

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

State-Level Complaint 2022:553
El Paso 49

DECISION

INTRODUCTION

On October 19, 2022, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against El Paso 49, District 49 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified four 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.

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 October 19, 2021 through October 19, 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.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review and revise an IEP that was tailored to meet Student’s individualized needs, specifically by:
 - a. Failing to include measurable annual goals designed to allow Student to be involved in and make progress in the general education curriculum from October 19, 2021 through November 16, 2021, in violation of 34 C.F.R. § 300.320(a)(2);

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.

- b. Failing to include a statement of the supplementary aids and services to be provided to Student to allow Student to advance toward attaining annual goals, be involved in and make progress in the general education curriculum and be educated and participate with other children with disabilities and nondisabled children from October 19, 2021 through December 8, 2022, in violation of 34 C.F.R. § 300.320(a)(4).
2. Failed to properly implement Student’s IEP from October 19, 2021 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide required minutes with a special education teacher inside the general education setting from October 19, 2021 through May of 2022;
 - b. Failing to provide required testing accommodations from August of 2022 to present.
3. Failed to educate Student in the Least Restrictive Environment (“LRE”) from October 19, 2022 through May of 2022 by enrolling him in a special education math class not included in his IEP, in violation of 34 C.F.R. §§ 300.114, 300.116 and 300.320(a)(5).
4. Failed to ensure that Student’s math teachers possessed required certifications and licenses from October 19, 2022 through May of 2022, in violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS:

A. Background

1. Student is 16 years old and attends 10th grade at a District school (“School”). *Exhibit A*, p. 49. Student and his Parent reside within the boundaries of District. *Id.*
2. At the time this Complaint was filed, Student was identified as a child with other health impairment (“OHI”). *Id.* Student is currently identified as a child with a specific learning disability (“SLD”) in mathematical calculation. *Exhibit B*, p. 4.
3. Student is quiet, respectful and a hard worker. *Interviews with Parent, Student’s case manager and special education teacher from his co-taught algebra class (“Former Case Manager”), and Student’s case manager and special education teacher from his 10th grade math classes (“Current Case Manager”).* Student is interested in all things mechanical,

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

including fixing up his own car, and manages his own bank account, credit cards and stocks. *Interview with Parent*. Student is coachable and motivated to learn and always listens to instruction in class. *Interviews with Former Case Manager and Current Case Manager*.

4. Student's diagnoses include Autism Spectrum Disorder ("ASD") and Attention Deficit Disorder ("ADD"). *Exhibit B*, p. 50. Student has needs in reading comprehension and math computation. *Exhibit A*, p. 6; *Interview with Former Case Manager*. He struggled to keep up with the pace and rigor of his algebra course. *Interview with Student's 9th grade algebra teacher ("Algebra Teacher")*. Student is reserved and does not ask for help unless the teacher approaches him. *Interview with Current Case Manager*.

B. May 2021 IEP

5. At the end of the 2020-2021 school year, Student's then-current IEP, created by staff at Student's middle school, was amended on May 24, 2021 ("May 2021 IEP"). *Exhibit 1*, p. 1. The May 2021 IEP included one math goal and two reading goals. *Id.* at pp. 6-7.
6. The May 2021 IEP included 13 accommodations Student received in middle school, including:
 - Visual Support
 - Simplified steps on paper for him to use as needed;
 - Provide a copy of classroom notes after student attempt in all subject areas;
 - Access to a word processor for lengthy writing assignments as needed;
 - Access to a graphic organizer for writing assignments and oral discussions as needed;
 - Visual models for multi-step math problems;
 - Check-in with Student from time to time to ensure the organization of materials;
 - Wait time after a direction is given;
 - Extra time to complete classroom assignments and assessments;
 - Encourage frequent check-ins and self-advocacy;
 - The option of retaking a test if Student scores 70% or less;
 - Provide an alternate assignment that still contains required material if Student is displaying difficulty in processing;
 - Shortened/chunked assignments that contain the same information.

Id. at p. 8.

7. There were also four additional accommodations to be implemented when Student started at School:
 - Access to audiobooks;
 - Access to speech to text;
 - Extended time will be time and one half;

- Access to the resource room.

Id.

8. While in middle school, Student received 250 minutes per week (“MPW”) of special education support in “a small group resource math class outside the general education classroom.” *Id.* at p. 10. He also received 60 MPW of support for reading from a special education teacher inside the general education setting in co-taught classes. *Id.* Co-taught classes allowed Student to participate with nondisabled peers and met “his need for social interaction” related to his ASD diagnosis. *Id.*
9. Starting in August of 2021, when Student was to start at School, he was to receive 60 MPW of “direct special education instruction inside the general education to (sic) support mathematics and reading.” *Id.* He would also receive 216 MPW of direct special education support outside of the general education setting in a life skills class “to support reading and mathematics deficits.” *Id.* This was recorded in the service delivery chart as 12,960 MPW outside the general education setting. *Id.* at p. 11.
10. Student’s LRE was general education more than 80% of the time, where he would have access to “grade-level peer models and standards.” *Id.* at p. 12. A more restrictive setting would be disadvantageous for Student because “he is close to grade level and removing him from the classroom too much would not be best to meet his educational needs and allow his success in reaching his reading and math goals.” *Id.*
11. The embedded prior written notice (“PWN”) notes a more restrictive setting was rejected because Student’s “needs are being met in the regular classroom with the added support of the special education teacher for reading comprehension and reading fluency.” *Id.* at p. 12. His “math computation skills [were] being strengthened and he [was] adequately working toward achieving his math computation goals in the math resource setting.” *Id.* There is no explanation for why the IEP team decided to move Student from a math resource class to a life skills class or spread the 60 MPW of push-in support between reading and math. *Id.* Life Skills was described as a place Student could work on his reading and math goals. *Interview with Parent.*

C. Student’s 2021-2022 Schedule

12. School operates on a block schedule, with classes meeting two days a week and every other Friday. *Interview with Former Case Manager.* One class amounts to 227 MPW with School’s current block schedule. *Exhibit K*, p. 111.
13. Student started the 2021-2022 school year at School. *Exhibit 1*, p. 1. At the start of the year, Student was enrolled in eight classes. *Exhibit F*, p. 1. School’s IEP clerk sent all of Student’s teachers a snapshot of the May 2021 IEP via email on August 4, 2021. *Exhibit O*, p. 1.

14. Student was enrolled in English I and Algebra I. *Id.* Both courses were co-taught by both a general education teacher and a special education teacher. *Exhibit N*, pp. 5, 8.
15. Algebra was co-taught by Former Case Manager from October 19, 2021 until the end of the year. *Id.* at pp. 5-6. Former Case Manager has an active professional teaching license with several endorsements including special education generalist (5-21). *Exhibit N*, p. 4. Algebra was initially co-taught by a different special education teacher who resigned early in the year. *Interviews with Assistant Principal at School (“Assistant Principal”) and Algebra Teacher.* A special education teacher who was also Student’s temporary case manager (“Temporary Case Manager”) supported in Student’s co-taught math class until Former Case Manager started. *Interview with Assistant Principal.*
16. Student was also enrolled in Math Lab and Life Skills with Temporary Case Manager. *Id.* Temporary Case Manager had an active professional teaching license, with a Special Education Generalist (5-21) endorsement, active starting October 4, 2021. *Exhibit H*, p. 4.
17. Life Skills classes are generally designed to teach functional and adaptive skills. *Interview with District Director of Special Education (“Director”).* Life Skills is taught by a special education teacher and enrolled students all have IEPs and generally an identified intellectual disability. *Id.* Whether a student should be enrolled in life skills is an IEP team decision, and students might be enrolled to get additional support and more time and access to a special education teacher to complete work. *Id.*
18. School enrolls students in Life Skills to support IEP needs including working on academic goals and actual life skills like completing job applications. *Interview with Assistant Principal.* School does not have a study hall, but Life Skills provides an opportunity for students to get help with homework. *Id.*
19. Math Lab is a time for students with IEPs to receive specially designed instruction specific to math goals and to get additional support on the general education math curriculum from a special education teacher. *Interview with Director.* Students from multiple general education math classes are enrolled in the same Math Lab with one special education teacher. *Interviews with Assistant Principal and Current Case Manager.*
20. Temporary Case Manager no longer works for District and was not available to be interviewed about what Student did during Life Skills or Math Lab. *Exhibit L.* In Life Skills, students were taught about money and budgeting as well as other life skills Student already knew. *Interview with Parent.* Parent was also a special education teacher at School. *Id.*
21. At the end of the school year, in May of 2022, Student was still enrolled in both Life Skills and Math Lab, while his IEP included only one special education class. *Exhibit K*, p. 162. Being in

both classes resulted in a change to Student's LRE, which should only occur after a reevaluation. *Id.* at p. 164.

D. September 2021 IEP

22. Student, Parent, Assistant Principal, Algebra Teacher and Temporary Case Manager attended an annual IEP team meeting on September 14, 2021. *Exhibit D*, p. 3. Together they finalized Student's IEP that was operative in October of 2021 ("September 2021 IEP"). *Exhibit A*, p. 1.
23. According to the September 2021 IEP, Student is "kind, hardworking, and self-advocates when needed." *Exhibit A*, p. 3. Student wants to be an engineer. *Id.* The Present Levels of Educational Performance Summary notes Student's current accommodations and grades. *Id.* at p. 4. Student had a 59% in English and Engineering, equating to a C, and a B in biology, with a 65%. *Id.* He was failing Algebra 1 although his grade on a retaken test had not yet been entered. *Id.*
24. Student had not made progress on his prior math goal of replacing variables and solving algebraic expressions with 80% accuracy, as he was still only solving problems with 20% accuracy. *Id.* However, when shown example problems, he was able to solve algebraic expressions with 85% accuracy. An unidentified teacher notes that his math skills "seem extremely low" because of his ability to remember steps. *Id.* at p. 5. Student requires several repetitions to understand and has "no understanding of what is going on" even when he appears to be paying attention. *Id.* He usually declines offers of help but works throughout the period and asks questions when he does not understand the concepts. *Id.*
25. Student also had two prior reading goals regarding comprehension at or above 85% accuracy when reading literature "at the high end of grades 6-8 text complexity band" and "on grade level text complexity band." *Id.* Student had not met either goal as he was comprehending at 75% and 80% accuracy respectively. *Id.* However, when "given a verbal prompt and or model example" his accuracy increased to 88% and 90% respectively. *Id.*
26. The present levels summary also includes an observation of Student in what appears to be an English class. *Id.* Student fidgeted in his seat before eventually starting the assignment and asking questions. *Id.* Student's behavior was not compared to peers. *Id.*
27. According to the Student Needs and Impact of Disability section, Student's OHI impacts "his ability to make grade level academic gains in the area of mathematical computation and reading comprehension." *Id.* at p. 6. Student requires direct specialized instruction on identifying "the central idea of a piece of literature and how it changes throughout the story" and "identifying and explaining each step involved to solve an equation or inequality." *Id.*

28. Parent wanted to know how Student's accommodations were being implemented. *Id.* Student did not require any special factors such as a Behavior Intervention Plan or Assistive Technology. *Id.* at p. 7.
29. The September 2021 IEP includes transition goals (identical to Student's annual goals) to support Student's goal of attending college to become an engineer. *Id.* at pp. 6-8. It describes the steps Student's case manager will take to help him research and attend college and career fairs and indicates two agency linkages to support Student's transition. *Id.* at p. 8.
30. The September 2021 IEP contains two annual goals. *Id.* at pp. 8-9. Progress will be shared with Parent "once per semester." *Id.* at p. 8. The two goals include:
- Transition Education/Training: From a baseline of 50% accuracy, by September 13, 2022, as measured by monitoring and charting progress on focused assessments, "[i]n order to be success (sic) as an engineer, [Student] will improve his mathematical computation abilities related to equations and inequalities. [Student] will be able to identify and explain each step to solve an equation or inequality with an 80% accuracy in 4 out of 5 trials."
 - Transition Employment\Career: From a baseline of 65% accuracy in 4 out of 5 opportunities, by September 13, 2022, as measured by monitoring and charting progress, "[i]n order to be successful as an engineer, [Student] will improve his reading comprehension related to identifying a central theme. [Student] will identify the central theme of a piece of literature and how it has changed throughout the story with an 80% accuracy in 4 out of 5 opportunities.

Id. at pp. 8-9. Both goals were tied to grade level standards connected to classes in which Student was enrolled. *Exhibit P*, pp. 2-3.

31. There are 12 accommodations in the September 2021 IEP, including:
- Simplified steps on paper for him to use as needed;
 - Provide a copy of classroom notes after student attempt in all subject areas;
 - Access to a word processor for lengthy writing assignments as advocated for by student;
 - Access to a graphic organizer for writing assignments and oral discussions as advocated for by student;
 - Extra time to complete classroom assignments and assessments. Two extra class periods or one additional week;
 - Provide an alternate assignment that still contains required material if Student is displaying difficulty in processing;
 - Shortened/chunked assignments that contain the same information;

- Extended time on assessments, time and a half and double time if only option. Access to resource room;
- Access to a math reference sheet;
- Ability to complete relatable problems prior to a test;
- Breaks as needed;
- Multiple breaks.

Id. at pp. 9-10.

32. Student did not qualify for extended school year services. *Id.* at p. 10. He required extended time, either time and a half or double time, on state and district assessments, as well as multiple breaks on CMAS Science and Social Studies and the PSAT. *Id.* at pp. 10-11.

33. According to the September 2021 IEP, Student received the following special education services during the school year (Student did not receive any related services):

- Inside General Education:
 - The Service Delivery Statement (“SDS”) notes that Student “will receive 30 minutes per week of special education services from a special education teacher in a co-taught math class to ensure necessary supports and accommodation usage are implemented for tests and assignments. He will also receive 30 minutes a week of special education services from a special education teacher in a co-taught Language Arts class to help support his reading comprehension.”
 - In contrast, the service grid lists 30 MPW of direct special education services inside the general education classroom.
- Outside General Education:
 - Student is to receive 210 MPW of direct special education services outside the general education classroom “to assist him with his mathematical computation skills.”

Id. at p. 12

34. The agreement during the IEP team meeting was that Student would get 30 MPW in a co-taught math class and 30 MPW in a co-taught English class, as is stated in the SDS. *Interview with Parent*. School agreed that Student’s service grid should reflect 60 MPW and could be corrected with an IEP amendment. *Exhibit K*, p. 180. For these reasons and based on Student’s enrollment in two co-taught classes, the SCO finds that Student was entitled to 30 MPW each in math and language arts and that including 30 MPW in the grid was a clerical error.

35. Student's LRE is general education at least 80% of the time because that setting allows him to generalize skills inside and outside general education and "challenge himself more appropriately and grow more in his skills and abilities." *Exhibit A*, p. 13. However, that setting will not focus as much as special education classes would on "some of the foundational skills that [Student] is still developing." *Id.*
36. The PWN notes that the team considered moving Student to a co-taught language arts class instead of his Life Skills class, but Student felt he was doing well and did not want to change his class. *Id.* at p. 13. As a child on the spectrum, Student needs routines and would have struggled with a schedule change. *Interview with Parent*. At the time, Parent did not understand that Life Skills was a special education class, and that Student was enrolled in two special education classes, contrary to what his IEP said. *Id.*
37. Temporary Case Manager would have been responsible for providing teachers with a copy of Student's September 2021 IEP or a snapshot. *Exhibit O*, p. 1. District was unable to confirm whether he had done so. *Id.* All general education teachers in District have "view only" access to all IEPs in their building through District's IEP system. *Id.* District's system flags all students on an IEP which alerts teachers who can then find the IEPs themselves in the system. *Id.*

E. November IEP Amendment

38. Student's September 2021 IEP was amended on November 30, 2021 ("November 2021 IEP"). *Exhibit A*, p. 15. The IEP was amended by Temporary Case Manager, a former District Coordinator of Special Education ("Former Coordinator") and Parent without a meeting. *Id.* at pp. 71-72. To come into compliance before a CDE Indicator 13 Audit, a summary of Student's most recent evaluation was added to the present levels and units of measurement were added to the goals. *Id.* at p. 72.
39. Results of an academic test administered in September of 2020 were added to Student's Present Levels. *Id.* at p. 18. Student's scores ranged from Low (spelling) to Very Superior (writing samples) with most scores falling in the low average range. *Id.*
40. For Student's first goal, the unit of measurement was changed from "Percentage of Accuracy" to "80% accuracy in 4 out of 5 trials" and the "in 4 out of 5 trials" was added to the baseline. *Id.* at pp. 9, 24.
41. For Student's second goal, the unit of measurement was changed from "Number of Opportunities" to "80% accuracy in 4 out of 5 opportunities." *Id.* The changes in the units of measure were not related to an indicator 13 audit and were likely the result of the change in case managers. *Interview with Director*.

42. The November 2021 IEP is otherwise the same as the September 2021 IEP. *Compare Exhibit A*, pp. 1-14 and 15-29.

F. December IEP Amendment

43. Historically, District has called parent requested meetings “additional meetings,” however they are otherwise treated as IEP team meetings. *Interview with Director*. A notice of meeting should be issued, inviting the whole team, and amendments can be made to the IEP during the meeting. *Id.*

44. On December 1, 2021, Parent requested a meeting to review Student’s progress on his math goal and his accommodations because Student was failing algebra despite working hard and participating in math lab. *Exhibit K*, p. 52. Student failed tests and assignments off and on throughout first semester. *Id.* at p. 120. Student’s abilities were above foundational math, a special education course, but he was unable to “understand the higher-end processes.” *Id.*

45. Parent, Former Case Manager, Temporary Case Manager, Former Coordinator and Algebra Teacher attended a meeting on December 8, 2021. *Exhibit A*, p. 76. District did not issue a notice of meeting because “it was not an official IEP meeting.” *Exhibit K*, p. 160.

46. During the meeting Parent, Former Coordinator and Student’s math teachers, all the required participants for an IEP team meeting, discussed how to better support Student in math. *Interview with Parent*. Algebra Teacher and Former Case Manager suggested moving Student to a special education math class that works on foundational skills. *Id.* Former Case Manager did not think that was an appropriate class for Student’s skill level but wanted the group to consider it. *Exhibit K*, p. 48; *Interview with Former Case Manager*.

47. Instead of moving Student out of algebra, the group agreed to add three additional accommodations to his IEP:

- “Simplified steps and example problems on math assessments for him to use, as needed;”
- “Provide fill-in-the-blank, scaffolded assessments in mathematics that include positive and negative signs already filled in;”
- “Abstract concepts are difficult for [Student]. Provide additional scaffolding and examples for abstract concepts, as needed for comprehension.”

Exhibit A, p. 75.

48. Former Coordinator recommended these accommodations and provided examples of what the second would look like during the meeting. *Interviews with Parent and Former Case Manager*. Although she thought she understood it at the time, implementing that accommodation did not seem to help Student. *Interview with Former Case Manager*. Student

did not always want to complete the problem the way she set it up, and he struggled to remember rules of basic calculation as well as negative versus positive numbers. *Id.*

49. At the end of the meeting, Parent signed an amendment notice, agreeing that an IEP team meeting did not need to be convened to make the changes. *Exhibit A*, p. 76. They also updated the IEP to indicate progress reports would be provided once per quarter instead of once per semester. *Id.* No other changes were made to the November 2021 IEP. *Id.*
50. After the meeting, the amendment was never finalized in District's system. *Exhibit K*, p. 75; *Interview with Director*. However, the new accommodations were implemented in Algebra right away. *Interview with Former Case Manager*. The amendment was finalized in the system on April 25, 2022. *Exhibit A*, p. 30. A new snapshot cannot be generated until the IEP is finalized. *Interview with Director*. Without a new snapshot, the SCO finds that Student's teachers were not provided with updated copies of his IEP, although all math teachers were present at the meeting.
51. No PWN was issued at the time, but Former Case Manager generated a PWN in May of 2022. *Exhibit K*, p. 160.

G. Co-Teacher in Algebra Class

52. When School is unable to get substitute teachers, teachers in the building provide coverage. *Interview with Assistant Principal*. General education teachers sometimes fill in for absent special education teachers. *Id.* School does not always get coverage for absent special education teachers in co-taught classes. *Id.*
53. Special Education teachers should be present in their co-taught classes daily as assigned. *Id.* They are permitted to miss class for scheduled IEP team meetings, to do observations of students and for other "IEP related things." *Id.* This might result in co-teachers missing class once a week, but they should only miss a portion of the class. *Id.*
54. Former Case Manager missed five days of school after she started in October of 2021. *Exhibit N*, p. 1. Two of those absences were covered by a substitute teacher. *Id.* Three absences, one in October and two in January, were covered by teachers at School. *Id.* All the absences occurred in different school weeks. *Id*; *Exhibit I*.
55. Former Case Manager was present in Student's algebra class daily, although she was occasionally out of the class to deal with IEPs. *Interview with Algebra Teacher*. The class met for 90 minutes every Tuesday and Thursday and every other Friday. *Interview with Former Case Manager*. Algebra Teacher would lecture for the first 45 minutes and then students would work independently or in small groups. *Id.*

56. Former Case Manager asked lots of questions during instruction, to help students understand. *Interviews with Algebra Teacher and Former Case Manager*. Because she was learning the material along with the students, she had a better sense of what questions to ask. *Interview with Former Case Manager*.
57. Former Case Manager and Algebra Teacher collaborated before every lesson to discuss the lesson and plan necessary accommodations for three students, including Student. *Id.* Former Case Manager and Temporary Case Manager were also in frequent contact about his needs so that he could provide support on ongoing assignments and circle back to reinforce prior lessons. *Id.*
58. Former Case Manager consistently supported Student and one to two others during the 45 minutes of independent work time. *Id.* She worked with Student in almost every class to review the material and provide homework assistance. *Exhibit K*, p. 342. Algebra Teacher reduced Student's homework by about 50% and Student only answered "C-level" problems on the exams, after Former Case Manager provided him with examples. *Id.*

H. Algebra Accommodations

59. Algebra Teacher does not recall Student getting fill-in-the-blank exams, but says his exams were scaffolded. *Interview with Algebra Teacher*. For instance, he would be provided with completed versions of similar questions and was only presented with the easiest, or "C-level" questions. *Id.*
60. Student took math exams in a side room, off the math classroom, with Former Case Manager. *Interview with Former Case Manager*. Student always got simplified steps and example problems for exams. *Id.* Student could always have a list of formulas in front of him during exams and he could use his homework as a reference during tests. *Id.* Student had several opportunities to complete relatable problems on his own, and with assistance, prior to completing exams. *Id.*
61. Former Case Manager offered to set up fill-in-the-blank problems for Student, but he preferred to set the questions up himself, in the way that made the most sense to him. *Id.* Filling in the blank can make exams harder when there is more than one way to get to the right answer. *Interview with Director*.
62. Former Case Manager provided lots of scaffolding and examples of abstract problems for Student. *Id.* Former Case Manager also provided Student with simplified steps and individualized, color-coded instructions. *Id.* Student did best with repetition, through extra practice, to reinforce understanding. *Id.*
63. At the end of each lesson, Student was able to compare his notes with Former Case Manager to make sure he was not missing anything. *Id.* Student had as much extra time on assignments

and assessments as he needed. *Id.* He was also free to take breaks, but other than occasional bathroom breaks, he did not take them. *Id.*

64. Instead of providing alternate assignments, Student was given a chance to show what he knew by focusing on the more accessible “C” and “B-level” problems. *Id.* Focusing on these easier problems also resulted in shortened assignments. *Id.*

I. Student’s Progress

65. Student ultimately earned a C in both semesters of algebra and biology. *Exhibit G*, p. 6. He earned As in Health and Civics, a B in 2D Art and a C in Principles of Marketing. *Id.* Student earned a B in the first semester of English, Life Skills and Intro to Engineering and a C in the second semester of each of those classes. *Id.*

66. As of December 17, 2021, Student had exceeded his math goal from the September 2021 IEP, solving algebra equations with 83% accuracy across 13 trials, including assignments and tests. *Id.* at p. 3. As of March 3, 2022, Student had regressed and could only solve algebra equations with 73% accuracy across nine trials. *Id.* However, by May 27 he had again exceeded the goal, solving algebra equations with 88% accuracy over eight trials. *Id.* The first two updates note that Student was able to “solve multiple types of equations that included inequalities.” *Id.*

67. Student also quickly met his reading goal. *Id.* at pp. 3-4. He could identify themes in his English class with 94% accuracy over four trials as of December 17, 2021. *Id.* at p. 3. He was identifying themes with 82% accuracy over four trials as of March 3, 2022. *Id.* at p. 4. Neither update notes whether Student could identify how a central theme changed throughout the story. *Id.* at pp. 3-4. As of May 27, 2022, Student met the goal “although he usually need (sic) some assistance in using deeper level critical thinking skills to see how a theme changed over time,” including one-on-one support from the teacher. *Id.* at p. 4. There is no quantitative data included in the May progress report. *Id.*

J. August 2022 IEP

68. Parent, an attorney for Parent, Student’s father (via zoom), an attorney for District, Assistant Principal, Director, a Special Education Coordinator for District, a special education instructional coach, Current Case Manager, and Student’s general education geometry teacher (“Geometry Teacher”) attended an IEP team meeting on August 24, 2022, resulting in a new IEP (“August 2022 IEP”). *Exhibit A*, pp. 49 and 69.

69. The August 2022 IEP includes nine accommodations:

- Scaffolded assignments in math;
- Simplified steps and example problems on math assessments for him to use, as needed;

- Provide fill-in-the-blank, scaffolded assessments in mathematics that include positive and negative signs already filled in;
- Abstract concepts are difficult for Student, provide additional scaffolding and examples for abstract concepts, as needed for comprehension;
- Access to a smaller environment to take tests;
- Provide a skeleton copy of class notes for Student to fill in;
- Extra time to complete assignments- up to two class periods;
- Provide opportunities for breaks if Student requests a break;
- Provide “pressure pass” for Student to use if he needs to take a break and wants to discreetly communicate this with his teacher without having to verbalize.

Id. at pp. 16-17.

70. According to the August 2022 IEP, Student received the following special education services (Student did not receive any related services):

- Inside General Education: 120 MPW of direct special education instruction:
 - 60 MPW of direct special education services inside a co-taught math class “to ensure necessary support and accommodation usage are implemented for tests and assessments.”
 - 60 MPW of direct special education services inside a co-taught English class “to help support his reading comprehension.”
- Outside General Education: 900 minutes per month (“MPM”), or approximately 225 MPW, of direct special education instruction “to address his math needs.”

Id. at p. 67.

K. Student’s Geometry Class

71. For the 2022-2023 school year, Student is enrolled in both Math Lab and a co-taught math class. *Exhibit A*, p. 69. Math Lab is taught by Current Case Manager, who is also the co-teacher in Student’s geometry class, taught by Geometry Teacher. *Interview with Current Case Manager*. Student is not enrolled in Life Skills. *Id.*

72. When Current Case Manager started in the second week of school, Student’s teachers, including Geometry Teacher, were already aware of their responsibilities under Student’s IEP. *Id.* Student’s teachers had all seen in their system that Student was flagged as having an IEP and downloaded the IEP to review. *Exhibit O*, p. 1. Geometry Teacher had already plotted out her responsibilities to the students in her class on IEPs. *Interview with Current Case Manager*.

Current Case Manager received copies of all his students' IEPs on his first day, which he reviewed in the first two days. *Id.* He is not sure when he sent out snapshots of Student's IEP or if it was before or after the August 2022 IEP team meeting. *Id.*

73. Current Case Manager and Geometry Teacher work together closely to ensure Student receives his accommodations. *Id.* Geometry Teacher provides Current Case Manager with lesson plans and materials so he can pre-teach lessons during Math Lab. *Id.* Geometry Teacher is very diligent about making sure students have everything they need. *Id.*
74. Student thinks his exams are not accommodated because they look like everyone else's. *Interview with Parent.* District intentionally makes accommodated exams look like all the other tests so students with disabilities are not singled out. *Interview with Director.*
75. Student gets shorter tests and can use his notes during exams. *Id.* However, he never wants to take his tests in a smaller setting. *Id.* He has both a virtual and hard copy of a math reference sheet and most classroom assignments include all the theorems students will need to complete that assignment. *Id.* Student's exams are also scaffolded with "baby steps" working up to bigger questions. *Id.*
76. Geometry Teacher did not provide Student with a fill-in-the-blank, scaffolded assessment on at least one occasion this fall. *Response*, p. 7. Geometry Teacher does provide him with a list of accommodations, which does not include scaffolded assessments or simplified steps and example problems on assessments. *Id.* Geometry Teacher did not create a fill-in-the-blank assessment because it forces Student to complete the problems using a method selected by the teacher when there were multiple ways to solve the problems. *Id.*
77. Director understood "fill-in-the-blank" to be one example of how to scaffold an assessment. *Interview with Director.* Creating a fill-in-the-blank exam can make the test harder when there are multiple correct ways to solve a problem. *Id.* Director indicated it is not logical to use an accommodation which makes the test harder, so there must be space for teachers to recognize when an accommodation does not make sense or is not appropriate. *Id.*
78. Geometry Teacher agreed to allow Student to retake a failed exam, which had not been appropriately accommodated. *Response*, p. 7. Student retook one geometry test, but Parent does not know how he did. *Interview with Parent.* Although Student initially struggled in geometry, he is doing much better now. *Interview with Current Case Manager.* Student did well on the most recent exam and seems to have a good grasp of the current unit. *Id.*
79. Student also struggles in engineering. *Interview with Parent.* Engineering is math heavy, so Current Case Manager tries to give Student an opportunity to get help with engineering assignments during math lab. *Interview with Current Case Manager.* However, Student usually has to do his homework during Math Lab, which does not leave time for engineering.

Id. Nevertheless, Student is doing well in engineering, having earned mostly As, a couple of Cs and one F. *Id.*

L. Reevaluation

80. Parent requested an independent educational evaluation (“IEE”) on August 18, 2022. *Exhibit K*, p. 252. In addition to the IEE, Parent signed consent for a District reevaluation on August 24, 2022. *Exhibit B*, p. 1.
81. The reevaluation included the results of several assessments of academic performance, completed by District. *Exhibit B*, pp. 18-23. Student’s scores on various math assessments ranged from average to borderline impaired to impaired, with Student particularly struggling with math calculation and higher-level skills like multiplication. *Id.* at pp. 18-22. Student’s scores on the Test of Reading Comprehension ranged from average to below average and his reading fluency was below the beginning of year benchmark for high school. *Id.* at pp. 22-23.
82. The reevaluation also reviewed the results of a Woodcock Johnson Test of Achievement completed as part of the IEE. *Id.* at p. 51. Student’s scores were “similar to those from his performance in September 2020, consistent with his performance on Star benchmark assessments, and commensurate with” reading scores from District’s evaluation. *Id.*

Cluster/Tests	Standard Score 2020	Classification 2020	Standard Score 2022	Classification 2022
<u>Broad Achievement</u>	87	Low Average	84	Low Average
<u>Broad Reading</u>	83	Low Average	91	Average
Letter-Word Identification	89	Low Average	91	Average
Passage Comprehension	83	Low Average	83	Low Average
Sentence Reding Fluency	83	Low Average	98	Average
<u>Broad Written Language</u>	101	Average	91	Average
Spelling	74	Low	86	Low Average
Writing Samples	143	Very Superior	98	Average
Sentence Writing Fluency	91	Average	97	Average
<u>Broad Mathematics</u>	82	Low Average	72	Low
Applied Problems	90	Average	86	Low Average
Calculation	81	Low Average	68	Very Low

Math Facts Fluency	84	Low Average	74	Low
<u>Academic Fluency</u>	83	Low Average	88	Low Average
<u>Academic Applications</u>	106	Average	87	Low Average

Compare Exhibit A, p. 18 and Exhibit B, p. 51.

83. As a result of the reevaluation, Student was found eligible as a Student with a SLD in math calculation on October 27, 2022. Exhibit B, p. 4.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to develop IEP goals and accommodations in the September 2021 IEP that were individually tailored to address Student’s needs, in violation of 34 C.F.R. §§ 300.320(a)(2) and (a)(4). This violation resulted in a denial of FAPE.

Parent’s concern is that Student’s goals were not appropriate during the 2021-2022 school year and that Student’s IEP did not include appropriate accommodations until after the December IEP team meeting.

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

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)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). An IEP must include a statement explaining how the child’s disability impacts the student’s involvement in and progress in the general education curriculum. *Id.* § 300.320(a)(1)(i).

It must also 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. *Id.* at § 300.320(a)(2). Along with measurable goals, an IEP must 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. *Id.* § 300.320(a)(4). An IEP may be amended in writing, outside of a formal IEP team meeting, if the parent and district agree a meeting is not necessary and the child’s IEP team is informed of those changes. *Id.* § 300.324(a)(4).

A. IEP Development Process

Here, the September 2021 IEP was developed outside the Complaint window and no concerns have been raised about the development process. (FF # 22.) The September 2021 IEP was developed at a properly constituted IEP team meeting on September 14, 2021. (*Id.*) The September 2021 IEP included a description of Student’s present levels of performance and the impact of his disability on his involvement in the general education curriculum. (FF #s 23-27.) The September 2021 IEP included two goals and 12 accommodations to address Student’s needs. (FF #s 30 and 31.) It also described the special education services Student would receive. (FF # 33.)

The September 2021 IEP was also modified twice in writing, by agreement of Parent and District consistent with 34 C.F.R. § 300.324(a)(4), in November and December of 2021. (FF #s 38 and 49.) These amendments added information to the IEP but did not remove anything from the IEP. (*Id.*)

Thus, the SCO finds and concludes that the development process for the September 2021 IEP, and the later modifications, complied with IDEA’s procedures. *Rowley*, 458 U.S. at 206. The SCO turns next to the second question of whether the September 2021 IEP was substantively appropriate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of the IEP

IEP Goals

Parent’s initial concern, captured in the original allegation, was that the goals in the September 2021 IEP were not measurable until units of measurement were added as part of the November amendment. In the Reply, Parent raised a related concern that the goals in the September 2021 IEP were not appropriate for Student. Because this additional concern is closely related to the original allegation and could be resolved by documentation already submitted, the SCO addressed this concern within the scope of this investigation. *See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,603 (Aug. 14, 2006) (discussing acceptance of additional allegations during the investigation process). District provided an additional Response regarding the additional concern.

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. at § 300.320(a)(2). To allow for the evaluation of a student’s progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff’d*, 38 IDELR 63 (6th Cir. 2003, *unpublished*). Appropriate goals should be clear enough that a stranger, or person unfamiliar with the IEP, would be able to implement the goal, monitor student’s progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006).

The SCO first considers whether the goals in the September 2021 IEP lacked units of measurement prior to the November 2021 amendment. The amendment notice indicated that units of measurement were added to the goals. (FF # 38.) In actuality, the units of measurement and baselines were modified, but existed prior to the amendment. (FF #s 40 and 41.) Thus, the SCO finds and concludes that the September 2021 IEP included units of measurement and that the November amendments did not change the substance or intent of the goals.

The SCO turns next to whether the goals in the September 2021 IEP were substantively appropriate for Student. The SCO, in consultation with CDE Content Specialist 1, finds that Student’s math goal, identifying and explaining each step to solve an equation or inequality, is inappropriately vague as it is not clear what Student needs to be working on. (FF # 30.) Another teacher would not be able to pick up that goal and clearly understand her responsibilities. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006). This is especially true since Former Case Manager, who implemented the goal for much of the year, was not part of the team when the goal was written. (FF # 15.) As a result, the SCO finds that Student’s math goal is inappropriately vague, in violation of 34 C.F.R. § 300.320(a)(2). In contrast, the SCO, in consultation with CDE Content Specialist 1, finds that the reading goal, identifying the central theme of a piece of literature and how it has changed throughout the story, is sufficiently clear and measurable. (FF # 30.)

In addition, the SCO is concerned that Student met both goals a mere three months after they were written. (FF #s 66 and 67.) Without being able to speak with Temporary Case Manager, who wrote the goals, the SCO cannot easily ascertain if this is because the goals were not appropriately ambitious in light of Student’s circumstances or because Former Case Manager was not implementing and measuring them as Temporary Case Manager intended. (FF #s 20 and 22.) However, the September 2021 IEP also lacked information from Student’s most recent evaluation, had the same target for both goals and Temporary Case Manager adjusted the units of measurement just months after writing the goals. (FF # 30 and 38-41.) Thus, the SCO finds and concludes that the goals were not appropriately ambitious to allow student to make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).

District contends that the goals were reasonably calculated to allow Student to make progress in the general education curriculum because they were based in grade-level standards. (FF # 30.)

However, the SCO cautions District that selecting from grade-level standards does not ensure that goals are appropriately ambitious in light of a student's circumstances. For instance, the SCO, in consultation with CDE Content Specialist 2, notes that given the foundational needs identified in Student's most recent evaluation, Student likely requires goals intended to remediate his foundational skills. (FF #s 81, 82.)

In sum, the SCO finds and concludes that the goals in the September 2021 IEP and the subsequent amended versions, were not reasonably calculated to enable Student to receive an educational benefit and violated the IDEA's substantive requirements related to the development of an IEP at 34 C.F.R. § 300.320(a)(2), resulting in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

IEP Accommodations

Parent's next concern is that Student's IEP did not include appropriate supplementary aids to allow him to make progress in math until after three additional accommodations were added in December of 2021.

The second prong of the *Rowley* test considers whether the IEP was substantively appropriate by asking whether the IEP was reasonably calculated to enable the child to receive an educational benefit. Here, the SCO examines whether the additional accommodations added in December were necessary for the September 2021 IEP to be reasonably calculated to enable Student to receive an educational benefit.

Along with measurable goals, an IEP must 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). "Accommodations allow different instructional designs to support students and to enable them to receive instruction based on the general education curriculum and other content focus areas needed by the students, such as social, self-determination, and independent living skills." *CDE IEP Procedural Guidance Manual*, p. 44 (July 2017), available at https://www.cde.state.co.us/cdesped/iep_proceduralguidance.

Whether an IEP is reasonably calculated to allow a student to make appropriate progress is determined prospectively, based on what was known when the IEP was drafted, and not determined by the student's actual progress. *Fuhrmann v. East Hanover Bd. of Educ.*, 19 IDELR 1065 (3d Cir. 1993), *reh'g denied*, 110 LRP 65930 (3d Cir. 06/08/93); and *Adams v. State of Oregon*, 31 IDELR 130 (9th Cir. 1999). Instead of promising a particular educational or functional outcome for a student with a disability, the IDEA provides a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address new information or a lack of expected progress. 34 C.F.R. § 300.324(a)(2).

Here, at the time the September 2021 IEP was written, Student had not made progress on his prior math goal and his math skills seemed “extremely low.” (FF # 24.) However, while not included, his most recent evaluation showed Student’s math skills to be in the low average range. (FF # 82.) The September 2021 IEP included 10 accommodations intended to help Student make progress on his math goal and in his general education math class, most of which were carried over from the May 2021 IEP. (FF #s 6, 7, and 31.) Access to a math reference sheet and the ability to complete relatable problems prior to a test appear to have replaced visual models for multi-step math problems. (FF #s 6 and 31.)

No special education minutes or other services were added to address Student’s “extremely low” math skills or the fact that Student had not made progress on his prior math goals. (FF # 9 and 33.) The Record clearly demonstrates that Student continued to struggle in algebra. (FF #s 44, 46, 58, and 62-65.) The SCO, in consultation with CDE Content Specialist 2, notes that students with gaps in foundational skills require very clear and targeted accommodations, which might include use of a calculator in general education, to remediate foundational skills. For these reasons, the SCO finds and concludes that the September 2021 failed to include supplementary aids and services appropriately tailored to allow Student to make progress on his goals and in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(4).

Parent specifically contends that the September 2021 IEP was not appropriate because it did not include the three accommodations added to his IEP after a meeting in December. (FF # 47.) However, the IDEA intends for IEPs to be revised, so the fact that something is appropriate after an amendment does not necessarily mean that support or service was always necessary for the provision of FAPE. 34 C.F.R. § 300.324(a)(2). In addition, the SCO cautions that those accommodations did not appear to improve Student’s progress on his math goal. (FF # 66.) If anything, Student’s accuracy when solving equations regressed slightly after the accommodations were added. (*Id.*) This is perhaps consistent with the concern that providing fill-in-the-blank exams did not help Student and actually makes tests harder for Student. (FF #s 48, 61 and 76.) In addition, access to the additional accommodations also did not increase Student’s ability to make progress in the algebra curriculum, as Student’s final grade was the same both semesters. (FF # 65.) While the new accommodations may have been a reasonable attempt to increase support to address Student’s difficulties, the evidence simply does not support that Student needed those accommodations to access his education.

In sum, the SCO finds and concludes that the accommodations in the September 2021 were not reasonably calculated to enable Student to receive an educational benefit and violated the IDEA’s substantive requirements related to the development of an IEP at 34 C.F.R. § 300.320(a)(4), resulting in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements).

Since the September 2021 IEP has since been replaced, the SCO will order remedies intended to compensate Student for the denial of FAPE related to both annual goals and accommodations.

C. Compensatory Education

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

Although Student’s reading goal was not appropriate, as evidenced by Student meeting it almost immediately, Student continued to make progress in that area. Student passed both semesters of his English class, and testing showed that his reading and writing abilities generally improved. (FF #s 65 and 82.) Student was noted to specifically have needs in the area of reading comprehension, where he was able to keep pace with his peers and remain in the low average range. (FF #s 27 and 82.) For these reasons, the SCO, in consultation with CDE Content Specialist 1, finds and concludes that no compensatory English services are required.

However, the failure to include appropriate goals and accommodations to address Student’s needs in the area of math, now his primary area of eligibility, must be remedied. Although Student ultimately passed algebra, he was on the verge of failing off and on. (FF # 44.) He has also struggled this year in geometry, failing at least one exam. (FF # 78.) The most recent evaluation showed that Student had regressed in every area of mathematics, which is now both a normative and a relative weakness. (FF # 82.) The SCO, in consultation with CDE Content Specialist 2, finds that Student will require specially designed instruction to remediate Student’s foundational math skills, coupled with accommodations and support to help him access the grade level curriculum. Considering Student’s age, individualized needs, and math regression, the SCO, in consultation with CDE Content Specialist 1, has designed the following award of compensatory services: 25 hours of one-on-one instruction in math calculation, designed to improve Student’s fundamental math skills.

Conclusion to Allegation No. 2: District failed to properly implement Student’s IEP from December of 2021 to the present, in violation of 34 C.F.R. § 300.323. This violation did not result in a denial of FAPE.

Parent’s next concern is that District did not fully implement Student’s May 2021 IEP by failing to provide all of Student’s push-in minutes inside his algebra class and all of his accommodations during exams in his geometry class.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children

. . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

An IEP must identify the special education and related services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

A. Special Education Minutes

Parent’s concern is that Student did not receive all of his special education minutes inside the general education math classroom because the special education co-teacher was not consistently present in the classroom.

IEP Accessibility

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). All of Student’s teachers, including Algebra Teacher, received a copy of Student’s May 2021 IEP on August 4, 2021. (FF # 13.) District could not confirm whether teachers were sent an updated snapshot for the September 2021 IEP. (FF # 37.) However, all of District’s teachers have access to students’ IEPs and students’ profiles are flagged when there is an applicable plan to review. (*Id.*) At issue here is whether Student was receiving his special education minutes inside the general education setting. In that arena, Student’s May 2021 and September 2021 IEPs were the same, so teachers were aware that he was to receive 60 MPW of push in support to help with reading and math. (FF #s 8 and 33.) Further, Former Case Manager and Algebra Teacher were in daily contact about the support that Student would need in class. (FF # 57.) Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323(d).

Implementation of Special Education Minutes

As a preliminary matter, before determining whether Student received the special education minutes in his IEP, the SCO must determine how many minutes he was entitled to receive. Due to a clerical error, the SDS in the September 2021 IEP indicates that Student would receive support from a special education teacher for 30 MPW in a co-taught math class and 30 MPW in a co-taught English class, but the service grid only listed 30 MPW total. (FF # 34.)

IEP teams are not required to include information “under one component of a child’s IEP that is already contained under another component of the child’s IEP.” 34 C.F.R. § 300.320(d)(2). IEPs should be read as a whole when assessing clerical errors. *See, e.g., Los Angeles Unified Sch. Dist.*, 60 IDELR 29 (SEA CA 2012) (holding that a Student’s IEP required the provision of one-to-one assistance where it was mentioned at least once in the document.) Thus, despite the clerical error, the SCO finds and concludes that Student was entitled to 60 MPW of special education support inside the general education environment, 30 minutes each in math and English.

Former Case Manager started supporting in Student’s algebra class on October 19, 2022. (FF # 15.) She was absent from work on five occasions, three of which were covered by building teachers, who do not always cover for absent special education co-teachers. (FF #s 52 and 54.) Other than occasional absences to deal with IEP things, Former Case Manager was present in Student’s algebra class every time it met. (FF # 55.) While Algebra Teacher would lecture, Former Case Manager would ask questions to help the students understand. (FF # 56.) She also worked with three students, including Student, during the 45 minutes of independent work time during almost every class period. (FF # 58.) Student also took exams in a side room, with Former Case Manager, who would provide assistance including simplified steps and example problems for exams and present him with only the easiest questions. (FF #s 59-62.) She also created individualized, color-coded instructions for Student and provided him with copies of classroom notes. (FF #s 62 and 63.) With Student’s algebra class meeting for an average of 225 MPW and Former Case Manager supporting Student for most of those minutes, the SCO finds that Student was receiving substantially more than 30 MPW. (FF # 54.) For these reasons, the SCO finds and concludes that even if Former Case Manager missed part of class once a week for IEP meetings and observations, Student received at least 30 MPW of support inside his math class and there was no violation of 34 C.F.R. § 300.323.

B. Accommodations

Parent’s concern is that Geometry Teacher did not provide Student with all his accommodations on exams.

IEP Accessibility

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). All of Student’s teachers, including Geometry Teacher, found and reviewed his IEP in the first weeks of school. (FF # 72.) Both the amended September 2021 IEP and the August 2022 IEP included testing accommodations for math, including “fill-in-the-blank” assessments and simplified steps and example problems for tests. (FF #s 47 and 69.) Current Case Manager and Geometry Teacher work together regularly to ensure Student has access to his accommodations. (FF # 73.)

However, District has an affirmative duty to ensure that staff are aware of their responsibilities related to implementing IEPs. 34 C.F.R. § 300.323(d). Although Student’s teachers took it upon

themselves to access Student’s IEPs this fall, District could not provide evidence that staff was notified about any of Student’s IEPs after August of 2021. (FF #s 37, 50, and 72.) There also appeared to be confusion about what “fill-in-the-blank, scaffolded assessments” required as Current and Former Case Manager understood it to require them to do something that made tests harder, and Director understood “fill-in-the-blanks” to be but one example of a scaffolded assessment. (FF # 61, 76, and 77.) The SCO finds, in consultation with CDE Content Specialist 2, that the scaffolded assessments accommodation lacked sufficient specificity to allow teachers to determine how to implement it. (FF #s 47 and 77.) For these reasons, the SCO finds that District failed to ensure Student’s teachers were aware of all their responsibilities with respect to Student’s accommodations, in violation of 34 C.F.R. § 300.323(d).

Implementation of Accommodations

Geometry Teacher indicated she provides Student with a list of accommodations that does not include scaffolded assessments or simplified steps and example problems for exams. (FF # 76.) However, Current Case Manager scaffolds his exams by including simplified steps to help Student answer questions. (FF # 75.) Student did not receive a “fill-in-the-blank” assessment on at least one occasion in geometry. (FF # 76.) A “fill-in-the-blank” exam was not provided because it would make the test harder for Student. (*Id.*) In reality, Student has not been consistently provided with that accommodation since it was added, as Former Case Manager also found it made exams more difficult. (FF # 61.) Thus, the SCO finds and concludes that District has not implemented all of Student’s accommodations, in violation of 34 C.F.R. § 300.323(c).

Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App’x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App’x 202, 205 (2d Cir. 2010).

“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However,

the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

In this case, during algebra Student was provided with simplified steps and example problems for exams, along with a list of formulas and the option to use his homework as a reference during the exam. (FF # 60.) He also completed similar problems independently, and with Former Case Manager prior to exams. (*Id.*) In geometry, he gets shortened exams, simplified steps and has access to his notes and a reference sheet. (FF # 75.) Student did not receive "fill-in-the-blank" exams in either math class, because rather than helping Student, his teachers believed that would make the exams harder. (FF #s 61 and 76.)

Because this accommodation was not helping Student, the SCO finds and concludes that the failure to implement it was not material. However, the SCO cautions District that concerns with that accommodation should have been addressed at the August 2022 IEP team meeting, if not sooner, because, once written, an IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

Conclusion to Allegation No. 3: District failed to educate Student in his LRE throughout the 2021-2022 school year, in violation of 34 C.F.R. §§ 300.114, 300.116 and 300.320(a)(5). This violation resulted in a denial of FAPE.

Parent's concern is that Student was enrolled in two special education classes throughout the 2021-2022 school year, even though his IEP indicated he would only be enrolled in one.

"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. 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." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* The school district must educate a student in accordance with the LRE described in the IEP. *Id.*

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, 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).

In this case, Student's September 2021 IEP, and the subsequent amendments, describe his LRE as general education at least 80% of the time. (FF #s 35, 42 and 49.) These IEPs concluded that Student required 210 MPW of direct instruction in mathematical computation, outside of the general education setting. (FF # 33.) Although Student's IEPs only called for enrollment in one special education course during the 2021-2022 school year, Student was enrolled in both Math Lab and Life Skills for the entire year. (FF # 16 and 21.)

District does not deny that Student was enrolled in Life Skills even though it was not in his IEP. However, District alleges that two special education classes, and not the services described in Student's IEPs, was actually his LRE. To reach this conclusion, it relies on the fact that Student advocated not to change his schedule in September. (FF # 36.) However, it is a group of people, including the parent, and not solely the student, who is responsible for determining a student's placement. 34 C.F.R. §§ 300.320(a) and 300.321. Further, Student did not actually say that he needed the Life Skills class, but merely that he did not want to change his schedule, which is consistent with his desire for routine as a Student with an ASD diagnosis. (FF # 36.)

If the IEP team believed Student needed the Life Skills class and that he was advocating for it, that should have been reflected in the resultant IEP. However, Student's IEPs did not include any functional goals or indicate a need for instruction related to functional or adaptive skills, which are normally taught in a life skills class. (FF #s 17 and 23-35.) The SCO was also unable to interview Temporary Case Manager and District did not provide any information about how Life Skills addressed Student's unique needs, except to say it was a place he could complete homework. (FF #s 18 and 20.) Therefore, the SCO finds and concludes that Student was not educated in his LRE, in violation of 34 C.F.R. §§ 300.114(a)(2), 300.116, and 300.320(a)(5).

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, District's position is that enrollment in Life Skills did not result in a denial of FAPE because it should have been included in Student's IEP and the IEP team, including Parent, was aware Student was enrolled in the course. However, there is no evidence in Student's IEP that he needed a class focused on functional and adaptive skills. (FF #s 17 and 23-35.) Special education services are more than minutes in a classroom. Indeed, "[s]pecial education means specially designed instruction, at no cost to the parents, to meet *the unique needs* of a child with a disability." 34 C.F.R. § 300.39(a)(1) (emphasis added). Specially designed instruction must meet the child's unique needs and ensure the child's access to the general education curriculum by adapting "as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction." *Id.* at § 300.39(b)(3). Even accepting that Life Skills was a study hall and not focused on functional and adaptive skills, study hall is not specially designed instruction unless the student's IEP indicates he needs support of that nature.

The fact that the August 2022 IEP does not include Life Skills further suggests that Student did not require enrollment in a Life Skills course to receive an educational benefit. (FF # 71.) In addition, enrollment in the second special education course deprived Student of the educational benefit he would have received from enrollment in a general education course at that time. Thus, the SCO finds and concludes that enrollment in two special education courses resulted in a denial of FAPE. To remedy this denial of FAPE, the SCO will order the provision of services through an enrichment program, as described in Remedy No. 4.

Conclusion to Allegation No. 4: Student’s math teachers possessed the required certifications and there was no violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

Parent’s concern is that Student’s math teachers during the 2021-2022 school year did not possess the required certifications and licenses.

Under the IDEA, the CDE must establish qualifications to ensure that special education teachers are “appropriately and adequately prepared and trained . . . to serve children with disabilities.” 34 C.F.R. § 300.156(a). This includes ensuring that all special education teachers have obtained state certification as special education teachers. *Id.* at § 300.156(c). District’s must ensure that staff are “appropriately and adequately prepared, subject to the requirements of § 300.156.” *Id.* at § 300.207.

To that end, the CDE requires “[a]ll special education teachers [to] hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). School districts bear responsibility for ensuring their staff comply with state licensing requirements. ECEA Rule 3.03.

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>.

Here, during the Complaint window, Student had two special education math teachers, Temporary Case Manager who taught Math Lab and Former Case Manager who co-taught algebra. (FF #s 15-16). Both teachers had active teaching licenses with a special education generalist endorsement from October 19, 2021 through the end of the 2021-2022 school year. (*Id.*)

Parent is specifically concerned that Former Case Manager was learning the algebra content along with the students. (FF # 56.) However, neither the IDEA nor the ECEA Rules require that special education teachers possess endorsements beyond special education generalist. In fact,

the SCO, in consultation with CDE Content Specialist 2, finds that learning the material alongside students can better equip special education teachers to identify potential areas of difficulty and improve student support. Thus, the SCO finds and concludes that Student's math teachers possessed the required certifications and licenses and there was no violation of 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

Systemic IDEA Violations: This investigation demonstrates a violation that is systemic in nature and will likely impact the future provision of services for all children with disabilities in District if not corrected.

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

IEP Development

There is nothing to suggest that the issues with Student's IEP were systemic. Instead, the issues appear to stem, at least in part, from the fact that Student's IEP was written less than two months after he started at School and was primarily implemented by a teacher who was not present at the IEP team meeting. (FF # 15 and 22.) Thus, the SCO finds and concludes that the violations of 34 C.F.R. § 300.320 are not systemic in nature.

IEP Implementation

The SCO finds and concludes that the violation of 34 C.F.R. § 300.323(d) is systemic in nature. The SCO's concern is that although everyone seems to agree that case managers are responsible for ensuring teachers and providers are aware of their responsibilities under a student's IEP, District does not have a process for ensuring that is happening. (FF #s 37, 50, and 72.) Although Student's teachers generally appeared to be aware of their responsibilities and several took it upon themselves to download the IEP, that does not fulfill District's affirmative duty to ensure teachers and providers are aware of their responsibilities. 34 C.F.R. § 300.323(d). It is unclear in this case whether teachers were provided with copies of Student's IEPs after any annual meetings or amendments. (FF #s 37, 50, and 72.)

In contrast, there is no evidence that the failure to implement Student's IEP under 34 C.F.R. § 300.323(c) was systemic in nature. Instead, the failure to implement one of Student's accommodations appeared to stem from confusion over what scaffolded assessments required and whether "fill-in-the-blank" exams helped Student. (FF # 61, 76 and 77.)

The SCO will set forth remedies consistent with the IDEA to ensure teachers and providers in District are made aware of their responsibilities under students' IEPs.

LRE

There is nothing in the Record to suggest that the violation of Student's LRE was systemic in nature or has impacted other Students. The issue here appears to be related to confusion stemming from Student's transition from middle school to School. Prior to the 2021-2022 school year, Student had been enrolled in a math resource class, but the May 2021 IEP called for him to be enrolled in a Life Skills course at School to support reading and math deficits. (FF #s 8-9.) When Student started at School he was enrolled in both Life Skills and Math Lab (FF # 16.) However, it is concerning that when the error was recognized at the September 2021 IEP team meeting, he was left in both courses and his IEP was not updated. (FF # 36.) Nevertheless, the SCO finds and concludes that the violation of 34 C.F.R. §§ 300.114, 300.116 and 300.320(a)(5) is not systemic in nature.

REMEDIES

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

- a. Failing to include measurable annual goals designed to allow Student 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 include supplementary aids and services to allow Student to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(4);
- c. Failing to properly implement Student's IEP, in violation of 34 C.F.R. § 300.323;
- d. Failing to educate Student in his LRE, in violation of 34 C.F.R. §§ 300.114, 300.116 and 300.320(a)(5).

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

1. Corrective Action Plan

- a. By **Monday, January 23, 2023**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CAP must, at a minimum, provide for the following:

- i. Director, Coordinator, Assistant Principal, and Current Case Manager must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.114, 300.116, 300.320 and 300.323. This review must occur no later than **Monday, February 27, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, March 6, 2023**.
- ii. Attendance and completion of training provided by CDE on IEP development, review, revision and implementation. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114, 300.116, 300.320 and 300.323 and the related concerns noted in this Decision. 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 Director, Coordinator, Assistant Principal, Current Case Manager and all case managers at School. Such training shall be completed no later than **Monday, April 3, 2023**.
 - a. Evidence that this training 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 **Friday, April 14, 2023**.
 - 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 **Friday, May 12, 2023**, District must develop and submit written procedures regarding how District will ensure teachers and providers are made aware of their responsibilities under students' IEPs, including subsequent to amendments and annual IEP team meetings finalized during the year, to ensure compliance with 34 C.F.R. §§ 300.323(d). These procedures must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized

3. Compensatory Education Services for Failure to Develop an Appropriate IEP

- a. Student shall receive **25 hours of specialized math instruction**. This instruction must be provided one-on-one by an appropriately licensed special education

teacher. These services must target Student's deficits in math. All 25 hours must be completed by **Friday, October 27, 2023**, though Parent and Student may opt out of some or all of the compensatory educational hours if they wish.

- b. **By Friday, January 27, 2023**, District shall schedule compensatory services in collaboration with Parent. 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. District shall submit the schedule of compensatory services to the CDE no later than **Friday, February 3, 2023**. If District and Parent cannot agree to a schedule by January 27, 2023, the CDE will determine the schedule for compensatory services by **Friday, February 24, 2023**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
- c. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards grade level skills and any related IEP goal(s) and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to remediate deficits in Student's math calculation. 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 and title of the provider and the date, the duration, and a brief description of the consultation.
- d. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- e. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the

scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

- f. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).

4. Enrichment Program for Failure to Educate in the LRE

- a. Student shall be enrolled in a **mutually agreed upon enrichment program** with nondisabled peers after school or over the summer. Enrollment in such a program shall support Student's progress on IEP or transition goals. If District does not have an appropriate program, District shall **pay up to \$600** to enroll Student in an appropriate program or activity in the community. This program must be completed by **Friday, October 27, 2023**, though Parent and Student may opt out if they wish.
- b. **By Monday, March 13, 2023**, District and Parent shall agree upon an appropriate program or activity. A meeting is not required to arrange this program, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for this program. District shall submit the plan for this program to the CDE no later than **Friday, March 24, 2023**. If District and Parent cannot agree to a program by March 13, 2023, the CDE will determine the program by **Friday, April 7, 2023**.
 - i. The parties shall cooperate in selecting the program. If Parent refuses to meet with District within this time, District will be excused from paying for the program, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from paying for the program, rests solely with the CDE.
- c. To verify that Student has participated in the program required by this Decision, District must submit proof of enrollment to CDE by **Thursday, June 1, 2023** and proof of completion no later than **Friday, October 27, 2023**. Proof of completion must include date and duration of any services.
- d. Services received through this program will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for the scheduled program or portion thereof, District will be excused from providing the service scheduled for that session. If for any reason District fails to

provide the program or funding or the program is cancelled and District is reimbursed, District and Parent must work together to identify another mutually agreed upon alternative. District must immediately notify the CDE of the change.

- e. The services through the program must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).

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.

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 18th day of December, 2022.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-17

Response, pages 1-10

- Exhibit A: IEPs
- Exhibit B: Evaluations
- Exhibit C: PWNs
- Exhibit D: Meeting Documents
- Exhibit E: None
- Exhibit F: Attendance
- Exhibit G: Progress
- Exhibit H: Teacher Certifications
- Exhibit I: District Calendars
- Exhibit J: District Policies and Procedures
- Exhibit K: Correspondence
- Exhibit L: Contact Information
- Exhibit M: None
- Exhibit N: Other Records
- Exhibit O: Correspondence
- Exhibit P: Additional Response

Reply, pages 1-6

- Exhibit 1: IEP
- Exhibit 2: IEP
- Exhibit 3: IEP Amendment
- Exhibit 4: PSAT Scores

Telephone Interviews

- Parent: November 17, 2022
- Assistant Principal: November 21, 2022
- Algebra Teacher: November 21, 2022
- Director: November 21, 2022
- Former Case Manager: November 21, 2022
- Current Case Manager: November 28, 2022
- English Co-Teacher: November 29, 2022