

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

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**State-Level Complaint 2024:584  
Summit School District**

**DECISION**

**INTRODUCTION**

On August 9, 2024, the parent (“Parent 1”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Summit School District (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified three 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.

On August 8, 2024, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in impasse and the CDE resumed the investigation on September 5, 2024.

The CDE’s goal with this investigation and written decision is to build capacity among all participants in the special education process and to provide opportunities for professional growth to educators. The CDE views the state complaint process as an opportunity for participants in the IEP process to learn about special education, identify points for improvement, and tap available resources, all to improve outcomes for students with disabilities.

**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 August 9, 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)<sup>2</sup> of the IDEA:

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

<sup>2</sup> The CDE’s state complaint investigation will determine if District complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. From approximately September 2023 through the end of the 2023-2024 school year, District did not develop, review, and revise an IEP that was tailored to meet Student's individualized needs because it did not include sufficient special education and related services—specifically psychological or social work services—to address Student's social-emotional needs, as required by 34 C.F.R. §§ 300.34(c)(10), (14), 300.320(a)(4), and 300.324(a)(1)(iv).
2. District amended Student's IEP outside of an IEP Team meeting without Parent's agreement in or about April 2024, removing 200 minutes per week of specialized instruction in Language Arts in the general education classroom, as required by 34 C.F.R. § 300.324(a)(4), (6).
3. District did not fully implement Student's IEP from March through May 2024 because it did not provide the 200 minutes of specialized instruction in Language Arts in the general education classroom required by his IEP, as required by 34 C.F.R. § 300.323(c).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>3</sup> the CDE makes the following findings of fact (“FF”):

#### **A. Background**

1. Student is fourteen years old and attended a District middle school (“School 1”) and a District K-12 school (“School 2”) during the 2023-2024 academic year. *Complaint*, p. 3. He currently attends a District high school. *Id.* During all times relevant to this investigation, he qualified for special education and related services under the disability category of Specific Learning Disability. *Exhibit A*, pp. 7, 44.
2. Student is friendly, gets along well with peers, and has a good sense of humor. *Interviews with Parent 1, Parent 2, Student's Special Education Teacher at School 1 (“Special Education Teacher 1”), Student's Special Education Teacher at School 2 (“Special Education Teacher 2”), and Student's Special Education Teacher in District's Expulsion Program (“Expulsion Program Teacher.”)* Student enjoys participating in athletics and is interested in art. *Id.*
3. Student has a specific learning disability that affects reading comprehension and writing expression. *Exhibit A*, p. 17.
4. This investigation involves the development, review, revision and implementation of an IEP dated September 20, 2023 (“the IEP”), as well as its amendment on April 3, 2024. *Id.* at pp. 34, 44.

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<sup>3</sup> The appendix, attached and incorporated by reference, details the entire Record.

## **B. Student's IEP**

5. The IEP documents Student's academic and functional strengths, particularly in mathematics and in connecting with peers. *Id.* at p. 47.
6. The IEP's present levels of performance section documents Student's academic performance, his attendance, and the results of assessments in reading, mathematics, and language. *Id.* at pp. 47-52.
7. The IEP documents the impact of Student's disability, stating that it affects his ability to access the general education curriculum specifically by inhibiting his reading comprehension and written expression. *Id.* at p. 52. It also notes that Student has difficulty initiating and sustaining attention. *Id.*
8. The IEP documents parental input and concerns, specifically noting that Parent 1 had recently moved to another state and that Student was adjusting to living with Parent 2. *Id.*
9. The IEP's Consideration of Special Factors section identifies that Student had limited English proficiency and documents the result of a language assessment performed earlier that year. *Id.* at p. 53. This section does not identify other special factors. *Id.*
10. The IEP contains three annual goals, one each in Reading, Writing, and Access Skills. *Id.* at pp. 54-55.
11. The IEP documents 26 accommodations to allow Student to access the general education curriculum. *Id.* at pp. 55-56.
12. The IEP documents the services to be provided to Student. *Id.* at pp. 59-60. Specifically, the IEP required that Student receive 200 minutes per week of direct specialized academic instruction in a language arts class that is co-taught by a general education teacher and a special education teacher. *Id.* Subsequent to the April 3, 2024 amendment, the IEP notes that Student will no longer be enrolled in the co-taught class. *Id.* at pp. 34, 60. The IEP does not state that psychological or social work services are to be provided to Student. *Id.* at pp. 59-60.
13. The IEP Team determined that it was appropriate for Student to be in the general education classroom at least 80 percent of the time. *Id.* at p. 61.

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

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, stating that staff are trained on special education compliance, and have access to a "live binder," an online information hub with resources for special education professionals. *Interview with Director.* In addition, District staff engage in frequent meetings with Director

and District's special education coordinators and are encouraged to bring questions regarding student-specific situations to those meetings. *Id.*

15. Director stated District staff should remain vigilant to ensure that a student's IEP continues to meet the student's individual needs and should reconvene the IEP team to make revisions if necessary. *Id.* With respect to social and emotional needs, District staff must rely upon evaluations, their observations of the student, and the student's attendance and behavior to determine if there are unmet needs. *Id.*
16. Director stated that IEP amendments should be made at a properly convened IEP meeting, unless the student's parent agrees to amend the IEP without a meeting. *Id.* District's written policies do not provide guidance upon the procedures by which an IEP amendment is made. *Exhibit L*, pp. 1-9.
17. District staff responsible for implementing a student's IEP have access to that student's IEP via the District's electronic student information system. *Interviews with Special Education Teachers 1 and 2, Expulsion Program Teacher, and Director.* When interviewed, District staff responsible for implementing Student's IEP demonstrated familiarity with and knowledge of Student's IEP. *Id.* District staff are directed to implement IEPs with fidelity to the document. *Interview with Director.*

#### **D. Development of the IEP**

18. At the start of the 2023-2024 academic year, Student attended School 1 and resided with Parent 2 following Parent 1's move out of state. *Interview with Parent 1; Exhibit A*, p. 52.
19. Parent 1 and Parent 2 agreed in divorce proceedings to share joint decision-making responsibility with respect to Student's educational decisions. *CDE Exhibit 2.*
20. On September 8, 2023, a Notice of Meeting was sent to both Parent 1 and Parent 2 inviting them to participate in an IEP meeting for Student at School 1 on September 20, 2023. *Exhibit D*, p. 12.
21. On September 20, 2023, a properly constituted IEP Team convened to review Student's IEP. *Exhibit A*, p. 44. Parent 1 attended the meeting virtually, but Parent 2 did not attend. *Id.* at p. 52; *Exhibit F*, p. 14.
22. During the meeting, Parent 1 noted that Student had recently moved in with Parent 2 due to her out-of-state move. *Exhibit A*, p. 52. The IEP team noted that despite her distance, Parent 1 remained an active participant in Student's education. *Id.*
23. At the meeting, Special Education Teacher 1 expressed concerns with respect to Student's attendance during the first month of the academic year, noting that he had been late or absent for about half of school days. *Interviews with Parent 1 and Special Education Teacher 1; Exhibit A*, p. 46. On five days in August and September 2023, District attendance records

coded Student absences as “cut,” with numerous other unexcused tardies noted. *Exhibit H*, p. 16.

24. As a result of continued conversations between Parent and School 1 staff regarding Student’s attendance, on October 5, 2023, an assistant principal at School 1 established an 8-person group text message thread “to communicate about [Student’s] attendance,” including both Parents, several members of School 1’s staff, and other family members of Student. *CDE Exhibit 1*, p. 1. In this chat, information would be exchanged between family and staff to ensure that Student was going directly from home to school and vice-versa. See, e.g., *Id.* at pp. 2-5, 7.
25. As a result of these communications, Student’s attendance improved dramatically, with a message from the assistant principal on October 16 noting that Student “has been here every day since our meeting,” and a message November 3 noting that Student “earned a Coca-Cola for being here all this week.” *Id.* at pp. 6-7. Student’s attendance records reflect that his only absences from October through the end of the semester were due to illness, suspension, or family travel, and that he only had one unexcused absence in the spring 2024 semester. *Exhibit H*, pp. 16-19.

#### **E. Student’s Move to School 2**

26. School 2 is “a non-traditional, relationship-based” magnet school which focuses on small class sizes and individual support to promote student outcomes. *CDE Exhibit 3*. Admission to School 2 is based upon a selective application process which includes a video essay, letters of recommendation, and an interview with the school’s principal. *Interview with Special Education Teacher 2*.
27. School 2 also hosts the District’s program for expelled students, overseen by Expulsion Program Teacher. *Interviews with Special Education Teacher 2 and Expulsion Program Teacher*.
28. On December 5, 2023, Student was involved in a disciplinary incident in which he was alleged to have given a vape pen containing marijuana to two other students at School 1. *Exhibit H*, pp. 7, 9-10, 26, 28. He received a three-day out-of-school suspension following this incident. *Id.*
29. On January 25, 2024, Student was involved in a disciplinary incident in which he was alleged to have smoked marijuana in a school bathroom, resulting in another three-day out-of-school suspension. *Id.* at pp. 1, 9-10, 26-27.
30. Special Education Teacher 2, who had worked as Student’s case manager prior to the 2023-2024 academic year before moving to School 2, recommended to Student that he apply for admission to School 2. *Interview with Special Education Teacher 2*. Student, with Special Education Teacher 2’s assistance, applied for and gained admission to School 2. *Id.*

31. Student began attending School 2 full time on March 11, 2024. *Exhibit G*, p. 3.

#### **F. The April 2024 IEP Amendment**

32. Prior to March 11, 2024, Student attended a Language Arts class at School 1 with about 30 students, which was co-taught by a general education teacher and Special Education Teacher 1. *Interview with Special Education Teacher 1*.

33. Student's Language Arts class at School 2, with about 8 students, was taught only by a general education teacher. *Interview with Special Education Teacher 2*. Special Education Teacher 2 worked with Student on reading and writing in a separate academic support class, but Student did not receive co-taught specialized instruction after moving to School 2 on March 11, 2024. *Id.*

34. On April 3, 2024, Parent 2 was scheduled to come to School 2 for a non-special-education related matter. *Interviews with Parent 2 and Special Education Teacher 2*. Shortly prior to that day, Special Education Teacher 2 contacted Parent 2 by phone to ask him to meet to discuss Student's IEP while he was in the building. *Id.*

35. Special Education Teacher 2 did not contact Parent 1 or notify her of this meeting, stating later that he did not know that Parents 1 and 2 were divorced and assumed that a communication sent to Parent 2 would also reach Parent 1. *Interview with Special Education Teacher 2*. He also stated that he believed that Parent 2 was fluent in English and would not need an interpreter. *Id.*

36. District provided a screenshot, created October 1, 2024, of Student's page on the District's student information management system, which inaccurately shows that Student resides with both Parent 1 and Parent 2, and that the primary language spoken at Student's home is English. *CDE Exhibit 4*.

37. On April 3, 2024, Special Education Teacher 2 and Parent 2 met in-person at School 2. *Interviews with Parent 2 and Special Education Teacher 2*. No interpreter was present. *Id.* Special Education Teacher 2 provided Parent 2 a copy of a proposed IEP amendment, written solely in English, which removed the language arts co-teaching service minutes from Student's IEP due to School 2's lower student-to-teacher ratio. *Id.*; *Exhibit A*, pp. 33-34. This form also included a section in which Parent 2 was to sign, agreeing to adopt the IEP amendment without convening an IEP team meeting. *Id.*

38. Parent 2, whose native language is Spanish and not English, stated that he had substantial difficulty understanding the proposal being made but signed the amendment because he trusted that the school staff had Student's best interests in mind. *Interview with Parent 2*. He stated that while he did understand that the document he was signing pertained to Student's change of schools, he did not understand at the time that Student's services were being reduced. *Id.* The state complaints officer ("SCO") finds Parent 2's representation credible

based on informal conversations with Parent 2 without an interpreter and an interview with Parent 2 with an interpreter. *Interview with Parent 2*.

39. Parent 2 signed the document and checked the box that stated that he agreed to amend the IEP without convening an IEP team meeting. *Interviews with Parent 2 and Special Education Teacher 2; Exhibit A*, p. 34.

#### **G. Student's Expulsion and Participation in Expulsion Program**

40. On April 9, 2024, Student was involved in a disciplinary incident in which Student was found in possession of a marijuana vaporizer and stated to school staff that he was planning to sell the device to another student for money. *Exhibit H*, p. 25.
41. On April 11, 2024, based upon this incident and Student's prior two substance-related incidents, School 2's principal recommended that Student be expelled from School 2 until the start of the second semester of the 2024-2025 academic year, with provisions allowing him to return to School 2 at the start of the 2024-2025 academic year upon the completion of seven conditions demonstrating his ability to meet expectations. *Id.* at pp. 23-24.
42. On May 8, 2024, a manifestation determination review meeting took place to determine whether Student's disciplinary issues were related to his disability. *Exhibit F*, pp. 1-13. The review team determined that the incidents were not manifestations of Student's disability. *Id.* A prior written notice was issued to reflect the results of the manifestation determination review meeting. *Exhibit E*.
43. Following Student's expulsion, he attended District's expulsion program with Expulsion Program Teacher. *Interview with Expulsion Program Teacher*. During this period, Student received his specialized instruction services from Expulsion Program Teacher, who possesses an active special education credential. *Id.*; *CDE Exhibit 5*.
44. Student's progress on his annual IEP goals was tracked on a quarterly basis through the 2023-2024 academic year. *Exhibit J*. This progress monitoring indicates that Student made progress on each of his three annual goals. *Id.*
45. Student completed District's expulsion program, and returned to a District high school for the beginning of the 2024-2025 academic year. *CDE Exhibit 6*. On August 23, 2024, a properly constituted IEP team convened to review Student's IEP at the start of his first year of high school. *Exhibit A*, p. 7; *Exhibit D*, p. 1. The IEP Team determined that Student will receive specialized instruction in reading and writing outside the general education setting for 220 minutes weekly. *CDE Exhibit 6*.

#### **H. Parent 1's Concerns with Student's Social and Emotional Functioning**

46. Parent 1's concern is that Student's IEP did not provide adequate psychological and social work services to address Student's social and emotional needs. *Complaint; Interview with Parent.*
47. Student's most recent evaluation was completed on September 28, 2022. *Exhibit C.* As part of this re-evaluation, Student was administered social and emotional evaluations including the Behavior Assessment System for Children, 3rd Edition (BASC-3). *Id.* at p. 9. Student's scores on the BASC-3 indicated potential concerns with respect to executive functioning, but did not indicate significant social or emotional concerns. *Id.* at pp. 9-10; *Consultation with CDE Content Specialist.* Parent 1 reported in her input for this assessment "that [Student] understands emotional situations and acts accordingly. He gets along with everyone, tried to include others, and is expressive." *Id.* at p. 9.
48. Student's eligibility meeting following this re-evaluation found that he was not eligible for special education and related services under the category of Serious Emotional Disability, but did find him eligible under the category of Specific Learning Disability. *Exhibit A*, p. 65.
49. Student's teachers reported that they did not observe any behavioral or social concerns with Student during the 2023-2024 academic year, stating that Student was social, non-disruptive and got along well with peers and adults in their respective classes. *Interviews with Special Education Teachers 1 and 2 and Expulsion Program Teacher.*
50. Following Student's August 23, 2024 IEP meeting, Student was again found eligible for special education under the category of Specific Learning Disability but not Serious Emotional Disability. *CDE Exhibit 6*, p. 1.
51. Although Student demonstrated some challenges with attendance to start the 2023-2024 academic year, School 1 staff worked with Parents and others to address these challenges. (FF #s 24-25). When absences are caused by anxiety or other mental health concerns this may indicate a need for social-emotional interventions or supports. *Consultation with CDE Content Specialist.* However, nonattendance due to work avoidance or a desire to engage in non-school activities over a short period of time that does not impact educational performance, like in this case for Student, does not indicate a child requires interventions or supports to address social-emotional needs. *Id.*
52. Student was also involved in three substance-related disciplinary incidents during the course of the 2023-2024 academic year. *See Exhibit H.* A student's disciplinary record may indicate the presence of social or emotional needs when those disciplinary incidents are related to mental health concerns. *Consultation with CDE Content Specialist.* However, when these incidents are motivated by financial reasons, as in this case for Student, such incidents do not indicate that a child requires interventions or supports to address social-emotional needs. *Id.*

### **CONCLUSIONS OF LAW**



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

**Conclusion to Allegation No. 1: District developed, reviewed, and revised an IEP tailored to meet Student’s individual social and emotional needs, as required by 34 C.F.R. §§ 300.34(c)(10), (14), 300.320(a)(4), and 300.324(a)(1)(iv). District complied with the IDEA.**

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. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. 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. IEP Development Process**

Parent 1 did not raise concerns regarding the IEP development process under the first prong, so the SCO turns directly to consider the second prong of whether the IEP was substantively adequate. *Rowley*, 458 U.S. at 207.

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

Parent 1’s concern pertains to the substantive adequacy of the IEP, specifically indicating that it did not contain sufficient psychological or social work services. (FF #s 46, 12).

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). Moreover, the IEP team must consider the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1)(iv).

Here, Student’s IEP does not include service minutes for psychological or social work services. (FF # 12). This is because the IEP Team determined that Student does not have any unmet social-emotional needs that would require additional services, supports, or interventions.

First, Student qualifies for special education and related services under the disability category Specific Learning Disability. (FF # 1). This determination was made, in part, on Student’s BASC-3 assessment results which did not indicate significant social or emotional concerns over a long period of time and to a point that was adversely affecting Student’s educational performance. (*Id.*).

Second, during the 2023-2024 academic year, teachers observed Student to be social and successful in their classrooms, with no behavioral concerns exhibited in the academic setting. (FF # 49). Over the course of the school year, Student made progress on each of his annual IEP goals. (FF # 44).

Third, although Student's attendance was noted as a concern early in the 2023-2024 academic year, with records indicating that Student frequently "cut" class during the first two months of the year, District staff engaged with Student's family to swiftly and effectively address these attendance concerns as Student's attendance record improved substantially. (FF #s 23-25). Nonattendance due to work avoidance or a desire to engage in non-school activities over a short period of time that does not impact educational performance, like in this case for Student, does not indicate a child requires interventions or supports to address social-emotional needs. (FF # 51).

Finally, although Student faced disciplinary issues outside the classroom related to the alleged use and distribution of illicit substances, a manifestation determination review found that these disciplinary incidents were not related to Student's disabilities. (FF #s 28-29, 40-42). Moreover, Student stated that his motivations for engaging in this behavior were financial (to sell the vape pens to other students for money). (FF # 40).

For these reasons, the SCO finds that the IEP included the special education and related services in this respect to allow Student to attain annual goals, be involved in and make progress in the general education curriculum and participate in nonacademic activities. The SCO also finds that the IEP team considered Student's academic, developmental, and functional needs. Accordingly, the SCO finds and concludes that the IEP was reasonably calculated to enable Student to make progress appropriate in light of his circumstances, as required by 34 C.F.R. §§ 300.320 and 300.324.

**Conclusion to Allegation No. 2: District improperly amended Student's IEP outside of an IEP meeting, in noncompliance with 34 C.F.R. § 300.324(a)(4) and (6). This resulted in a denial of FAPE.**

Parent 1 is concerned that the April amendment to Student's IEP took place without her notice and participation. (FF #s 32-39). To resolve the concern in this case, the SCO must first determine who qualifies as a "Parent" under the IDEA.

#### **A. "Parent" under the IDEA**

"Parent," for the purposes of the IDEA, includes individuals identified under a judicial decree or order to act as the parent of a child or to make educational decisions on behalf of a child. 34 C.F.R. § 300.30. Where multiple individuals are identified under such an order as being empowered to make educational decisions, "an IDEA action requiring parental consent may proceed with the consent of only one parent – it is not necessary to obtain consent from both." *Arapahoe County Sch. Dist. 5.*, 117 LRP 10790, (SEA CO 01/06/17).

Here, Parent 1 and Parent 2 share joint decision-making responsibility with respect to Student's educational decisions. (FF # 19). Accordingly, the SCO finds that Parent 1 and Parent 2 are a "Parent" for the purposes of the IDEA, and that either Parent 1 or Parent 2 could provide parental consent.

### **B. The IEP Amendment**

The IDEA allows an IEP to be amended in one of two ways: (1) by the entire IEP Team at an IEP Team meeting, or (2) in a written document outside of an IEP Team meeting, as long as the parent and the school district agree. 34 C.F.R. § 300.324(a)(6). When the IEP is changed by agreement, "such a change would clearly require the consent of the parents." See *K.A. v. Fulton County Sch. Dist.*, 59 IDELR 248 (N.D. Ga. 2012), *aff'd*, 62 IDELR 161 (11th Cir. 2013).

For the purposes of the IDEA, "consent" means that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication." 34 C.F.R. § 300.9(a) (emphasis added). Likewise, the IDEA requires districts to "take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English." 34 C.F.R. § 300.322(e). In addition to the IDEA's requirements, Colorado law recognizes the importance of making the IEP process accessible to parents whose native language is not English, requiring that IEP teams notify the parents of students who are English language learners of their right to have IEPs and IEP draft documents translated into the dominant language spoken in the home of the child's parent. *Colo. Rev. Stat.* § 200-20-108 (4.8).

Here, District sought to amend Student's IEP on April 3, 2024 in order to reduce the amount of services Student would receive. (FF # 34). Special Education Teacher 2 contacted Parent 2 to ask him to meet at the school to discuss Student's IEP. (*Id.*). He did not contact Parent 1. (FF # 35). During the meeting with Parent 2, whose native language is Spanish, no interpreter was provided, and the proposed IEP amendment was written in English. (FF #s 37-38). Parent 2 signed the proposed amendment, but did not understand Special Education Teacher 2's proposal, or the document he was asked to sign, due to the lack of translation and interpretation. (FF # 38).

Based on these facts, the SCO finds that District did not obtain consent from Parent 2 to amend Student's IEP outside of a properly constituted IEP meeting because Parent 2 was not fully informed of all information relevant to the activity for which consent was sought, "in his or her native language." 34 C.F.R. § 300.9(a). Indeed, District did not take any action to ensure that Parent 2 understood what was happening, including arranging for an interpreter since Parent 2's native language is other than English. 34 C.F.R. § 300.322(e).

District's position is that Special Education Teacher 2 could not have been reasonably expected to know that English was not Parent 2's native language or known that Parent 1 and Parent 2 were divorced and living separately. (FF # 35). In support of this, District provided a screenshot of their records as of the day of Special Education Teacher 2's interview with the SCO, which

inaccurately shows that Student resides with both parents and that the primary language spoken at Student's home is English. (FF # 36). Nevertheless, Special Education Teacher 2 was, as Student's case manager, familiar with the contents of the IEP (including at the time he was proposing an amendment to that very document). (FF #s 17, 37). The IEP identifies that Student has limited English proficiency and documents the results of English language assessments. (FF # 9). Importantly, the IEP documents that Parent 1 has been participating in Student's IEP process remotely due to living out of state, and that Student recently began to reside with Parent 2. (FF #s 8, 21-22). That District's student records were inaccurate and contradictory to the IEP at the time of the amendment, and *remained* inaccurate six months after, does not excuse District's decision to not obtain proper consent – to the contrary, it provides more reason for concern.

For these reasons, the SCO finds and concludes that District improperly amended Student's IEP, in noncompliance with 34 C.F.R. § 300.324(a)(4) and (6).

### **C. Denial of FAPE**

Procedural noncompliance with the IDEA results in a denial of FAPE if it (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); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, District's procedural noncompliance impeded Parents' opportunity to participate in the decision-making process. The improper IEP amendment meant neither parent had the opportunity to participate in an IEP meeting or provide substantive input with respect to the proposed changes to Student's services. Indeed, if the information regarding the amendment had been provided to Parent 2 in his native language, Parent 2 may have had objections to or questions about the proposal to remove Student's specialized instruction minutes. For these reasons, the SCO finds and concludes that District's procedural noncompliance resulted in a denial of FAPE.

To remedy this noncompliance, the CDE would have ordered that District convene an IEP meeting to amend the IEP consistent with 34 C.F.R. § 300.324(a)(4) and (6). However, no remedy in this respect is necessary here because on August 23, 2024, District convened a properly constituted IEP meeting and the IEP Team, with Parents' participation, determined that Student will receive specialized instruction in reading and writing outside the general education setting for 220 minutes weekly. (FF # 45).

**Conclusion to Allegation No. 3: District did not properly implement Student's IEP from March 11, 2024 through April 9, 2024, as required by 34 C.F.R. § 300.323. This failure to implement was not material, and thus did not result in a denial of FAPE.**

Parent's concern is that District did not provide 200 minutes per week of direct specialized instruction in a co-taught language arts class. (FF #s 12, 33).

### **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 three District staff members responsible for delivering Student’s specialized instruction demonstrated familiarity with Student’s IEP and their responsibilities. (FF # 17). Each of the three instructors had access to the IEP via District’s electronic student information system. (*Id.*). Accordingly, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323(d).

### **C. Implementation of Specialized Language Arts Instruction**

The IEP required that Student receive 200 minutes per week of direct specialized academic instruction in a language arts class co-taught by a general education teacher and a special education teacher. (FF # 12). This service was provided regularly to Student at School 1. (FF # 32). However, Student did not receive this service following his move to School 2 on March 11, 2024. (FF # 33).

Almost a month later, on April 3, 2024, District improperly amended the IEP to remove these services from Student’s IEP due to School 2’s lower student-to-teacher ratio and increased focus on individual support. (FF # 26, 32-33, 37). Accordingly, the SCO finds and concludes that District’s obligation to provide the co-teaching services described in the IEP persisted beyond April 3, 2024.

On April 9, 2024, Student was expelled from school for the remainder of the academic year for a disciplinary incident that a manifestation determination review determined not to be related to his disability. (FF # 40-43).

Based on these facts, the SCO finds and concludes that District did not implement the IEP in this respect from March 11, 2024 through April 9, 2024, as required by 34 C.F.R. § 300.323(c)(2).

#### **D. Materiality of Noncompliance**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services).

Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App'x 202, 205 (2d Cir. 2010).

The omission of a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE).

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

Here, District did not provide 200 minutes of specialized instruction per week from March 11, 2024 to April 9, 2024, a span of 20 instructional days, or four weeks. (FF #s 32-43). During that time, Student still received specialized instruction in reading and writing in a separate academic support class. (FF # 33). Moreover, Student exhibited progress on both his annual reading and writing goals. (FF #44). When Student's IEP team reconvened in August 2024, it determined that he would receive specialized instruction outside the general education environment. (FF # 45). Based on these facts, the SCO finds and concludes that District's noncompliance with IEP implementation was not material and did not result in a denial of FAPE.

**Systemic IDEA Noncompliance: This investigation demonstrates 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 also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are “critical” to the State Enforcement Agency’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46601 (Aug. 14, 2006).

Here, with respect to the improper IEP amendment, the Record indicates that this noncompliance, if not corrected, will impact the future provision of services for children with disabilities. District lacks written procedures or guidance regarding proper IEP amendment. (FF # 16). District asserted that Special Education Teacher 1’s decision to seek consent for an IEP amendment from Parent 2 without providing information about the amendment to Parent 2 in his native language was made in reliance on District student records. (FF #s 35-36). These records, however, were inaccurate in April 2024 when District improperly amended the IEP. (FF #s 8-9, 21-22). As of October 1, 2024, Student’s records continued to reflect inaccurate information concerning Student’s living situation and language spoken at home. (FF # 36). The CDE will order remedies to address this systemic noncompliance.

With respect to IEP implementation, the Record does not indicate that this noncompliance is systemic. District staff have access to student IEPs, and all staff interviewed demonstrated familiarity with their responsibilities under Student’s IEP. (FF # 17). District’s noncompliance lasted less than a month, and during some of that time, Special Education Teacher 2 believed the IEP to have been properly amended to no longer require the services in question. (FF #s 32, 39-41). Moreover, while Student did not receive the specific service outlined in his IEP, he still received specialized instruction in reading and writing. (FF # 33).

### **REMEDIES**

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

1. Amending the IEP, as required by 34 C.F.R. § 300.324(a)(4) and (6).
2. Implementing the IEP, as required 34 C.F.R. § 300.323(c).

To demonstrate compliance, District is ORDERED to take the following actions:

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

- a. By **Monday, December 2, 2024**, 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 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, Special Education Teacher 2, and all District special education coordinators must review this decision, as well as the requirements of 34 C.F.R. §§ 300.324(a), 300.9, 300.322(e), and 300.323(c). 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, December 13, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, December 20, 2024**.

## **3. Written Procedures or Guidance**

- a. By **Monday, February 3, 2025**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. §§ 300.324(a), 300.9, and 300.322(e).
- b. At a minimum, the procedure or guidance must offer clear guidance on the following:
  - i. Procedures for proper amendment of student IEPs.
  - ii. How to ensure that parents whose native language is not English are enabled to be appropriately informed of information regarding their child's education.
  - iii. How to appropriately obtain informed consent from parents in situations in which IDEA requires such consent.
- c. District may submit existing procedures that meet these requirements. Any proposed procedure or guidance must be submitted to CDE Special Education Monitoring and Technical Assistance for review and approval prior to being finalized.
- d. District must ensure that all special education providers in District receive a copy of the approved written procedures or guidance no later than **Monday, March 3, 2025**.
- e. Evidence that the procedure or guidance was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Monday, March 17, 2025**.



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 Avenue  
Denver, CO 80203

**NOTE:** If District does not meet the timelines set forth above, it 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 1st day of November, 2024.



Nick Butler  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-6**

#### **Response, pages 1-6**

- Exhibit A: IEPs
- Exhibit B: n/a
- Exhibit C: Evaluations
- Exhibit D: Notices of Meeting
- Exhibit E: Prior Written Notices
- Exhibit F: Documentation from IEP meetings
- Exhibit G: Service logs
- Exhibit H: Disciplinary records
- Exhibit I: Grades and attendance
- Exhibit J: Progress monitoring
- Exhibit K: District calendar
- Exhibit L: Policies and procedures
- Exhibit M: Correspondence
- Exhibit N: Communication logs
- Exhibit O: Information regarding District staff
- Exhibit P: Confirmation of delivery to Parent 1

#### **Reply, pages 1-4**

- Exhibit 1: April 24, 2024 Text message from Parent 1 to School 2 principal
- Exhibit 2: June 10, 2024 Email from Parent 1 to Special Education Teacher 2

#### **Telephone Interviews**

- Parent 1: September 26, 2024
- Expulsion Program Teacher: September 30, 2024
- Special Education Teacher 1: September 30, 2024
- Special Education Teacher 2: October 1, 2024
- Director: October 1, 2024
- Parent 2: October 16, 2024