

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

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**State Complaint 2024:622**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On December 17, 2024, the parent (“Parent”) 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 complaint (“Complaint”) against Denver Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified one allegation subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

**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 December 17, 2023. Information prior to December 17, 2023 may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

The Complaint raises the following allegation subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)<sup>2</sup> of the IDEA:

1. The District did not fully implement Student’s Individualized Education Program (“IEP”) because it:

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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 determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

- a. Did not make the IEP accessible to teachers or service providers responsible for its implementation from August 2024 to present, as required by 34 C.F.R. § 300.323(d);
- b. Did not provide the speech language services listed in the IEP from November 2024 to present, as required by 34 C.F.R. § 300.323(c); and
- c. Did not provide the accommodations listed in the IEP from August 2024 to present, 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 a six-year-old girl who is very bright and observant, and loves numbers, leaves, bubbles, and sensory play. *Interviews with Parent, Special Education Teacher, and Occupational Therapist (“OT”).* She transferred from an out-of-state school over the summer of 2024 and attended kindergarten in School’s Multi-Intensive Autism center-based classroom (“MIA classroom”) for the 2024-2025 school year. *Interview with Parent.* Student is nonverbal and communicates primarily with Alternative and Augmentative Communication (“AAC”) devices. *Interviews with Parent, Special Education Teacher, and OT.*
2. During the 2024-2025 school year, the MIA classroom had between 8-11 students, one special education teacher, up to three paraprofessionals, and the service providers as dictated by each student’s IEP. *Interview with Senior Manager Special Education Elementary (“Senior Manager”).* Students were placed in the MIA classroom consistent with their least restrictive environment (“LRE”) as determined in their IEPs. *Id.* These students were eligible for special education under the category of Autism Spectrum Disorder (“ASD”), with some eligible under additional categories. *Interviews with Senior Manager and Special Education Teacher.* In January 2025, District began to close the MIA classroom and started the process of relocating each student to other center programs in the District. *Exhibit P, p. 1; Exhibit S, p. 1.*
3. Student is eligible for special education and related services under the disability categories of ASD and Developmental Delay. *Exhibit A, p. 1.*
4. Parent is concerned that Student did not receive the speech-language services and accommodations required by her IEP, in part due to a staffing vacancy. *Complaint, pp. 1-8.*

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

## **B. District's Approach to Speech Language Provider Vacancies**

5. A District Speech-Language Pathologist Manager ("District SLP Manager") oversees speech-language pathology related hiring and speech-language pathology assistant ("SLPA") provider assignments to schools. *Interview with District SLP Manager*. This includes providing professional development, managing the SLP department budget, managing SLP materials and resources, meeting with families, developing policy and procedures for the SLP department, and onboarding new SLP and SLPA professionals. *Id.* District SLP Manager is the initial point of contact for SLP and SLPA vacancies, staffing gaps, and leave management. *Id.* Once those vacancies are identified, District SLP Manager works collaboratively with District's compliance and talent acquisition teams to fill those gaps. *Id.*
6. District utilizes an extensive recruitment strategy for SLPs. *Interviews with Senior Manager and District SLP Manager*. This strategy includes partnering with multiple agencies across the state to fill vacancies and provide coverage. *Interview with District SLP Manager*.
7. To determine the caseload and coverage needs for SLPs at schools, a District leadership team uses a workload calculator. *Id.* Once a staffing gap has been filled and if it is determined that compensatory services are warranted, District SLP Manager works with other administrators to run service reports in Enrich, District's special education information system. *Id.* These reports detail how many service hours or minutes that a student should be receiving each month, and how many hours or minutes were missed. *Id.* District also considers any progress that a student has made towards their IEP goals, input from parents, and suggestions from specific service providers who are familiar with the student. *Exhibit L, pp. 225, 304.*
8. Next, District SLP Manager works with the District leadership team to draft proposed compensatory services. *Interview with District SLP Manager; Exhibit L, pp. 269-270.* This letter is shared with families of students affected by an SLP vacancy. *Interview with District SLP Manager*. An offer of compensatory services is not determined until after the staffing gap has been resolved. *Id.*
9. The District has had difficulty filling SLP vacancies due to a nationwide staffing shortage. *Interviews with District SLP Manager and Senior Manager*. As a result, a job posting for an SLP has remained on the District's website since the 2023-2024 school year. *Id.* District's partner agencies are also aware of their specific SLP needs and are prepared to notify District in the event that a qualified candidate is located by the agency. *Id.*

## **C. Speech Language Pathologist at School**

10. District SLP Manager was made aware of an SLP vacancy in the MIA classroom before the provider's assignment at School ended. *Interview with District SLP Manager*. The departing SLP ("Former SLP") requested an assignment shift for personal reasons. *Id.* Former SLP's last day of assignment was Friday, November 15, 2024. *Response, p. 3.*

11. District reported this staffing gap to the CDE on November 19, 2024. *Response*, p. 3; *Interviews with District SLP Manager and Senior Manager*. District SLP Manager and Senior Manager had conversations on how to fill the staffing gap left by Former SLP's departure. *Interviews with Senior Manager and District SLP Manager*. District SLP Manager notified school leadership of this staffing gap and shared a letter with school leadership that was eventually distributed to impacted families. *Interview with District SLP Manager; Exhibit 4*.
12. During the staffing gap, District SLP Manager and Senior Manager ensured SLP coverage at IEP meetings and evaluations by utilizing a team of SLP's throughout the District whose full or partial assignment consisted of coverage. *Interviews with District SLP Manager and Senior Manager; See Exhibit O*, p. 1. However, District was not able to provide indirect or direct service minutes from an SLP in the MIA classroom from Monday, November 18, 2024 to present. *Interviews with District SLP Manager, Special Education Teacher*.
13. District SLP Manager was in the process of assigning a group of SLPs to begin providing service to Student, and the other students in MIA classroom, beginning in January 2025. *Exhibit O*, p. 1. This did not happen due to the MIA classroom beginning the closure process. *Exhibit O*, p. 1; *Exhibit S*, p. 1.

#### **D. District's Policies, Procedures, and Practices on IEP Implementation**

14. At School, special education teachers, service providers, special education managers, specific provider managers, and Special Education Instructional Specialists ("SEIS") are responsible for ensuring that staff are aware of their responsibilities under a student's IEP. *Interviews with Special Education Teacher, OT, and Senior Manager*.
15. Teachers and service providers receive copies of a student's IEP at the beginning of the school year. *Id.* Staff also have ongoing access to a student's IEP through Enrich. *Id.* Special education teachers and service providers meet in the days immediately preceding the start of the school year for professional development training which includes training on how to implement IEPs and to discuss how to support each student at the beginning of the year. *Interviews with Special Education Teacher and Senior Manager; See Exhibit J*, p. 1.
16. At the start of the school year, Special Education Teacher highlights the accommodations in a hard copy version of each student's IEP and collaborates with service providers to ensure each student receives the required accommodations. *Interview with Special Education Teacher*. Special Education Teacher reviews the IEPs frequently because she utilizes them in her lesson planning. *Id.*
17. Special Education Teacher also acts as a case manager and attends every IEP and reevaluation meeting for students in the MIA classroom. *Interviews with Special Education Teacher and Senior Manager*. Specific service providers, such as SLPs and occupational therapists, log into Enrich to run a search tailored to the services they provide. *Interview with OT*. They are then able to generate a list which includes each student's service time. *Id.* Occasionally, District

support staff will provide materials and coaching to support the accommodations in a student's IEP and the classroom structure. See *Exhibit L*, p. 407.

#### E. The IEP

18. Student had no IEP in effect from August 19, 2024 through August 28, 2024. See *Exhibit L*, pp. 26, 31, 34; *Interview with Parent*; *Exhibit 3*, p. 2.
19. Student had three separate but identical IEPs in place for the 2024-2025 school year. *Exhibit A*, pp. 1-42; *Exhibit 2*, pp. 62-82. The state complaints officer ("SCO") finds that the at-issue services and accommodations were the same across the three IEPs, and for purposes of this investigation shall refer to the most recent IEP from November 2024 (the "IEP"). The IEP was in effect from August 29, 2024 to present. *Exhibit A*, p. 23.
20. The IEP documents Student's educational strengths in letter identification, number identification, and letter-sound correspondence. *Id.* at p. 25. Student can make requests with verbal support and follow a toilet routine. *Id.*
21. Student exhibits "severe difficulties" with respect to sensory processing in the school setting in the following sensory systems: vision, hearing, touch, taste, smell, body awareness, balance, and motion. *Id.* at p. 27. Student's disability impacts her ability to participate in age-appropriate classroom activities. *Id.* at p. 29. Furthermore, "due to the number of accommodations and modifications necessary, high support needs in the areas of safety, behavior, and academics, [Student's] ability to participate and make progress in the general curriculum is significantly impeded. *Id.*
22. The IEP includes annual goals in mathematics, reading, social/emotional wellness, writing, and communication. *Id.* at pp. 30-33. Specifically, Student's communication goal includes a projected achievement date of November 14, 2025, therapy data as a unit of measurement, and monitoring and measuring of progress. *Id.* at p. 33. The objectives include:
  - a. By November 2025, given multimodal language models of functional gestalts (verbal language, AAC, ASL) during both child-directed and classroom activities, [Student] will spontaneously produce at least 5 new 2+ word gestalts to request across the school week as measured by SLP notes and teacher/para input.
  - b. By November 2025, given multimodal language models of functional gestalts (verbal language, AAC, ASL) during both child-directed and classroom activities, [Student] will spontaneously produce at least 5 new 2+ word gestalts to negate across the school week as measured by SLP notes and teacher/para input.
  - c. By November 2025, given multimodal language models of functional gestalts (verbal language, AAC, ASL) during both child-directed and classroom activities, [Student] will spontaneously produce at least 5 new 2+ word gestalts to comment across the school week as measured by SLP notes and teacher/para input.

*Id.* p. at 34.

23. To address communication needs, the IEP requires 480 minutes per month (“MPM”) of direct services outside the general education classroom provided by an SLP, and 120 MPM of indirect support outside the general education classroom provided by an SLP. *Id.* at p. 40.
24. The IEP requires at least 30 indirect MPM dedicated to parent communication in order to share progress, ensure use of consistent strategies, and to collaborate on AAC vocabulary. *Id.* at p. 38.
25. Student’s IEP lists 40 accommodations. *Id.* at pp. 34-35.

#### **F. IEP Implementation: Accessibility and Responsibilities**

26. Special Education Teacher, OT, and Former SLP, had access to the IEP via Enrich. *Interviews with Senior Manager, Special Education Teacher, and OT.* Special Education Teacher, OT, and Former SLP were involved in supporting Student and implementing the IEP. *Interviews with Special Education Teacher, Senior Manager, and OT.* Furthermore, Special Education Teacher highlighted the accommodations in the IEP in accordance with her personal practice. *Interview with Special Education Teacher.*
27. Special Education Teacher, OT, and Former SLP reviewed the IEP and discussed service schedules and accommodations. *Interviews with OT and Special Education Teacher; Exhibit L,* p. 18. Special Education Teacher, OT, and Former SLP reached out to Student’s previous teachers and services providers to learn more about which service and accommodation implementation methods Student was familiar with. *Interview with OT and Special Education Teacher; see Exhibit L,* p. 178.
28. Relevant staff had access to the IEP and were informed of their responsibilities related to implementing it. *Interviews with OT, Special Education Teacher, and Senior Manager.*

#### **G. IEP Implementation: SLP Services**

29. Parent raised concerns with the implementation of SLP services from November 2024 through January 24, 2025. *Complaint,* p. 4.
30. Former SLP created a service schedule for Student in the MIA classroom and emailed it to Special Education Teacher on August 20, 2024. *Exhibit L,* p. 190. The schedule noted that Student would receive direct SLP services twice weekly on Tuesdays and Thursdays from 12:45pm to 1:15pm, and indirect SLP consult on Fridays in 15-30 minute chunks throughout the afternoon. *Id.* at pp. 190, 350.
31. Student received direct SLP services including language modeling verbally and using an AAC device, declarative language modeling, mitigable gestalt modeling, and the addition of words

to her AAC device like “first” “then” “stamp” “farm puzzle” Tuesdays and Thursdays from August 26 to November 6, 2024. *Exhibit F*, pp. 5-8.

32. Student received indirect SLP support including consultation in support of Student’s specific needs, which included observations, consultation between adults, trainings, meetings to develop ideas, and plans for implementation, on Fridays from August 30 to November 8. *Exhibit L*, pp. 244-245.
33. Former SLP taught Special Education Teacher the functionality of Student’s AAC device, including how to use the LAMP program during Student’s indirect service time. *Interview with Special Education Teacher, Exhibit F*, pp. 1-8.
34. Student did not receive any SLP services during the week of November 11-15 due to an absence on November 12, and Former SLP being present in other evaluation and IEP meetings on November 13 and 15. *Id.* at p. 8.
35. Former SLP’s last day in the MIA classroom was November 15, 2024. *Response*, p. 3.
36. Following Former SLP’s departure and during periods where staff members in the MIA classroom were unavailable due to illness or personal reasons, District took steps to maintain support inside and outside of the classroom, including having 4-5 staff (such as paraprofessionals, a school nurse, or principal) present in the classroom, and sometimes leveraging other building resources such as School principal (“Principal”). *Interviews with Senior Manager and Special Education Teacher*.
37. Based on these findings, the SCO finds that Student did not receive speech-language services consistent with the IEP from November 18, 2024 to January 24, 2025. Accounting for school holidays during this time, Student did not receive speech-language services consistent with the IEP for approximately seven weeks.

#### **H. IEP Implementation: Accommodations**

38. Parent raised concerns with the implementation of eleven accommodations. *Complaint*, p. 6; *Exhibit 2*, pp. 2-7; *Interview with Parent*. There was no IEP in effect to be implemented from August 19 through August 28, 2024. *See Exhibit L*, pp. 26, 31, 34; *Interview with Parent; Exhibit 3*, p. 2. The SCO will determine whether accommodations were provided from August 29, 2024 to present.

#### **Unlimited Access to AAC Device**

39. The IEP requires unlimited access to Student’s AAC device, specifically ensuring that Student’s device is accessible at all times across the educational environment. *Exhibit A*, p. 35.
40. Parent’s concern is that Student did not have unlimited access to her AAC device. *Complaint*, p. 6; *Interview with Parent*. For example, Parent observed on or about August 22, 2024 that

Student's AAC device was not accessible when it was on top of a filing cabinet that was too high for her to reach. *Interview with Parent*. The family's advocate ("Advocate") observed Student's AAC device outside of the classroom once as well. *Reply*, p. 2; *Interview with Parent*. On September 4, 2024, Parent notified District leadership, including Principal, that Student's AAC device was shared and altered during a school day. *Interview with Parent; Exhibit L*, pp. 31-32, 332-336. Principal met with Parent that day to discuss her concerns. *Exhibit L*, p. 433.

41. On or about August 21, 2024, Parent expressed concern about an incident where Student's classmate took her AAC device in class. *Id.* at pp. 335, 338; *Interview with Special Education Teacher*. Shortly after, District supplied every student in the MIA classroom with their own personal AAC devices, which were ordered prior to this incident. *Id.* In response to Parent's concerns, a passcode was added to Student's device so only teachers and providers could unlock it and use it. *Exhibit L*, p. 351.
42. Student carried her AAC device everywhere unless she was outside for recess. *Interviews with Special Education Teacher and OT*. Special Education Teacher did not recall Student's device ever being outside of the classroom or on top of a filing cabinet. *Interview with Special Education Teacher*. Special Education Teacher credibly described Former SLP putting cues into the AAC device and how Student was able to communicate using those cues. *Interview with Special Education Teacher*.
43. Special Education Teacher also described how Student utilized her device to communicate when she was frustrated, for clean-up, to eat, and to get bubbles. *Interview with Special Education Teacher; Exhibit F*, pp. 1-8. On November 11, 2024, the school psychologist ("School Psychologist") observed Student utilizing her AAC device during an in-class observation. *Exhibit 2*, p. 31. Student's progress monitoring also showed that her AAC device (sometimes referred to as a "talker"), was utilized in at least 28 different instances from September 1, through November 1, 2024. *Exhibit F*, pp. 1-8. Substitute Teacher indicated that Student had access to her AAC device "100% of the time." *Interview with Substitute Teacher ("Substitute Teacher")*.
44. Based on these facts, the SCO finds that this accommodation was made available to Student consistent with the IEP from August 29, 2024 to present.

#### Repeat and Expand on Vocalizations

45. The IEP requires repeating and expanding on vocalizations and "sound play to encourage sound development (for example environmental sounds or animal sounds)." *Exhibit A*, p. 35.
46. Parent's concern is that due to the high student-to-teacher ratio, Student was unable to consistently access an adult who could repeat and expand on her vocalizations and honor her voice. *Interview with Parent*.



47. Special Education Teacher, OT, and Former SLP would routinely repeat Student's vocalizations and add additional information or difficulty to it. *Interviews with Special Education Teacher and OT*. An example of this repeat and expand is when Student would say "play bubbles" SLP would say "big bubbles," "small bubbles," "I see bubbles." *Exhibit L*, p. 394. On September 9, 2024, when Student requested bubbles, Former SLP modeled verbally and using AAC, including "more bubbles," "want bubbles," and "pop bubbles." *Exhibit F*, p. 5. On November 1, during a 1-on-1 session, Student requested "play bubbles" using her talker and walked to the closet where the bubbles are stored and Former SLP redirected by saying/signing "all done" bubbles and modeled "play stamps" on the talker. *Id.* at p. 8.
48. Based on these facts, and because the providers were able to accurately and credibly describe how this accommodation was provided, the SCO finds that this accommodation was provided consistent with the IEP from August 29, 2024 to present.

#### Opportunities to Improve Spatial Awareness and Positional Concepts

49. The IEP requires opportunities to "participate in activities and games that develop hand-eye coordination, explore depth perception and teach spatial awareness and positional concepts." *Exhibit A*, p. 18. Her "motions and positions should be labeled, such as backwards, forwards, in front of, behind, away from and together." *Exhibit A*, p. 34.
50. Parent's concern is that this accommodation was not provided because Student does not know positional concepts such as backwards, forwards, and behind, and that this is the result of the spatial awareness accommodation not being reinforced by teachers or staff. *Interview with Parent*. Furthermore, Parent said Student does not know left side or right side and has difficulty using a shape sorting box when being instructed with positions. *Id.*
51. Special Education Teacher indicated that Student had a sensory area where she did pushups and other physical activity to teach spatial awareness and positional concepts. *Interview with Special Education Teacher*. Student sought frequent movement opportunities while in the classroom including rocking, spinning, and running. *Exhibit A*, p. 27. For instance, on September 27, OT indicated that Student sometimes utilized a separate area of the classroom where she would play with crash pads and steppingstones. *Exhibit F*, p. 2.
52. On October 9, Student verbally said "up, up, up" after Former SLP modeled herself getting up from the floor during a transition from an activity on the floor to the table. *Id.* at p. 7. On October 25, Former SLP indicated that she utilized language models with Student which included the words "up," and "down." *Id.* On October 30, Student played with puzzles and was engaged with SLP in modeled language relating to the puzzle which included yes/no questions ("Does it fit?" Yes!). *Id.*
53. The SCO finds that spatial awareness can refer to the ability to know where the body is in space and that it can be used to familiarize oneself with positional concepts as a language component. *Consultation with CDE Content Specialist*.

54. Based on these facts, including the accurate and credible description of opportunities for spatial awareness by providers, the SCO finds that this accommodation was provided consistent with the IEP from August 29, 2024 to present.

Increased Time to Process Verbal Instructions

55. The IEP requires “increased time to process verbal instructions and information and to formulate her responses.” *Exhibit A*, p. 34.

56. Parent’s concern is that Student did not receive extra time to process or respond to verbal instructions due to the high student-to-teacher ratio. *Interview with Parent*. Specifically, she said Student was unable to consistently access an adult who could reinforce the extra minute(s) that Student needs to process instructions and formulate a response. *Id.* During one observation where Student was supposed to be given extra time to process an instruction or formulate a response, Special Education Teacher redirected her attention from Student to a classroom peer who was causing a disruption. *Id.* Parent indicated that this redirection positioned Special Education Teacher to effectively ignore Student’s response, thus not allowing for the increased time pursuant to her accommodations. *Id.*

57. Special Education Teacher regularly used time delay with Student to increase her independence. *Interview with Special Education Teacher*. During a classroom observation on November 7, 2024, Student was playing with letter stamps and a teacher modeled “clean up” on Student’s AAC device, to which Student responded by also selecting “clean up.” *Exhibit 2*, p. 16. Student then continued to play with the stamps until a teacher again modeled “clean up” five times on Student’s AAC device. *Id.* After giving Student additional time to respond to this cue, Student signed “more,” and the teacher started to put the stamps away. *Id.* At some point after, Student also began putting the stamps away in an independent manner while occasionally vocalizing. *Id.*

58. Based on these facts, including the accurate and credible description from Special Education Teacher, the SCO finds that this accommodation was provided consistent with the IEP from August 29, 2024 to present.

Utilize Video Modeling

59. The IEP requires the utilization of video modeling as appropriate to teach letter/number formations. *Exhibit A*, p. 35.

60. Parent is concerned that video modeling was only partially implemented because District was using Bluey instead of other more effective types of video modeling. *Exhibit A*, p. 34; *Interview with Parent*. Furthermore, Parent never received documentation to support that Student received video modeling. *Interview with Parent*.

61. OT personalized some of Student’s accommodations to incorporate things that Student was interested in and characters that she liked. *Interview with OT*. On September 6, 2024, OT described trialing video modeling to work on the letter L. *Exhibit F*, p. 1. OT and Former SLP progress notes from September 13, September 20, and November 1, described Student engagement in video modelling activities. *Id.* at pp. 1-8. Specifically, on November 1, Student utilized video modeling to write letters. *Exhibit F*, p. 3.
62. Based on these facts, the SCO finds that District provided this accommodation consistently with the IEP from August 29, 2024 to present.

*Recasting and Expanding on Utterances*

63. The IEP requires opportunities to “recast and expand on [Student’s] utterances when using her communication device. All verbal attempts at communication should be honored and [Student] should not be required to repeat her utterances on her device in these situations.” *Exhibit A*, p. 35.
64. Parent is concerned that there were not enough paraprofessionals in Student’s classroom to effectively recast and expand on Student’s verbal utterances, including requests, on her AAC device. *Exhibit L*, p. 193; *Interview with Parent*. Parent highlighted “bubbles” as a request that Student makes frequently on her AAC device that should always be honored. *Exhibit L*, p. 183; *Interview with Parent*. Parent also expressed concern that that paraprofessionals were too inexperienced and inconsistent to implement this accommodation. *Interview with Parent*.
65. On September 11, 2024, Former SLP indicated that Student does request “bubbles” but that unfortunately “[they] can’t play with bubbles all day, and this becomes very frustrating for her.” *Exhibit L*, p. 338. Former SLP indicated that when Student cannot have bubbles, she still praised her for asking while also telling her “no” when appropriate. *Id.* On October 18, SLP modeled declarative language verbally and using the AAC device as Student communicated “play stamps” “play farm puzzle” which resulted in Former SLP following Student’s request and adding “stamps” and “farm puzzle” to Student’s “play” page. *Exhibit F*, p. 7.
66. On October 25, OT noted that Student worked on a pumpkin craft with a paraprofessional and that Student was able to assist with glue on an apple craft after communicating back and forth with a paraprofessional on her device. *Exhibit F*, p. 3; *Interview with OT*. On November 11, when asked by a teacher if she wanted goldfish, Student responded using the ASL sign for “more,” and afterwards a teacher modeled the ASL sign for “please.” *Exhibit 2*, p. 16. Student was responsive to the teacher’s recasting and signed “please” before being given more goldfish. *Id.* That same day, Former SLP acknowledged that Student wanted to take a break and modeled “break” on her talker. *Exhibit F*, p. 8.
67. Based on these facts, the SCO finds that District provided this accommodation consistent with the IEP from August 29, 2024 to present.

### Support and Warnings for Safety Drills

68. The IEP requires “warning of any drills (fire, safety, weather, etc.)” and “[f]ollow up the drill with support for the student in helping regulate and resume school schedule.” *Exhibit A*, p. 34.
69. Parent indicated that a fire drill occurred on October 22, 2024, when she was at School for a meeting. *Interview with Parent*. Parent is concerned that Student’s visual schedule was not updated to show that a fire drill would be taking place. *Id.* Additionally, she is concerned because Special Education Teacher told Parent that she was not informed ahead of time that a fire drill would be happening and as a result she was unable to grab noise-cancelling headphones for the class and students were dysregulated. *Id.*
70. Typically, Special Education Teacher and other service providers would operate collaboratively to prepare students for routine safety or fire drills. *Interviews with Special Education Teacher and Senior Manager*. This collaborative effort includes Special Education Teacher receiving a notification from school staff about a planned drill, and Special Education Teacher informing Student, typically on the morning of the drill. *Id.* However, Special Education Teacher was not informed of an upcoming fire drill for October 22, 2024 and therefore she was unable to prepare Student. *Exhibit F*, p. 7.
71. Based on these facts, the SCO finds that District did not provide this accommodation consistent with the IEP on October 22, 2024.

### Provision of Proprioceptive Input

72. The IEP requires “ample opportunities to engage in activities that provide proprioceptive (pushing, pulling, lifting, carrying) and vestibular input (swinging, jumping, spinning, etc.) throughout the day.” *Exhibit A*, p. 34.
73. Parent is concerned that there were no swings or trampolines in Student’s classroom to provide vestibular input. *Interview with Parent*. Instead, Student was provided with books to add weight to her backpack for input. *Interviews with Parent, Special Education Teacher, and OT*.
74. School received consent from Parent to allow Student to wear a weighted compression vest that belonged to the classroom. *Id.* However, Student did not like the vest, so it was not used. *Id.* Recess was another opportunity to provide proprioceptive input for Student. *Interview with Special Education Teacher*. OT credibly described that Student was provided with a cube chair and an additional wiggle cushion. *Exhibit F*, p. 1. Special Education Teacher indicated that Student had an area to swing in the classroom. *Interview with Special Education Teacher*.
75. A cube chair is an appropriate tool to provide clear boundaries. *Consultation with CDE Content Specialist*. A wiggle cushion is also an appropriate tool to allow for vestibular input

during seated times. *Id.* Furthermore, weight is an appropriate proprioceptive tool to also feed into a child's system. *Id.*

76. Based on these facts, the SCO finds that this accommodation was provided consistently with the IEP from August 29, 2024 to present.

#### Visual Schedule

77. The IEP requires "access to a visual schedule at all times; as well as warnings of transitions and changes. Review visual schedule with student throughout the day, so she can anticipate which event is coming next." *Complaint*, p. 6; *Exhibit A*, p. 34.

78. Parent is concerned that Student's visual schedule was not being updated. *Interview with Parent*. Parent was physically present in the classroom daily for pick up and drop off and said she consistently observed that Student's schedule was never updated. *Exhibit 2*, p. 2; *Interview with Parent*. For example, the vertical visual schedule that Student uses never showed her bathroom breaks or when she goes to specials like science. *Interview with Parent*.

79. Special Education Teacher provided a visual schedule for Student that was kept at Student's desk and included pictures to help prime Student to better anticipate her schedule for the day. *Interview with Special Education Teacher; Exhibit R*, p. 2. On November 11, 2024, School Psychologist observed a visual schedule being used. *Exhibit 2*, p. 31. Specifically, School Psychologist observed a teacher model "eat" on student's device and then she walked Student over to the visual schedule to show Student that it was time to eat. *Exhibit 2*, p. 16. Special Education Teacher credibly described utilizing the visual schedule everyday with Student and updating it as needed. *Interview with Special Education Teacher*.

80. Based on these facts, including the providers' accurate and credible descriptions of how this accommodation was implemented, the SCO finds that District provided this accommodation consistent with the IEP from August 29, 2024 to present.

#### Pair Directions with Gestures, Modeling, and Visuals

81. The IEP requires pairing "directions with gestures, modeling, and visuals." *Exhibit A*, p. 34; *Exhibit 2*, p. 2.

82. Parent is concerned that pairing directions with gestures and modeling was not happening due to the high student-to-teacher ratio. *Interview with Parent*. Parent said this prevents Student from getting 1-on-1 support necessary to consistently ensure that pairing was happening. *Id.* Parent stated that the hand-on-hand pairing method is not being utilized consistently because there is hardly ever a teacher to assist with this method. *Id.*

83. On October 7, OT noted that Student preferred to use the hand-on-hand method when writing letters. *Exhibit F*, p. 1. Additionally, OT credibly described giving Student a model to

draw a person and that once OT provided more assistance, Student was able to draw body parts more independently. *Id.* On October 18, OT noted again that Student preferred the hand-on-hand method, possibly to help with confidence, when writing letters and numbers on the chalkboard. *Id.* On November 11, 2024, School Psychologist observed a teacher giving directions with verbal and gestural prompting to Student. *Exhibit 2*, p. 30. Specifically, Student threw trash on the floor and the teacher gave her a verbal prompt “pick up” and a gestural prompt (pointing to the trash) to pick up the items. *Id.* Student then picked up her trash and threw it away independently. *Id.*

84. Based on these facts, and because the providers were able to accurately and credibly describe how this accommodation was implemented, the SCO finds that District provided this accommodation consistent with the IEP from August 29, 2024 to present.

#### Line of Sight Supervision

85. The IEP requires line of sight supervision at all times (classroom, playground, outdoors, etc.). *Exhibit A*, p. 35.
86. Parent expressed concern with the staffing in the MIA classroom and injuries that Student sustained within the first two weeks of school. *Exhibit L*, pp. 408-411, 476. Parent contends that Student would not have sustained injuries if there were more paraprofessional support in the classroom. *Interview with Parent; See Exhibit L*, p. 407. Parent indicated that most of the injuries occurred while Student was in the classroom and were not injuries like what a student might typically receive on the playground. *Interview with Parent*.
87. The MIA classroom had anywhere between 1 and 3 paraprofessionals at any given time. *Interviews with Senior Manager and Special Education Teacher*. District documented behavioral incidents concerning Student. *See Exhibit R*, pp. 1-17; *Exhibit L*, p. 1. These incidents included an occurrence in P.E. class where a teacher had to intervene and bring Student back to the classroom. *Exhibit L*, p. 1. There was another incident where Student sat with a teacher in the calming corner and a physical altercation ensued with a peer. *Id.* Student had line-of-sight supervision during the aforementioned incidents. *Interview with Substitute Teacher*. In response to Parent's concerns regarding Student's injuries, Principal assured her that staff would put extra eyes on the students in the classroom, or whatever setting that they thought the injury occurred, and further explained that it is possible for children to sustain injuries even with line-of-sight supervision. *Exhibit S*, p. 2.
88. Based on these facts, the SCO finds that Student received this accommodation consistent with the IEP from August 29, 2024 to present.

#### **I. Student's Progress on Annual Goals and Attendance**

89. The IEP requires that Parent be informed of progress when report cards are sent home each trimester. *Exhibit A*, p. 29. It also requires that Student's progress be measured by an SLP. *Id.*

90. A progress report was provided to Parent on November 8, 2024. *Exhibit I*, pp. 1-8. The report indicated “progress made” on Student’s communication goal prior to the November trimester reporting period. *Id.* at p. 1.
91. There was no progress measured or reported on Student’s communication goal after November 8, 2024, because there was no SLP. *Exhibit I; Interview with Senior Manager; Exhibit F*, p. 8.
92. Student was absent for 7 days between August 2024 and January 2025. *Exhibit F*, pp. 1-8.
93. Student was relocated to another center-based classroom within District on January 29, 2025. *Exhibit 6*, p. 1.

**J. Other Students’ IEP Implementation: SLP Services**

94. At the start of the school year, nine other students (“Other Students”), in addition to Student, were entitled to instruction from an SLP in the MIA classroom. *Exhibit N, Exhibit O*, pp. 1-212.
95. The IEPs for Student, and Other Students, required:
  - a. **Student** – 480 MPM of direct instruction from an SLP outside the general education setting and 180 minutes per year (“MPY”) of indirect instruction from an SLP outside the general education setting. *Exhibit A*, p. 40. From November 18, 2024 to present (excluding school vacation days), Student required a total of 840 minutes of direct SLP instruction. *Id.*
  - b. **Student A** – 180 MPM of direct instruction from an SLP outside the general education setting and 180 MPY of indirect instruction from an SLP outside the general education setting. *Exhibit O*, p. 36. From November 18, 2024 to present (excluding school vacation days), Student A required a total of 315 minutes of direct SLP instruction. *Id.*
  - c. **Student B** - 180 MPM of direct instruction from an SLP outside the general education setting and 180 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 210. From November 18, 2024 to present (excluding school vacation days), Student B required a total of 315 minutes of direct SLP instruction. *Id.*
  - d. **Student C** - 240 MPM of direct instruction from an SLP outside the general education setting and 300 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 116. From November 18, 2024 to present (excluding school vacation days), Student C required a total of 420 minutes of direct SLP instruction. *Id.*

- e. **Student D** – 240 MPM of direct instruction from an SLP outside the general education setting and 300 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 73. From November 18, 2024 to present (excluding school vacation days), Student D required a total of 420 minutes of direct SLP instruction. *Id.*
  - f. **Student E** - 240 MPM of direct instruction from an SLP outside the general education setting and 360 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 196. From November 18, 2024 to present (excluding school vacation days), Student E required a total of 420 minutes of direct SLP instruction. *Id.*
  - g. **Student F** - 120 MPM of direct instruction from an SLP inside the general education setting and 240 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 140. From November 18, 2024 to present (excluding school vacation days), Student F required a total of 210 minutes of direct SLP instruction. *Id.*
  - h. **Student G** - 180 MPM of direct instruction from an SLP inside the general education setting and 660 MPY of indirect instruction from an SLP outside the general education setting. *Id.* at p. 15. From November 18, 2024 to present (excluding school vacation days), Student G required a total of 315 minutes of direct SLP instruction. *Id.*
  - i. **Student H** - 150 MPM of direct instruction from an SLP outside the general education setting and 180 MPY of indirect instruction from an SLP inside the general education setting. *Id.* at pp. 170, 176. From November 18, 2024 to present (excluding school vacation days), Student H required a total of 262 minutes of direct SLP instruction. *Id.*
96. Between November 18, 2024 to present, Student’s A-H did not receive any direct or indirect instruction from a speech-language pathologist, inside or outside of the general education setting. District remedied the missed services for Student I. *Exhibit P*, p. 1.

**K. Other Students’ Progress on Annual Goals and Attendance**

97. Other Students’ IEPs required that, at a minimum, parents be informed of progress at the same time that report cards are issued for the trimester. *Exhibit Q*, pp. 1-399.
98. Student A, and Students C-H, each had a communication goal that required progress to be measured by the SLP using a combination of various data collection tools, observations, and teacher reports. *Id.* Student B had a reading goal that required progress to be measured by the special education teacher and SLP. *Id.* at pp. 397-398.



99. Student A, and Students C-H, each made progress on their communication goals prior to the November trimester reporting period as measured by Former SLP. *Exhibit Q*, pp. 1-399. Student B made progress on her reading goal prior to the November trimester reporting period as measured by Former SLP. *Id.*
100. There was no SLP to measure progress towards Other Students' communication and reading goals between November 18, 2024 to present. *Interview with Senior Manager; Exhibit Q*, pp. 1-399.
101. From November 18, 2024 to present, Student A had 0 unexcused absences, Student B had 3 unexcused absences, Student D had 1 unexcused absence, and Student H had 2 unexcused absences. *Exhibit Q*, pp. 31, 82-84, 300-301, 378.
102. From November 18, 2024 to present, Students C and E each had 7 unexcused absences, and they were both entitled to the same amount of SLP direct services under their IEPs. *Exhibit Q*, pp. 124-127, 338; *Exhibit O*, pp. 116-196.
103. From November 18, 2024 to present, Student F had 10 unexcused absences and Student G had 12 unexcused absences. *Exhibit Q*, pp. 1-3, 210-212.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District made Student's IEP accessible to teachers and service providers responsible for its implementation from August 29, 2024 to present, as required by 34 C.F.R. § 300.323(d). District did not properly implement Student's IEP from August 2024 to present, as required by 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE for Student. District did not properly implement Other Students' IEPs from November 2024 to present, as required by 34 C.F.R. § 300.323(c). A denial of FAPE occurred for Other Students A through I.**

#### **A. 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.* 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. Accessibility and Responsibilities**

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

On August 29, 2024, when the IEP was accessible in Enrich, Special Education Teacher and Former SLP were involved in supporting student and implementing her IEP. (FF # 26). Teachers and service providers received copies and had access to the IEP in Enrich. (FF #s 26-28). In addition to reviewing the IEP’s services and accommodations, teachers and service providers consulted with Student’s teachers from her previous school district. (FF # 27). Special Education Teacher was continually aware of her responsibilities under the IEP due to her role as Student’s case manager and presence at all IEP meetings for Student. (FF # 17). Teachers and service providers were aware of their responsibilities under the IEP and were aware of accommodations listed in the IEP. (FF #s 16-17, 26-28). Indeed, they credibly described an understanding of their role in providing the accommodations. (FF #s 39-88). Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323(d) from August 29, 2024 to present.

### **C. Implementation of Student’s Speech Language Services**

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2) from November 2024 to present with respect to the speech language services listed in the IEP. The IEP was in effect from August 29, 2024 to present. (FF # 19). The IEP required 480 MPM of direct services outside the general education classroom provided by an SLP, and 120 MPM of indirect support outside the general education classroom provided by an SLP. (FF #s 23, 95). From November 18, 2024 to present, Student did not receive any direct or indirect SLP services. (FF # 37). This occurred primarily due to Former SLP ending her assignment at School and District being unable to fill the vacancy despite efforts to do so. (FF #s 5-13).

Thus, the SCO finds and concludes that District did not implement the SLP services in the IEP from November 18, 2024 to January 24, 2025, as required by 34 C.F.R. § 300.323(c).

### **D. Implementation of Student’s Accommodations**

The SCO must determine whether District satisfied its obligation under C.F.R. § 300.323(c)(2) with respect to accommodations. Here, implementation of eleven accommodations are disputed: (1) Unlimited Access to AAC Device; (2) Repeat and Expand on Vocalizations; (3) Opportunities to Improve Spatial Awareness and Positional Concepts; (4) Increased Time to Process Verbal Instructions; (5) Utilize Video Modeling; (6) Recasting and Expanding on Utterances; (7) Support and Warnings for Safety Drills; (8) Provision of Proprioceptive Input (9) Visual Schedule; (10) Pair Directions with Gestures, Modeling, and Visuals; and (11) Line of Sight Supervision. (FF #s 38-88).

From August 29, 2024 to present, District provided ten of these accommodations—Unlimited Access to AAC Device, Repeat and Expand Vocalizations, Opportunities to Improve Spatial Awareness, Increased Time to Process Verbal Instructions, Video Modeling, Recast and Expand on Utterances, Opportunities for Proprioceptive Input, Visual Schedule, Pair Directions with Gestures, and Line-of-Sight Supervision—consistent with the IEP. (FF #s 39-67, 72-88). On one occasion, District did not provide the Support and Warning for Safety Drills accommodation—consistent with the IEP. (FF #s 68-71).

Accordingly, the SCO finds and concludes that District did not implement one accommodation in Student’s IEP, as required by 34 C.F.R. § 300.323(c)(2).

### **E. Materiality of Noncompliance for Student**

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. The failure to implement 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*, 502 F.3d at 822. 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.*

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).

### **Speech-Language Services**

Here, Student did not have an IEP in place for seven days. (FF # 18). Thus, Student did not receive any services during this time. From November 18, 2024, to January 24, 2025, approximately seven weeks, Student did not receive any direct or indirect speech-language instruction from a speech-language pathologist, or a SLPA. (FF #s 35-37). There was no progress monitoring for Student during this period. (FF #91). In total, Student missed approximately 840 direct SLP minutes (480 MPM/4 weeks = 120 MPW, 120 MPW x 7 weeks = 840 total missed minutes) and 210 indirect SLP minutes (120 MPM/4 weeks = 30 MPW, 30 MPW x 7 weeks = 210 total missed minutes). (FF #s 23, 37).

The SCO finds that the combination of missed service minutes, in light of Student's individualized communication needs, is "more than a minor discrepancy" between the services Student received and the services required by the IEP. *Van Duyn ex rel. Van Duyn*, 502 F.3d at 822. Moreover, Student's educational progress, specifically as it pertains to her communication goal, cannot be determined at this time due to a lack of progress measuring and reporting by an SLP from November 18, 2024 to present. (FF #s 89-91). Thus, the SCO finds and concludes that District's noncompliance as to Student's missed service minutes was material and resulted in a denial of FAPE for Student.

#### Accommodations

Here, District did not provide access to one of the accommodations Parent raised a concern about. (FF # 38). Specifically, access to Support and Warning for safety drills was not provided on a single instance. (FF #s 68-71). The following accommodations were delivered with fidelity from August 29 to present: Unlimited Access to AAC Device; Repeat and Expand on Vocalizations; Opportunities to Improve Spatial Awareness and Positional Concepts; Increased Time to Process Verbal Instructions; Utilize Video Modeling; Recasting and Expanding on Utterances; Provision of Proprioceptive Input; Visual Schedule; Pair Directions with Gestures, Modeling, and Visuals; and Line of Sight Supervision. (FF #s 39-67, 72-88). For these reasons, the SCO finds and concludes that District's noncompliance as to Student's accommodations was not material and did not result in a denial of FAPE.

#### **F. Compensatory Services for Student**

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

Here, the SCO finds and concludes that an award of compensatory services is necessary to place Student in the position she would have been in if not for the noncompliance: 2 hours and 30 minutes of direct speech language services outside the general education classroom provided by

an SLP and 2 hours of indirect speech language services outside the general education environment provided by an SLP. This is because Student is nonverbal and relies heavily on speech language services and her accommodations, including access to her AAC device, to be involved in and make progress in the general education curriculum. (FF #s 1, 22-24, 39-84).

### **G. Other Students**

#### *i. Implementation of Speech Language Services*

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2) from November 2024 to present with respect to speech language services for Other Students. Here, Other Students' IEPs required anywhere from 180 to 240 MPM of direct speech-language services from a speech-language pathologist and indirect SLP minutes. (FF #s 94, 95). They did not receive these minutes consistent with their IEPs from November 18, 2024 to present. (FF # 96). Thus, the SCO finds and concludes that District did not implement their IEPs from November 18, 2024 to present, as required by 34 C.F.R. § 300.323(c)(2).

#### *ii. Materiality of Noncompliance*

The SCO must now determine whether this noncompliance was "material" and thus resulted in a denial of FAPE. *Woodstock Bd. of Educ.*, 370 Fed. App'x at 205. A student's progress toward achieving annual IEP goals can show that an IEP implementation failure was not "material." *Id.* Also, a minor discrepancy between the services provided and services required under an IEP is not enough to amount to a denial of FAPE. *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014).

Here, for at least seven weeks during the school year, Other Students did not receive any specialized speech-language instruction consistent with their IEPs. (FF # 96). This noncompliance involved an "essential element" of the IEPs, which includes communication goals and Student B's reading goal, to address significant speech difficulties. (FF #s 94-100). Other Students' educational progress, specifically progress related to communication and Student B's reading goal, cannot be determined at this time due to lack of progress measuring and reporting by an SLP from November 18, 2024 to present. (*Id.*). Thus, the SCO finds and concludes the noncompliance is material and results in a denial of FAPE for them.

### **H. Compensatory Services for Other Students**

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

Here, the SCO finds and concludes that an award of compensatory services—specifically direct speech language services—is necessary to place Other Students in the positions they would have been if not for noncompliance. In determining each award, the SCO considered the services received by each Other Student, the services required by Other Students’ IEPs, the lack of progress monitoring, the number of days between November 18, 2024 and January 24, 2025 (excluding vacation days), and the number of unexcused absences for each Student.

The award shall be: Student A, who had 0 unexcused absences (95 minutes); Student B, who had 3 unexcused absences (95 minutes); Student C, who had 7 unexcused absences (48 minutes); Student D, who had 1 unexcused absence (72 minutes); Student E, who had 7 unexcused absences (48 minutes); Student F, who had 10 unexcused absences (30 minutes); Student G, who had 12 unexcused absences (30 minutes); and Student H, who had 2 unexcused absences (45 minutes).

In addition to direct service minutes, Other Students shall also be awarded two hours each of indirect services from an SLP, or SLPA under the supervision of an SLP, to address speech and communication related accommodations to access the general curriculum. Moreover, there is no award of direct or indirect services for Student I because District remedied the noncompliance with respect to that student. (FF # 96).

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

Here, the noncompliance with IEP implementation impacted Other Students and thus the SCO finds and concludes that this was systemic. This noncompliance was caused by a staffing shortage. The CDE recognizes the challenges districts are facing due to nationwide staffing shortages which are largely outside of their control. However, the IDEA does not excuse a district’s obligation to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

District has procedures for tracking and addressing staffing vacancies that impact the implementation of IEPs. (FF #s 5-9). District also has an extensive recruitment strategy to fill SLP vacancies. (FF # 6). Furthermore, there are written procedures to address any need for compensatory services after a vacancy has been permanently resolved. (FF #s 7-8). Given the existence of these procedures—and because the noncompliance for Other Students is addressed in this Decision—no further remedy is required.

## **REMEDIES**

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

1. Implementing the IEP, as required by 34 C.F.R. § 300.323.

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

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

- a. By **March 28, 2025**, 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. Senior Manager, District SLP Manager, Special Education Teacher, OT, and Principal must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.323 by **Friday, April 11, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Friday, April 18, 2025**.

### **3. Compensatory Education Services - Student**

- a. Student shall receive **2 hours and 30 minutes of direct speech language services from an appropriately licensed speech language pathologist selected by District.** These services must be designed to advance Student toward current IEP goals.
- b. Student shall receive **2 hours of indirect speech language services from an appropriately licensed speech language pathologist or a speech language pathologist assistant under the direct supervision of an appropriately licensed**

**speech language pathologist employed by District.** These services must be designed to advance Student toward current IEP goals.

- c. All compensatory services must be provided to Student no later than **February 28, 2026.**
- d. By **Monday, March 31, 2025,** Parent shall provide written consent for the provision of compensatory services to the CDE and District. If Parent does not provide written consent for services by this date, District will be excused from providing compensatory services to Student. Unless otherwise specified by the District, this written consent shall be provided by Parent to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- e. If written consent for the provision of compensatory services is received by **Monday, March 31, 2025,** District shall schedule compensatory services in collaboration with Parent. District shall submit the schedule of compensatory services to the CDE by **Friday, April 18, 2025.** A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
  - i. The parties shall cooperate in determining how compensatory services will be provided. If Parent refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent and should thus be excused from providing compensatory services to Student, rests solely with the CDE.
  - ii. Any delay in beginning the provision of compensatory services must be approved by the CDE.
  - iii. While determining the schedule, Parent may opt out of some of the compensatory services. In that case, along with the schedule of services, District shall submit evidence of Parent's written request to opt out of a specific amount of compensatory services.
  - iv. If the District and Parent cannot agree to a schedule by **Friday, April 18, 2025,** District and Parent must meet either in-person or via video conference to resolve scheduling complications by **Friday, April 25, 2025** and submit the schedule by **Wednesday, April 30, 2025.**



- v. If the District and Parent cannot agree to a schedule by **Friday, April 25, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parent, including but not limited to, copies of correspondence sent to the Parent and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Wednesday, April 30, 2025**.
- vi. By **Wednesday, May 14, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that the District is excused from providing the compensatory services.
- f. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- g. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- h. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction to which Student is entitled (including time in general education).
- i. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the appropriate service log.

#### **4. Compensatory Education Services – Other Students**

- a. The following Other Students shall receive direct specialized instruction from an appropriately licensed special education teacher selected by District in these amounts: **Student A** (95 minutes); **Student B** (95 minutes); **Student C** (48 minutes); **Student D** (72 minutes); **Student E** (48 minutes); **Student F** (30 minutes); **Student G** (30 minutes); **and Student H** (45 minutes). These services must be designed to advance Other Students toward their current IEP goals.
- b. Students A-H shall receive 2 hours of indirect speech language services from an appropriately licensed speech language pathologist or a speech language pathologist assistant under the direct supervision of an appropriately licensed speech language pathologist selected by District. These services must be designed to advance Other Students toward their current IEP goals.
- c. All compensatory services must be provided to Other Students no later than **February 28, 2026**
- d. By **March 28, 2025**, District shall submit to the CDE for review a draft letter to be sent to the parents of Students A-H (“Other Parents”). This letter shall notify Other Parents that their Student was identified in a recent state complaint decision (with information on where to find the decision) as a student who requires compensatory services as a result of a staffing vacancy, as identified in the decision.
  - i. This can be a form letter, but it must include an individualized section indicating the amount of compensatory services the Other Student was awarded in this decision.
  - ii. The letter must include a section requiring Other Parents to sign, acknowledging their receipt of the letter and understanding of its contents.
  - iii. The letter must include a section requiring Other Parents to consent to or opt out of the compensatory education services.
  - iv. CDE will approve the draft letter, approve it with modifications, or reject it by **Friday, April 11, 2025**.
- e. By **Friday, April 18, 2025**, District must send the approved letter to Other Parents.
  - i. District must translate the approved letter as necessary to provide it to parents with limited English proficiency in their native language.
  - ii. District must send the letter via both email (if the parent has an email address) and postal mail.

- iii. District must simultaneously submit a signed assurance to CDE that the approved letters were sent to Other Parents, along with a list of the parents' names, students' names, addresses, and the date that the letter was sent to each.
  - iv. If the Other Student no longer attends School but still attends school in the District, the letter must be sent to the parents by April 4, 2025.
  - v. If the Other Student no longer attends any school in the District, the letter must be sent to the parents' last known address and email address and District must make reasonable attempts to reach them, including calling any last known numbers and contacting the Other Student's last known AU of residence.
  - vi. If District is unable to reach parents whose Other Student no longer attends a school in the District, District will be excused from delivering compensatory services for that Other Student, provided that District diligently attempts to reach parents and documents such efforts. A determination that District diligently attempted to contact parents of Students A through H, and should thus be excused from providing compensatory services, rests solely with the CDE.
- f. By **Friday, May 16, 2025**, Other Parents shall provide written consent for the provision of compensatory services to the CDE and the District. If Other Parents do not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by the District, this written consent shall be provided by parents to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- g. If written consent for the provision of compensatory services is received by **Friday, May 16, 2025**, District shall schedule compensatory services in collaboration with Other Parents. District shall submit the schedule of compensatory services to the CDE by Friday, June 6, 2025. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
- i. The parties shall cooperate in determining how compensatory services will be provided. If any Other Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services to that Student, provided that District diligently attempts to meet with Other Parents and documents such efforts. A determination that

District diligently attempted to meet with Other Parents and should thus be excused from providing compensatory services to a specific Other Student, rests solely with the CDE.

- ii. District may, at its discretion, provide more than the above-assigned amounts of compensatory services. Other Parents may waive, in writing, their Student's participation in some or all of these compensatory services, but must first be provided a copy of this Decision and specifically informed of District's compensatory service obligation with respect to their Student.
- iii. Any delay in beginning the provision of compensatory services must be approved by the CDE.
- iv. While determining the schedule, Other Parents may opt out of some of the compensatory services. In that case, along with the schedule of services, District shall submit evidence of the Other Parents written request to opt out of a specific amount of compensatory services.
- v. If the District and Other Parents cannot agree to a schedule by **Friday, May 16, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with those Other Parents, including but not limited to, copies of correspondence sent to the Other Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Wednesday, May 21, 2025**.
- vi. By **Wednesday, June 4, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services to that Other Student.
- h. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Other Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- i. To verify that Other Students have received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of**

**each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.

- j. These compensatory services will be in addition to any services Other Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. These compensatory services must be provided to Other Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Other Students are not deprived of the instruction they are entitled to (including time in general education).
- k. If for any reason, including illness, Other Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Other Parents, as well as notify the CDE of the change in the appropriate service log.

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

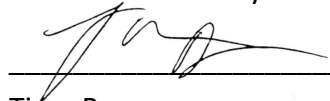
Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
201 E. Colfax Avenue  
Denver, CO 80203

**NOTE:** If District does not meet the timelines set forth above, it may adversely affect District's annual determination under the IDEA and subject 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 State Complaints Officer ("SCO").

Dated this 28th day of February, 2025.

  
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Tierra Brown  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-8**

- Exhibit 1: Email Correspondence

### **Response, pages 1-5**

- Exhibit A: IEPs
- Exhibit B: BIP
- Exhibit C: Notice of meeting
- Exhibit D: Notice of meeting
- Exhibit F: Provider notes
- Exhibit H: Attendance and schedule
- Exhibit I: Progress reports
- Exhibit J: School calendar
- Exhibit K: District procedural guidance
- Exhibit L: Correspondence and evaluations
- Exhibit M: Staff list
- Exhibit N: List of Other Students
- Exhibit O: Other Students' IEPs
- Exhibit P: Supplemental email
- Exhibit Q: Other Students supplemental docs
- Exhibit R: Dedicated adult support data
- Exhibit S: Email correspondence

### **Reply, pages 1-2**

- Exhibit 2: Email correspondence
- Exhibit 3: Additional information
- Exhibit 4: Letter to families
- Exhibit 5: Picture
- Exhibit 6: Email correspondence

### **Telephone Interviews**

- Parent: January 13, 2025
- Special Education Teacher: January 15, 2025
- Senior Manager: January 15, 2025
- OT: January 21, 2025
- District SLP Manager: January 21, 2025
- Substitute Teacher: February 14, 2025