

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

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**State Complaint SC2025-551**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On April 17, 2025, the attorney for 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 two allegations 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.

On April 21, 2025, 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 May 20, 2025.

On July 1, 2025, the CDE extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A final written 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 properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after April 17, 2024. Information prior to that date may be considered to fully investigate all allegations.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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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.

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:

1. District did not fully implement Student’s Individualized Education Program (“IEP”) from October 2024 to present because it:
  - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d); and
  - b. Did not provide the accommodations listed in the IEP—specifically, preferential seating, check-ins with a trusted adult, and access to fidgets—as required by 34 C.F.R. § 300.323(c).
2. District did not review and, as appropriate, revise Student’s IEP, from October 2024 to present, to address information about Student provided to or by Parent and Student’s anticipated needs—specifically regarding bullying and social-emotional needs—as required by 34 C.F.R. § 300.324(b)(1).

### **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 14 years old and attended a District middle school (“School”) in eighth grade during the 2024-2025 school year. *Exhibit A*, p. 17. Student is eligible for special education and related services under the disability category Specific Learning Disability. *Id.*
2. Student is personable and open to experiences but can also be shy within the school environment. *Interviews with Parent, School’s principal (“Principal”), Student’s special education teacher (“Teacher”), and School’s social worker (“Social Worker”).* She loves sports and other activities and is interested in learning more about dogs and eventually becoming a veterinarian. *Id.*
3. This investigation involves the implementation, review, and revision of an IEP dated October 18, 2024 (“IEP”), which was amended on May 21, 2025. *Exhibit A*, p. 17.

#### **B. Student’s IEP**

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<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.

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

4. The IEP's present levels of performance section details Student's strengths and interests and includes a review of Student's attendance and academic performance as well as the results of assessments. *Id.* at pp. 19-28. Specifically, this section notes that Student's attendance rate for the school year as of October 18, 2024, is 77%, which it notes as "chronically absent," and attributes to school-related anxiety. *Id.* at pp. 28.
5. The IEP documents the impact of Student's disability, noting that Student struggles with reading, writing and mathematics, and needs to work with a mental health provider to develop coping strategies to address anxiety. *Id.* at p. 29.
6. The IEP includes input from Parent and notes that Student needs assistive technology to access her educational programming. *Id.* at pp. 29-30.
7. The IEP includes four annual goals, one each in the areas of reading, writing, mathematics, and social/emotional wellness. *Id.* at pp. 30-33. Specifically, Student's social/emotional wellness goal provides that by "October 2025, [she] will be able to identify the intensity of her emotions and anxiety and independently use coping strategies (mindfulness, deep breathing, journaling) and be able to advocate (asking for a break or help) for herself in 4/5 opportunities from a baseline of 2/5 opportunities as measured by observations and School Psychologist data collection." *Id.* at pp. 32-33.
8. The IEP provides that Parent will receive progress reports on Student's IEP goals and objectives "when grades go home at the semester twice a year." *Id.* at p. 30
9. The IEP originally included 30 accommodations and now contains 32 accommodations following a May 21, 2025 amendment. *Id.* at pp. 33-34, 69-70. Specific to this investigation, the IEP (both pre- and post-amendment) includes:
  - "Preferential seating close to a teacher [...]"
  - "Access to appropriate fidgets when they are not a distraction."

*Id.* The pre-amendment IEP also contains an accommodation which reads "[o]pportunities to check in with a trusted adult." *Id.* at p. 70. The post-amendment IEP expands on this accommodation, noting that Student can indicate her desire for a check-in with a trusted adult by wearing a color-coded bracelet. *Id.* at p. 34. In addition, the post-amendment IEP added accommodations allowing Student access to a private bathroom and allowing her to change classes four minutes prior to the start of the regularly scheduled passing period. *Id.*

10. The IEP contains a service delivery statement, which describes the services that must be delivered according to the IEP, including 240 minutes per week of direct specialized instruction in each of reading and math, and 120 minutes per month of direct psychological services. *Id.* at p. 36-37.

11. The IEP identifies the least restrictive environment for Student as being within the general education classroom at least 80% of the time. *Id.* at p. 38.
12. Student's IEP was amended on May 15, 2025, to add the accommodations described in FF # 9, and to correct a clerical error in the alternative testing section. *Id.* at p. 77.

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

13. District's senior manager for special education ("Senior Manager") discussed District's responsibilities under IDEA and ECEA, describing how District works to ensure that its staff remain knowledgeable and up to date regarding their duties under the law. *Interview with Senior Manager.*
14. To accomplish this, District provides regular professional development training regarding special education to staff. *Id.* In addition, District-level special education professionals regularly meet with building level staff to discuss both general topics and student-specific cases. *Id.*
15. District provides staff a 61-page special education manual, establishing District's standard operating procedures with respect to special education. *Exhibit S.* For many of its topics, the manual provides a link and access code to an online seminar discussing that topic in depth, or other resources related to the topic. *Id.*
16. Senior Manager stated that District must remain vigilant to ensure that students' IEPs remain responsive to their individualized needs. *Interview with Senior Manager.* He stated that District's expectation is that staff regularly monitor students' progress, information provided by parents, and other information to determine whether an IEP needs to be revised prior to an annual review. *Id.*
17. With respect to peer conflict and bullying, Senior Manager described that while District has procedures to address conflicts involving all students, including investigating the incident and administering appropriate discipline, IEP teams must be aware of whether conflicts involving students with disabilities are impacting those students' ability to access their education. *Id.* When necessary, IEP teams must review and revise the IEP to address issues arising from peer conflicts and bullying. *Id.*
18. Senior Manager stated that each District student on an IEP is assigned a case manager. *Id.* That case manager is responsible for ensuring that all staff responsible for implementing the IEP are aware of their specific responsibilities, and that such staff have access to the IEP or an IEP snapshot that describes their responsibilities. *Id.; Exhibit R, p. 30.*

### **D. Student's Conflicts with Peers**

19. Parent's concern is that District did not appropriately respond to peer conflict involving Student or adequately address her social-emotional needs related to this conflict. *Interview with Parent*.
20. Student and a male peer ("Male Peer") ended a romantic relationship early in the 2024-2025 school year, after which they engaged in an ongoing conflict characterized by a back-and-forth exchange of hostile text messages. *Reply*, p. 2; *Interviews with Parent and Principal; Exhibit 2*.
21. As the conflict continued, the text message exchanges began including some of Student's other peers, including a female peer ("Female Peer") who was close with Male Peer. *Id*.
22. During the first week of November, Student and a group of students including Male Peer were involved in a verbal confrontation at School. *Interviews with Parent and Principal; Exhibit L*, pp. 67-68; *Exhibit 3*. At the conclusion of this confrontation, Student alleges that one of her peers threw a vape pen and hit her on the back of the head. *Id*. Following a doctor's visit two weeks later, the doctor noted that Student had sustained a small hematoma behind her right ear. *Exhibit 3*.
23. Student and Female Peer both played on School's flag football team. *Interview with Principal; Exhibit H; Exhibit L*, pp. 114-15. After practice on November 11, 2024, Student and Female Peer began arguing, and escalated to physical fighting. *Exhibit H; Exhibit L*, pp. 114-15. The two girls were separated and de-escalated by the flag football coach. *Id*.
24. Following the incident, a discipline report was created, and both Student and Female Peer received a one-day out-of-school suspension "so that the school culture team can investigate to determine if there is more at play here than meets the eye." *Exhibit H*. On November 12, 2024, Principal obtained a written statement from the flag football coach describing the incident. *Exhibit L*, p. 114. In addition, Principal stated that he spoke with several of the students who witnessed the fight. *Interview with Principal*.
25. On November 13, 2024 – the girls' first day back at school following their suspension – the flag football coach and a facilitator from a restorative justice nonprofit engaged Student and Female Peer in a restorative conversation to address the fight. *Exhibit L*, p. 115. During this conversation, both girls expressed that they wished to apologize to the team for the incident, and that they were open to re-establishing a friendship in the future. *Id*.
26. On or around November 19, 2024, Parent reported to Principal her account of the incident involving the vape pen, described in FF # 20. *Interview with Principal; Exhibit L*, pp. 67-68.
27. Following this report, Principal reviewed School's camera footage from the date of the incident and could not find evidence of anyone in the building making a throwing motion, or of Student being injured. *Interview with Principal*. Because of this, no disciplinary action was taken. *Id*.

28. Later in the school year, on March 5, 2025, Parent reported to Principal that Student was uncomfortable using a school bathroom because she believed that Female Peer and her friends were smoking in that bathroom. *Exhibit L*, p. 117; *Interview with Principal*.
29. After receiving this email, Principal checked in with Student and offered her the use of the private bathroom in School's administrative office. *Interview with Principal*.
30. In a meeting with Social Worker on April 4, 2025, Social Worker asked Student about any conflicts she has had with peers. *Exhibit G*, p. 1. Student mentioned the November 11, 2024, fight with Female Peer, and stated that while she was "uncomfortable" around Female Peer and her friends, "[n]othing really major is happening, they just stare at me." *Id.* Student went on to say that she had received no physical or verbal threats from other students. *Id.*

**E. Student's Attendance and Progress during the 2024-2025 School Year**

31. During the first quarter of the 2024-2025 school year, which spanned from August 11 to October 14, Student attended 77% of class periods. *Exhibit A*, p. 28. Her absences during this term were primarily concentrated in the early part of the day: on 29 out of 38 instructional days she missed her advisory period at the start of the day but she was only absent for the whole day four times. *Exhibit I*, pp. 5-7.
32. Student's attendance took a downturn over the remaining three quarters. *Id.* at p. 7. Of the 43 instructional days of the second quarter, Student was absent for at least one period 39 days and was absent the whole day 23 times. *Id.* During the third quarter, Student was absent for at least one period on every one of the 46 instructional days and was absent the whole day 25 times. *Id.* Student's nonattendance continued into the fourth quarter at a similar rate. *Id.*; *Interviews with Teacher and Principal*.
33. Following the peer conflict incidents in November, Parent reported to School on multiple occasions, including November 19, December 18 and 19, January 30, March 5, and April 3, that the reason for non-attendance was due to Student's anxiety. *Exhibit I*, p. 4; *Exhibit L*, pp. 10-11, 67, 117, 120.
34. Due to Student's involvement in truancy proceedings, a representative for Student's guardian ad litem ("GAL Representative") corresponded regularly throughout the year with Teacher to gather information regarding Student's attendance. *Id.* at pp. 84-111, 119. Teacher consistently reported that Student's attendance was poor. *Id.*
35. Principal stated that School was aware of Student's attendance issues. *Interview with Principal*. When a student has an unexcused absence, School sends an automated phone message to the parent to let them know that the student was absent. *Id.*
36. Student's progress monitoring data for her annual IEP goals indicates the baseline measurements taken on or around October 18, 2024, but due to Student's lack of attendance, no further progress monitoring data was gathered on any of her goals. *Exhibit F*, pp. 15-22.

#### **F. Review and Revision of Student's IEP**

37. On April 4, April 8, and April 14, 2025, Social Worker met with Student to discuss her absences and social-emotional concerns. *Exhibit G*, pp. 1-2. Through these discussions, Social Worker developed a list of possible accommodations that might help Student to feel safer at School, including scheduled check-ins and check-outs, a delayed passing period so that Student would not be in the hallway during crowded times, and the continued access to an alternative bathroom. *Id.* at p. 4.
38. On May 15, 2025, District convened a properly constituted IEP meeting to discuss Student's social-emotional concerns and propose amendments to Student's IEP to address those concerns. *Response*, p. 6; *Exhibit A*, pp. 77-78; *Exhibit L*, p. 71.
39. In addition to the list created by Social Worker, the meeting participants developed a color-coded wristband system by which Student could discreetly request a check-in from a trusted adult. *Exhibit A*, p. 34.
40. These accommodations were incorporated into Student's IEP via an amendment, in compliance with IDEA, on May 21, 2025. *Id.* at p. 17.
41. Aside from a ceremony celebrating eighth graders' graduation into high school, Student did not return to School following the May 15 meeting. *Interviews with Principal, Teacher, and Social Worker*.

#### **G. Accessibility of Student's IEP**

42. Prior to the start of the 2024-2025 school year, Teacher, who is Student's case manager, met with Student's general education teachers to discuss Student's IEP and answer any questions regarding implementation. *Interview with Teacher*.
43. Teacher uploaded an IEP snapshot document, which details Student's goals, accommodations and services, to a shared Google Drive folder accessible to all staff responsible for implementing the IEP. *Id.* For some teachers who prefer a hard copy, Teacher printed copies of the snapshot and distributed them. *Id.*
44. Teacher also provided staff responsible for implementation with a chart detailing Student's accommodations as a reference. *Id.*
45. Following the May 21, 2025, IEP amendment, Teacher emailed all of Student's teachers with a newly updated IEP snapshot, asking the teachers to read the new IEP carefully and reach out with any questions they have regarding implementation. *Exhibit L*, p. 63.

#### **H. Implementation of Student's IEP Accommodations**

46. Parent's concern is that District did not fully implement the preferential seating, check-ins with a trusted adult, and access to fidgets accommodations. *Interview with Parent.*

#### Preferential Seating

47. The IEP contains an accommodation which reads: "Preferential seating close to a teacher [...]." *Exhibit A*, p. 34.

48. At the start of the year, Teacher consulted with Student's general education teachers and noted that Student must be allowed to sit near the front of the class. *Interview with Teacher*; On September 30, 2024, Student's science teacher confirmed to Teacher that Student would be seated at the front of the class. *Interview with Teacher*; *Exhibit L*, p. 15.

49. In classes where Teacher provided direct support to Student, Student would often prefer to sit in the seat closest to her, so that Teacher could support her during class. *Interview with Teacher.*

50. Based on these facts, the CDE finds that this accommodation was made available to Student consistent with the IEP from October 2024 to present.

#### Check-ins with Trusted Adult

51. The IEP, prior to the May 2025 amendment, contains an accommodation which reads: "Opportunities to check in with a trusted adult." *Exhibit A*, p. 70.

52. This accommodation allows Student to identify a trusted adult with whom she can check in during the school day when feeling escalated or anxious. *Interviews with Parent, Teacher, and Social Worker.*

53. Over the course of the year, Student identified several adults within School to check in with, including her math teacher, a special education teacher, and Social Worker. *Interviews with Parent, Teacher, and Social Worker.*

54. For example, on the afternoon of April 14, 2025, Social Worker performed a check-in with Student, who reported a headache. *Exhibit G*, p. 2. Social Worker offered support to Student including snacks, water, the opportunity to call Parent, and the opportunity to check in with the school nurse. *Id.*

55. Following the May 2025 amendment, this accommodation was revised to allow Student to discreetly signal her desire for a check-in by wearing a color-coded bracelet. *Exhibit A*, p. 34.

56. After the meeting at which this accommodation was developed, Principal purchased a set of bracelets for Student to use in conjunction with this new accommodation. *Interview with Principal*; *Exhibit L*, p. 102.



57. Because Student did not return to School for class the remainder of the year, there was not an opportunity for her to make use of the new accommodation. *Interviews with Principal, Teacher, and Social Worker.*

58. Based on these facts, the CDE finds that the accommodation was made available to Student consistent with the IEP from October 2024 to present.

#### Access to Fidgets

59. The IEP contains an accommodation which reads: “Access to appropriate fidgets when they are not a distraction.” *Exhibit A*, p. 34.

60. Teacher and Social Worker stated that because so many students benefit from the use of fidgets, every general education teacher at School has fidgets available for any student to use as needed. *Interviews with Teacher and Social Worker.* In addition, School’s mental health providers also have fidgets on hand. *Id.*

61. Teacher stated that she has a bin of fidgets in her classroom. *Interview with Teacher.* Typically, Student would take one of the fidgets from Teacher’s bin and use it for the day. *Id.*

62. Social Worker stated that when she met with Student in April, she gave Student a couple of fidgets from the box in her office to use for the remainder of the school year. *Interview with Social Worker.*

63. Based on these facts, the CDE finds that the accommodation was made available to Student consistent with the IEP from October 2024 to present.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District implemented Student’s IEP from October 2024 through present, consistent with 34 C.F.R. § 300.323. District complied with the IDEA.**

#### **A. IEP Implementation: Legal Requirements**

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

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

### **B. IEP Accessibility and Responsibilities**

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, all District staff responsible for implementing Student’s IEP had access to an IEP snapshot describing her services and accommodations via a shared folder. (FF # 43.) General education teachers met with Teacher to discuss and ask questions regarding Student’s IEP. (FF #s 42, 45.) Teachers were also provided with resources to help them keep track of student accommodations. (FF # 44). When Student’s IEP was amended during the year, Teacher updated the staff responsible and encouraged them to reach out with any questions. (FF # 45.) For these reasons, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

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

Parent raised concerns with three accommodations: preferential seating, check-ins with trusted adults, and access to fidgets. (FF #s 47, 51, 59.) As described in the Findings of Fact, District made these accommodations available to Student. (FF #s 47-63.) For these reasons, the CDE finds and concludes that District provided these accommodations to Student consistent with the IEP, as required by 34 C.F.R. § 300.323(c).

**Conclusion to Allegation No. 2: District did not review and revise, as appropriate, Student’s IEP to address her social-emotional needs from January 1, 2025 to May 15, 2025, as required by 34 C.F.R. § 300.324(b).**

Parent’s concern is that District did not appropriately address Student’s needs related to peer conflict and social-emotional wellness. (FF # 19.)

### **A. Legal Obligation to Review and Revise IEPs**

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399. The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* at 400. To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address any lack of expected progress toward the annual goals, the

results of any reevaluation, “[i]nformation about the child provided to, or by, the parents,” “[t]he child’s anticipated needs,” or other matters. *Id.*; see *Endrew F.*, 580 U.S. at 400.

The U.S. Department of Education confirmed that an “IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it.” *Questions and Answers on Endrew F.*, 71 IDELR 68 (EDU 2017). This includes monitoring and revising an IEP as necessary, particularly if appropriate progress is not occurring, to ensure the goals remain individualized and appropriately ambitious for the child. *Id.*

### **B. Bullying Under the IDEA**

Under Colorado law, bullying is defined as “[a]ny written or verbal expression, or physical or electronic act or gesture, or a pattern thereof, that is intended to coerce, intimidate, or cause any physical, mental, or emotional harm to any student.” C.R.S. 22-32-109.1(1)(b). According to the U.S. Department of Education, “any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE under the IDEA that must be remedied.” *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013). The U.S. Department of Education characterizes bullying as “aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time.” *Id.* Bullying can take a variety of forms, including physical, verbal, emotional, or social behaviors. *Id.*

School districts “have an obligation to ensure that a student with a disability who is the target of bullying behavior continues to receive a FAPE in accordance with his or her IEP.” *Id.* In response to bullying, a school district may convene the student’s IEP team to “determine whether, as a result of the effects of bullying, the student’s needs have changed such that the IEP is no longer designed to provide meaningful educational benefit.” *Id.*

### **C. Student’s Experiences During the 2024-2025 School Year**

Here, Student was involved in a long-running conflict with Male Peer and Female Peer. (FF #s 20-30.) Although the conflict started as the exchange of hostile text messages between Student and Male Peer, over time it escalated into confrontation on multiple occasions involving others. (FF #s 20-21.) Upon witnessing Student fight with Female Peer at football practice, School staff took disciplinary action against both participants and investigated the incident to determine if further steps needed to be taken. (FF # 23.) When the two girls returned to School, they were provided the opportunity to participate in a restorative justice conversation with a facilitator and a trusted adult, and both expressed regret for the incident and made a plan to move forward from it. (FF # 25.)

Parent then reported another confrontation, between Student and group of students including Male Peer, which allegedly occurred weeks prior to the fight with Female Peer. (FF #s 22, 26.) Following that report, Principal investigated Parent’s concern by reviewing School’s video footage but did not find evidence of an object being thrown at Student. (FF # 27.)

The CDE finds that these incidents conform to Colorado’s definition of bullying. Specifically, this pattern of incidents shows a power imbalance between the group of peers targeting Student—Male Peer, Female Peer, and other members of their friend group—and Student. The Record shows that School personnel responded to these concerns in a timely and effective fashion by investigating each incident, taking appropriate disciplinary action where warranted, and working to support the affected students in the aftermath of the incident.

However, effectively responding to these incidents outside of the IEP process, while necessary, was not sufficient to ensure that Student’s social-emotional needs were met consistent with the IDEA. The Record shows that this peer conflict in November 2024 impacted Student’s ability to receive a “meaningful educational benefit.” *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013). District was aware that Student had significant social-emotional needs: her October 2024 IEP describes the impact of Student’s anxiety on her attendance and performance at School, and one of Student’s annual goals was focused on the development and employment of coping strategies for anxiety. (FF #s 4-5, 7.) During the second quarter of the 2024-2025 school year, Student’s attendance took a downturn, which persisted into the third and fourth quarters. (FF # 32.)

District did not respond to address Student’s attendance issues driven by her social-emotional needs. From November 2024 through April 2025, the only attendance-related intervention undertaken by District was an automated phone message to Parent indicating that Student was absent from School. (FF # 35.) The Record indicates that District was aware of Student’s chronic nonattendance—Teacher reported Student’s concerning attendance trends to GAL Representative on a regular basis throughout the school year. (FF # 34.) Parent reported to School staff on at least six occasions between November 2024 and April 2025 that the absences were due to her anxiety. (FF # 33.)

As of January 1, 2025, District’s records reflected that during the previous quarter, Student had been absent from school for at least one period on 39 of 43 instructional days (including for the whole day on more than half of instructional days). (FF # 32.) Moreover, due to Student’s nonattendance, District was unable to gather any data on progress toward IEP goals. (FF # 36.)

Based on these facts, the CDE finds and concludes that from January 1, 2025, to May 15, 2025, District did not review and revise, as appropriate, Student’s IEP, to address social emotional concerns resulting in lack of attendance and lack of expected progress toward annual IEP goals, as required by 34 C.F.R. § 300.324(b). The CDE also finds and concludes that District’s noncompliance related to the review and revision of Student’s IEP resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements); *See also Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013) (“bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied.”) As a result, the CDE will order corrective action to address this denial of FAPE for this time.

The CDE recognizes that in April 2025 Social Worker began to meet with Student on a regular basis when Student was in school. (FF # 37.) Through these meetings, Social Worker worked with Student to develop a plan to make her feel safer at School. (*Id.*) The next month, District convened a meeting to propose amending Student's IEP to incorporate elements of Social Worker's safety plan. (FF # 38.) Following the meeting, these accommodations, plus another developed at the meeting, were incorporated into Student's IEP. (FF # 40.) Despite this revision to Student's IEP—targeted toward addressing Student's school-based anxiety and improving her sense of safety at School—Student's nonattendance persisted through the end of the school year. (FF # 41.)

As Student transitions into a high school environment, it is important that the IEP team continue to work to review and revise, as appropriate, Student's IEP to enable her to attend and succeed in the coming school year. Accordingly, the CDE will order that Student's IEP team, including individuals with expertise in social emotional skill development and managing anxiety, convene to revise Student's IEP to address these ongoing and upcoming challenges.

#### **D. Compensatory Services**

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 Educ.*, 118 LRP 43765 (SEA CO 06/22/18). 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 Phila.*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the CDE finds an award of the following compensatory services to be appropriate to place Student in the same position she would have been in if not for District's noncompliance from January 1, 2025 through May 15, 2025: (1) 720 minutes of direct specialized instruction in reading, (2) 720 minutes of direct specialized instruction in mathematics, and (3) 120 minutes of direct psychological services.

**Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that is systemic in nature nor that it will likely impact the future provision of services for all children with disabilities in District if not corrected.**

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

Here, nothing in the Record indicates that District's noncompliance is systemic in nature. District provides consistent training to staff members regarding their IEP development responsibilities, and special education administrators make themselves available to building-level staff to ensure compliance with IDEA and ECEA Rules. (FF #s 12-13.) Director described policies, practices and procedures consistent with the legal requirements outlined in this Decision. (FF#s 14-15.) Finally, despite the noncompliance in this case specific to Student, District did attempt to address Student's needs in May 2025. (FF #s 37-40.) Accordingly, the CDE finds and concludes that this noncompliance is not likely to impact the future provision of services for all children with disabilities in District.

### **REMEDIES**

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

1. District did not review and revise, as appropriate, Student's IEP, as required by 34 C.F.R. § 300.324(b).

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

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

- a. By **Monday, September 1, 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. Assistant Director and Teacher must read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.324(b), by **Monday, September 1, 2025**. If these individuals are no longer employed by the District, the District may substitute an individual occupying an identical role to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE no later than **Monday, September 8, 2025**.

#### **3. IEP Meeting**

- a. District must convene Student's IEP Team, at a mutually agreeable date and time, by **Monday, September 1, 2025**. In consideration of the concerns identified in this Decision, Student's IEP Team must review and, as appropriate, revise Student's IEP consistent with 34 C.F.R. § 300.324(b). This meeting must include staff from

the high school Student will be attending who can provide information regarding the unique challenges of the high school transition.

- a. If Parent refuses to participate in the IEP Team meeting, District may convene a meeting without Parent, provided District diligently attempts to secure Parent's participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure Parent's participation rests solely with the CDE.
- b. By **Monday, September 29, 2025**, District must provide notice of the IEP Team meeting, proof the meeting was scheduled at a mutually agreeable date and time, proof of attendance of IEP Team members (such as a signature page), and a finalized IEP to the CDE. The IEP submitted for the CDE's review must address Student's needs as discussed in this Decision.

#### **4. Compensatory Services**

- a. Student shall receive the following compensatory services:
  - i. 720 minutes (12 hours) of direct specialized instruction in reading provided by an appropriately licensed special education teacher selected by District;
  - ii. 720 minutes (12 hours) of direct specialized instruction in mathematics provided by an appropriately licensed special education teacher selected by District; and
  - iii. 120 minutes (2 hours) of direct psychological services provided by an appropriately licensed therapeutic provider such as a school psychologist, social worker, or BCBA/RBT selected by District.
- b. All compensatory services must be provided to Student **no later than May 31, 2026**. The specialized instruction services must be designed to advance Student toward her annual IEP goals, and the psychological services should be designed to address social-emotional factors related to Student's pattern of nonattendance.
- c. By **Monday, September 1, 2025**, Parent shall provide written consent for the provision of compensatory services to the CDE and the District. If Parent does not provide written consent for services by this date, the District will be excused from providing compensatory services. Parent may, at her discretion, consent to a smaller award of compensatory service minutes than specified above, or consent to one type of service but not another. Unless otherwise specified by the District, this written consent shall be provided by Parent to Assistant Director. The District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.

- d. If written consent for the provision of compensatory services is received by **Monday, September 1, 2025**, District shall schedule compensatory services in collaboration with Parent. District shall submit the schedule of compensatory services to the CDE by **Monday, September 15, 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. Any delay in beginning the provision of compensatory services must be approved by the CDE.
  - ii. If the District and Parent cannot agree to a schedule by **Monday, September 15, 2025**, District and Parent must meet either in-person or via video conference to resolve scheduling complications by **Monday, September 22, 2025** and submit the schedule by **Friday, September 26, 2025**.
  - 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, September 26, 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 **Friday, October 3, 2025**.
  - v. By **Monday, October 13, 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.
- e. The parties shall cooperate in determining how compensatory services will be provided. If Parents 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 Students, rests solely with the CDE.



- f. Monthly consultation between the provider(s) delivering compensatory services and Assistant Director or the Assistant 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. The specialized instruction 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 she is entitled (including time in general education). To the extent possible, the CDE encourages District to provide the psychological services to Student on school days during time not otherwise dedicated to instruction (such as lunch, breaks in the day, or before/after school) to facilitate Student's school attendance.
- 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 and notify the CDE of the change in the appropriate service log.

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

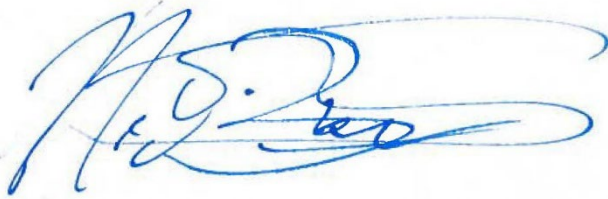
Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant  
201 E. Colfax Avenue  
Denver, CO 80203

**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's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; 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 29th day of July, 2025.



Nick Butler  
State Complaints Officer

## **APPENDIX**

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

- Exhibit 1: Student's IEP

### **Response, pages 1-9**

- Exhibit A: IEPs
- Exhibit B: Notices of Meeting
- Exhibit C: PWNs
- Exhibit D: Documentation from IEP meetings
- Exhibit E: Evaluations
- Exhibit F: Progress Monitoring
- Exhibit G: Service Logs
- Exhibit H: Disciplinary Reports
- Exhibit I: Attendance Records, Schedule, Grades
- Exhibit J: District Calendar
- Exhibit K: District Policies and Procedures
- Exhibit L: Correspondence
- Exhibit M: Description of remedial actions taken
- Exhibit N: List of District Staff with Knowledge
- Exhibit O: Verification of Delivery

- Exhibit P: Other Relevant Information

### **Reply, pages 1-6**

- Exhibit 2: Text messages between Student and Peers
- Exhibit 3: Medical report for Student
- Exhibit 4: Mental health report for Student, November 12, 2024
- Exhibit 5: Mental health report for Student, November 19, 2024
- Exhibit 6: Emails between Parent's Attorney and District's Attorney

### **Telephone Interviews**

- Parent: June 23, 2025
- Assistant Director: June 26, 2025
- Principal: July 1, 2025
- Teacher: July 1, 2025
- Social Worker: July 2, 2025