

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

**State-Level Complaint 2024:569
El Paso School District 20 (Academy)**

DECISION

INTRODUCTION

On June 11, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso School District 20 (Academy) (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two 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. Therefore, the CDE has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 11, 2023. Information prior to that date may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b) of the IDEA:

Whether District provided Student a Free Appropriate Public Education (“FAPE”) by:

1. Developing, reviewing and revising an IEP tailored to Student’s needs on or around November 28, 2023 by:
 - a. Considering the concerns of Parent in developing annual IEP goals, as required by 34 C.F.R. § 300.324(a)(1)(ii); and
 - b. Developing measurable annual IEP goals, as required by 34 C.F.R. § 300.320(a)(2)(i).

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. Implementing Student’s IEP from March 11, 2024 through May 22, 2024, as required by 34 C.F.R. 300.323, specifically by:
 - a. Making Student’s IEP accessible to teacher or service providers responsible for its implementation; and
 - b. Providing the social work services required by Student’s IEP.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 17 years old and attended a District high school (“School”) in the eleventh grade during the 2023-2024 academic year. *Exhibit A*, p. 2. He qualifies for special education and related services under the disability category of Serious Emotional Disability. *Id.*
2. Student is respectful with peers, engages well with trusted adults in the school environment, and has a great sense of humor. *Interviews with Parent, Student’s Special Education Teacher and Case Manager (“Case Manager”), and Student’s Social Worker (“Social Worker”).* Student is a gifted athlete and enjoys participating in sports. *Id.*
3. This investigation involves the development and implementation of an IEP dated November 29, 2023 (“the IEP”), which was in effect during the 2023-2024 academic year. *Exhibit A.*

B. The IEP

4. The IEP documents Student’s strengths across his academic courses, including teacher and parent input. *Id.* at p. 4.
5. The IEP’s Present Levels of Academic Achievement and Functional Performance section describes the outcomes of evaluations and assessments administered to Student. *Id.* at pp. 5-19.
6. The IEP describes the impact of Student’s disability, stating that he has support needs in the areas of self-advocacy and organization. *Id.* at p. 20.
7. The IEP documents extensive Student and Parent input, including the results of interviews of Student and Parent, the full text of Parent’s input statement read aloud at the November 29,

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

2023 IEP meeting, the results of Parent's responses to written questionnaires, and additional comments from Parent. *Id.* at pp. 21-23.

8. The IEP's Consideration of Special Factors section does not indicate that any special factors are applicable to Student. *Id.* at pp. 23-24.
9. The IEP describes Student's postsecondary transition plan, including his interest in attending a four-year college. *Id.* at pp. 20, 24-26.
10. The IEP contains four annual goals:
 - Emotional Regulation: "By the end of the IEP year, to help [Student] identify and manage feelings (i.e., anger, anxiety, stress, frustration) on a daily basis, [Student] will develop and use at least one appropriate coping strategy in 3/5 observable opportunities."
 - Self-Esteem: "By the end of the IEP year, [Student] will demonstrate improved self-awareness and self-acceptance by identifying and expressing his emotions, strengths, and areas of growth when meeting with the Special Service Provider in 4/5 opportunities."
 - Executive Functioning: "In order to meet his post-secondary education goal of attending college, [Student] will demonstrate the ability to organize/prioritize his school work and will meet with his case manager at least bi-monthly to review missing assignments (indicated as missing or score of 0) and come up with a plan to complete them using organizational tools available to him and accessing supports at school/home."
 - Self-Advocacy: "In order to meet his post-secondary education goal of attending college, by the end of the IEP year, [Student] will communicate his needs to a teacher or staff (i.e., ask for help, clarification or explanation of an assignment/task), either verbally or electronically 80% of the time as measured by teacher observation, or electronic messages."

Id. at pp. 26-29.

11. The IEP documents eleven accommodations to allow Student to access the general curriculum. *Id.* at p. 29.
12. The IEP documents the services Student must receive, including 180 minutes of direct Resource Services per week and 60 minutes of direct mental health services per month. *Id.* at p. 32.
13. The IEP Team determined that it was appropriate for Student to be in the general education classroom at least 80% of the time. *Id.* at p. 34.

C. District's Policies, Practices and Procedures

14. District's special education director ("Director") described District's efforts to ensure that District staff are knowledgeable about and compliant with the requirements of IDEA and ECEA Rules, stating that District special education staff are frequently trained on special education compliance issues, meet monthly to discuss legal requirements and answer questions, and have access to a District procedural manual which guides staff with respect to their obligations under the law. *Interview with Director.*
15. Director stated that when developing an IEP, District staff should meet with parents to discuss their concerns for the student's education and incorporate those concerns into the IEP and its annual goals. *Id.* An IEP Team should, whenever possible, seek to achieve consensus through the development process. *Id.*
16. Director stated that IEP goals should be measurable in a way which allows District staff to effectively track progress and assess the effectiveness of specific learning strategies. *Id.* Director stated that goals should be objectively measurable, and recommended the use of surveys before and after implementation of services to reliably measure whether the student is benefiting from the IEP.
17. District staff are directed to implement IEPs with fidelity to the requirements outlined in the document. *Id.* District provides appropriate staff members with an IEP snapshot document, which summarizes a Student's goals, accommodations, services, and other information necessary to ensure that the IEP is followed. *Id.*

D. Development of Student's IEP

18. Although Student had previously received services under an IEP during elementary and middle school, he did not have an IEP at the beginning of the 2023-2024 academic year. *Interview with Parent.*
19. Early in the 2023-2024 academic year, Parent indicated that she suspected that Student may have a disability and requested that he be evaluated for an IEP. *Interviews with Parent and Case Manager.*
20. On September 13, 2023, a meeting was held including Parent, Case Manager, Social Worker, a general education teacher, a speech-language pathologist, an assistant principal, a note taker, and a CDE facilitator to discuss Parent's request. *Interviews with Parent, Case Manager and Social Worker; Exhibit B, pp. 3-51.*
21. During this meeting, Parent expressed that Student "has challenges advocating for himself" and "has challenges letting teachers know when he feels anxious or overwhelmed or when he doesn't understand." *Exhibit B, p. 17.* She also expressed that Student has organizational difficulties and struggles with failing to turn in assignments. *Id.* at p. 18.

22. The participants at this meeting determined that Student should be evaluated in the areas of “health, social-emotional, executive function, and academics.” *Id.* at p. 43. The next day, District issued a Prior Written Notice and Consent for Evaluation seeking Parent’s permission to evaluate Student in those four areas, which Parent signed that day. *Exhibit C*, pp. 7-8.
23. On October 2, 2023, the assistant principal and school psychologist contacted Parent by telephone to inform her of the status of the ongoing evaluations, and answer questions regarding the questionnaires Parent needed to complete. *Exhibit K*, p. 4; *Exhibit B*, pp. 52-59.
24. Student’s evaluation was completed October 31, 2023, and an Evaluation Report was issued by District. *Exhibit I*, pp. 33-57.
25. On October 31, 2023, an eligibility meeting was scheduled to review Student’s evaluations and determine whether he qualified for an IEP. *Exhibit D*, p. 9. Attendees of this meeting included Parent, Student, Case Manager, Social Worker, an assistant principal, a school psychologist, a general education teacher, a school nurse and the CDE facilitator. *Exhibit B*, p. 157.
26. During this meeting, which lasted one hour and nineteen minutes, attendees reviewed the evaluation report and determined that Student qualified for special education and related services under the disability category of Serious Emotional Disability. *Id.* at pp. 157-188.
27. Based upon the finding of eligibility, the IEP Team scheduled a meeting for November 29, 2023, to develop an IEP for Student, and issued a Notice of Meeting. *Exhibit D*, p. 7. This meeting was attended by Parent, Case Manager, Social Worker, the assistant principal, a general education teacher, a school nurse, a school counselor, and a CDE facilitator. *Exhibit A*, pp. 38-39; *Exhibit C*, pp. 16-17.
28. During the time between the eligibility meeting and the IEP development meeting, Case Manager and Social Worker prepared proposed IEP goals based upon the evaluation and discussions during previous meetings. *Interviews with Case Manager and Social Worker*.
29. During the November 29, 2023 IEP development meeting, the IEP Team discussed the proposed goals. *Exhibit B*, pp. 60-156.
30. For example, Case Manager stated: “What I put in to address the executive functioning needs was a goal for work completion. And that would involve him meeting with me at least every other week, or ideally more than that, to come up with a plan and help him look at what he’s missing, prioritize his assignments, and complete them.” *Id.* at p. 77. Following this description, Parent and Case Manager discussed how this Executive Functioning goal would work in practice, and Case Manager invited Parent to ask questions regarding this proposed goal. *Id.* at pp. 77-82.
31. Likewise, Social Worker discussed her proposed goals and invited Parent feedback. *Id.* at pp. 82-87. Parent indicated that she would like for Student to have a goal pertaining to

communicating his needs to teachers, to which Social Worker responded, “I can definitely do that.” *Id.* at pp. 83-84. Parent confirmed that she was satisfied with the proposed goals as discussed at the IEP development meeting. *Id.* at pp. 86-87.

32. The day after this meeting, District issued a Prior Written Notice (“PWN”) summarizing the outcome of the meeting. *Exhibit C*, pp. 16-17. The PWN noted that the IEP was developed through consideration of, among other factors, parent input. *Id.* at p. 16. It further described that Parent “read a statement regarding parental concerns which was added to the parent input section of the IEP.” *Id.* at p. 17.

E. Parent’s Concerns Following the IEP Development Meeting

33. Parent stated that her input was not meaningfully considered in the development of Student’s IEP goals. *Interview with Parent*.
34. After the IEP was finalized, Case Manager met with Student’s teachers to ensure that they had access to Student’s IEP or an IEP snapshot, and that they understood their responsibilities with respect to the implementation of Student’s IEP. *Interview with Case Manager*.
35. On January 17, 2024, Parent contacted Director via telephone to express concerns about Student’s special education services. *Interviews with Parent and Director*. Following this conversation, Director asked Case Manager to convene an IEP meeting to address Parent’s concerns. *Interviews with Director and Case Manager*. A meeting was scheduled for January 31, 2024, and eventually rescheduled to February 14, 2024. *Exhibit D*, pp. 2-4.
36. The attendees of the February 14, 2024 IEP meeting included Parent, Parent’s family friend, Case Manager, Social Worker, Director, the assistant principal, a district nurse, a school nurse, a District special education facilitator, and a general education teacher. *Exhibit A*, p. 41. The meeting lasted one hour and thirty-one minutes. *Exhibit B*, pp. 189-238.
37. During this meeting, participants discussed many issues related to Student’s performance at school, including progress on goals, accommodations, and transition planning. *Id.* About one hour and eight minutes into the meeting, the IEP team reviewed Student’s goals and asked Parent if she had any questions or concerns with Student’s IEP goals. *Id.* at p. 220. Parent did not indicate any questions or concerns related to Student’s IEP goals. *See Id.* at pp. 220-238.
38. Based upon the results of this meeting, on February 20, 2024, Case Manager issued five proposed IEP amendments for Parent’s signature and agreement, proposing to update Student’s accommodations, his health summary, his Student Needs and Impact of Disability statement, his Service Delivery Statement, and his transition goals. *Exhibit A*, pp. 40-51. Because Parent did not sign and return these proposed amendments, the IEP was not amended. *Interview with Case Manager*.

F. Measurability of Student’s Goals

39. Parent stated that Student's goals are inappropriate because they are not measurable. *Interview with Parent.*

Emotional Regulation Goal

40. Student's Emotional Regulation goal reads: "By the end of the IEP year, to help [Student] identify and manage feelings (i.e., anger, anxiety, stress, frustration) on a daily basis, [Student] will develop and use at least one appropriate coping strategy in 3/5 observable opportunities." *Exhibit A*, p. 26. The IEP does not define or describe the term "appropriate coping strategy." *Id.*

41. The IEP indicates that this goal will be measured via "Observations, disciplinary referrals, reports from staff." *Id.* Student's baseline for this goal is that he uses coping strategies on 0/5 opportunities. *Id.*

42. Social Worker stated that she measures this goal's progress via her observation of Student in her sessions with him, and via reports from Student's teachers regarding his use of coping strategies in their classroom. *Interview with Social Worker.* For example, a March 22, 2024 progress report for this goal indicates that Student "appears to be coping with his anxiety/stress without leaving class or asking for a break" and "is willing to discuss coping strategies." *Exhibit E*, p. 3.

Self-Esteem Goal

43. Student's Self-Esteem goal reads: "By the end of the IEP year, [Student] will demonstrate improved self-awareness and self-acceptance by identifying and expressing his emotions, strengths, and areas of growth when meeting with the Special Service Provider in 4/5 opportunities." *Exhibit A*, pp. 26-27.

44. The IEP indicates that this goal will be measured via "Observations, disciplinary referrals, reports from staff." *Id.* at p. 27. Student's baseline for this goal is that he identifies and expresses his emotions, strengths, and areas of growth when meeting with Social Worker on 0/5 opportunities. *Id.*

45. Social Worker stated that she measures this goal's progress via her observation of Student in her sessions with him. *Interview with Social Worker.* For example, a March 22, 2024 progress report for this goal indicates that Student has identified and expressed feelings regarding school, the football team, and whether he has personal issues with peers. *Exhibit E*, p. 3.

Executive Functioning Goal

46. Student's Executive Functioning goal reads: "In order to meet his post-secondary education goal of attending college, [Student] will demonstrate the ability to organize/prioritize his school work and will meet with his case manager at least bi-monthly to review missing assignments (indicated as missing or score of 0) and come up with a plan to complete them

using organizational tools available to him and accessing supports at school/home.” *Exhibit A*, pp. 27-28.

47. The IEP indicates that to measure this goal, Case Manager will “monitor and chart progress.” *Id.* at p. 28. Student’s baseline for this goal is that “In the first semester, [Student] has the following missing assignments: Algebra 2 – 26, Amer Lit & Comp – 4, AP Psych – 8, AP US Hist/Geog – 1, Chemistry – 36, H Princ Bio – 29, and Spanish 2 – 2.” *Id.*
48. Case Manager stated that she measures this goal by pulling Student’s grade reports from his classes and identifying the number of missing assignments. *Interview with Case Manager*. For example, a progress report from May 22, 2024 states that “In the fourth quarter, [Student] has the following missing assignments: American Lit & Comp – 1; Chemistry – 6; and H Princ Bio - 6. [Student] has done well [at] communication with his teachers and making a plan to complete missing assignments.” *Exhibit E*, p. 2.

Self-Advocacy Goal

49. Student’s Self-Advocacy goal reads: “In order to meet his post-secondary education goal of attending college, by the end of the IEP year, [Student] will communicate his needs to a teacher or staff (i.e., ask for help, clarification or explanation of an assignment/task), either verbally or electronically 80% of the time as measured by teacher observation, or electronic messages.” *Exhibit A*, p. 28-29.
50. The IEP indicates that this goal will be measured via “Teacher observation/Reports.” *Id.* at p. 28. Student’s baseline for this goal is that “On average, he effectively communicates his needs to staff 10% of the time.” *Id.*
51. Social Worker stated that she measures this goal by reviewing reports from Student’s teachers regarding his ability to communicate his needs in class. *Interview with Social Worker*. Case Manager stated that she assists with data collection for this goal by sending a Microsoft form to Student’s teachers, asking each of them to report whether Student has asked for help in class. *Interview with Case Manager*.

G. Student’s Social Work Services

52. The IEP requires that Student receive 60 minutes per month of direct mental health services from Social Worker. *Exhibit A*, p. 32. Parent stated that Student had not been provided these services between March 11, 2024 and the end of the 2023-2024 academic year. *Interview with Parent*.
53. Social Worker indicated that she was familiar with her responsibilities under Student’s IEP, due to participating in Student’s IEP meetings. *Interview with Social Worker*. In addition, she stated that she had access to Student’s IEP via District’s electronic document management system. *Id.*

54. Social Worker, because she serves multiple schools in District, and because of the nature of School's block scheduling, was only able to meet with Student during first period during "Blue 1" schedule days, approximately once every two weeks. *Id.* When she met with Student, her sessions typically lasted 30 minutes. *Exhibit F*, p. 2.
55. On March 11, 2024, Parent sent an email to Director, stating: "I am requesting a different social worker be assigned to [Student]. [Case Manager]'s questions make him feel uncomfortable and unsafe. Please let me know how I go about making this change." *Exhibit K*, p. 330.
56. On March 13, 2024, Director replied to that email, asking: "Would you be able to share details regarding the questions being asking (*sic*) so that I may understand how he feels unsafe and uncomfortable?" *Id.*
57. Parent did not respond to Director's email, but instead expressed her concern to another member of District staff. *Interview with Parent*.
58. Between March 11, 2024 and the end of the 2023-2024 academic year, Social Worker scheduled three sessions to provide Student his mental health services – on April 5, 2024, April 24, 2024, and May 3, 2024. *Exhibit F*, p. 2.
59. District attendance records show that Student was absent from school on April 5, 2024, due to a college visit. *Exhibit G*, p. 2.
60. District attendance records show that Student was late to school on April 24, 2024, missing first period. *Id.* The tardy was marked as excused as a result of Parent's explanation. *Id.*
61. District attendance records show that Student was absent from school on May 3, 2024, due to a "School Activity," specifically a track and field event. *Id.*
62. Because Student was not present at school. Social Worker did not provide services to Student on any of these dates. *Interview with Social Worker*.
63. Social Worker was made aware of Parent's concerns from the March 11, 2024 email by Director, but stated that she still planned to meet with Student to discuss his concerns, and would have done so had Student attended any of their sessions subsequent to that date. *Id.*

H. Student's Performance during the 2023-2024 Academic Year

64. During the first semester of the 2023-2024 academic year, Student's grades were reported as four As, one B, one C, one D, and one F. *Exhibit G*, p. 10.
65. During the second semester of the 2023-2024 academic year, which took place after the implementation of Student's IEP, Student's grades were reported as four As, two Bs, and one C. *Exhibit G*, p. 11.

66. Student did not receive any behavioral disciplinary reports during the 2023-2024 academic year, an improvement over each of his previous two school years, in which he received one referral each year. *Exhibit N*, pp. 6-7.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District considered the concerns of Parent in developing annual IEP goals, as required by § 300.324(a)(1)(iii), but did not develop measurable annual IEP goals, as required by 34 C.F.R. § 300.320(a)(2)(i). This resulted in a denial of FAPE.

Parent’s concerns are that the IEP Team did not adequately consider her input when developing the annual IEP goals, and that those goals were not measurable. (FF #s 33, 39.)

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

A. The IEP Development Process

Consideration of Parent Input

The IDEA requires that parental participation be meaningful, to include carefully considering parents’ concerns for enhancing the education of the child in developing an IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O’Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful consideration does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than “mere form.” *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.*

An IEP meeting “serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that

are necessary to meet the unique needs of the child.” *Letter to Richards*, 55 IDELR 107 (OSEP 2010). “The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . .” *Id.*

Here, the Record demonstrates that the IEP Team went to great lengths to ensure that Parent input was considered. The IEP itself documents extensive Parent input, and the PWN issued with the IEP describes that input. (FF #s 7, 32.) Prior to beginning the special education evaluation process, District staff met with Parent to solicit her concerns. (FF #s 20-21.) The concerns expressed by Parent during this meeting were directly reflected in the annual goals adopted by the IEP team. (FF #s 10, 21.) Parent participated extensively in the evaluation process, providing input on her concerns regarding Student. (FF # 23.)

Parent attended the IEP eligibility meeting, at which the evaluation was reviewed, and it was determined that Student was eligible for special education and related services. (FF #s 25-26.) Parent also attended the IEP development meeting on November 29, 2023, where the IEP team reviewed the proposed goals and solicited Parent’s questions and feedback regarding the goals. (FF #s 30-31.) Parent offered feedback, indicating that she would like for Student to have a goal pertaining to communicating his needs to teachers. (FF # 31.) A goal reflecting that concern was incorporated into the eventual IEP. (FF #s 10, 49.) Parent indicated that she was satisfied with the proposed goals during this meeting. (FF # 31.)

After the finalization of the IEP, Parent reached out to Director with additional concerns regarding the IEP. (FF # 35.) Director quickly worked with Case Manager to convene an IEP Team meeting to discuss Parent’s concerns. *Id.* At this meeting, the IEP team discussed many of Parent’s concerns, but when directly asked about the IEP goals, Parent did not indicate any specific concern. (FF # 37).

Based upon these facts, the SCO finds and concludes that District adequately considered Parent’s concerns when developing the annual IEP goals. Thus, the SCO finds and concludes that the IEP development process complied with the IDEA’s procedures. *Rowley*, 458 U.S. at 206.

Next, the SCO turns to the substantive adequacy of the IEPs—that is, whether the IEP has been reasonably calculated to enable Student to receive an educational benefit.

B. Substantive Adequacy of the IEPs

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

student's progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

Here, Student had four annual goals, targeting emotional regulation, self-esteem, executive functioning, and self-advocacy. The SCO will address the measurability of each in turn.

Emotional Regulation Goal

The Emotional Regulation goal proposes that Student will “develop and use at least one appropriate coping strategy in 3/5 observable opportunities.” (FF # 40.) However, the goal does not describe what an “appropriate coping strategy” might be. *Id.* Although Student's progress report indicates that Student “appears to be coping with his anxiety/stress without leaving class or asking for a break” and “is willing to discuss coping strategies,” it likewise does not identify the coping strategies the goal is proposing that Student develop and use. (FF # 42.)

Despite Social Worker's apparent *subjective* understanding of how she believes the goal is to be measured, the goal is not *objectively* measurable – a person unfamiliar with the IEP would not be able to determine how progress on this goal is to be measured.

Accordingly, the SCO finds and concludes that the Emotional Regulation goal is not measurable, and thus is not designed to meet the needs of Student and enable him to make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(2).

Self-Esteem Goal

The Self-Esteem goal proposes that Student will “demonstrate improved self-awareness and self-acceptance by identifying and expressing his emotions, strengths, and areas of growth” when meeting with Social Worker. (FF # 43.) Social Worker stated that she measures Student's progress based upon her observations of Student during her sessions with him. (FF # 45.)

As above, while this goal is subjectively measurable, it lacks an objective method of measurement that a person unfamiliar with the IEP would be able to replicate reliably. Social Worker's observations inherently rely upon her subjective understanding of Student's statements during sessions, and the annual goal requires Social Worker to speculate as to whether Student is accurately and completely communicating his emotions. An objectively measurable goal might make use of a rubric or a specific set of questions administered each session to track the changes in Student's responses, to ensure that data and progress can be measured accurately.

Accordingly, the SCO finds and concludes that the Self-Esteem goal is not measurable, and thus is not designed to meet the needs of Student and enable him to make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(2).

Executive Functioning Goal

The Executive Functioning goal proposes that Student will meet with his Case Manager to review missing assignments (defined as items appearing in a grade report as missing or with a score of zero) and develop a plan to complete them. (FF # 46.) To measure this goal, Case Manager will “monitor and chart progress” by reviewing Student’s grade reports to determine the number of missing assignments. (FF #s 47-48.)

This measurement relies on objective data – an individual not familiar with Student’s IEP would still be able to collect the number of missing assignments, as defined in the goal and chart whether Student was making progress toward reducing the number of missing assignments over time.

Accordingly, the SCO finds and concludes that the Executive Functioning goal is measurable, and thus is designed to meet the needs of Student and enable him to make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(2).

Self-Advocacy Goal

The Self-Advocacy goal proposes that Student will “communicate his needs to a teacher or staff (i.e., ask for help, clarification or explanation of an assignment/task), either verbally or electronically 80% of the time as measured by teacher observation or electronic messages.” (FF # 49.) Social Worker and Case Manager described that this data is collected by sending an online form to Student’s teachers, asking each of them to report whether Student has asked for help or clarification. (FF # 51.)

This goal relies on objectively measurable data. It gives concrete examples of the sort of behaviors the IEP is seeking to increase frequency of, and uses a standard questionnaire distributed to Student’s teachers to collect that data. An individual unfamiliar with Student’s IEP would still be able to observe and track this data as collected.

Accordingly, the SCO finds and concludes that the Self-Advocacy goal is measurable, and thus is designed to meet the needs of Student and enable him to make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(2).

Overall, because two of Student’s four annual IEP goals were not measurable, the SCO finds and concludes that the IEP was not tailored to Student’s needs as required by 34 C.F.R. § 300.320(a)(2)(i), and 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).

C. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position she would have been in if not for the violation. *Reid v. Dist. Of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the

stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Although two of Student's goals were not appropriate, Student's academic performance substantially improved following the implementation of his IEP near the end of the first semester of the 2023-2024 academic year. (FF #s 64-65.) In addition, although two social-emotional goals were not objectively measurable, Social Worker's subjective descriptions of Student's performance indicated that he was appropriately coping with anxiety and stress without leaving class or asking for a break, was willing to discuss coping strategies with Social Worker, and was able to identify and express feelings. (FF #s 42, 45.) Finally, Student did not receive any behavioral disciplinary referrals during the 2023-2024 academic year. (FF # 66.)

Conclusion to Allegation No. 2: District appropriately implemented Student's IEP from March 11, 2024 through May 22, 2024, as required by 34 C.F.R. § 300.323. District complied with IDEA.

Parent's concern is that District did not provide Student with the mental health services required by his IEP. (FF # 52.)

A. IEP Implementation: Legal Requirements

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

A district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d).

B. IEP Accessibility and Responsibilities

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d).

Here, the Record indicates that Social Worker was aware of her responsibilities under Student's IEP and had access to Student's IEP via District's electronic document management system. (FF # 53.) Case Manager indicated that she met with Student's teachers to ensure that they also had access to Student's IEP or an IEP snapshot, and that they understood their responsibilities subject to that IEP. (FF # 34.)

For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the 2023-2024 academic year were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

C. Implementation of Mental Health Services

The SCO must determine whether District made special education and related services available to Student consistent with the IEP between March 11, 2024 and May 22, 2024. 34 C.F.R. § 300.323(c)(2). In doing so, the SCO recognizes that a school district can be required to implement only so much of the IEP as it reasonably can within the constraints imposed by a parent's actions. *Montgomery County Public Sch., 111 LRP 54915*, (Md. SEA 2011) (finding that a district provided a FAPE by implementing as much of the IEP as possible despite a parent's restriction on who could administer the IEP's services).

Here, Social Worker did not provide service minutes to Student during the time in question. (FF # 62.) However, this lapse occurred because Student was absent from school on each of the three occasions upon which a mental health service was scheduled after March 11, 2024. (FF #s 58-62.) Each of these absences was excused, including a college visit, a track and field event, and a Parent-explained tardiness. (FF #s 59-61.) Social Worker remained willing and ready to provide the mental health services but could not do so due to Student's absences. (FF # 60.) Although a sustained pattern of Student absences may prompt a district to convene the IEP Team to discuss whether a student's absences should result in changes to the IEP, here, the three absences are directly explainable by Student's activities and college visits, and do not yet rise to that level. District should, however, continue to monitor Student's attendance to ensure that the IEP remains appropriate to his needs. To the extent that Student missed mental health services due to Student's absence from school, District can be required to implement only so much of the IEP as it reasonably can within the constraints imposed. *See CDE Decision 2023:557* (October 2023).

For these reasons, the SCO finds that District properly implemented Student's IEP with respect to mental health services from March 11, 2024 to May 22, 2024, as required by 34 C.F.R. § 300.323(d).

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

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

The Record does not indicate that the District’s noncompliance is systemic in nature. Director accurately described District’s responsibility to craft objectively measurable goals and described that she recommends the use of standardized measurement to ensure objectivity. (FF # 16.) Although two of Student’s four goals relied on measurement units that were not adequately defined to ensure objectivity, they did identify baseline data and units of measure that Social Worker was able to document in progress reports. (FF #s 40-45.) The remaining two goals demonstrated objective measurability. (FF # 46-51.) For these reasons, the SCO finds and concludes that District’s noncompliance is not systemic in nature.

REMEDIES

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

- a. Developing measurable annual goals, as required by 34 C.F.R. §§ 300.320 and 300.324.

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

1. Corrective Action Plan

- a. By **Monday, September 9, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Case Manager, Social Worker, and all District special education facilitators must review this decision, as well as the requirements of 34 C.F.R. §§ 300.320 and 300.324. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Friday, September 13, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, September 20, 2024**.

3. IEP Meeting and Review of IEP

- a. District must convene Student’s IEP team, at a mutually agreeable date and time, by **Friday, October 25, 2024**. In consideration of all recent evaluations of Student

and the concerns identified in this Decision, Student's IEP team must review, and, as necessary, revise Student's annual goals, consistent with the requirements of 34 C.F.R. §§ 300.320 and 300.324.

- i. If Parent refuses to participate in the IEP meeting, District may convene a meeting without her, provided District diligently attempts to secure her participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure her participation rests solely with CDE. Regardless, unless Student is withdrawn from District, District must still convene Student's IEP team.
- b. By **Friday, November 15, 2024**, District must provide notice of the IEP meeting, proof of attendance of IEP Team members (such as a signature page), and a finalized IEP to the CDE. The IEP submitted for the CDE's review must include measurable goals to address Student's needs as described in this Decision.

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

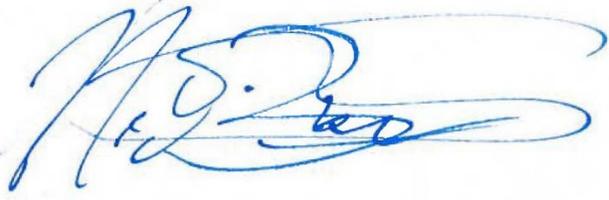
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax
Denver, CO 80203

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

CONCLUSION

The Decision of the CDE 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 9th day of August, 2024.

A handwritten signature in blue ink, appearing to read "Nick Butler", is written over a faint, light blue rectangular background.

Nick Butler
State Complaints Officer

APPENDIX

Complaint, pages 1-35

Response, pages 1-18

- Exhibit A: IEPs
- Exhibit B: Documentation from IEP meetings
- Exhibit C: Prior Written Notices
- Exhibit D: Notices of Meeting
- Exhibit E: Report Cards, Progress Monitoring, and Progress Reports
- Exhibit F: Service Logs
- Exhibit G: Grade and Attendance Records
- Exhibit H: District Calendar
- Exhibit I: Evaluations
- Exhibit J: District Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L: District Personnel
- Exhibit M: Verification of Delivery
- Exhibit N: Additional Student Information
- Exhibit O: Complaint and Complaint Procedures

Reply, pages 1-16

- Exhibit 1: Safety and Attendance Plans
- Exhibit 2: OCR Documentation
- Exhibit 3: District Policies
- Exhibit 4: Educational Records Audit
- Exhibit 5: Correspondence
- Exhibit 6: List of District Employees
- Exhibit 7: Independent Educational Evaluation

Telephone Interviews

- Parent: July 9, 2024
- Director: July 15, 2024
- Case Manager: July 16, 2024
- Social Worker: July 16, 2024