

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

State-Level Complaint 2022:513
Denver Public Schools

DECISION

INTRODUCTION

On March 24, 2022, AdvocacyDenver (“Complainant”) filed a state-level complaint (“Complaint”) on behalf of parents (“Parents”) of Black students identified as children with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ and placed in affective needs (“AN”) programs (“Students”) against Denver Public Schools (“District”).

The State Complaints Officer (“SCO”) determined that the Complaint identified five systemic allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

Due to the significant number of identified Students and the voluminous documentation required to resolve the Complaint’s systemic allegations, the SCO extended the 60-day investigation timeline due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1), on these dates: May 18, 2022 for thirty (30) days, until June 22, 2022; June 21, 2022 for an additional thirty (30) days, until July 22, 2022; July 21, 2022 for an additional fourteen (14) days, until August 5, 2022; August 5, 2022 for twenty-six (26) days, until August 31, 2022; and August 31, 2022 for seven (7) days, until September 7, 2022.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from March 24, 2021 through March 24, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

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

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to appropriately determine the eligibility of Students between March 24, 2021 and present, specifically by:
 - a. Failing to conduct comprehensive evaluations of Students by not using a variety of assessment tools and strategies to gather relevant information about Students, including information provided by Parents, and by not ensuring that assessments were selected and administered so as not to be discriminatory on a racial or cultural basis, in violation of 34 C.F.R. § 300.304; and
 - b. Failing to draw upon information from a variety of sources, including parent input and Students’ social or cultural background, in interpreting evaluation data, and failing to ensure that all the information was documented and carefully considered, in violation of 34 C.F.R. § 300.306(c).
2. Failed to educate Students in the Least Restrictive Environment (“LRE”) from March 24, 2021 to present, specifically by:
 - a. Failing to ensure Students were educated to the maximum extent appropriate with students who are nondisabled, including failing to consider whether supplementary aids and services would make it possible to educate Students in regular classes, in violation of 34 C.F.R. § 300.114;
 - b. Failing to determine Students’ placement based upon their IEPs, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a); and
 - c. Failing to ensure Students could participate with nondisabled children in nonacademic and extracurricular services to the maximum extent appropriate and failing to ensure Students had the supplementary aids and services that were appropriate and necessary for them to participate in nonacademic settings, in violation of 34 C.F.R. § 300.117.
3. Denied Parents meaningful participation from March 24, 2021 to present, specifically by:
 - a. Failing to include Parents in the Location Determination Team making placement decisions for Students, in violation of 34 C.F.R. §§ 300.116 and 300.327; and

- b. Failing to provide Parents with prior written notices related to Students' placement changes, in violation of 34 C.F.R. §300.503.
4. Failed to ensure that AN special education teachers possessed required certifications and licenses from March 24, 2021 to present, in violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.
5. Failed to develop, review, and revise IEPs that were tailored to meet Students' individualized needs from March 24, 2021 to present, specifically by:
 - a. Failing to develop annual goals that would allow Students to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. §300.320(a)(2);
 - b. Failing to consider Students' academic, developmental and functional needs, in violation of 34 C.F.R. §300.324(a); and
 - c. Failing to address any lack of expected progress toward annual goals and in the general education curriculum, in violation of 34 C.F.R. §300.324(b)(1)(ii)(A).

SYSTEMIC INVESTIGATION STRUCTURE

This investigation concerns 99 Students identified by District who were served in District's AN programs, including a separate school program ("Facility School"), between March 24, 2021 and March 24, 2022. *See, Exhibit A.* At some point between March 24, 2021 and March 24, 2022, in addition to Facility School, District operated AN programs at 33 schools. *See Exhibit K.* This included 13 elementary schools, 10 middle schools and 10 high schools. *Id.*

Based on District's Response to the Complaint provided on May 8, 2022, the SCO determined the current grade and school for each of the 99 Students. *See CDE Exhibit 1.* There were Students served at eight of the 13 elementary schools, eight of the 10 middle schools and all 10 high schools. *Id.* There were also four Students no longer being served in a District AN program. *Id.* Finally, there were 17 Students placed at separate schools: three elementary-school age Students, nine middle-school age Students, and four high-school age Students at Facility School; and one Student placed at a facility outside of District. *Id.*

The SCO used a random number generator to select a sampling of Students from across the AN programs to conduct individualized, in-depth file reviews. In general, to ensure a broad sample of Students and assess practice throughout District, the SCO selected: (a) one Student from AN programs with one or two Students; (b) two Students from AN programs with three or four Students; and (c) three Students from AN programs with five or more Students. For purposes of selecting Student files for review, Facility School was treated as three programs: an elementary school, a middle school, and a high school.

The SCO, along with two other SCOs, three Special Education Monitoring and Technical Assistance Consultants, and the Supervisor of Dispute Resolution and Policy (“The CDE Review Team”) reviewed the individual files of 50 selected Students. The CDE Review Team used a standardized process specific to this investigation to ensure consistency across each review. The SCO also conducted the following interviews in June and August 2022 to gather more information about District’s pattern and practice: (a) Complainant, (b) District’s Executive Director of Exceptional Student Services (“Executive Director”), (c) a Senior Manager of Special Education in District (“Senior Manager 1”), (d) District’s School Psychology and Assessment Manager (“School Psychology Manager”), (e) a Senior Manager of Special Education in District (“Senior Manager 2”), (f) a Former Senior Manager of Special Education (“Former Manager 1”), and (g) a Former Senior Manager of Special Education (“Former Manager 2”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS OF FACT and enters the following CONCLUSIONS OF LAW:

Conclusion to Allegation No. 1: District systematically failed to conduct comprehensive evaluations or make appropriate eligibility determinations for Students, in violation of 34 C.F.R. §§ 300.304 and 300.306(c).

A. District’s Procedures

The SCO, along with CDE Content Specialist, reviewed District’s evaluation procedures and finds that they are suitable for conducting comprehensive and appropriate evaluations, and that they are consistent with IDEA requirements.

District has developed Standard Operating Procedures (“SOP”) to ensure a methodical approach to evaluations, with an emphasis on evaluating the “whole child” as achieved by assessing in all identified areas of challenge. *Response*, pp. 2-3. Relevant to this investigation, in October 2020, District developed SOPs for evaluating students identified as IDEA-eligible under Other Health Impairment (“OHI”) and Serious Emotional Disability (“SED”). *Id.*; *See Exhibit J*, pp. 27-31, 45-49. For English Language Learners (“ELL”), both SOPs require that the student’s English Language Development (“ELD”) teacher provide input and participate as a member of the IEP team. *See Exhibit J*, pp. 27, 45. As part of their COVID-19 guidance, the SOPs also encourage teams to “[c]onsistently cente[r] race, gender, linguistic history, experiential history, socio-economic status, and the influence of trauma on presenting concerns.” *Id.* at pp. 28, 46.

All IEP team members are to be involved in determining what areas to assess and what formal and informal assessments should be conducted. *Id.* at pp. 29, 47. Evaluations for students eligible under OHI should gather information from all staff who work with students and the family, and student input should also be sought, where appropriate. *Id.* at p. 30. For students eligible under

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

SED, information should be collected from staff (but not necessarily everyone who works with the student) and parents, and student input is not optional. *Id.* at p. 48. Evaluations should include two peer comparison observations. *Id.* at pp. 30, 48. If there are academic concerns based on a review of universal academic data, teams are directed to follow the guidelines for Specific Learning Disability (“SLD”). *Id.*

District has an assessment task force that is continually reviewing the assessments available for evaluations and making recommendations to purchase new ones. *Interview with School Psychology Manager.* The purpose of the task force is to ensure available assessments are up-to-date and rely on normed data that are responsive to the population of students in District. *Id.* Any time the task force brings in a new assessment, it offers training that includes a discussion of the normed data. *Id.*

Given this information, the SCO, in consultation with CDE Content Specialist, finds that District procedures are consistent with 34 C.F.R. §§ 300.304 and 300.305 and suitable for conducting comprehensive and appropriate evaluations. The SCO now turns to the question of whether District’s practice is consistent with its procedures. To assess practice throughout District, The CDE Review Team considered the most recent evaluations and eligibility determinations for all 50 Students. Among these 50 Students, there were 27 evaluations completed in the period after March 24, 2021, the date the Complaint was filed (“The Complaint Window”).

B. Evaluation Practices

Complainant’s concern is that District does not conduct comprehensive evaluations by failing to use a variety of assessment tools and strategies to gather information about Students, including information provided by Parents, and by not ensuring that assessments are selected and administered so as not to be discriminatory, in violation of 34 C.F.R. § 300.304.

The IDEA requires districts to conduct full and individual evaluations before the provision of special education and related services and at least once every three years thereafter, unless the parties agree a reevaluation is unnecessary. 34 C.F.R. §§ 300.301(a) and 300.303(b)(2). The purpose of these evaluations is to determine if the child is, or remains, a child with a disability and the contents of an IEP that will enable “the child to be involved in and progress in the general education curriculum.” 34 C.F.R. § 300.304(b)(1).

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

In this investigation, for the reasons described below, the SCO finds that over 50 percent of the evaluations reviewed were not sufficiently comprehensive to identify all areas of need and assist in developing the contents of the Students' IEPs. Specifically, the SCO finds and concludes that 28 of the 50 evaluations reviewed, including 14 of the 27 evaluations completed in The Complaint Window, were not sufficiently comprehensive, considering the information available in each Student's file.

Variety of Assessment Tools and Strategies

The IDEA requires that districts "use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information about the child, including information provided by the parent" to assist in determining whether the student is a child with a disability. 34 C.F.R. § 300.304(b)(1)(i).

In this investigation, the SCO finds and concludes that 26 of the evaluations—including 13 in The Complaint Window—considered by The CDE Review Team did not rely on a variety of assessment tools and strategies, in violation of 34 C.F.R. § 300.304(b)(1)(i). Indeed, eight evaluations, including three conducted in The Complaint Window, relied exclusively, or almost exclusively, on a review of records with no current formal assessments. In one case, an evaluation in the spring of 2021 relied on a review of academic testing from three years prior, even though academics were a significant concern. *Exhibit B*, pp. 78-85. In fact, SLD became that Student's primary area of eligibility after the evaluation. *Id.* at pp. 145-147. In another case, although District's consent form included academic performance and social emotional status, the evaluation completed within The Complaint Window consisted solely of a review of social emotional assessments, without consideration of academic performance. *Id.* at pp. 228, 672-675.

Selection and Administration of Assessments

Assessments and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis. 34 C.F.R. § 300.304(c)(i). Assessments and other evaluation materials must be "provided and administered in the child's native language . . . and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally." 34 C.F.R. § 300.304(c)(ii).

In this investigation, the SCO finds and concludes that, based on The CDE Review Team's review, nine evaluations were not conducted so as not to be discriminatory on a racial or cultural basis, in violation of 34 C.F.R. § 300.304(c)(i). For instance, there was a pattern of concern related to the evaluation of Students for whom English was not their first language. These specific Students were never evaluated in their native language, which limited the accuracy of testing. As one example, an evaluation noted that the results "should be considered with caution" due to Student's limited English proficiency. *Exhibit B*, p. 1256. No effort was made to evaluate that Student in his native language. *Id.*

All Areas Related to Suspected Disability

An evaluation must assess students “in all areas related to the suspected disability,” including health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. § 300.304(c)(4).

In this investigation, the SCO finds and concludes, based on concerns identified by The CDE Review Team, that several evaluations did not assess students in all areas related to the suspected disability, in violation of 34 C.F.R. § 300.304(c)(4). In one case representative of these concerns, despite low scores on academic testing, District focused on one Student’s behavioral concerns and did not assess the Student’s cognitive abilities. *Exhibit B*, pp. 525-533. In another representative case, the 2022 evaluation of a Student raised concerns about his slow processing and significant difficulties with the principles of reading and reading comprehension but did not include a cognitive assessment and relied on a review of academic testing from 2017. *Id.* at pp. 1467-1484. In another representative case, during The Complaint Window, District evaluated a transfer Student eligible under SED, SLD and Speech or Language Impairment (“SLI”) several months late and did not conduct any formal academic testing—instead relying on “Classroom Based Measures”—and did not evaluate communication needs at all. *Id.* at pp. 1299-1305.

Existing Evaluation Data and Information from Parents

As part of a reevaluation, the IEP team must, “review existing evaluation data on the child including *evaluations and information provided by the parents of the child.*” 34 C.F.R. § 300.305(a)(1)(i) (emphasis added).

In this investigation, the SCO finds and concludes, based on the assessment of The CDE Review Team, that seven evaluations failed to include information from Parents (without documenting efforts to include Parents in the evaluation process), in violation of 34 C.F.R. § 300.305(a)(1)(i). In one case, the evaluation failed to collect Parent rating scales for a Student participating in virtual learning due to “scheduling challenges.” *Exhibit B*, p. 81. In another case, the evaluation of a Student eligible as a child with OHI, placed at Facility School, consisted of one academic assessment and teacher ratings on one universal screener. *Id.* at pp. 1603-1610.

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

Overall, the SCO finds that the concerns identified by The CDE Review Team are widespread throughout District. Indeed, these concerns were present in at least one evaluation in almost every AN program. Despite the guidance provided by District’s SOPs, the SCO finds that staff is unaware of, or does not understand, that guidance. For these reasons, the SCO finds and concludes that District systematically failed to conduct comprehensive evaluations of Students, in violation of 34 C.F.R. § 300.304.

C. Eligibility Determinations Practices

Complainant’s concern is that District, in determining eligibility of Students, fails to draw upon information from a variety of sources and fails to ensure that all information is documented and carefully considered, in violation of 34 C.F.R. § 300.306(c).

The IDEA requires that a group of qualified professionals and the parent of the child, the multidisciplinary team (“MDT”), determine “whether the child is a child with a disability. 34 C.F.R. § 300.306(a)(1). An analysis of the appropriateness of an eligibility determination involves two steps. First, the SCO examines whether the school district followed relevant standards and procedures in making the determination. *See Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question B-6 (OSERS 2013). Under the second step, the SCO determines whether the eligibility decision was consistent with the data in the record. *Id.*

Accordingly, the SCO begins by examining whether District adhered to applicable IDEA procedures regarding reevaluations and eligibility determinations. The IDEA has specific and extensive procedural requirements governing how school districts reevaluate students and determine ongoing eligibility. *See* 34 C.F.R. §§ 300.304-306.

Reevaluation Practices

To determine a student’s eligibility for special education, a school district must “[d]raw upon information from a variety of sources,” including parent input. 34 C.F.R. § 300.306.

In this investigation, the SCO finds and concludes that, based on The CDE Review Team’s assessment, roughly 50 percent of the 50 eligibility determinations reviewed, including 13 in The Complaint Window, did not draw upon a variety of sources, including parent input, to determine a Student’s eligibility, in violation of 34 C.F.R. § 300.306. As an initial matter, the SCO finds that the concerns identified in section 1(b) above regarding the comprehensiveness of evaluations necessarily impacts the resulting eligibility determinations. Indeed, roughly half of the evaluations did not use a variety of assessment tools and strategies, meaning the MDT did not have a variety of sources of information to pull from. For instance, seven evaluations failed to solicit parental input for the MDT to consider.

Moreover, the SCO finds that no evaluations were conducted for at least four Students as District failed to turn over evaluations for these Students. In one case, a Student whose then-current LRE

was general education 40-79 percent of the time was found ineligible for special education during The Complaint Window. See *Exhibit B*, pp. 1355-1356 and *Exhibit C*, pp. 2993-3007. This Student's Evaluation was not produced, even after the SCO specifically requested it on June 6, 2022. For these reasons, the SCO finds and concludes that District made eligibility determinations in the absence of an evaluation report, in violation of 34 C.F.R. § 300.306(a), thereby failing to follow relevant standards and procedures regarding evaluations.

The SCO finds that District failed to draw upon information from a variety of sources in making eligibility determinations, in violation of 34 C.F.R. § 300.306.

Eligibility Determination Practices

In making eligibility determinations, school districts must ensure that information obtained from a variety of sources, including parents, is documented and carefully considered. 34 C.F.R. § 300.306.

In this investigation, the SCO finds and concludes that, based on the assessment of The CDE Review Team, MDTs in some cases changed Students' eligibility categorizations to emphasize behavioral concerns, without supporting data. In one case, the MDT changed a Student's eligibility from SLD to OHI based upon an evaluation that did not contain any updated academic testing and relied largely on a review of the evaluation that led a prior team to determine the Student was eligible as a student with a SLD. *Exhibit B*, pp. 509-511, 134-1154.

In other cases, Students continued to be identified under the SED category even after MDTs did not determine them to be eligible under that category. For instance, a therapeutic day school determined that a Student had developed self-regulation skills and no longer met the eligibility criteria for SED. *Exhibit F*, p. 11. However, the prior placement indicated the Student required significant academic supports based on academic testing. *Id.* The IEP developed after that Student returned to District kept SED as Student's primary disability and kept Student in an AN center more than 60 percent of the time. *Exhibit S*, p. 917. In another instance, District determined that a Student's sole area of eligibility was OHI. *Exhibit B*, pp. 1295-6. However, the IEP that followed continued to list SED as that Student's primary disability. *Exhibit C*, p. 3283.

Also, in at least one instance, District relied on a review of three- and five-year-old records to evaluate a Student and change his eligibility categories even though District had not seen him in months and could not reach Parent. See *Exhibit G*, p. 5797 and *Exhibit B*, pp. 1668-74, and *Exhibit C*, p. 3509. In that case, no Prior Written Notice ("PWN") was produced to document or explain this change.

Because District failed to follow relevant standards and procedures regarding eligibility determinations (in addition to evaluations as noted in the section above), the SCO does not turn to the question of whether the eligibility determinations were consistent with the data in the record.

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

Overall, the SCO finds and concludes that the concerns identified by The CDE Review Team are widespread throughout District. Indeed, these concerns impacted Students in most of the AN programs. Despite the guidance provided by District’s SOPs, the SCO finds that staff is unaware of, or does not understand, that guidance. For these reasons, the SCO finds and concludes that District systematically failed to draw upon information from a variety of sources or to ensure that information was carefully considered, in violation of 34 C.F.R. § 300.306(c).

Conclusion to Allegation No. 2: District systematically failed to educate Students in their LRE, in violation of 34 C.F.R. § 300.114. District also systematically failed to ensure Students could participate in nonacademic and extracurricular activities to the greatest extent possible, in violation of and 300.116 and ECEA Rule 4.03(8)(a) and 300.117.

A. District’s Procedures

District is committed to educating students “to the maximum extent appropriate with children who are not disabled.” *Response*, p. 6. To that end, in 2019 District passed a resolution expressing its commitment to becoming a nationwide model for inclusive practices. *DPS Board Resolution No. 3982* (June 12, 2019) available at [https://go.boarddocs.com/co/dpsk12/Board.nsf/files/BD4VUF826E1D/\\$file/Board%20Resolution%20Inclusion_61219.pdf](https://go.boarddocs.com/co/dpsk12/Board.nsf/files/BD4VUF826E1D/$file/Board%20Resolution%20Inclusion_61219.pdf). In October 2020, District adopted an SOP intended specifically to promote the inclusion of students eligible under SED and OHI, “Ensuring Strong Interventions Prior to Considering Significant Changes in LRE (SED/OHI).” *Response*, p. 6. The SOP emphasizes the importance of giving students an opportunity to respond to supports and interventions before considering a significant change in placement. *Exhibit J*, p. 6. Before holding a meeting to consider moving a student to an AN program, the IEP team must notify the Special Education Instructional Specialist (“SEIS”). *Id.* IEP teams are then encouraged to carefully review the IEP and other records to ensure they accurately reflect the student’s current needs and to consider additional supports that can be added to the IEP or at a building level. *Id.* at p. 9.

District also has a SOP for “Building a Body of Evidence for LRE 3+ (SED or OHI).” *Id.* at p. 1. IEP teams are instructed to ensure the Functional Behavioral Assessment (“FBA”) and Behavior Intervention Plan (“BIP”) reflect and address the student’s current state. *Id.* Both SOPs repeatedly refer to the possibility of engaging central District resources like the Behavior Barriers team. *See*,

e.g. Id. at pp. 1, 8. District’s LRE 3+ IEP Review form is used by SEISs to help guide teams through the process of determining if they have exhausted the available supports at a student’s current placement. *Exhibit J*, pp. 23-26; *Interview with Senior Manager 1*. The forms are not generally completed or stored with student files. *Interview with Senior Manager 1*.

Finally, District has an SOP titled “Determining Need for Additional Supplementary Aids and Services” which indicates such services may be requested by parents or “school team members.” *Exhibit J*, p. 3. Though this SOP is largely focused on supports like additional paraprofessionals, the SCO finds that it does not make clear that supplementary aids and services meant “to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate” should be considered at every IEP meeting, not just upon request. *See, Id.* at pp. 3-5.

Overall, with the exception of the concern about considering supplementary aids and services even when not requested, the SCO finds that these procedures are consistent with the requirements of IDEA. However, the success of these SOPs depends in large part on IEP teams bringing SEISs into the process to provide coaching and additional support from District. The SCO finds that this does not happen consistently and teams that want to move a student are not always open to support from District. *Interviews with Former Manager 1 and Former Manager 2*. Indeed, in many cases where the SEIS was engaged and able to bring in the Behavior Barriers team, no placement change was necessary. *Interview with Former Manager 2*.

B. Least Restrictive Environment

Complainant’s concern is that District fails to ensure Students are educated in their LRE—with students who are nondisabled to the maximum extent appropriate—by failing to consider whether supplementary aids and services would make it possible to educate Students in general education classes, in violation of 34 C.F.R. § 300.114.

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116.

Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii). For instance, placement in the regular education classroom may not be appropriate when the student engages in dangerous or disruptive behavior that threatens the safety of others or interferes with the education of peers. *See Clyde K. v. Puyallup Sch. Dist.*, 21 IDELR 664 (9th Cir. 1994); *see also C.L. v. Lucia Mar Unified Sch. Dist.*, 114

LRP 1813 (C.D. CA 1/9/14) (concluding violent and disruptive behavior that results in safety concerns for a student, classmates, or school staff may be a reason to reduce a student's time in the general education environment). Also, if a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

Although a child need not fail in the general education environment before moving to a more restrictive program, more restrictive settings should only be considered after the IEP Team contemplates placement in general education, including the supplemental aids and services required to make that setting successful. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). IEPs must include evidence to support LRE placement decisions. See, *H.L. v. Downingtown Area Sch. Dist.*, 65 IDELR 223 (3d Cir. 2015, unpublished) (finding that a district had not considered the full range of supplemental aids and services where the IEP and placement notice relied on general statements of need to support 90 minutes a day of pull-out services). Use of boilerplate language in the LRE section of IEPs indicates a failure to make individualized determinations about students' ability to participate in the general education setting. *Yonkers (NY) Pub. Schs.*, 69 IDELR 18 (OCR 2016).

In this investigation, the SCO finds and concludes that only 12 of the 50 IEPs (24 percent) reviewed by The CDE Review Team explicitly considered the supplementary aids and services that would make it possible to educate students in a less restrictive enrollment, resulting in a violation of 34 C.F.R. § 300.114. In one case, the IEP acknowledged that a Student, who was in general education less than 40 percent of the time, was "doing great in general education" but declined to increase time in general education because Student could not be in general education 40-79 percent of the time without losing AN supports and it would require a reevaluation. *Exhibit Q*, p. 1062. Because this IEP team determined that an increase in time in general education required a removal of all AN supports, the SCO finds that the IEP team did not consider the supports and services that would make it possible for Student to be educated in a less restrictive environment. In another case, the IEP notes that a Student's lack of glasses may be impacting his academic development, but no consideration is given to resolving this concern. *Exhibit C*, p. 2102. The IEP for that Student, who is in general education less than 40 percent of the time, did not contemplate the possibility of supporting the Student in general education 40-79 percent of the time. *Id.* at pp. 2101-2102.

The SCO also finds, based on The CDE Review Team's analysis of files for 20 Students, that these IEPs did not support the current placement. The SCO finds further that another nine files lacked sufficient information for The CDE Review Team to feel confident the given Student's placement was his LRE. In one case, a file lacked any FBA at all and the only BIP was from April 2022 (the prior BIP, from 2019, was blank). *Exhibit N*, pp. 1350-1354. The embedded PWN for that Student, from April 2021, also appears to have been copied and pasted from another IEP, as it uses the wrong name for Student. *Exhibit Q*, p. 1014. In a second case, a Student's FBA and BIP had not been updated since 2015. *Exhibit O*, pp. 1-18. In a third case, a Student's FBA and BIP were not updated until after he moved to a more restrictive setting. *Exhibit S*, pp. 77-81, 112-122. In a

fourth case, a school-based team determined that an elementary school Student's placement was appropriate "due to a lack of data" and did not consider any other options although Parent and Student vehemently opposed the placement because Student felt disconnected and would not attend. *Exhibit C*, pp. 3877, 3885.

The SCO also finds that other IEPs use boilerplate language in the LRE section, indicating a lack of individualized determinations. In one case, an IEP copied and pasted the same language as the advantage and disadvantage of two different placements, including the same typos: "this was selected because of the students needs to access curriculum and the students need for social interaction with like peers. for proper peer modeling." *Id.* at p. 2668. This same language was also copied and pasted into other IEPs from that high school. *Id.* at pp. 2826, 2992.

For these reasons, the SCO finds and concludes that District failed to educate Students in their LRE, including by failing to consider the supplementary aids and services that would make it possible to educate many Students with non-disabled peers to the maximum extent appropriate, in violation of 34 C.F.R. § 300.114.

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

Overall, the SCO finds that the concerns identified by The CDE Review Team are widespread throughout District. Indeed, IEPs for 76 percent of the Students assessed by The CDE Review Team did not consider the supplementary aids and services that might make it possible to educate Students in a LRE. This includes concerns about IEPs that did not support a Student's current placement. In addition, the SCO is concerned that District's procedures do not make it clear that supplementary aids and services must be considered in every IEP meeting, not just when requested. Moreover, despite the District's guidance on FBAs, several files throughout District lacked up-to-date FBAs and BIPs. Given this, the SCO finds that staff is unaware of, or does not understand, that guidance.

For these reasons, the SCO finds and concludes that District systematically failed to educate Students in their LRE, including by failing to consider the supplementary aids and services that would make it possible to educate Students in a less restrictive setting, in violation of 34 C.F.R. § 300.114.

C. Placement in IEP

Complainant's concern is that Students were not educated in the placement agreed upon in their IEPs, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a).

Placement decisions must be made by a group of people, including parents, and in conformity with the LRE provisions of 34 C.F.R. §§ 300.114 through 300.118. 34 C.F.R. § 300.116(a). A child's placement must be based upon his IEP. *Id.* at § 300.116(b). An IEP must include, among other things, "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section." *Id.* at § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* A child's placement "must be based on the child's IEP and made by the IEP team." ECEA Rule 4.03(8)(a). "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). Changing a student's LRE from what is described in their IEP based on a point system is a violation of the IDEA. *Columbus Sch. Dist.*, 114 LRP 36216 (SEA WI 8/27/99).

Level Systems

Complainant is specifically concerned that, due to level systems used in AN programs, Students were not educated in the LRE agreed upon in their IEPs because they had to "earn" their way into general education classes and nonacademic activities through good behavior. *Complaint*, p. 4.

In this investigation, the SCO finds that only two elementary schools, where five Students were placed, used a level system to determine access to general education during The Complaint Window. *Exhibit I*. At School 1, Students are all working on the same five goals and any physical or verbal aggression results in a reduction of time in general education. *Exhibit I*, pp. 3-4. Students earning higher levels gradually get more time in general education and less push-in support. *Id.* At School 2, Students earn points and move through levels "by displaying positive behavior choices" consistently across several days. *Id.* at p. 6. Once Students reach level 3, they "may earn general education grade level privileges" and the "IEP team may begin discussions about additional general education opportunities." *Id.* The concern for the SCO, based on these findings, is twofold.

First, a student's IEP must describe the extent to which the child will participate in general education, and the child must be educated in accordance with the LRE described his IEP. Failure to provide the special education services or the time in general education described in a student's IEP violates the IDEA. *See Columbus Sch. Dist.*, 114 LRP 36216 (SEA WI 8/27/99). Conditioning students access to general education on their success on a point system, as District did here, means their time inside and outside the general education environment varies day to day and does not consistently match what is included in their IEP. For these reasons, the SCO finds and concludes that District violated 34 C.F.R. § 300.116.

Second, these point systems are the same for all students in the program, with students earning points for the same goals or expectations. However, IEPs must be developed by the IEP team, including parents, in consideration of the individual strengths and needs of the child. 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1); ECEA Rule 4.03(8)(a). Level systems that are paired with explicit instruction and used to teach and reinforce prosocial behavior may be permissible under the IDEA, provided that the details are determined by IEP teams and individualized to the student's unique needs, including connecting to the student's IEP goals. One size fits all point systems are not individualized to the unique needs of the student. Parents and IEP teams are also not part of the team that develops these point systems and parents do not get to participate in discussions of whether these programs are appropriate for their student. Because the level systems at School 1 and School 2 were not individualized to the needs of the students in those programs, the SCO finds and concludes that those level systems resulted in a procedural violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1) and ECEA Rule 4.03(8)(a).

This investigation demonstrated that an additional eight programs, where 36 Students were placed during The Complaint Window, use point systems to measure behavior and determine access to privileges. *Exhibit I*. These systems do not directly control access to general education. *Id.* Although it is not clear in its program description, another school, where six Students are placed, uses a level system to determine when Students are ready for a less restrictive setting: "[t]his system is utilized to drive an exit from the affective needs program, incentives, and ongoing progress monitoring." *See, e.g. Exhibit S*, p. 350. The SCO cautions District that to the extent that points in a non-individualized point system control determinations about a student's LRE this could lead to student not being educated with nondisabled peers to the maximum extent appropriate in consideration of their unique needs, consistent with 34 C.F.R. § 300.114.

Substantive Violation

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996).

Determining whether the use of level systems resulted in a substantive violation requires an in-depth analysis of how the level system impacted the Students at School 1 and School 2 and their Parents. As such, the SCO will order District to work with CDE to determine each Student's need, if any, for compensatory services.

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds that the level systems used at School 1 and School 2 were applied to all students in the program, not just Students in this investigation. The SCO also finds that the concerns identified with the level system are specific to these schools. Because this type of level system was limited to two programs, the SCO finds and concludes that this violation is not systemic in nature.

D. Nonacademic and Extracurricular Activities

Complainant’s concern is that District does not provide the necessary and appropriate supports and services to ensure that Students are able to participate with nondisabled children in nonacademic activities to the maximum extent possible and otherwise fails to ensure Students can participate in nonacademic and extracurricular activities with nondisabled children to the maximum extent possible, in violation of 34 C.F.R. § 300.117.

The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and that they attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116. This requirement extends outside of the classroom as school districts must ensure that each child with a disability participates with nondisabled children in meals, recess periods and extracurricular services to the maximum extent appropriate to the needs of that child. 34 C.F.R. § 300.117. “Regular educational environment” in 34 § CFR 300.114 (a) encompasses regular classrooms and other settings in schools such as lunchrooms and playgrounds in which children without disabilities participate. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,585 (2006).

In this investigation, the SCO finds that, based on The CDE Review Team’s review, the IEPs of 16 Students did not ensure that those Students could participate in nonacademic activities to the greatest extent possible. In one representative case, a Student’s IEP listed his LRE as general education less than 40 percent of the time. *Exhibit C*, pp. 3058-3059. His only accommodations are preferential seating and an option to work in the AN center when requested. *Id.* at p. 3055. The IEP notes that he can be supported by special education teacher or a paraprofessional in the general education environment for core classes, but no such minutes are included. *Id.* at pp. 3058-9. There is no discussion of necessary supports for nonacademic settings or extracurriculars. *Id.* For these reasons, the SCO finds that IEP teams did not consider what supports were required to educate Students in the regular educational environment to the greatest extent possible, in violation of 34 C.F.R. § 300.117.

The SCO also finds that, based on The CDE Review Team’s review, 36 IEPs did not consider the supports and services necessary to ensure Students could participate in extracurricular activities, in violation of 34 C.F.R. § 300.117. Indeed, almost no IEPs considered what Students needed to participate in extracurricular activities. A few IEPs noted that Students were participating in extracurricular activities, suggesting they were either getting the support they needed or that they did not need support. As just one example, an IEP noted that the Student “reports that he has been involved in Cheerleading his high school career.” [sic]. *Exhibit C*, p. 3497

District concedes that Facility School “lacks opportunities for participation in extracurricular activities.” *Response*, p. 8. Consistent with Colorado law, C.R.S. § 22-32-116.5 (providing that school districts in Districts in Colorado must allow students to participate in any activities offered by the district that are not offered at the student’s school of attendance or nonpublic home-based educational program), District routinely allows students to participate in extracurricular activities at other programs if its schools do not offer that activity. *Id.* District indicates Students at Facility School have the same option, but that no one has ever approached District to take advantage of it. *Id.* Complainant noted that even when families bring up a Student’s desire to participate in extracurricular activities, he or she has never been given the opportunity to participate at other schools. *Interview with Complainant.*

The SCO finds that, based on a review of the evidence, Complainant’s position is consistent with the records provided by District. For instance, one IEP provides, “[t]he goal is for [Student] to work his way back into the general education setting so that he can attend a high school that has a performing arts program for him to participate in.” *Exhibit S*, p. 1583. That IEP does not indicate any supports that could be provided so the Student could participate in performing arts activities while enrolled at Facility School. *Id.* at pp. 1562-1584. This is true even though Student’s transition goal is to pursue a career and/or degree in acting. *Id.* at p. 1574. The SCO finds and concludes that Students at Facility School are not given the opportunity to participate in extracurricular activities, in violation of 34 C.F.R. § 300.117.

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds that District did not produce any procedures to guide teams in supporting Students in participating in nonacademic and extracurricular activities. Indeed, District IEP teams are rarely, if ever, considering the supports and services that would make it possible for Students to participate in these activities. For these reasons, in light of the violations noted above, the SCO

finds and concludes that District is systematically failing to ensure that Students can participate in nonacademic activities and/or extracurricular activities to the greatest extent appropriate, in violation of 34 C.F.R. § 300.117.

Conclusion to Allegation No. 3: District included Parents in discussions about placement changes, consistent 34 C.F.R. §§ 300.116(a)(1) and 300.327. However, District systemically failed to issue PWN of placement changes, in violation of 34 C.F.R. § 300.503.

A. District's Location Determination Team

Complainant's concern is that District denied Parents meaningful participation by failing to include them in placement decisions, in violation of 34 C.F.R. §§ 300.116 and 300.327.

Placement decisions must be made by a group of persons, including the parents. 34 C.F.R. §§ 300.116(a)(1) and 300.327. Placement must be determined annually, be based on the child's IEP and be as close as possible to the child's home. *Id.* at § 300.116(b). Although the IDEA creates a preference for educating students in their neighborhood school, students may need to be placed elsewhere if the neighborhood school is not properly suited to meet their educational needs. *H.D. v. Central Bucks Sch. Dist.*, 59 IDELR 275 (E.D. Pa. 2012). Placement means the "provision of special education and related services and [does] not mean a specific place, such as a specific classroom or specific school." ECEA Rule 4.03(8)(a).

When a student's IEP cannot be implemented in his neighborhood school, federal regulations are not clear on how the location is determined. Nonbinding federal guidance indicates school districts should have flexibility to assign students to a particular school or classroom where they have two equally appropriate locations. *Letter to Trigg*, 50 IDELR 48 (OSEP 2007). However, federal guidance also indicates parents must be included in discussions about location because "the placement team, which includes the child's parents, must consider the proximity of the placement option(s) to the child's home." *Letter to Breeskin*, 75 IDELR 256 (OSEP 2019). Colorado rules formerly stated "[d]ecisions regarding the physical location in which a child's IEP will be implemented . . . shall be made by the Director of Special Education or designee." ECEA Rule 4.03(8)(a). However, effective June 30, 2022, Colorado rules now require parent participation in discussions about a "change in building or location." ECEA Rule 4.03(8)(b)(iii).

Here, placement decisions in District are made by IEP teams, including Parents. *Response*, p. 9. Historically, when an IEP calls for services generally offered in a center-based program, decisions about where the IEP would be implemented were made by a "Location Determination Team" ("LDT") made up of District special education staff, without parent input. *Id.*; *See Exhibit J*, pp. 20-22. The LDT would determine a student's location after considering the needs identified in the IEP, proximity of potential schools to a student's home, a student's needs and school program fit. *Exhibit J*, p. 21. The LDT also considers the current and projected size of the closest programs. *Exhibit F*. The SCO finds nothing in the record to suggest that District was not following its own procedures regarding location determinations.

In this investigation, placement decisions were made for 20 Students during The Complaint Window. The SCO finds nothing in the record to suggest, and Complainant does not contend, that placement decisions were made outside of properly convened IEP team meetings. For these reasons, the SCO finds and concludes that placement decisions in District were made consistent with 34 C.F.R. §§ 300.116(a)(1) and 300.327.

In terms of location, based on The CDE Review Team’s analysis, the SCO finds that District, consistent with its practice, did not include Parents in discussions about where to implement the IEPs of 13 of those 20 Students. In one case, staff was instructed to “notify the family of the location” after District staff made the decision about where one Student’s IEP would be implemented. *Exhibit G*, pp. 8668-8670. In another case, a Student’s enrollment was changed by the LDT after the family moved but no one notified the family. *Id.* at pp. 1134-1136. Notwithstanding, the SCO finds and concludes that these decisions about location changes, during The Complaint Window, were made by the LDT (the Director of Special Education’s designee) consistent with ECEA Rule 4.03(8)(a).

As reflected above, Colorado’s rules now require parent participation in any decisions about changing the location where a student’s IEP will be implemented. ECEA Rule 4.03(8)(b)(iii). The SCO finds that District, given this change in Colorado’s rules, is now including parents in location determinations and is in the process of updating internal processes and procedures to ensure parents are included in such discussions moving forward. *Interview with Director.*

B. Notice of Placement Changes

PWN must be issued a reasonable time before a district proposes or refuses to change “the educational placement of the child or the provision of FAPE to the child.” 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) statement that the parents of a child with a disability have protection under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district’s proposal or refusal. 34 C.F.R. § 300.503(b)(1-7). The notice must be “written in language understandable to the general public.” *Id.* at § 300.503(c). A change in location that does not change the program or services in a Student’s IEP is not a change of placement. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,588-46,589 (Aug. 14, 2006).

Adequately identifying the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether

to seek resolution of the dispute through the available procedural safeguards. See *Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18).

It may be acceptable to use an IEP to provide PWN of a placement change as long as the document contains all of the notice requirements set out in 34 CFR § 300.503(a). See *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,691 (2006) ("There is nothing in the Act or these regulations that would prohibit a public agency from using the IEP as part of the PWN so long as the documents the parent receives meet all the requirements in 300.503") and *El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13) (An IEP met notice requirements but was not provided within a reasonable time before it implemented the proposed change.).

District's Procedures

District's SOP "Prior Written Notice (for Regular IEP Meetings)" provides guidance on how school teams should complete PWNs, including required information and suggested language. *Exhibit J*, pp. 32-35. The SOP directs school teams to consider more than one factor when drafting embedded PWNs in IEPs. *Exhibit J*, p. 32. PWNs "must include components to be implemented and/or changed" and be written in language that is easy for parents to understand. *Id.* PWNs should document any other possibilities discussed during the meeting as well as any specific parent requests. *Id.* Upon review, the SCO finds that District's SOP is consistent with the requirements of the IDEA. The SCO now turns to the question of whether District's PWN practice is consistent with its procedures.

PWN

In this investigation, the SCO finds, based on The CDE Review Team's assessment, that in 16 of the 20 files where a Student's placement changed during The Complaint Window, District did not issue PWN of the placement change, in violation of 34 C.F.R. § 300.503(a).

Representative of this concern, one Student was moved from general education 40-79 percent of the time to general education less than 40 percent of the time in spring of 2022. Compare *Exhibit C*, p. 819 and *Exhibit S*, p. 323. The first page of the new IEP does not reflect Student's prior placement in the relevant section and the IEP does not ever clearly indicate that this is a new placement District is proposing to implement. *Exhibit S*, p. 323. The IEP from 2022 also substantially changes the service delivery, replacing 400 minutes per week each of math and literacy instruction with 90 minutes of each, and increasing "other" specialized instruction from 400 to 1,100 weekly minutes. Compare *Exhibit C*, p. 828 and *Exhibit S*, p. 331. Although the LRE section considers Student's prior placement, it is not clear that it was his prior placement. *Exhibit S*, p. 332. The embedded PWN does not acknowledge the placement change, explain why it was made or why Student's math and literacy minutes were reduced, or discuss Student's prior placement as another option considered. *Id.* According to the embedded PWN, no other factors were considered, and the only other option considered was providing a 1:1 paraprofessional,

which was rejected “because the team felt that [Student’s] behaviors would be the same with or without a dedicated person.” *Id.* District did not produce any standalone PWNs of this placement change.

In another illustrative case, a Student was moved from general education 40-79 percent of the time to general education at least 80 percent of the time in fall of 2021 and the first page of the new IEP does not indicate Student’s prior placement. *Compare Exhibit C*, pp. 2360, 2371. The 2021 IEP also removes several accommodations. *Compare Exhibit C*, pp. 2365, 2378. It also substantially reduces Student’s specialized instruction, from 200 daily minutes of other instruction and 30 minutes per day of specialized math instruction to 60 minutes per week of other specialized instruction. *Compare Exhibit C*, pp. 2368, 2381. The LRE section of the 2021 IEPs compares both options to placement in a center program, which was not an option considered by the IEP team: “[t]he IEP team determined the disadvantages of this setting for [Student] include a reduction of structure, as compared to the center program, increase in transitions, and a higher stimuli from the general education setting.” *Id.* at p. 2382. The advantages and disadvantages of Student’s prior setting are copied verbatim from the prior IEP, suggesting no new discussion was held. *Compare Exhibit C*, pp. 2369, 2382. The embedded PWN notes that the IEP Team considered “reducing [Student’s] time inside the general education classroom,” but does not note that this IEP constituted a change in placement or reflect consideration of Student’s prior placement as another option considered. *Id.* at p. 2383. The standalone PWN from that time notes that Student continues to be eligible for special education after a reevaluation but does not say anything about placement. *Id.* at p. 3661.

While it may be possible to provide notice through an IEP, the notice must still contain all required elements. *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,691 (Aug. 14, 2006) (“There is nothing in the Act or these regulations that would prohibit a public agency from using the IEP as part of the PWN so long as the documents the parent receives meet all the requirements in 300.503”) and *El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13). Indeed, a primary purpose of PWN is to ensure parents understand the basis of any disagreement. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18). The SCO finds that, like the instances described above where Students’ placements were changing, the IEPs and embedded PWNs did not include an adequate explanation of why District was proposing to take actions or sufficient description of the other options the IEP team considered and why they were rejected to ensure Parents could understand the basis of any disagreements. Thus, the SCO finds and concludes that District failed to issue PWN of placement changes, in violation of 34 C.F.R. § 300.503.

The SCO also finds that the PWNs in at least 21 of the 50 files reviewed by The CDE Review Team were not written in a language understandable to the general public such that Parents would understand what was or was not changing for their Student, in violation of 34 C.F.R. § 300.503(c). In one case, the embedded PWN of an IEP notes that the IEP Team was considering several options including AN programming and Mild-Moderate programming, but fails to reach a

conclusion on what Student needs. *Exhibit S*, pp. 66-67. In another example, the embedded PWNs in a Student's IEPs from two different years were identical. *Exhibit C*, pp. 2599 and 2609. The PWN in that Student's later IEP does not acknowledge the reduction in services or suggest that the IEP team considered not changing Student's services or eligibility. *Id.*

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds that District did not issue PWN of placement changes, in almost every instance (16 out of 20) where a Student's placement was changed during The Complaint Window. This indicates that this issue is not isolated to particular schools or staff. The SCO also finds that School staff are either unaware of, or choosing not to follow, District's guidance regarding PWNs. For these reasons, the SCO finds and concludes that District is systematically failing to issue PWN before changing Student's placements, in violation of 34 C.F.R. § 300.503.

The SCO finds that PWNs in almost half of the files reviewed (21 out of 50) were not written in language understandable to the general public such that Parents could understand what District was proposing or refusing to do for their Student. While this was not an issue at every school, The CDE Review Team had concerns about the language used in PWNs issued by programs at 13 schools, or approximately one third of the programs. The SCO finds that staff at a substantial number of schools is either unaware of District's guidance around writing clear PWNs or unsure how to follow it. For these reasons, the SCO finds and concludes that District is systematically failing to issue PWNs in language understandable to the general public, in violation of 34 C.F.R. § 300.503.

Conclusion to Allegation No. 4: District failed to ensure teachers at two AN programs and Facility School possessed required certifications and licenses, in violation of 34 C.F.R. § 300.156 and ECEA Rule 3.03.

Complainant's concern is that the teachers in District's AN programs lack the appropriate certification, in violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

IDEA requires that State Educational Agencies—here the CDE—"establish and maintain qualifications to ensure that personnel . . . are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities." 34 C.F.R. § 300.156(a). In Colorado, districts are responsible for ensuring

sufficient personnel are appropriately licensed and certified “to provide appropriate special education instructional and related services to implement all IEPs for children with disabilities.” ECEA Rule 3.03. Colorado law mandates that “all special education teachers shall hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). Under ESSA, special education teachers must meet full state certification requirements, or meet emergency, temporary or provisional licensure and have at least a bachelor’s degree. 20. U.S.C. 9214(d)(2)(A)(i).

Special Education Generalist is Colorado’s cross categorical K-12 special education endorsement. To qualify for this endorsement, teachers must complete an approved university licensing preparation program for special education generalists (or 24 semester hours), as well as earn passing scores on elementary education, special education generalist and teaching reading content exams. See *CDE Endorsement Requirements*, found at: <http://www.cde.state.co.us/cdeprof/endorsementrequirements#spedteacher>.

A. AN Programs

In this investigation, the SCO finds that Teachers at District’s AN programs had appropriate licenses at all times during The Complaint Window, with two exceptions. *Exhibit K*. A licensed teacher left School 3, a middle school, on February 4, 2022, and another licensed teacher left School 4, an elementary school, on April 12, 2022. *Id.* District indicates that it worked to ensure it always had a licensed teacher covering any vacancies. *Interview with Executive Director*. However, District did not timely respond to the SCO’s August 9, 2022 request to specify how these specific vacancies were covered. For these reasons, the SCO finds and concludes that the AN programs at School 3 and School 4, serving four Students, did not have teachers with appropriate licenses for approximately 15 and eight weeks respectively, in a 21 week semester. *CDE Exhibit 2*. This results in a violation of 34 C.F.R. § 300.156(a) and ECEA Rule 3.03.

B. Facility School

In this investigation, the SCO finds that Facility School started the 2021-2022 school year with six licensed special education teachers. *Interview with Senior Manager 2*. During about one week in mid-December, Facility School went from six teachers to two, without a substantial change in enrollment. *Id.* Although Facility School initially sought to fill vacancies using substitutes, on December 14, 2021, Facility School transitioned to virtual learning. *Id.* Students participated in asynchronous learning with paper packets and online lessons. *Id.* Teachers and paraprofessionals met with Students one-on-one for support. *Id.* Facility School remained remote until February 14, 2022. *Id.* Related services were provided, virtually, throughout this time. *Id.*

Still with just two teachers, Facility School brought elementary-school-aged students back two days a week on February 14, 2022, and middle-school- and high-school-aged students back one day a week. *Id.* Students continued with asynchronous learning and one-on-one sessions on the

remaining days. *Id.* Starting March 3, 2022, Facility School had all students in person two days per week, with asynchronous learning continuing the rest of the time. *Id.* Parents were contacted to set up a schedule for services but were not involved in the decision to move to remote or hybrid learning. *Id.*

District contracted with a private provider (“Contractor”) to run and staff Facility School. *Id.* District and Contractor had conversations about compensatory education services for students impacted by the lack of teachers, but District indicated that Contractor did not have any conversations with families before District terminated its contract with Contractor. *Id.*

District identified two teachers who were providing special education services for Students at Facility School after December 14, 2022 (“Teacher 1” and “Teacher 2”). *Exhibit V.* Teacher 1 possessed a valid professional teaching license with a special education endorsement. *CDE Exhibit 3*, p. 1. Teacher 2 possessed a substitute teaching license that was not active until February 11, 2022. *Id.* at p. 2. For these reasons, the SCO finds and concludes that District did not have sufficient licensed special education teachers at Facility School, as it had only one after December 14, 2022, in violation of 34 C.F.R. § 300.156 and ECEA Rule 3.03.

C. Procedural Violations

The failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Urban v. Jefferson County Sch. Dist. R-1*, 24 IDELR 465 (10th Cir. 1996).

AN Programs: School 3 and School 4

Due to staffing shortages, School 3 and School 4 lacked the staff to implement all the special education teacher minutes in the IEPs of the Students in their programs. Indeed, District failed to provide Students at School 3 with required services from a special education teacher for 40 percent of the year and failed to provide Students at School 4 with required services from a special education teacher for 22 percent of the year. For these reasons, the SCO finds and concludes that District impeded these Students’ rights to a FAPE.

Determining appropriate compensatory services requires an in-depth analysis of the extent to which the IEPs of the four Students at School 3 and School 4 were not implemented and the impact this had on Students. For these reasons, the SCO will order District to work with CDE to determine each Student’s need, if any, for compensatory services.

Facility School

Due to a shortage of special education teachers, District unilaterally changed the way services were provided for Students who required a full day of special education services (providing remote and then hybrid services to Students at Facility School, without considering their individual needs). For at least two months and likely beyond February 14, 2022, District also changed the way related services were provided due to a shortage of teachers. This determination was made outside of IEP team meetings and without the involvement of Parents or consideration of Student's unique needs. This also resulted in a discrepancy between the services required by the Students' IEPs and the services provided at Facility School.

Although the staffing shortage was outside District's control, the IDEA does not permit Districts to unilaterally change the delivery method of students' services outside the IEP process and without considering the students' needs or parents' input. Indeed, an IEP Team must determine a child's need for special education and related services on an individual basis, given the child's unique needs. 34 C.F.R. § 300.320. This obligation continues even when a staffing shortage impacts the delivery of a student's services. *In re: Student with a Disability*, (SEA CO 6/5/22). The IDEA also does not excuse a district's failure to implement an IEP based on staff shortages. *See, e.g., 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 indicates that the impact of the staffing shortage was partially mitigated by the number of Students who successfully transitioned out of Facility School during The Complaint Window. The SCO finds that 11 of the 16 Students at Facility School left at some point during the 2021-2022 school year. *Exhibit U*. The SCO finds that five Students stepped down to a less restrictive setting while the others moved or were placed in other facilities by other agencies. *Id.* The concern for the SCO here is that District did not produce an IEP reflecting the new placement for four of the five Students who moved to a less restrictive environment. For one Student, the PWN noted that the Student's IEP still reflected a separate school but determined that receiving school could not modify the IEP because Student had not been enrolled long enough for them to conduct an evaluation. *Exhibit S*, pp. 615-616. A different Student, in the absence of an appropriate IEP for his new setting, has been on a shortened day schedule since March of 2022, awaiting placement back at a separate school setting. *Exhibit S*, p. 673. Although another Student's IEP was amended to allow a school psychologist to provide his mental health minutes because that Student "is placed in the affective needs program," the most recent IEP produced by District still placed that Student at Facility School. *Exhibit S*, p. 312; *Exhibit C*, p. 4092. This demonstrates that placement changes were not made pursuant to IEP team meetings.

For these reasons, the SCO finds and concludes that District impeded Students' rights to a FAPE and significantly impeded the parent's opportunity to participate in the decision-making process. Determining appropriate compensatory services requires an in-depth analysis of the extent to which the IEPs of the 16 Students at Facility School were not implemented and the impact this

had on Students. As such, the SCO will order District to work with CDE to determine each Student's need, if any, for compensatory services.

D. Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds that these concerns were related to staffing shortages and limited to three programs. Nothing in the record suggests that District systematically failed to have sufficient, qualified teachers in violation of 34 C.F.R. § 300.156(a) and ECEA Rule 3.03. Still, these staffing shortages impacted all students in these programs, not just the Students identified in this Complaint. Accordingly, the SCO will order District to work with CDE to determine the extent to which, if at all, students in these programs need compensatory services.

Conclusion to Allegation No. 5: District systematically failed to develop, review, and revise IEPs tailored to Students' individualized needs, in violation of 34 C.F.R §§ 300.320(a)(2), 300.324(a), and 300.324(b)(1)(ii)(A).

Complainant's concern is that District failed to develop, review, and revise IEPs that were tailored to meet Students' individualized needs by failing to: (1) develop annual goals that would allow Students to be involved in and make progress in the general education curriculum; (2) consider Students' academic, developmental and functional needs; and (3) address any lack of expected progress towards annual goals and in the general education curriculum.

A. Annual IEP Goals

District's Procedures

District indicates that goal writing is a skill that must be developed and honed. *Response*, p. 11. District offers, but does not require, training on goal writing annually (although the training was not offered during the COVID-19 pandemic). *Id.* Because District did not provide materials from this training the SCO cannot evaluate whether the training adequately and accurately reflects the requirements of the IDEA. However, District trains teams to write goals that are "Specific, Measurable, Attainable, Results-oriented, and Time-Bound" ("SMART"). *Id.* SMART goals should "identify the area(s) in which a student with a disability needs specially designed instruction and/or related services targeted to build essential skills that will facilitate participation and

progress in the general education curriculum.” *Id.* SEISs also work with teams throughout the year to draft SMART goals. *Id.*

An SEIS acts as District’s “accountability check that ensures school teams are getting the targeted training and guidance needed to ensure the systemic and consistent provision of FAPE to students.” *Id.* District conducts some internal audits of IEP quality by pulling random IEPs for review, but there is no explicit focus on students in AN programs or other center-based programs. *Interview with Senior Manager 1.* District is also trialing a new approach to monitor school level trends in inclusion, compliance, timely progress monitoring, and IEP and evaluation quality that will not disaggregate data from center-based programs. *Interview with Executive Director.* District hopes this new approach will help school teams and SEISs identify and target specific areas of struggle. *Id.*

Given this information, the SCO finds and concludes that District’s procedures provide appropriate guidance on developing IEP goals, consistent with 34 C.F.R § 300.320(a)(2). The SCO now turns to the question of whether District’s practice is consistent with its procedures.

District’s Practices

Complainant’s concern is that District does not develop IEPs that include annual goals that would allow Students to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. §300.320(a)(2).

An IEP is “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 *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

Along with a statement of the special education and related services to be provided to the student, an IEP must include measurable goals designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. 34 C.F.R. § 300.320(a)(2). The IEP must also include supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in

the general education curriculum, and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4).

Here, except as otherwise noted in this Decision, The CDE Review Team did not identify concerns with District's IEP development process. District produced IEPs that contained a statement of the child's present levels, measurable goals, a statement of the special education and related services to be provided to the student, an explanation of the student's placement, and a list of the appropriate accommodations, as required by 34 C.F.R. § 300.320. To the extent there were deviations, the issues were unique to individual Students. Thus, the SCO finds and concludes that the IEP development process in District complied with IDEA's procedures.

The SCO now considers whether Students' IEPs were reasonably calculated to enable Students to receive an educational benefit.

The SCO finds and concludes that, based on the results of The CDE Review Team's assessment of 50 IEPs, 21 of these IEPs—nearly half—had goals that were not designed to allow Students to be involved in and make progress in the general education curriculum.

Demonstrative of this concern, The CDE Review Team raised concerns about IEP teams copying and pasting a Student's Present Levels of Academic Achievement and Functional Performance ("PLAAFP") from a prior IEP for that Student. As a representative example, one Student moved from elementary school to a new middle school and underwent a new evaluation. *Exhibit B*, pp. 990-996. Nevertheless, the PLAAFP in his subsequent IEP copied and pasted a description of his behavior from his IEP dated 11 months prior, adding two sentences about his academic performance and scores for the WIAT subtest he was administered. *Exhibit C*, pp. 2028, 2040. The SNID is copied verbatim, and the one sentence parent input section is also copied from the prior IEP. *Id.* at pp. 2030, 2041. It is hard, if not impossible, to develop goals to allow Students to participate and make progress in general education without an accurate understanding of their present levels and needs. Indeed, the SCO finds that Student's IEP team did not develop a SMART goal to target his needs: from a baseline of "some of the time" "[Student] will learn to clearly communicate his emotions and choose a coping strategy to decrease frequency of self-harm and suicidal statements as evidenced by teacher reports and SRR data." *Exhibit C*, pp. 2041-2042.

For other Students, The CDE Review Team found that the goals in Students' IEPs did not address all areas of need or failed to adequately address the identified needs. In an example representative of this concern, the sole social-emotional wellness ("SEL") goal for a Student spending less than 40 percent of the time in general education did not match the needs identified in that Student's evaluation or the statements about his behavior that were included in the IEP. In that case, the IEP team noted that while the Student would benefit from increased access to peer role models with more time in general education, that setting was not appropriate while Student "learns to control his aggressive behavior which is often triggered by academic work demands." *Exhibit Q*, p. 1191. Student also required an environment with 1:1 support that could "be provided by Crisis Prevention Intervention trained professionals." *Id.* The Student's only SEL

goal was to “be able to describe how each party is feeling and why they may be feeling that way in 4/5 opportunities.” *Id.* at p. 1186. As objectives for that goal, Student is supposed to (1) use regulatory strategies and (2) utilize advocacy skills (neither of which are directly related to identifying emotions). *Id.* at p. 1187. Taken together, this supports The CDE Review Team’s conclusion that the Student’s goals were not designed to allow him to participate in general education as they did not target the behaviors that were preventing that participation.

For these reasons, based on The CDE Review Team’s assessment, the SCO finds and concludes that District failed to develop goals that were reasonably calculated to allow Students to participate in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds, based on The CDE Review Team’s analysis, that this violation was widespread throughout District (though it was not a problem at every AN program). Indeed, this appeared to be an obligation some IEP teams understood, and others did not. While The CDE Review Team determined that one IEP from three AN programs had appropriate goals to allow Students to be involved in and make progress in general education, the vast majority of the time all IEPs reviewed from one program either met this requirement or did not. Specifically, the SCO finds that the IEPs in half the AN programs—including almost every elementary school AN program—had appropriate goals to satisfy this requirement. Nevertheless, the SCO also finds that the IEPs in the other half of the AN programs—including most of the high schools—did not have goals that were reasonably calculated to allow Students to participate in and make progress in the general education curriculum.

Moreover, despite the guidance provided by District’s SOPs, the SCO finds that half the staff is unaware of, or does not understand, that guidance. District does not impose required training on schools or conduct consistent internal audits to identify and address concerns. For these reasons, the SCO finds and concludes that District systematically failed to write goals that were designed to allow Students to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).

B. Academic and Functional Needs

District's Procedures

District indicates it generates IEPs which consider Students' academic, developmental, and functional needs by conducting comprehensive evaluations using its whole child approach. *Response*, p. 11. However, as reflected in Section 1 above, the SCO found and concluded that District does not consistently conduct comprehensive evaluations which identify all areas of need.

District has another SOP, "Functional Behavior Assessments and Behavior Intervention Plans," that guides teams in gathering information when students have "an identified area of concern that impacts that student's functioning in an education setting." *Id.* at p. 12; *Exhibit J*, pp. 12-19. According to the SOP, "[a]n FBA/BIP should be considered whenever there is a patterned behavior related to internalizing or externalizing needs that are observed to be impacting a student's functioning in their educational setting." *Exhibit J*, p. 14. BIPs are created alongside IEPs and focus "on interventions that target the function of the behavior identified in the FBA." *Id.* BIPs should be "reviewed and readopted or rewritten" at least annually, alongside IEPs, as well as with any significant change in behavior. *Id.* IEP teams "should consider including an IEP goal aligned to the student's BIP." *Id.* Data should be reviewed "at the frequency determined in the BIP to ensure interventions are effective," and at minimum every six weeks. *Id.* at pp. 15, 17. A new FBA should be conducted if students develop a new pattern of behavior or make sufficient progress on the prioritized behavior such that the team is ready to prioritize new behaviors in the BIP. *Id.*

Most students in AN programs or Facility School should have BIPs, but teams may decide on a case-by-case basis that an individual student does not require a BIP. *Interview with Senior Manager 1*. The circumstances where a student in that level of programming does not require an FBA should be very rare. *Interview with Executive Director*. Students whose primary area of eligibility is not SED might enter Facility School without a BIP. *Interview with Senior Manager 2*.

The SCO, in consultation with CDE Content Specialist, finds and concludes that District's FBA and BIP procedures are consistent with technical assistance provided by the CDE. *Functional Behavioral Assessment (FBA) and Behavior Intervention Plans (BIP)* (August 2017) available at www.cde.state.co.us/cdesped/ta_fba-bip. The SCO now turns to the question of whether District's practice is consistent with its procedures.

District did not submit any other procedures relevant to ensuring IEPs in District consider Students' academic, developmental and functional needs, consistent with 34 C.F.R. §300.324(a).

District's Practices

Complainant's concern is that Students' IEPs were not tailored to address all of their academic, developmental and functional needs, in violation of 34 C.F.R. § 300.324(a).

An IEP is "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 *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and the academic and functional needs of the child." 34 C.F.R. § 300.324(a).

In this investigation, the SCO finds, based on The CDE Review Team's analysis, that 26 of the 50 IEPs reviewed failed to consider Students' academic and functional needs, in violation of 34 C.F.R. § 300.324(a). Indeed, there was significant overlap between the IEPs that failed to consider Students' academic and functional needs and those that lacked goals to allow Students to participate in and make progress in the general education curriculum. Moreover, the lack of comprehensive evaluations identified in Section 1 above suggests that, in many situations, IEP teams did not have adequate information about Students' academic and functional needs. By failing to consider Students' academic and functional needs, the SCO finds and concludes that District's IEP development process failed to comply with the IDEA's procedures (and thus failed to meet the first prong of the *Rowley* test).

Academic Needs

The SCO finds that, based on The CDE Review Team's analysis, several IEPs lacked goals to address all of Students' documented needs. As a representative example, one Student had identified needs in math, a prior math goal, and "demonstrates difficulties maintaining attention, following directions, and utilizing pro-social self-regulation strategies." *Exhibit C*, pp. 2373, 2376-2377. However, his IEP contains only one SEL goal around increasing on-task behaviors, with no goals targeting math, self-regulation or following directions. *Id.* at p. 2378. The PLAAFP also does not report on Student's progress on his prior math goal. *Id.* at pp. 2373-2376.

Moreover, as discussed in more detail below in Section 5(c), The CDE Review Team determined that 19 of the 50 Students had significant, identified struggles with attendance. The Students' IEP teams then lacked information about present levels and academic, developmental and functional needs. Demonstrative of this concern, one IEP team noted, "[d]ue to [Student's] frequent absences from school, the school-based team has been unable to get the full scope of [Student's] academic, social and emotional needs." *Exhibit S*, p. 416. Nevertheless, that Student's IEP included no goals or services to increase Student's attendance.

For these reasons, based on The CDE Review Team's assessment, the SCO finds and concludes that District failed to consider Students' academic needs, in violation of 34 C.F.R. § 300.324(a).

Functional Needs

The SCO finds that, based on the CDE Review Team's analysis, there were concerns with how several IEPs addressed behavior when it was impeding learning. Where a student's behavior impedes his learning or the learning of others, the IEP Team must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324(a)(2)(i). The regulations do not require an IEP Team to use a particular tool or assessment when considering positive behavioral support; however, "conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,683 (Aug. 14, 2006). Development of a BIP is an "acceptable way of considering a child's behavioral needs", though not required. *Coleman v. Wake Cnty. Bd. of Educ.*, 120 LRP 4253, at *9 (E.D. N.C. 2020). To be effective, a BIP should detail the target behaviors and the motivation behind these target behaviors. *CDE IEP Procedural Guidance Manual*, p. 121. If a student displays unsafe behaviors, a BIP should also include a crisis intervention plan to address positive intervention and de-escalation strategies. *Id.*

As reflected above in Section 2(b), The CDE Review Team identified concerns with files that lacked current FBAs or BIPs. In addition to these concerns, the SCO finds that some BIPs were removed although Students' behavior had not changed. As an example, one Student continued to be educated outside the general education setting 99.8 percent of the time because of his "social/emotional and academic needs" but he was found to not require a BIP. *Exhibit S*, pp. 417, 424. Another Student with an OHI and SLD "often initiates and participates in negative attention-seeking and disruptive behavior or leaves the classroom to wander the hallways," but does not have a BIP and has no SEL goals. *Id.* at pp. 808, 811-813.

Only a couple of the IEPs of Students who were regularly not attending addressed attendance as a functional need that was impacting Students' access to education. As is exemplified by one Student, efforts to address attendance in the IEP were limited to a goal of having Student increase class attendance, with no accommodations or services designed to support that goal. *Exhibit S*, pp. 1076-1079.

For these reasons, based on The CDE Review Team’s assessment, the SCO finds and concludes that District failed to consider Students’ functional needs, in violation of 34 C.F.R. § 300.324(a).

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds, based on The CDE Review Team’s analysis, that this violation was widespread throughout District (though it was not a problem at every AN program). Most of the IEPs reviewed from one AN program either met this requirement or did not. But the IEPs in just over half of the programs failed to consider academic and functional needs. Also, with just three exceptions, these programs that failed to consider all areas of need also failed to develop goals designed to allow Students to participate in and make progress in the general education curriculum.

Moreover, despite the guidance provided by District’s SOPs, the SCO finds that half the staff is unaware of, or does not understand, that guidance. District does not impose required training on schools or conduct consistent internal audits to identify and address concerns. For these reasons, the SCO finds and concludes that District systematically failed to consider Students’ academic and functional needs, in violation of 34 C.F.R. § 300.324(a).

C. Lack of Expected Progress Towards Goals and in General Education

District’s Procedures

District has an SOP titled “Progress Monitoring.” *Exhibit J*, pp. 36-44. This SOP reminds teams that accurate and consistent progress monitoring is necessary to ensure the provision of a FAPE and make data-driven decisions in future IEP team meetings. *Id.* at p. 36. Teams are advised to collect data “at least every two weeks based on five-to-eight hours of specially designed instruction,” with individualization as needed. *Id.* Data must be uploaded to District’s data management system, and data along with “an interpretation of goal progress must be included in the Progress Report that goes home to parents.” *Id.* at p. 37. School teams are advised to reconvene and adjust IEPs if students are making inadequate progress after four to six data points (eight to twelve weeks if they are measuring every two weeks), and to review for progress at least as often as Progress Reports are sent home. *Id.* Teams are advised against recycling present levels or goals and instructed to document any adjustments considered to address lack of progress. *Id.* The SOP also includes guidance for selecting and using appropriate tools of measurement. *Id.* at pp. 38-40.

During the 2018-2019 school year, 38 percent of students were chronically absent (meaning they had more than 10 absences in a year). *Exhibit X*, p. 1. To address attendance concerns, which were compounded by current events, District developed an SOP called “Attendance Intervention SOP 2022-2023.” *Id.* at pp. 1-7. The SOP lays out various tools and strategies for addressing attendance concerns, including removing barriers like potential microaggressions. *Id.* at p. 3. According to the SOP, if a student with an IEP has five to nine unexcused absences in a year, the team should convene “to determine if changes need to be made.” *Id.* at p. 4. A truancy filing is required for a student with 30 or more unexcused absences. *Id.* at p. 5. Students who are completely out of contact can be coded as a drop out and withdrawn consistent with “Attendance Withdrawal Procedures,” but teams are instructed to make “significant effort to locate child to ensure their safety” before doing so. *Id.* at p. 6.

Schools have teams, outside of special education, who are dedicated to addressing attendance concerns and most conversations about attendance happen outside the special education process. *Interview with Senior Manager 1*. However, District guidance aims to ensure that attendance concerns are not disability related. *Id.* This is a very individualized assessment based on student characteristics and individual families. *Interview with School Psychology Manager*. MDTs should be considering whether attendance concerns are disability related at eligibility determinations and can use progress monitoring to help determine if concerns are driven by attendance or learning challenges. *Interview with Executive Director*. In reality, the SCO finds that it often appeared as if attendance interventions were operating on a separate track from the IEP process. *Interview with Former Manager 2*.

The SCO also finds that responses to attendance concerns are inconsistent across schools. *Interview with Former Manager 1*. What may start as rigorous follow up at the beginning of the year often tapers off. *Id.* Attendance handbooks exist, but teams can be reluctant to file truancy cases for students in AN programs. *Id.* It is very difficult to reengage older students who feel very disconnected from their education. *Id.* Facility School did extensive outreach during the summer of 2021 to try and engage students, but many parents “felt like it was the school’s job to get kids in to school.” *Interview with Senior Manager 2*.

Given this information, the SCO finds and concludes that District’s procedures provide appropriate guidance on revising IEPs to address a lack of appropriate progress, consistent with 34 C.F.R. §300.324(b)(1). The SCO now turns to the question of whether District’s practice is consistent with its procedures.

District’s Practices

Complainant’s concern is that District failed to address any lack of expected progress towards annual goals and in the general education curriculum, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).

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. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). 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.* 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 changed needs or a lack of expected progress. *Id.*; *Andrew*, 137 S. Ct. at 994.

The U.S. Department of Education confirmed a school district's obligation to monitor progress and convene the IEP Team if progress does not occur:

The IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it. For example, if a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress. Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. *If a child is not making progress at the level the IEP Team expected, despite receiving all of the services and supports identified in the IEP, the IEP Team must meet to review and revise the IEP if necessary, to ensure the child is receiving appropriate interventions, special education and related services and supplementary aids and services, and to ensure the IEP's goals are individualized and ambitious.*

Questions and Answers (Q&A) on U. S. Supreme Court Case Decision *Andrew F. v. Douglas County School District Re-1* (2017) (emphasis added).

To allow teams to monitor progress and identify when students are not making expected progress, IEPs must include a description of how a child's progress towards their annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3).

The SCO finds, based on The CDE Review Team's analysis, that District failed to address lack of expected progress towards goals and in general education for 34 of the 50 Students, and failed to address only lack of expected progress towards goals for an additional three Students.

Progress Monitoring

As an initial matter, the SCO finds, based on The CDE Review Team's assessment, that District did not conduct adequate progress monitoring for 20 of the 50 Students.

As an example, new goals were written for one Student in October of 2021, but the only Progress Report provided for that Student for the 2021-2022 school year was blank. *Exhibit D*, pp. 872-873. Progress monitoring for another Student stopped after December 2021. *Id.* at pp. 270-274.

In other instances, Progress Reports were completed for Students but did not report progress in the quantitative measure envisioned by the IEPs. Demonstrative of this concern, one Student had measurable goals, but reported progress during the 2021-2022 school year was all anecdotal or qualitative, *Exhibit D*, pp. 61-62. That same Student, at Facility School, had a goal of increasing math skills “by participating in Title 1 tutoring sessions and I-Ready reading lessons.” *Id.* The only progress reported on that goal is “[w]e do not have tutoring sessions here, but do expect students to take the i-ready assessments” in October of 2021. *Id.* No progress was reported for December and his IEP was not updated until May. *Id.*; *Exhibit S*, p. 1041.

Other Students had Progress Reports appropriately tracking progress on some goals but not others. In a representative example, one Student’s Progress Report included detailed statements about his progress on some goals as of December, with conclusory statements of “progress made” or “insufficient progress made” without accompanying data in June. *Exhibit D*, pp. 332-337. No progress was reported on that Student’s two math goals in either period. *Id.* For another Student, no progress monitoring was reported for a March 2021 SEL goal on May 28, 2021, but detailed information was provided in November 2021. *Id.* at pp. 432-434. However, nothing was reported about his reading goal in May 2021 and the November 2021 report was qualitative, commenting on the availability of accommodations but not Student’s ability to answer comprehension questions after reading grade level texts. *Id.*

For these reasons, the SCO finds and concludes, that District failed to consistently monitor and report Student’s progress on goals, in violation of 34 C.F.R. §300.320(a)(3).

Attendance

The SCO finds, based on The CDE Review Team’s assessment, that the files for 19 of the 50 Students identified significant attendance concerns. While attendance was identified as a concern, it was rarely, if ever addressed in the IEPs. Instead, many IEPs blamed Students’ lack of progress on goals or in general education on their infrequent attendance and took no steps to revise the IEP to address the concern.

For instance, for every goal, the Progress Report for one Student concluded “[Student] has not been present in school to be introduced to this goal” in November and “[Student] has not been in attendance to work on this goal” in December. *Exhibit D*, pp. 270-274. No new IEP was written for that Student after September, despite the lack of attendance.

In another representative example, Student had the same goals in IEPs from February 2021 and February 2022, with the same baselines, although methods of measurement were added to the math and reading goal in 2022. *Compare Exhibit C*, pp. 2742-2744 and *Exhibit S*, pp. 418-421.

Despite the lack of progress indicated by the repeating goals, Student's accommodations, services and LRE remained the same. *Compare Exhibit C*, pp. 2745-2749 and *Exhibit S*, pp. 421-424. No other options were considered. *Exhibit S*, p. 424.

For these reasons, and because it is impossible for IEP teams to address a lack of expected progress on goals if it is not known whether a student is making progress, the SCO finds and concludes that District failed to review and revise IEPs to address any lack of expected progress towards annual goals and in the general education curriculum, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).

Systemic IDEA Violations

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. 46,601 (Aug. 14, 2006).

The SCO finds, based on The CDE Review Team's analysis, that this violation is widespread through District because it impacts more than two thirds of the files reviewed, and files at almost every program. Despite the guidance provided by District's SOPs, the SCO also finds that half the staff is unaware of, or does not understand, that guidance. Indeed, the IEPs in just over half of the AN programs were not revised to address a lack of expected progress towards IEP goals or in the general education curriculum. For these reasons, the SCO finds and concludes that District systemically failed to review and revise IEPs to address a lack of expected progress, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).

REMEDIES

The SCO concludes that District has violated the following IDEA requirements:

- a. Failing to ensure Students were educated to the maximum extent possible with students who are nondisabled, in violation of 34 C.F.R. § 300.114;
- b. Failing to ensure the placement of Students in some schools was based upon their IEPs, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a);
- c. Failing to ensure Students could participate with nondisabled children in nonacademic and extracurricular services to the maximum extent possible, in violation of 34 C.F.R. § 300.117;

- d. Failing to ensure some programs had sufficient teachers with the required certifications and licenses, in violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04;
- e. Failing to conduct comprehensive evaluations, in violation of 34 C.F.R. § 300.304;
- f. Failing to consider information provided by Parents in some evaluations, in violation of 34 C.F.R. § 300.305(a)(1)(i);
- g. Failing to draw upon information from a variety of sources, and ensure that all information was documented and carefully considered in determining eligibility, in violation of 34 C.F.R. § 300.306(c);
- h. Failing to develop annual goals that would allow Students to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. §300.320(a)(2);
- i. Failing to consistently monitor and report Students’ progress on goals, in violation of 34 C.F.R. §300.320(a)(3).
- j. Failing to determine the placement of Students in some schools with Parents and in consideration of Students’ unique needs, in violation of violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1);
- k. Failing to consider Students’ academic, developmental and functional needs, in violation of 34 C.F.R. §300.324(a); and
- l. Failing to address any lack of expected progress toward annual goals and in the general education curriculum, in violation of 34 C.F.R. §300.324(b)(1)(ii)(A);
- m. Failing to provide Parents with PWN of placement changes and in language understandable to the general public, in violation of 34 C.F.R. §300.503; and

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

1. Corrective Action Plan

- a. By **October 10, 2022**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Students and all other students with disabilities for whom District is responsible. The CAP must, at a minimum, provide for the following:
 - i. All central office special education staff, including Executive Director, Special Education Directors, Senior Managers, Manager of Psychology and

SEISs must review this decision as well as the requirements of 34 C.F.R. §§ 300.114, 300.116, 300.117, 300.156, 300.207, 300.304, 300.305, 300.306, 300.320(a), 300.321(a)(1), 300.324 and 300.503. This review must occur no later than **Friday, November 18, 2022**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Wednesday, November 30, 2022**.

- ii. Attendance and completion of training provided by CDE on conducting comprehensive evaluations and appropriately determining eligibility. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.304 through 300.306 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Special Education Directors, Collaborative Directors or any other central District staff who support building leaders at schools with AN programs on issues related to this complaint, Senior Managers, SEISs, AN Program Teachers, Facility School Teachers and the School Psychologists and Social Workers who support those programs. Such training shall be completed no later than **Tuesday, January 31, 2023**.
 - a. Evidence that these trainings occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Tuesday, February 7, 2023**.
- iii. Attendance and completion of training provided by CDE on LRE and placement determinations, as well as access to nonacademic and extracurricular activities and documenting IEP team discussions within the IEP. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114, 300.116 and 300.117 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Special Education Directors, Collaborative Directors or any other central District staff who support building leaders at schools with AN programs on issues related to this complaint, Senior Managers, SEISs, AN Program Teachers, Facility School Teachers and the School Psychologists

and Social Workers who support those programs. Such training shall be completed no later than **Tuesday, January 31, 2023.**

- a. Evidence that these trainings occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Tuesday, February 7, 2023.**
- iv. Attendance and completion of training provided by CDE on issuing PWN in plain language and for all placement changes. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.503 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Special Education Directors, Collaborative Directors or any other central District staff who support building leaders at schools with AN programs on issues related to this complaint, Senior Managers, SEISs, AN Program Teachers, Facility School Teachers and the School Psychologists and Social Workers who support those programs. Such training shall be completed no later than **Tuesday, January 31, 2023.**
- a. Evidence that these trainings occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Tuesday, February 7, 2023.**
- v. Attendance and completion of training provided by CDE on developing, reviewing and revising IEPs. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.320 and 300.324 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Executive Director, Special Education Directors, Collaborative Directors or any other central District staff who support building leaders at schools with AN programs on issues related to this complaint, Senior Managers, SEISs, AN Program Teachers, Facility School

Teachers and the School Psychologists and Social Workers who support those programs. Such training shall be completed no later than **Tuesday, January 31, 2023.**

- a. Evidence that these trainings occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Tuesday, February 7, 2023.**
- vi. At each session of all trainings described in 1(a)(i)-(v) above, District must have a representative, at or above the level of Senior Manager, present who is qualified to answer any questions about District's internal Procedures. District must also distribute copies of any related District Procedures with each training.
- b. 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. District Procedures

- a. By **Monday, October 31, 2022,** District must submit finalized, updated written procedures regarding location determinations, consistent with ECEA Rule 4.03(8)(b)(iii), to CDE Special Education Monitoring and Technical Assistance Consultant.

3. File Review

- a. **Evaluations**
 - i. Following the required training on evaluations, Senior Managers and/or SEISs will pull all of the evaluations of Students completed between January 1, 2023 and May 31, 2023 to review their comprehensiveness. By **Friday, June 30, 2023,** evidence that this review occurred must be sent to CDE Special Education Monitoring and Technical Assistance Consultant in the form of a list or spreadsheet containing at least the following information: a) Student's eligibility prior to the evaluation, b) areas identified for evaluation in the consent for evaluation, c) the formal assessments completed, d) the formal assessments reviewed, e) Student's eligibility after the meeting, and f) steps taken to address any errors in comprehensiveness (if any). CDE will then conduct follow-up and verification activities as necessary.

- ii. Based on the results of the review, the CDE will collaborate with District to revise relevant policy, procedure, and practice and to provide technical assistance, professional development, and resources to ensure compliance with IDEA's evaluation procedures. Findings of noncompliance identified through District's file review must be corrected consistent with 34 C.F.R. § 300.600(e).

b. IEPs Tailored to Need

- i. By **Friday, October 21, 2022**, District must submit an approach for internally monitoring compliance with IEP development requirements. District can submit the approach they are currently trialing or another plan for approval by CDE Special Education Monitoring and Technical Assistance Consultant.
- ii. District must implement the approved approach and submit the results of the review for all schools with an AN program to the CDE by **Monday, January 16, 2023 and Monday, June 5, 2023**.
- iii. By **Wednesday, February 15, 2023 and Friday, June 30, 2023**, District must submit to CDE an explanation of what steps have been taken to address any issues of noncompliance identified in their review.
 - a. District may, but is not required to, submit a revised plan by Friday, March 31, 2023, in consideration of the required training on IEP development or the outcome of the first review.
- iv. Based on the results of District's internal monitoring, the CDE will collaborate with District to revise relevant policy, procedure, and practice and to provide technical assistance, professional development, and resources to ensure compliance with IDEA's IEP development requirements. Findings of noncompliance identified through District's file review must be corrected consistent with 34 C.F.R. § 300.600(e).

4. Compensatory Education Services for Denial of a FAPE

a. School 1 and School 2

- i. By **Friday, September 30, 2022**, District must submit to CDE Special Education Monitoring and Technical Assistance Consultant a plan for how District intends to individually determine the extent to which students in

the AN programs at School 1 and School 2 during The Complaint Window require compensatory education.

- b. This plan must be consistent with OSEP’s guidance for determining compensatory services. *See Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act*, 79 IDELR 232 (OSERS 2021), Questions D4-6.
 - c. This plan must also be consistent with CDE’s guidance for determining compensatory services. *See Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory.
 - d. While the above guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.
- ii. If CDE Special Education Monitoring and Technical Assistance Consultant and District reach agreement on the plan by **Monday, October 31, 2022**, District must use the plan to make individualized determinations about each Student’s need for compensatory services.
 - iii. If District and CDE Special Education Monitoring and Technical Assistance Consultant cannot reach agreement on a plan by **Monday, October 31, 2022** or the CDE has concerns with the schedule submitted pursuant to 4(a)(iv) below, District will respond within two weeks to any record requests from CDE to allow CDE to determine the compensatory education awards.
 - iv. District shall submit a schedule of all Students’ compensatory services to CDE Special Education Monitoring and Technical Assistance Consultant no later than **Thursday, December 15, 2022**. District shall schedule compensatory services in collaboration with Students’ Parent(s). 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. These compensatory services shall begin as soon as possible and will be in addition to any services Students currently receive, or will receive, that are designed to advance Students toward IEP goals and objectives. The parties shall cooperate in determining how the

compensatory services will be provided. If the Parent(s) refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent(s) and documents such efforts. A determination that District diligently attempted to meet with a Student's Parent(s), and should thus be excused from providing compensatory services, rests solely with CDE.

- v. Monthly consultation between the provider(s) delivering compensatory services and Executive Director must occur to evaluate Students' progress in general education and 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 in general education and on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name of the Student, the name and title of the provider(s), and the date, the duration, and a brief description of the consultation.
- vi. To verify that Students have received the services required by this Decision, District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory services have been completed. The name of the Student, 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. All compensatory services must be completed by **Tuesday, August 1, 2023**.
- vii. If for any reason, including illness, Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District 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 Student's Parent(s) and notify CDE of the change in the appropriate service log.

b. **School 3, School 4, and Facility School**

- i. By **Friday, September 30, 2022**, District must submit to CDE Special Education Monitoring and Technical Assistance Consultant a plan for how District intends to individually determine the extent to which students at Facility School and in the AN programs at School 3 and School 4 during The Complaint Window require compensatory education.

- a. This plan must be consistent with OSEP’s guidance for determining compensatory services. *See Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act, 79 IDELR 232 (OSERS 2021)*, Questions D4-6.
 - b. This plan must also be consistent with CDE’s guidance for determining compensatory services. *See Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory.
 - c. While the above guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.
- ii. If CDE Special Education Monitoring and Technical Assistance Consultant and District reach agreement on the plan by **Monday, October 31, 2022**, District must use the plan to make individualized determinations about each Student’s need for compensatory services.
 - iii. If District and CDE Special Education Monitoring and Technical Assistance Consultant cannot reach agreement on a plan by **Monday, October 31, 2022** or the CDE has concerns with the schedule submitted pursuant to 4(b)(iv) below, District will respond within two weeks to any record requests from CDE to allow CDE to determine the compensatory education awards.
 - iv. District shall submit a schedule of all Students’ compensatory services to CDE Special Education Monitoring and Technical Assistance Consultant no later than **Thursday, December 15, 2022**. District shall schedule compensatory services in collaboration with Students’ Parent(s). 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. These compensatory services shall begin as soon as possible and will be in addition to any services Students currently receive, or will receive, that are designed to advance Students toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If the Parent(s) refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet

with Parent(s) and documents such efforts. A determination that District diligently attempted to meet with a Student's Parent(s), and should thus be excused from providing compensatory services, rests solely with CDE.

- v. Monthly consultation between the provider(s) delivering compensatory services and Executive Director must occur to evaluate Students' progress in general education and 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 in general education and on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name of the Student, the name and title of the provider(s), and the date, the duration, and a brief description of the consultation.
- vi. To verify that Students have received the services required by this Decision, District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory services have been completed. The name of the Student, 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. All compensatory services must be completed by **Tuesday, August 1, 2023**.
- vii. If for any reason, including illness, Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District 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 Student's Parent(s) and notify 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
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will**

work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 7th day of September, 2022.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-11

- Exhibit 1: Project Disrupt
- Exhibit 2: CORA Request
- Exhibit 3: Project Disrupt
- Exhibit 4: Threat Assessment Data
- Exhibit 5: District Email
- Exhibit 6: District AN Analysis
- Exhibit 7: CORA Response - Documents
- Exhibit 8: CORA Response - Emails

Response, pages 1-15

- Exhibit A: Identified Students
- Exhibit B: Eligibility Documents
- Exhibit C: IEP Documents
- Exhibit D: Progress Reports
- Exhibit E: PWNs
- Exhibit F: LDT Meetings
- Exhibit G: Correspondence
- Exhibit H: Project Disrupt
- Exhibit I: Level System
- Exhibit J: Policies and Procedures
- Exhibit K: AN Teachers
- Exhibit L: Staff with information
- Exhibit M: Verification of Delivery
- Exhibit N: BIPs
- Exhibit O: FBAs
- Exhibit P: Grades
- Exhibit Q: Missing Documents
- Exhibit R: Redaction
- Exhibit S: 2022 Updates
- Exhibit T: LRE 3+ checklists
- Exhibit U: Facility School Student information
- Exhibit V: Facility School Staff

Reply, pages 1-9

- Exhibit 9: Emails re LDT Process
- Exhibit 10: Emails re LDT Process
- Exhibit 11: Memorandum on Parent Participation

Telephone Interviews

- Complainant: June 15 and 16, 2022
- School Psychology Manager: August 4, 2022
- Senior Manager 1: August 4, 2022
- Former Manager 1: August 5, 2022
- Executive Director: August 5, 2022
- Former Manager 2: August 8, 2022
- Senior Manager 2: August 8, 2022