: 420 minutes
- Mental health: 290 minutes for Student A and 180 minutes for Student B

(FF #s 69-76.)

Subtracting the services received from the services owed, the SCO finds and concludes that the District did not provide 470 minutes of direct occupational therapy for Student A, 500 minutes of direct occupational therapy for Student B, and 960 minutes of speech-language therapy for each student as required by 34 C.F.R. § 300.323(c).

E. Curriculum Modifications

An IEP must identify the “program modifications or supports” that will be provided to enable the student “to be involved in or make progress in the general education curriculum.” 34 C.F.R. § 300.320(a)(4).

Here, Students’ IEPs required that their curriculums be modified. (FF # 14.) As discussed and determined in the First Investigation, no qualified instructor worked directly with the SSN program students for a sufficiently sustained period of time to understand their individual needs or to thoughtfully modify their curricula on a continual basis to allow them both to make academic progress for their goals and to participate meaningfully with general education classes. *CDE Exhibit 1*, pp. 29-30. Accordingly, the SCO finds and concludes that the District did not provide the curriculum modifications required by Students’ IEPs as required by 34 C.F.R. § 300.323(c).

F. Progress Monitoring and Reporting

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

report of their student's progress toward meeting annual goals, in accordance with the schedule described in the IEP. 34 C.F.R. §§ 300.320(a)(3), 300.323(c).

Here, the District did not monitor and report Students' progress as required by their IEPs. (FF #s 73-76.) Accordingly, the SCO finds and concludes that the District did not properly monitor and report Students' progress on their IEP goals as required by 34 C.F.R. § 300.323(c).

G. This Noncompliance Resulted in a Denial of FAPE

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 not implementing 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 not implementing a "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.

Taken together, the facts that the District did not have an IEP in effect at the beginning of the year, did not provide specialized instruction, did not provide related services, did not provide curriculum modifications, did not monitor progress, and did not report progress constituted material noncompliance because these things were essential to Students' IEPs and more than a minor discrepancy between the services provided and the services required by Students' IEPs. *See Van Duyn*, 502 F.3d at 822; *Neosho*, 315 F.3d at 1027.

Compensatory services are an equitable remedy designed to restore a student to the position they would be in had the noncompliance 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).

As in the First Investigation, the SCO finds that awarding roughly two-thirds of the missed amount of related services is an appropriate amount to allow Students to recoup progress in these areas alongside the demands of their regular education and other activities. Accordingly, the SCO will award, for each Student, 330 minutes of occupational therapy and 645 minutes of speech-language therapy.

Conclusion to Allegation No. 5: The District did not educate Students according to their LRE as required by 34 C.F.R. §§ 300.114 and 300.323. This resulted in a denial of FAPE.

Parents have alleged that the District did not educate Students in the general education environment as required by their IEPs.

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). A child’s placement must be determined by the IEP Team (including parents), must be individualized, and must be based on the IEP. *Id.* § 300.116; ECEA Rule 4.03(8)(a); U.S. Dept. of Ed., *Questions and Answers (Q&A) on Andrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (Dec. 7, 2017). The IEP must include evidence that supports the student’s LRE placement. See *H.L. v. Downingtown Area Sch. Dist.*, 624 Fed. Appx. 64, 68-69 (3d Cir. 2015) (mem.). The IEP Team must first consider placing a student with disabilities in the regular classroom. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). Before a student’s LRE may be changed to a more restrictive setting, the IEP Team must consider any supplemental aids and services that could facilitate the student’s placement in a less restrictive setting. *Id.* Any significant change in placement—such as the addition or termination of services, or a changed opportunity to participate in nonacademic activities—must be made upon consideration of reevaluation. ECEA Rule 4.03(8)(b)(ii)(B). Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii).

Here, although Students’ LREs were less than 40% of time in the general education environment, the District did not intend for that number to be zero. (FF #s 77-81.) As found in the First Investigation, none of the students in the SSN program spent a meaningful amount of time in the general education environment; further, in this investigation, Students’ general education teachers both said that they had not interacted with Students at all because Students had not been in their classrooms. (*Id.*) Students could not participate in the general education physical education class, even with one-to-one paraprofessional support, because of their behavioral challenges. (*Id.*)

The SCO finds that this noncompliance constitutes a denial of FAPE because it impeded Students’ right to learn alongside their nondisabled peers to the extent appropriate, one of the most important aspects of a FAPE, and it caused a deprivation of the educational benefit of learning alongside their nondisabled peers. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765.

In the Second Investigation, the SCO ordered the District to track each SSN program student’s time in the general education environment each day and submit a log to CDE for compliance monitoring each month. *CDE Exhibit 2*, p. 17. No further remedy is ordered.

Conclusion to Allegation No. 6: The District disclosed students’ PII without the consent required by 34 C.F.R. § 300.622. This was not a denial of FAPE.

Parents have alleged that the District disclosed multiple students’ PII on two occasions without gaining the consent required by 34 C.F.R. § 300.622.

Parents’ allegation is an almost word-for-word copy of the same allegation in the Second Investigation. As discussed and determined in that decision, District staff improperly, if accidentally, provided multiple SSN program students’ schedules to one SSN program student’s

parent, and it missed several necessary redactions across 344 pages of emails in a Colorado Open Record Acts production to a parent, with the result that students' PII was disclosed without their parents' consent, although parental consent is required by 34 C.F.R. § 300.622. *CDE Exhibit 2*, pp. 15-16. The circumstances of both incidents show that they were unintended mistakes, the District attempted to correct the error when notified, and the PII was disseminated further only because the recipients intentionally distributed it. *Id.* The District's noncompliance did not constitute a denial of FAPE. *Id.*

Conclusion to Allegation No. 7: Students were secluded multiple times from the beginning of the 2023-2024 school year through at least part of November without continually monitoring Students, ensuring the space was free of injurious items, and creating documentation as required by C.R.S. § 26-20-111 and Rules 2.02(e) and 2.04(2).

Parents contend that Students were secluded in the sensory area of the SSN classroom.

As used in the PPRA, "seclusion" means "the placement of an individual alone in a room or area from which egress is involuntarily prevented, except during normal sleeping hours." C.R.S. § 26-20-102(7). Here, as a general practice through at least part of November, one or the other of Students was placed alone in the "sensory area" of the SSN classroom to separate the two. (FF #s 82-94.) Chairs and mats were placed in the gap between the end of the sensory area wall and the wall of the classroom, preventing Students' egress. (*Id.*) Accordingly, the SCO finds and concludes that Students were regularly secluded in the sensory area from the beginning of the 2023-2024 school year through at least part of November.

The PPRA imposes a number of requirements on the permissible use of seclusion. See Rules 1.00 *et seq.* Here, the District did not meet at least three of the requirements:

First, a secluded student must be visually monitored at all times. Rule 2.02(2)(e)(iii). SSN program staff generally secluded one or the other of Students because of a lack of staffing, and this same lack of staffing meant that, at times, the person watching the secluded Student was pulled away to deal with a health or safety issue in the main classroom. (FF #s 82-94.)

Second, the area in which a student is secluded must be free of injurious items. Rule 2.02(2)(e)(ii). A photo of the sensory area shows a grab bar beneath the exterior window, running the length of the window. (FF #s 82-94.) Mother took another photo of one of Students crawling on the windowsill. (*Id.*) Because a student could easily use the bar to climb onto the windowsill and then fall off, the grab bar is an "injurious item" in the space.

Third, any use of restraint or seclusion must be documented, including by a written report. Rule 2.04(2). The District did not document these uses of seclusion. (FF #s 82-94.)

For these reasons, the SCO finds and concludes that the District secluded Students without complying with the requirements of C.R.S. § 26-20-111 and Rules 2.02(e) and 2.04(2). The SCO has ordered staff training as a remedy.

REMEDIES

The SCO concludes that the District did not comply with the following IDEA requirements:

- a. Did not evaluate Students in their native language as required by 34 C.F.R. § 300.304.
- b. Did not develop an IEP that was tailored to Students' needs as required by 34 C.F.R. § 300.324.
- c. Did not ensure that Students' teachers possessed the required certifications and licenses required by 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.
- d. Did not make Students' IEPs accessible to staff as required by 34 C.F.R. § 300.323(d).
- e. Did not have an IEP in effect at the beginning of the school year as required by 34 C.F.R. § 300.323(a).
- f. Did not implement Students' IEPs as required by 34 C.F.R. § 300.323(c).
- g. Did not educate Students in their LRE as required by 34 C.F.R. §§ 300.114, 300.117, and 300.323(c).
- h. Disclosed Students' PII without gaining their parents' consent as required by 34 C.F.R. § 300.622.

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

1. Corrective Action Plan

- a. By **Friday, July 12, 2024**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Students and all other students with disabilities for whom the District is responsible. The CDE will approve or request revisions that support compliance with the CAP. 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. Director, SSN Facilitator, District Floater, and New Principal must review this Decision. This review must occur no later than **Friday, July 12, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Wednesday, July 17, 2024**.

3. Training

a. Multilingual Learners Training

- i. Director, Director for Special Education Compliance, all District Special Education Facilitators, District Floater, New Principal, special education case managers, and related service providers directly involved in special education student evaluations must complete training provided by CDE on evaluations and IEP writing for multilingual learners. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy.
- ii. Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast, at CDE's discretion.

b. PPRA Training

- i. Director, SSN Facilitator, District Floater, New Principal, the special education teacher supervising School's SSN program at the beginning of the 2024-2025 school year, and all paraprofessionals employed in School's SSN program at the beginning of the 2024-2025 school year must complete training provided by CDE on PPRA requirements. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy.
- ii. This training will be conducted through an online course specified and provided by CDE. Director or Director's Designee will submit a list of the staff who will take the course by **August 23, 2024**. This list will include each staff member's first and last name, contact phone number, email address, and role. Staff will complete the course by Monday, September 30, 2024.
- iii. Director or Director's Designee will submit each participant's certificate of completion to CDE by **Friday, October 4, 2024**.

4. Compensatory Education Services

- a. Students A and B shall each receive the following in-person compensatory services:
 - i. **330 minutes (5.5 hours) of occupational therapy** to be provided by an appropriately licensed and qualified occupational therapist, including an

- appropriately licensed and qualified therapist currently employed by District.
- ii. **645 minutes (10.75 hours) of speech-language therapy** to be provided by an appropriately licensed and qualified speech-language therapist, including an appropriately licensed and qualified therapist currently employed by District.
- b. These services must target Students' goals. All services must be completed by **one year after the date of this Decision**.
 - c. By **Friday, July 12, 2024**, the District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Wednesday, July 17, 2024**. If the District and Parents cannot agree to a schedule by **Friday, July 12, 2024**, CDE will determine the schedule for compensatory services by **Friday, August 2, 2024**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parents may opt out of some or all of the compensatory services.
 - d. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
 - e. To verify that Students have received the services required by this Decision, the District must submit records of service logs to the CDE **by the second Monday of each month**, once services begin, until all compensatory education services have

been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.

- f. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward their IEP goals and objectives. Consistent with Students' IEPs, special education transportation will be provided to allow Students to receive the compensatory services. These compensatory services must be provided to Students outside of the regular school day (such as before and/or after school, during free periods, on weekends, or during school breaks) to ensure Students are not deprived of the instruction Students are entitled to (including time in general education). If for any reason, including illness, Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District does not provide a scheduled compensatory session, including by not providing transportation, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consultation with Parents and notify CDE of the change in the appropriate service log.

5. Reevaluation and Review of IEP

- a. The District must provide Parents with a form seeking consent to reevaluate Students by **Friday, July 12, 2024**. The District must simultaneously submit a copy of the consent form to CDE. The reevaluation must be administered in accordance with the IDEA and include an assessment of Students' needs in the area of communication.
 - i. If Parents refuse to sign consent for evaluation within 30 days of receipt, the District will be excused from conducting the reevaluation, provided the District diligently attempts to resolve disagreements about the scope of the evaluation and secure signatures and documents such efforts. A determination that the District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Students, rests solely with CDE. Regardless, the District must still convene Students' IEP Teams in accordance with 5(b) below.
 - ii. If Parents sign the consent, the District must submit a copy of the signed consent to CDE within 7 days of receiving the signed consent.
- b. Students' IEP Teams shall convene, at a mutually agreeable date and time, by **Friday, August 9, 2024**. In consideration of the concerns identified in this Decision, Students' IEP Teams must review and, as appropriate, revise Students' IEPs to reflect their current needs, including their communication-related needs and their needs for verifiable assistance with nutrition, hygiene, and toileting. The revised

IEP must be tailored to Students' unique needs in accordance with 34 C.F.R. §§ 300.320 and 300.324.

- c. A copy of Students' evaluations, IEPs, any notes from the IEP meetings, and any PWNs issued must be provided to CDE no later than **Friday, August 16, 2024**. CDE may determine, in its sole discretion, whether the IEP meetings complied with these requirements, whether the evaluations reflect compliance with 34 C.F.R. § 300.304(c)(1)(ii), and whether the submitted IEPs adequately address Students' needs in the areas of communication, nutrition, hygiene, and toileting as discussed in this Decision.
- d. If Parents have disenrolled Students from the District, then the District will be excused from completing the requirements of this section 5 of the Remedies.

Please submit the documentation detailed above to 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: If the District does not meet any of the timelines set forth above, the District's annual determination under the IDEA may be adversely affected and the District will be subject 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 14th day of June, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint A, pages 1-24

- Exhibit 1: Photograph

Complaint B, pages 1-24

Response, pages 1-44

- Exhibit A-1: IEPs
- Exhibit A-2: IEPs
- Exhibit B-1: BIPs
- Exhibit B-2: BIPs
- Exhibit C-1: Evaluation
- Exhibit C-2: Evaluation
- Exhibit D-1: PWNs
- Exhibit D-2: PWNs
- Exhibit E-1: Meeting Notes
- Exhibit E-2: Meeting Notes
- Exhibit F-1: Behavior-Discipline
- Exhibit F-2: Behavior-Discipline
- Exhibit G-1: Attendance
- Exhibit G-2: Attendance
- Exhibit H-1: Progress Reporting
- Exhibit H-2: Progress Reporting
- Exhibit I-1: Restraint-Seclusion
- Exhibit I-2: Restraint-Seclusion
- Exhibit J-1: Annual Restraint Review
- Exhibit J-2: Annual Restraint Review
- Exhibit K-1: CPI Certifications
- Exhibit K-2: CPI Certifications
- Exhibit L-1: School Calendars
- Exhibit L-2: School Calendars
- Exhibit M-1: Policies
- Exhibit M-2: Policies
- Exhibit N-1: Correspondence
- Exhibit N-2: Correspondence
- Exhibit O-1: Contact Info
- Exhibit O-2: Contact Info
- Exhibit P-1: Verification of Delivery
- Exhibit P-2: Verification of Delivery
- Exhibit Q-1: Service Logs

- Exhibit Q-2: Service Logs
- Exhibit R-1: Assorted Documents
- Exhibit R-2: Assorted Documents
- Exhibit S-1: Copy of Complaint
- Exhibit S-2: Copy of Complaint
- Exhibit T-1: Student Records
- Exhibit T-2: Student Records

Telephone Interviews

- Director: April 10, 2024
- Psychologist A: April 10, 2024
- Psychologist B: April 10, 2024
- Social Worker: April 10, 2024
- Paraprofessional 5: April 10, 2024
- OT: April 10, 2024
- SLP: April 10, 2024
- Paraprofessional 1: April 16, 2024
- Paraprofessional 2: April 16, 2024
- New Principal: April 17, 2024
- District Floater: April 17, 2024
- District Adapted Physical Education Coordinator: April 17, 2024
- Paraprofessional 3: April 18, 2024
- Paraprofessional 4: April 18, 2024
- School Physical Education Teacher: April 25, 2024
- See also interviews for the First Investigation, CDE Exhibit 1, p. 50

CDE Exhibits

- CDE Exhibit 1: Decision in State Complaint 2023:613
- CDE Exhibit 2: Decision in State Complaint 2024:515
- CDE Exhibit 3: Correspondence
- CDE Exhibit 4: Media