

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

State-Level Complaint 2023:618
Denver Public Schools

DECISION

INTRODUCTION

On December 7, 2023, the Parents (“Parents”) 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 Denver Public Schools (“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 December 7, 2022 to the present 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.

On December 15, 2023, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, Parents later decided not to participate in mediation, and, on December 21, 2023, the SCO resumed the investigation.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to implement Student’s IEP and behavior intervention plan (“BIP”), from December 2022 to present, specifically by:

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.

- a. Failing to make Student’s IEP accessible to the teachers and service providers responsible for its implementation, including substitutes, in violation of 34 C.F.R. § 300.323(d);
 - b. Failing to ensure that the personnel necessary to carry out Student’s IEP were appropriately and adequately prepared and trained, in violation of 34 C.F.R. §§ 300.156 and 300.207;
 - c. Failing to provide Student with the accommodations required by his IEP and BIP, in violation of 34 C.F.R. § 300.323;
 - d. Failing to provide Student with the special education services required by his IEP, including 1:1 support and indirect consultative services from a special education teacher, in violation of 34 C.F.R. § 300.323; and
 - e. Failing to educate Student in the least restrictive environment (“LRE”) as required in his IEP, in violation of 34 C.F.R. §§ 300.314, 300.317 and 300.323.
2. Failed to permit Parents to inspect and review education records relating to Student without unnecessary delay and before any IEP meetings after requests between December 2022 and present, in violation of 34 C.F.R. § 300.613.
 3. Failed to respond to Parents request to revise information in Student’s records, pursuant to a request in November 2023, in violation of 34 C.F.R. § 300.618.
 4. Failed to provide Parents with periodic reports on Student’s progress between December 2022 and present, in violation of 34 C.F.R. § 300.320(a)(3)(iii).

FINDINGS OF FACT

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

A. Background

1. Student is ten years old and, during the 2022-2023 and 2023-2024 school years, attended a school (“School”) in District. *Response*, p. 1.
2. Student is identified as a child with an autism spectrum disorder (“ASD”) and a speech or language impairment. *Exhibit A*, p. 61.

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

3. Student is smart and inquisitive. *Interviews with Parents and the school psychologist at School ("School Psychologist")*. He loves reading and is very good at math. *Interviews with Parents and Student's fifth grade teacher ("Teacher")*. He is twice exceptional, as he has been identified as highly gifted, with normative strengths in verbal reasoning, fluid reasoning, visual spatial skills and working memory. *Exhibit A*, p. 63.
4. He has relative weaknesses in writing and processing speed. *Id.* at pp. 64-65. He struggles with flexible thinking when things do not go the way he wants or expects and has difficulty transitioning between tasks, especially after preferred activities. *Id.* at p. 65; *Interview with Parents*. He has difficulty with social cues and may miss when others do not appreciate his jokes. *Id.* He needs extra support with executive functioning including task initiation and focus but does not respond well to staff efforts to manage how he spends his time. *Id.*

B. January 2023 IEP

5. On December 8, 2022, an IEP team met to review a reevaluation of Student. *Exhibit A*, p. 1. Based on the reevaluation, the IEP team agreed to amend the services, assistive technology, and accommodations in Student's March 2022 IEP. *Id.* After some discussion over email, the amended IEP was finalized January 12, 2023 ("January IEP"). *Exhibit N*, pp. 346-350.
6. The January IEP included two goals, on which progress was to be reported each trimester. *Exhibit A*, pp. 12-14. The first was a communication goal with four objectives, targeting Student's ability to engage in social interactions by providing organized and on-topic verbal responses in various settings. *Id.* at pp. 12-13. The second was a self-determination goal with two objectives, focusing on Student's ability to utilize executive functioning skills to produce written responses. *Id.* at pp. 13-14.
7. The January IEP includes four accommodations for social communication, two for executive functioning in writing, five to support flexibility and independence and six to support engagement. *Id.* at pp. 14-15. Relevant here, the accommodations include visuals for non-verbal communication, including visual cues for taking a break, a visual schedule, allowing Student to transition between classes five minutes early, reducing his workload by having him complete the most difficult questions first and crossing out unnecessary questions. *Id.* He was also supposed to have a signal for when he needed to take a break from class and opportunities to "access and earn" free reading time throughout the day. *Id.* at p. 15.
8. The January IEP includes services from a special education teacher, school psychologist, speech and language pathologist ("SLP") and close 1:1 adult support. *Id.* at pp. 18-19. Relevant here, Student was entitled to 240 minutes per month ("MPM") of direct instruction outside of general education and 60 MPM of direct instruction inside general education from a special education teacher to "support the development of written communication skills." *Id.* at p. 18. He would also receive 360 minutes per year ("MPY") of indirect support from a

special education teacher for “consultation, team collaboration, scheduling, and coordinating services, team meetings, parent communication, and IEP development.” *Id.*

9. 1:1 adult support from a paraprofessional would be provided daily, both inside and outside the general education setting to present differentiated assignments, facilitate choice “around how/when [Student] is completing various assignments, including helping [him] to consider and make choices about need for brain breaks and/or body movement opportunities,” scribing, support around organization like turning in assignments, helping Student share off-topic interests, collecting data, prompting Student about transitions, monitoring transitions and elopements when Student leaves the classroom, supporting movement breaks outside the classroom, monitoring technology use and supporting use of assistive technology like speech-to-text. *Id.* at pp. 18-19.
10. Based on the services outlined in the January IEP, Student’s LRE was general education at least 80% of the time where he would have access to grade-level curriculum and opportunities to generalize social communication skills. *Id.*

C. December 2022 BIP

11. Based on interviews with teachers, Parents, and Student, observations across settings, and a review of data including a prior functional behavior assessment (“FBA”), District developed a new BIP on December 8, 2022 (“December BIP”). *Exhibit B*, p. 30. According to the December BIP, Student is inquisitive and passionate about preferred topics. *Id.* He loves to read and enjoys problem solving. *Id.* He has an involved and supportive family. *Id.*
12. The December BIP notes that Student engages in avoidant, disruptive and sometimes unsafe behaviors to avoid non-preferred activities and maintain or gain access to preferred activities. *Id.* Behaviors may also occur when Student is expressing frustration or attempting to “reduce arousal after having been prevented from having/doing something preferred.” *Id.*
13. Behaviors of concern include leaving the area, not responding to adult requests to start or end an activity or transition, playing loudly with classroom materials and furniture during instruction, calling out off-topic comments, destroying materials needed for non-preferred tasks, kicking/hitting furniture, throwing materials and pushing/kicking/grabbing/frightening others when denied access to preferred activities. *Id.* at pp. 30-31.
14. The December BIP includes 17 setting event strategies which include: providing frequent breaks and movement opportunities, setting clear expectations for classroom culture norms ahead of time, daily schedule with set times for preferred activities including reading and an indication of when Chromebook will be used, providing separate devices for choice time versus academic activities, building a strong rapport with Student to support “psychological safety” during times of dysregulation and planned ignoring of behaviors that are not impacting instruction. *Id.* at pp. 31-33.

15. Another setting even strategy is home/school communication to include school staff sharing about Student's day to "collaborate on problem solving." *Id.* at p. 33. As such, communication related to substantial dysregulation or discipline should "include adequate detail to support determining the antecedent and consequence" ("ABC analysis") to support responsive/proactive approaches. *Id.* Antecedent means what occurs before the behavior while consequences mean what occurs after the behavior that reinforces or maintains that behavior. CDE, *Functional Behavioral Assessment (FBA) and Behavior Intervention Plans (BIP)* at p. 1 (August 2017), available at www.cde.state.co.us/cdesped/ta_fba-bip (providing instructions for conducting FBAs and developing BIPs).
16. There are also 11 antecedent strategies. *Id.* at pp. 31-33. These include providing ample time for transitions with visual and verbal prompts, use of communication boards, offering choices for transitions, using start commands—like start cleaning up—instead of stop commands, and offering sensory input and space to self-regulate when Student starts to dysregulate. *Id.*
17. The December BIP includes seven teaching strategies, including direct instruction in executive functioning and communication skills to support Student in effectively communicating his needs, developing and implementing a "Plan B," utilizing a nonverbal communication board, and approaching non-preferred tasks. *Id.* at pp. 31-32. Paraprofessionals and teachers will also work with Student to identify spaces in School where he can take time or re-regulate. *Id.*
18. Finally, there are six reinforcement strategies. *Id.* at pp. 31-33. The first is collaborative problem solving where adults will first state what they are seeing and ask Student "what's up?" *Id.* at p. 31. Next, adults should provide wait time and empathize with Student while gathering additional information to understand his perspective. *Id.* Third, adults should define the problem from their perspective before finally inviting Student to work together to come up with a solution that meets everyone's needs. *Id.*
19. Other reinforcement strategies include tangible and verbal reinforcement and rewards for engaging in problem solving or successfully transitioning and opportunities for reflection and restorative conversations after Student has had a chance to regulate. *Id.* at p. 32-33. Finally, if Student is disruptive but not unsafe and other strategies are not working within two minutes, Student will be given the opportunity to transition to designated locations to regulate. *Id.* If the disruption continues for five minutes, Parents will be contacted to support. *Id.* at p. 33. If it continues for 10 minutes and Parents are unable to help, the classroom will be cleared. *Id.*

D. Implementation of the January IEP and December BIP – Staff Awareness

20. In District, case managers are responsible for ensuring that teachers and other providers are aware of their responsibilities under a student's IEP. *Interviews with School Psychologist and case manager for the 2022-2023 school year ("Prior Case Manager")*. At the start of every year, Prior Case Manager meets with classroom teachers to go over any IEPs for their students

and talk about what accommodations and other supports should look like. *Interview with Prior Case Manager.*

21. In addition to meeting with Student's teacher at the start of the year, after every update in spring 2023, she met with his teachers and paraprofessionals to review any changes. *Id.* Since Student changed teachers in the spring of 2023, she met with the new teacher before the transfer and a few times in the first weeks to go over Student's IEP and BIP and make sure the new teacher ("Fourth Grade Teacher") had the tools she needed. *Id.* On January 17, 2023, Prior Case Manager met with Student's specials teachers to review the December BIP with them. *Exhibit N*, p. 197.
22. School Psychologist also worked with a special education instructional specialist ("SEIS 1") last spring, who provided training for the entire fourth grade team in January or February 2023 on how to implement Student's December BIP. *Interview with School Psychologist.*
23. At the start of the spring 2023 semester, Student was supported by a couple of different paraprofessionals. *Interview with Parents.* Student did not get along well with all of them. *Id.* Parents asked that Student be supported by a registered behavior technician, but that was not required by his IEP. *Exhibit A*, p. 2; *Exhibit N*, pp. 50, 322.
24. On February 7, 2023, Student was playing with some supplies in a specials class while the teacher was providing instruction. *Exhibit N*, p. 401. A paraprofessional asked him to wait and took the materials from him, and Student became escalated. *Id.* A similar incident occurred the next day. *Id.* at p. 397. This was disruptive to other students, so the paraprofessional suggested he take a break outside the classroom. *Id.* He then ran down the hall and eventually back to the specials classroom looking for a book. *Id.* While there, he rolled chairs across the room before leaving again. *Id.* During one of these incidents, the paraprofessional picked Student up and carried him out of the room. *Id.* at p. 1202. After that, Student no longer worked with that paraprofessional. *Id.*

E. February 2023 IEP

25. Student's IEP was revised again after a meeting on February 28, 2023 ("February IEP"). *Exhibit A*, p. 23. Overall, with the support of a 1:1 paraprofessional implementing a variety of accommodations, Student's work completion increased and his unexpected behaviors decreased. *Id.* at p. 27. The present levels section of the February IEP includes updates on Student's two goals. *Id.* at pp. 28-30.
26. For his communication goal, both School Psychologist and an SLP provided detailed notes about their work with Student. *Id.* at p. 28. Student had met his first and third objectives, demonstrating on-topic verbal responses in four out of five opportunities in small group and 1:1 adult interactions. *Id.* at p. 29. He had also made progress on the two other objectives,

giving organized verbal responses in three out of five opportunities in small group and 1:1 adult interactions. *Id.*

27. Student had also made progress on his self-determination goal, although he was more successful when writing on a topic of interest and when working in a 1:1 setting. *Id.* The February IEP includes details of how Student was doing with each listed skill in this goal. *Id.*
28. Overall, much of the IEP is unchanged from the January IEP. *Id.* at pp. 4-41. For instance, the student needs and impact of disability statement is unchanged. *Id.* at pp. 10, 31. Goal progress is still to be reported after each trimester. *Id.* at p. 31.
29. The new communication goal also has four objectives measuring four communication skills: turn taking, perspective taking, identifying hidden rules, and identifying appropriate solutions. *Id.* at pp. 32-33. Instead of a self-determination goal, the February IEP has a writing goal with two objectives focused on using executive functioning skills to support production of written responses on both preferred and non-preferred subjects. *Id.* at pp. 33-34.
30. The February IEP includes all the same accommodations as the January IEP, except allowing Student to show mastery through a reduced workload by starting with the most difficult questions is no longer just limited to math. *Id.* at pp. 14-15, 34-35.
31. The February IEP still includes services from a special education teacher, School Psychologist and an SLP. *Id.* at p. 39. Relevant here, Student would receive 60 minutes per week (“MPW”) of direct instruction from a special education teacher outside the general education setting and 60 MPM inside the general education setting to support the development of skills “necessary to initiate, organize, and effectively execute academic tasks,” particularly related to writing. *Id.* He would also receive 240 MPM of indirect support from a special education teacher for “consultation, team collaboration, scheduling, and coordinating services, team meetings, parent communication, IEP development, and BIP implementation” and 30 MPM of indirect support for “consultation, collaboration, training, and scheduling for 1:1 paraprofessional support.” *Id.* The description of the support to be provided by a 1:1 paraprofessional is unchanged. *Id.* at pp. 18-19, 38-39.
32. Student’s LRE remained general education at least 80% of the time. *Id.* at p. 40.
33. A new BIP was also created, dated March 1, 2023. *Exhibit B*, pp. 9-15. However, this document is substantively identical to the December BIP, so the SCO will continue to refer to it as the December BIP. *Compare, Id.* at pp. 9-15, 30-36.

F. Implementation of the February IEP and December BIP – Staff Awareness

34. After the February IEP was finished, Prior Case Manager met with Fourth Grade Teacher and Student’s paraprofessionals to go over any changes. *Interview with Prior Case Manager.*

35. Because Student benefited from consistent 1:1 support from someone who was a good match, after February 28, 2023 School agreed to adjust schedules to provide greater consistency. *Exhibit A*, p. 41. From that point forward, Student was primarily supported by a paraprofessional who formed a strong bond with Student (“Preferred Paraprofessional”). *Interview with Parents*. Things went very well for the remainder of the school year. *Id.*

G. May 2023 IEP

36. Student’s IEP was revised again at a May 4, 2023 meeting after a reevaluation to consider the addition of occupational therapy supports (“May IEP”). *Exhibit A*, pp. 68, 81.

37. The results of the additional evaluation were added to the present levels and a statement about his difficulties with sensory processing was added to the student needs statement. *Id.* at pp. 68, 69.

38. The goals and most of the accommodations are unchanged. *Compare, Id.* at pp. 32-35, 70-73. This includes the statement that progress reports would be sent home “at each trimester reporting period.” *Id.* at p. 70. To support Student’s sensory processing needs, seven new accommodations were added. *Id.* at p. 73. This included “[a]dditional opportunities for movement and heavy work during the day,” and access to a designated calm down space when dysregulated. *Id.*

39. Indirect occupational therapy services were added, but Student’s direct and indirect special education instruction and paraprofessional support was unchanged. *Compare, Id.* at pp. 38-39, 77-79. To support the development of executive functioning skills, Student was entitled to 60 MPW of direct instruction outside of general education and 60 MPM of direct instruction in general education from a special education teacher. *Id.* at p. 77. A special education teacher was also supposed to provide 240 MPM of indirect support for general consultation and collaboration and 30 MPM for paraprofessional scheduling and consultation. *Id.* at pp. 77-78.

40. Student’s LRE remained general education at least 80% of the time. *Id.* at p. 80.

41. Again, a new BIP was created, dated May 4, 2023. *Exhibit B*, pp. 16-22. However, it is also substantively unchanged from the December BIP, so the SCO will continue to refer to it as the December BIP. *Compare, Id.* at pp. 16-22, 30-36.

H. Implementation of the May IEP and BIP – Staff Awareness

42. On August 18, 2023, Student’s new special education teacher and case manager for the 2023-2024 school year (“Case Manager”) met for an hour with all the special education paraprofessionals to review Student’s BIP and accommodations. *Exhibit F*, p. 22. That same day, SLP also provided training to the paraprofessionals about Student’s communication skills

and needs. *Id.* at p. 23. Case Manager also reviewed Student’s BIP and accommodations with Teacher and other service providers for an hour on August 18. *Id.* at p. 22.

43. During the week before School started, School Psychologist spent 300 minutes meeting with Teacher, SLP, special education teachers and Student’s paraprofessional for the 2023-2024 school year (“2023 Paraprofessional”). *Id.* at p. 24. On August 22, 2023, School Psychologist spent 45 minutes consulting with providers, including Teacher and 2023 Paraprofessional about how to respond to Student when escalated. *Id.* at p. 25. She also did extensive training for all the paraprofessionals on the IEPs and BIPs of any students they might be asked to support. *Interview with School Psychologist.*

I. Implementation of the May 2023 IEP and BIP – Paraprofessional Training

44. In general, schools in District are responsible for ensuring that any paraprofessionals they hire have appropriate training for their role. *Interview with a senior manager of special education for District (“Senior Manager”).* This would include training on a student’s IEP and BIP. *Id.* However, starting in January 2024, District has a new paraprofessional manager who is coordinating some centralized training to make this easier for schools. *Id.*

45. During the first days of school, from August 21 through August 30, 2023, Case Manager met daily with 2023 Paraprofessional to go over any questions and make a plan for the day. *Exhibit F*, p. 22. She also attended classes with Student and 2023 Paraprofessional and then collaborated with her on ways to support Student. *Id.*

46. 2023 Paraprofessional worked as Student’s paraprofessional until September 26, 2023. *Exhibit J-2; Exhibit N*, p. 263. Another building paraprofessional (“Building Paraprofessional”) then supported Student from September 27, 2023 through October 3, 2023. *Id.* She spent a day shadowing 2023 Paraprofessional and consulted with School Psychologist before taking over the role. *Id.*

47. A new paraprofessional from a placement agency (“Temporary Paraprofessional”) worked with Student from October 4 through October 17, 2023. *Exhibit J-2.* Before starting, she reviewed Student’s IEP and BIP with Prior Case Manager. *Exhibit F*, p. 23.

48. A new paraprofessional with training as a registered behavior technician (“RBT”) was hired to start supporting Student on October 18, 2023. *Exhibit N*, p. 594. RBT was trained on Student’s IEP and BIP and was working to build rapport with Student. *Id.* This included over two hours of training with School Psychologist and Prior Case Manager on October 12, 2023. *Id.* at p. 698.

49. When the assigned paraprofessionals took their lunch breaks, one of two classroom paraprofessionals would support Student. *Exhibit J-2.* Case Manager also spent time at the beginning of the year with the classroom paraprofessionals and any other paraprofessionals

who might help provide coverage, going over Student's IEP and BIP and helping them build rapport with Student. *Interview with Case Manager*. School Psychologist spent 20 minutes with one of the classroom paraprofessionals on August 24 going over strategies for helping Student because the classroom paraprofessional missed the prior training for all paraprofessionals. *Id*; *Interview with School Psychologist*. Classroom paraprofessionals and special education paraprofessionals have the same training and credentials. *Exhibit N*, p. 972. Paraprofessionals are not generally expected to have specific credentials because they are expected to be working under the supervision of one or more licensed professionals, like a teacher. *Interview with CDE Content Specialist*.

J. Implementation of the May 2023 IEP and BIP – Accommodations

50. Student's visual schedule included six scheduled 10-minute breaks every day, during which Student could walk, read, draw, do puzzles or go outside. *Exhibit P*. He also got a snack and computer time in the middle of each day. *Id*. Finally, during some breaks, Student could access preferred activities, like computer time, as long as he had completed work. *Id*. To earn preferred activities, Student just needed to complete shortened assignments including two to three challenging problems. *Exhibit N*, p. 86.
51. Student had access to a Chromebook for choice time, as well as an iPad for completing academic work. *Id*. at p. 594.
52. When the class worked on academics in the afternoon, paraprofessionals would offer Student various ways to participate, including related academic activities on the computer, but he rarely did. *Interview with Teacher*.
53. Student was given more challenging math assignments by the gifted and talented teacher ("GT Teacher"), and he was not expected to show his work on math assessments. *Id*. He was only asked to do one problem of each type on assignments and was often offered the opportunity to demonstrate his knowledge with alternative projects, like designing his own science experiments using the available materials. *Id*.
54. However, he completed very few of the accommodated assignments he was given. *Id*. For instance, he completed six of 20 literacy assignments and zero of seven science assignments. *Exhibit I*, p. 35. He also participated in only 18 of 175 classroom discussions/activities. *Id*.
55. On October 3, 2023, Student had a few homework assignments in his backpack that had not been turned in. *Exhibit N*, p. 883. When notified by Parents, Teacher could not find the assignments. *Id*. However, in general Student did not have any difficulty turning in assignments as Teacher or a paraprofessional would retrieve them from his backpack. *Interview with Teacher*. Helping Student submit completed work was included in the service delivery statement description of the paraprofessional's role, but it was not included in Student's accommodations. *Exhibit A*, pp. 72, 73, 77.

56. Student would not transition between activities or classes, unless he felt he was done, even with advanced warnings. *Id.* He had access to a variety of sensory tools including various seating options and a sensory bin. *Id.* He had a spot in the room with books, paper, and pencils, where he could go to self-regulate. *Id.* His 1:1 support would also offer to go outside with him or engage in various movement breaks like swinging or playing ball. *Id.* All of his scheduled breaks incorporated movement, and Teacher also built movement breaks, like dancing, into the schedule for all students. *Id.*
57. Teacher went over classroom norms at the start of the year, including expectations for each block. *Id.* These norms were posted throughout the classroom and in the independent reading area and near the math manipulatives. *Id.*
58. Teacher sent home weekly newsletters to all parents and responded to emails from Parents throughout the year. *Id.* However, she relied on others to communicate issues and did not have any regular or consistent communication with Parents. *Id.*
59. In October 2023, Student was on his computer for a planned break, with a visual timer indicating when the break would be over. *Exhibit N*, p. 163. When the classroom paraprofessional took over and reminded him how much time he had left, he poked her with a pencil. *Id.* She backed away, and Student was unable to make further contact, although he continued trying. *Id.* The paraprofessional then left the classroom and Student continued on his computer until Teacher used another countdown and then shut down the computer using her remote access, as is required by his BIP. *Id.*; *Exhibit B*, p. 32.

K. Implementation of the May 2023 IEP and BIP – Indirect Special Education Instruction

60. The 2023-2024 school year started on August 21, 2023. *Exhibit L*, p. 2. There were 10 weeks, or just over two months, between August 21, 2023 and October 30, 2023. *Id.*
61. On August 17, 2023, Case Manager spent 120 minutes reviewing Student's IEP and BIP with Teacher and GT Teacher and discussing how they aligned with classroom expectations. *Exhibit F*, p. 22. She spent another 120 minutes the following day reviewing the IEP and BIP with other teachers and all the special education teachers. *Id.*
62. During the first two weeks of school, Case Manager spent 160 minutes with 2023 Paraprofessional going over questions and making a plan for each day. *Id.* She spent another 60 minutes observing and collaborating with 2023 Paraprofessional. *Id.* In total, the SCO finds that Case Manager provided 460 minutes of indirect services to Student in August 2023.
63. Case Manager was out on leave from September 1 through October 27, 2023 as well as November 2 through November 30, 2023. *Interview with Case Manager*. Prior Case Manager was asked to step in as Student's case manager on October 2, 2023. *Exhibit N*, p. 258. Thus,

the SCO finds that Student did not receive any direct or indirect services from a special education teacher in September 2023.

64. On October 3, 2023, Prior Case Manager met with Temporary Paraprofessional for 30 minutes to review Student's IEP and BIP and talk about how things were going. *Exhibit F*, p. 23. They met for another 30 minutes the next day to review what was working and talk about how to move forward. *Id.* Prior Case Manager and Temporary Paraprofessional also met on October 5 and 6 for 20 minutes each day to check in. *Id.*
65. On October 12, 2023, Prior Case Manager spent 75 minutes reviewing Student's BIP with RBT and reviewing strategies for supporting him. *Id.* at p. 26; *Exhibit N*, p. 697. On October 18, 2023 she participated in a 30 minute consultation with RBT, Teacher and School Psychologist around how to support Student. *Exhibit F*, p. 27. Thus, the SCO finds that Prior Case Manager provided 205 minutes of indirect support in the second month of school.
66. On October 25, 2023, Prior Case Manager met for two hours with RBT, Teacher, School Psychologist and building administrators to review data collection processes and discuss possible next steps like an evaluation. *Id.*
67. On October 30, 2023, Case Manager spent 15 minutes modeling strategies to support Student when escalated. *Id.* at p. 22. On October 31 she spent 45 minutes reviewing Student's services with a paraprofessional. *Id.* Together, the SCO finds that Prior Case Manager and Case Manager provided 180 minutes of indirect support in Student's final two weeks of school.

L. Implementation of the May 2023 IEP and BIP – Direct Special Education Instruction

68. During the first two weeks of school, Case Manager met with Student each morning for a check in, for a total of 60 minutes. *Id.* at p. 22. On August 28, 2023, she worked with Student in his general education classroom for 60 minutes. *Id.*
69. Prior Case Manager notified Parents that she was stepping in to cover during Case Manager's leave as of October 19, 2023. *Exhibit N*, p. 594. She had already worked with Student "some" and would be working with him regularly until Case Manager returned. *Id.*
70. In early October she started pushing into general education to support Student with writing goal. *Interview with Prior Case Manager*. She worked with Student from 11:05-11:30 almost every day in October but could not get him to engage in any writing assignments. *Id.* There were 11 school days between October 3 and October 20, 2023, of which Student missed one. *Exhibit L*, p. 2; *Exhibit H*, p. 3. There were six school days between October 23 and October 30, 2023, of which Student attended five. *Id.*
71. When Prior Case Manager attempted to pull Student for services in the special education classroom, he would not come. *Interview with Prior Case Manager*.

72. Thus, the SCO finds that Student received a total of 60 minutes of direct special education instruction outside the general education setting in fall 2023.

M. Implementation of the May 2023 IEP and BIP – LRE

73. In addition to his scheduled breaks, Student was leaving his classroom five to six times per day without notice. *Interview with Teacher*. He would take anywhere from 10 minutes to several hours to return from both scheduled and unscheduled breaks. *Id.* A paraprofessional always stayed with him, but Teacher did not necessarily know where he went. *Id.*

74. Student would go to the library almost daily, usually several times a day, during fall 2023. *Interview with School's librarian ("Librarian")*. Some days he just ran in one door and out another. *Id.* Other days, he read for anywhere from 15 minutes to several hours. *Id.*

75. The visits gradually increased in both length and frequency throughout the fall. *Id.* By October, the visits were longer and more likely to be disruptive to others using the space. *Id.*

76. Teacher started locking her classroom door sometime in September. *Interview with Teacher*. Although the door was always locked, it was not usually closed. *Id.* She only closed the classroom door if the hallway was too loud. *Id.* Teacher explained to students that they would just need to knock to get back in, which Student had successfully done in the past. *Id.*

77. On the morning of October 30, 2023, Teacher had the door closed so she could get some work done. *Id.* Student became upset when the classroom door was locked, but Parent, who happened to be at school, was able to help him regulate after the incident since she was on campus. *Exhibit N*, p. 535-536.

78. Later that day, Student was working in the hallway with a paraprofessional and found the door locked when he returned. *Interview with Teacher*. Teacher did not hear any knocking, but only Student kicking at the door. *Id.* Because he was with a paraprofessional, Teacher did not let him into the classroom while he was escalated. *Id.*

79. Student eventually started using stools to hit the door. *Exhibit 2; Exhibit 3*. School Psychologist employed collaborative problem solving. *Id.* She also used visuals to prompt him to think about Plan A and Plan B. *Exhibit 3*. He was offered breaks, including time outside, an opportunity to read a preferred book and the option to watch videos on a preferred topic. *Id.* He eventually transitioned outside, where he was able to calm down. *Exhibit 2; Exhibit 3*. Student was out of the classroom for one to two hours during the incident. *Id.*

N. Parents' Requests for Records

80. Requests for individual, active documents can be handled by school staff. *Interview with Senior Manager*. These documents can be easily accessed in District's data management systems. *Id.* Larger requests should be directed to a central office in District. *Id.*
81. On January 24 and 25, 2023, Parents asked for the ABC analysis for an event that had occurred on January 24. *Exhibit N*, p. 2326-327. After sending four emails, Parents got no response. *Id.* On January 25, Parents asked for confirmation that School was "providing all the accommodations" in Student's IEP, as well as the setting event and antecedent strategies in the BIP. *Id.* at p. 216. There was also no response to this email. *Id.*
82. On February 7, 2023, School's principal ("Principal") emailed Parents about an incident where Student kicked and hit a paraprofessional in class, indicating that he had not had an opportunity to gather additional information from the paraprofessional. *Id.* at p. 388. Parents requested information about the antecedent and how the IEP and BIP were implemented. *Id.* Principal indicated they were doing their best, but they had to address disruptions to the learning environment. *Id.* Parents raised several concerns with how the incident was handled and requested an ABC analysis but received no response. *Id.* at pp. 404-407.
83. On September 15, 2023, Principal notified Parents of a recent incident in the general education classroom where Student was sticking classroom materials in the personal space of a student and paraprofessional despite requests to stop. *Id.* at p. 107. During another incident, a classroom paraprofessional accidentally touched Student's touchscreen, causing Student to run outside. *Id.* Once she got him out of a tree, Student hit or pushed the paraprofessional before 2023 Paraprofessional was able to get him back inside. *Id.* The email did not include an ABC analysis of either incident. *Id.*
84. On September 18 and 19, 2023, Parents requested additional ASD training for staff, "an itemized schedule of all training" the classroom paraprofessional had received on Student's IEP and BIP, and an explanation of how the IEP and BIP were followed during these incidents. *Id.* at pp. 106-107, 960-961. Parents became increasingly angry after not receiving a response for 48 hours. *Id.* Principal responded that 2023 Paraprofessional and Teacher received extensive training at the start of the year while the classroom paraprofessionals had been included in "regular discussions" about supporting Student. *Id.* at p. 105.
85. District also agreed to provide the dates and descriptions of the training and consultation that had been provided around implementing Student's IEP and BIP. *Id.* at p. 972. Those notes were provided on September 26, 2023, but only included training provided by School Psychologist because Case Manager, who also provided "extensive training," was on leave. *Id.* at p. 1062.

86. On September 29, 2023, Principal notified Parents that Student had poked an unspecified paraprofessional with a pencil when asked to transition away from free time on his computer. *Id.* at p. 173. He indicated that this incident made other students in the class feel unsafe. *Id.* Parents requested the ABC analysis of this incident and sent a list of accommodations and supports they believed were not being implemented. *Id.* at pp. 171-172. Because Student indicated that he was pretending, Parents also disputed that there could be a safety concern. *Id.* Parents also indicated that another student in the class denied observing the incident or seeing any other students bothered by it. *Id.* Parents' tone became increasingly antagonistic over the course of three emails in 24 hours. *Id.*
87. On October 2, 2023, assistant principal at School ("Assistant Principal") sent Parents narrative descriptions of recent incidents where Student poked the classroom paraprofessional with a pencil and later hid in his locker and kicked the classroom paraprofessional when she opened the locker. *Id.* at p. 157-159. Both descriptions were accompanied by an explanation of the antecedent and consequence of the behavior. *Id.*
88. Parents responded that evening with numerous questions about how adults responded to Student and indicated that Student should be given space to self-regulate, even when inside a locker. *Id.* at pp. 155-157. They requested detailed data about lockers in the building and the frequency of students becoming stuck in lockers, as well as an analysis of behaviors that had been reported on September 8 and 13, 2023. *Id.*
89. On October 4, 2023, Principal left Parents a voicemail about Student scratching Temporary Paraprofessional. *Id.* at p. 374. The email contains no further details and Parents requested an explanation of what actions from Student's BIP were taken by adults and noted that no ABC analysis had been provided. *Id.* at pp. 372-374.
90. On October 23, 2023, Prior Case Manager sent Parents the ABC analysis of an incident on October 18 where the classroom had to be cleared when Student swung a chair and donkey kicked in class after being asked to complete a math assignment before earning time for a preferred activity on the computer. *Id.* at p. 593. Student was given verbal and nonverbal prompts and opportunities to debrief and problem solve. *Id.* Student was given another opportunity to debrief when he transitioned to a break space an hour later. *Id.* Parents responded with Student's alternative version of what occurred that day, indicating that he felt he had already earned the computer time before he was asked to complete the math assignment. *Id.* at p. 592.
91. On November 5, 2023, Parents requested a complete copy of the occupational therapy evaluation from spring 2023, because they were missing several pages. *Id.* at p. 1172. The complete evaluation was sent to Parents on November 7, 2023. *Id.* at p. 765.

O. October 2023 Behavior Incidents

92. On October 2, 2023, Parents requested an IEP meeting to discuss the paraprofessionals' role. *Exhibit N*, p. 159. District then cancelled the meeting scheduled for October 11, 2023 because SEIS 1 was no longer available to attend and School was unwilling to meet without District support. *Id.* at p. 43.
93. Prior Case Manager asked if Parents still wanted an IEP meeting on October 19, 2023. *Id.* at p. 594. Parents reiterated their request for an IEP team meeting on October 25. *Id.* at p. 85.
94. On October 26, 2023, Principal notified Parents via email that he was imposing an in-school suspension for Student the following day in response to unspecified behaviors that week which he called "unmanageable." *Id.* at p. 65. Parents requested official documentation of the suspension, an IEP meeting, and evidence Student's IEP and BIP were followed. *Id.* at p. 73. They also requested a manifestation determination review ("MDR"). *Id.*
95. Parents responses threatened legal action. *Id.* at pp. 62-64, 477. They raised concerns about the RBT's implementation of Student's supports like submitting homework and indicated that she and Student did not have a strong relationship. *Id.* at p. 62. Parents also criticized the reward system because it was infantilizing, Student needed to earn too many tickets to earn tangible rewards, and he had trouble keeping track of the tickets. *Id.* at p. 63.
96. The next morning, Principal followed up with additional details, noting that the antecedents were a "request from an adult to do something" and there had been no consequences. *Id.* at p. 64. Behaviors that week included flinging his lunch, running through the halls, swinging class materials like a sword, throwing frisbees and making loud noises while the gym teacher was talking, climbing on lockers, and shaking doorhandles while students were in the classroom learning. *Id.* at pp. 64-65. During these incidents, some behaviors were ignored, and Student was able to take breaks outside. *Id.*
97. That same morning, October 27, 2023, Principal asked District for support for an IEP meeting to propose an evaluation of Student. *Id.* at p. 62. On November 1, 2023, a new special education instructional specialist ("SEIS 2") began supporting School while SEIS 1 was on leave. *Exhibit N*, p. 838. On October 30, 2023, Parent met with Case Manager to review her concerns. *Id.* at p. 536.
98. Parents first heard about the October 30 incident from Student, so they contacted District that afternoon for more information about why Student was locked out of his classroom. *Id.* at p. 535. Case Manager acknowledged Parents' request for an IEP meeting the next afternoon but did not provide any additional information about the incident on October 30. *Id.* at p. 534. As of November 1, 2023, Parents were still requesting information from District about why Student was locked out and how staff responded to him. *Id.* at p. 533. They also

requested the schedule of which paraprofessionals had been working with Student each day for the last three weeks of October. *Id.* at p. 80.

99. On Thursday, November 2, 2023, District proposed meeting with Parents to address their concerns on Monday, November 6, 2023. *Id.* at p. 837. Ultimately, the parties agreed to meet on November 8, 2023. *Id.* at p. 834.
100. As of November 3, 2023, District staff were consulting with their attorneys about what needed to be provided in response to Parents' requests. *Id.* at p. 614. School provided District with a narrative explanation of the October 30 events on November 6, 2023. *Id.* at p. 636. On November 8, School Psychologist provided District with documentation of Student's special education services the week of October 23 as well as the training that was provided to paraprofessionals and other staff. *Id.* at p. 669.
101. District provided Parents with Student's most recent evaluation, IEP and BIP on November 7 and indicated that any service logs would be provided at the meeting on November 8, 2023. *Id.* at p. 765. That same day, SEIS 2 sent Parents the narrative description of the October 30 incident. *Id.* at p. 834. Student's version of events differed greatly from that of School. *Exhibit 2; Exhibit 3.* Differences included whether Student knocked before kicking the door and how long the incident lasted (45 minutes versus two hours). *Id.* The recall of an individual in a frustrated or escalated state is generally less reliable. *Interview with CDE Content Specialist.*
102. On November 7, 2023, Parents requested video recordings of the October 30 incident. *Id.* at p. 834. Parents were told they would be allowed to view the footage in District's central office. *Id.* at p. 833. However, when Parents indicated that 30 minutes would not be enough time to review the relevant footage, District asked to postpone the meeting until after the Thanksgiving break. *Exhibit 1*, p. 18. When Parents followed up about viewing the footage, they were notified that it had been automatically deleted by the system since it was more than 30 days old. *Id.* Although this investigation concerns, in part, Parents' access to requested records, District did not produce this chain of correspondence. *Exhibit N.*
103. No disciplinary consequences were imposed after the October 30 incident. *Exhibit G*, p. 4. District indicated that Student would now be supported by a rotation of three paraprofessionals who had all received training in the fall, because the position was not sustainable for any one person. *Exhibit N*, pp. 70, 534.

P. Parents' Request to Revise November 2023 PWN

104. After October 30, 2023, Parents opted to keep Student home because they did not feel it was safe to send him to school. *Interview with Parents; Exhibit N*, p. 534. They told District, in a November 2, 2023 email, they were keeping him home because they believed Principal's discrimination and District's failure to implement Student's IEP had created a "hostile" environment. *Exhibit N*, p. 2. Parents were particularly concerned about the training the

various paraprofessionals received as well as the way those individuals were treating Student. *Id.* Student has not returned this year. *Id.*

105. In response to Parents' emails, District issued two PWNs. *Exhibit D*, pp. 11, 13; *Exhibit N*, p. 835. The first ("October 27 PWN") documented District's decision not to hold an MDR as Student had only been suspended for one day. *Exhibit D*, p. 11. The second ("November 3 PWN") stated that District was ready to serve Student "by following his current IEP and Behavior Plan," but Parents had kept Student home from October 31 through November 3, 2023. *Id.* at p. 13. The PWN noted that Parents were keeping Student home because they did not feel comfortable sending him to school and had concerns about recent incidents. *Id.*
106. On November 3, 2023, Parents told District they disputed the November 3 PWN because it misrepresented their concerns, again stating that School had created "a hostile learning environment through negligent indifference to discrimination by the principal and callous dereliction of standard of care from one-on-one supports." *Exhibit N*, pp. 834-835. Specifically, they requested a "stay put" for Student from the November 3 PWN. *Id.* Parents did not specify what a stay put would entail, but they never specifically requested that District change the PWN. *Id.*
107. During a meeting on November 8, 2023, Parents referenced their November 2 email and reasons for keeping Student home. *Exhibit 4*, at 1:26. They then asked District if it wanted a "chance to revise" the November 3 PWN. *Id.* District said no. *Id.*
108. District always considers requests to amend records but does not always agree. *Interview Senior Manager*. District does not have any official written guidance around how to respond to such requests. *Id.* Instead, they consult with District's attorneys and consider each request individually. *Id.* If the request is denied, it should be documented in writing, usually in a PWN and an email. *Id.*

Q. Provision of Progress Reports to Parents

109. Providers are responsible for monitoring their own students' goals and recording the results in District's data management system. *Interview with SEIS 2*. Case managers are responsible for ensuring the reports are issued. *Id.*
110. Case Manager generally issues progress reports about every 12 weeks, at the end of each trimester. *Interview with Prior Case Manager*. This generally aligns with November, February, and May. *Id.* She then sends the progress reports home via email. *Id.*
111. This was the process she followed for Student during the 2022-2023 school year. *Id.* During the fall of 2023, she tried to gather progress monitoring data for Student, but she was unable to gather much data because Student was not completing work. *Id.*

112. District generated a progress report on or around March 3, 2023. *Exhibit I*, pp. 17-19. However, the document is blank other than the baselines from the recently completed February IEP. *Id.* This progress report also was not emailed to Parents. *Exhibit N*. However, as described in Section E above, the February IEP includes detailed updates about how Student was doing on both goals from the December IEP. *Exhibit A*, pp. 28-29.
113. On June 2, 2023, Prior Case Manager sent Parents Student's end-of-year progress report for the 2022-2023 school year. *Exhibit N*, p. 897. Parents confirm receiving this report. *Complaint*, p. 12. This progress report includes both detailed qualitative information from SLP and School Psychologist about Student's progress on his communication goal, as well as quantitative measures of his progress on this goal. *Exhibit I*, pp. 2-4. It also includes numerical information about Student's progress, or lack thereof, on the writing goal, along with qualitative information about his related progress. *Id.* at pp. 5-6.
114. Parents received a progress report for this fall in December, after filing this Complaint. *Interview with Parents*. When Case Manager returned from her leave, she reviewed work samples and conferred with Prior Case Manager to create a progress report for Student. *Interview with Case Manager*. She sent it December 18, 2023. *Id.*
115. The most recent progress report again includes both qualitative and quantitative information from SLP and School Psychologist about Student's progress on goal 1. *Exhibit I*, pp. 2-4. Even while in school, Student had again not made progress on his writing goal, as he was only writing one sentence "during writing activities he participated in." *Id.* at pp. 5-6.
116. The updates in the first trimester progress report are dated November 10, 2023, consistent with the end of the first trimester. *Id.* at pp. 2-6. There were 55 school days between the start of the school year and November 10, 2023. *Exhibit L*, p. 2. Parents kept Student home for nine of them, or about 16%. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District ensured Student's providers were aware of their responsibilities, that paraprofessionals were adequately trained, implemented the majority of Student's accommodations and educated Student in his LRE. However, District did not implement all of his direct instruction from a special education teacher, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is "the centerpiece of the statute's education delivery system for disabled children . . . [and] the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct.

988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A. Knowledge of the IEPs and Appropriate Training

Parents’ concern is that Student’s providers were not aware of their responsibilities under his IEPs and BIP, and that the paraprofessionals lacked appropriate training.

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.” 34 C.F.R. § 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). This responsibility requires more than just providing them with a copy of the IEP. For instance, districts must ensure that general education teachers and other providers know how or when to implement all the accommodations or modifications. *San Luis Valley BOCES*, CDE Decision 2023: 535 (July 2023) (finding that BOCES failed to ensure teachers were aware of their responsibilities under the student’s IEP where the special education teacher had not read it).

i. Spring 2023

Case managers are responsible for ensuring that teachers and other providers are aware of their responsibilities under a student’s IEP. (FF # 20.) In this case, Prior Case Manager meets with teachers and providers at the start of every year and after any changes. (FF #s 20, 21.)

Because Student changed classes at the start of spring 2023, Prior Case Manager met with Fourth Grade Teacher before Student enrolled in her class and a few times at the start of the semester to go over Student’s IEP and BIP and make sure Fourth Grade Teacher had the tools she needed to support Student. (FF # 21.) She also reviewed the January IEP and December BIP with Student’s paraprofessionals and other teachers. (*Id.*) In addition, SEIS 1, with the support of School Psychologist, trained the entire fourth grade team on Student’s BIP that spring. (FF # 22.)

When Student’s IEP was updated in February 2023, his accommodations and BIP did not really change. (FF #s 30 and 33.) Nevertheless, Prior Case Manager reviewed the new February IEP with Fourth Grade Teacher and Student’s paraprofessionals. (FF # 34.) She similarly reviewed the limited changes with Fourth Grade Teacher and Preferred Paraprofessional after the May IEP was created. (FF #s 21, 34, 38, 41.)

Thus, the SCO finds and concludes that Student’s providers were informed of their responsibilities, and no violation of 34 C.F.R. § 300.323(d) occurred.

ii. Fall 2023

Here, in August 2023, Case Manager, School Psychologist and SLP met with Teacher, 2023 Paraprofessional, other paraprofessionals in School, and Student's other teachers to review the May IEP and December BIP and go over how to support Student. (FF #s 42, 43, 45.) Building Paraprofessional, who supported Student for five school days, participated in Case Manager and SLP's trainings at the start of the year. (FF #s 42, 46.) Temporary Paraprofessional went over Student's May IEP and December BIP with Prior Case Manager before starting. (FF # 47.) RBT went over Student's IEP and BIP with Prior Case Manager and School Psychologist in the week before she started. (FF #s 48, 65.) Finally, the classroom paraprofessionals, who supported Student during other paraprofessional's lunch breaks, reviewed Student's IEP and BIP with Case Manager, SLP, and School Psychologist before the start of the year. (FF #s 42, 49.) Thus, the SCO finds and concludes that Student's providers were informed of their responsibilities, and no violation of 34 C.F.R. § 300.323(d) occurred.

B. Paraprofessional Training

Parents' concern is that Student's paraprofessionals lacked appropriate training to implement his IEPs and BIP.

Under the IDEA, the CDE must establish qualifications to ensure that providers are "appropriately and adequately prepared and trained . . . to serve children with disabilities." 34 C.F.R. § 300.156(a). This includes permitting paraprofessionals, who are appropriately trained and supervised, to assist in the provision of special education. 34 C.F.R. § 300.156(b)(2)(iii). Administrative units must ensure that staff are "appropriately and adequately prepared, subject to the requirements of § 300.156." *Id.* at § 300.207. For paraprofessionals specifically, each district will determine the required qualifications, provided they are hired to assist licensed personnel. ECEA Rule 3.04(1)(e).

i. Spring 2023

Here, Student's IEPs required close 1:1 adult support throughout his day but did not require that the adult providing that support have any specific training. (FF #s 8, 9, 31, 39.) In Spring 2023, Prior Case Manager reviewed Student's IEPs and BIP with all the paraprofessionals supporting him. (FF # 21.) The entire fourth grade team also got specific training on Student's BIP from SEIS 1. (FF # 22.) There was no requirement that Student's paraprofessionals have training as a registered behavior technician. (FF # 23.) Because School provided training on Student's IEP and BIP to the paraprofessionals who supported Student in spring 2023, the SCO finds and concludes that Student's 1:1 support had appropriate training to implement his IEP and BIP.

ii. Fall 2023

Similarly, the May IEP requires 1:1 adult support throughout Student's day but does not require that the adult have any particular training. (FF # 8, 9, 39.) Classroom paraprofessionals and special education paraprofessionals in District have the same training, so there was nothing inappropriate about having classroom paraprofessionals support Student while his dedicated support took a lunch break. (FF # 49.) Throughout the fall of 2023, each of Student's paraprofessionals, including the classroom paraprofessionals, received training and ongoing consultation on how to support Student. (FF #s 42-49, 62, 64-67.) In fact, his final paraprofessional, RBT, even had the training as a registered behavior technician that Parents had requested. (FF # 48.) Thus, the SCO finds and concludes that Student's 1:1 support was adequately trained to implement his IEP and BIP.

For these reasons, the SCO finds and concludes that Student's paraprofessionals were appropriately and adequately trained and no violation of 34 C.F.R. §§ 300.156, 300.207 occurred.

C. Implementation of Accommodations

Parents are concerned that District has not been consistently implementing the accommodations in Student's IEPs and BIPs because District has not provided evidence of how the supports were implemented in specific situations.

In this case, the accommodations in Student's January and February IEPs were essentially the same. (FF # 7, 30.) The May IEP also included all the same accommodations, with the addition of a few accommodations to address sensory needs. (FF # 38.) Relevant here, each of the IEPs required visuals for non-verbal communication, including visual cues for taking a break, a visual schedule, allowing Student to transition between classes five minutes early, reducing his workload by having him complete the most difficult questions first and crossing out unnecessary questions. (FF #s 7, 30, 38.)

Student's BIP was also essentially unchanged throughout this period. (FF #s 33, 41.) The BIP required various strategies, including frequent breaks, clear classroom norms, a daily schedule, building rapport with Student, planned ignoring, home/school communication with ABC analysis of any incidents, visual supports, space to self-regulate, support developing a plan b and collaborative problem solving. (FF #s 14-19.) Thus, for ease of comprehension, the SCO will assess the implementation of Student's accommodations by semester rather than by IEP.

i. Spring 2023

Student did not get along well with all the paraprofessionals who were supporting him in spring 2023. (FF # 23.) However, as of February 28, 2023, he was responding to the 1:1 support, and his work completion had increased while unexpected behaviors had decreased. (FF # 25.) Starting in

March 2023, Student was supported primarily by Preferred Paraprofessional and the rest of the year went very well. (FF # 35.)

In one incident around February 7, 2023, a paraprofessional picked Student up when he was escalated and carried him from the classroom. (FF # 24.) This is inconsistent with the December BIP which requires using various interventions including collaborative problem solving or directing Student to take a break outside the classroom before ultimately clearing the classroom if Student will not leave and does not self-regulate. (FF #s 18, 19.) However, that paraprofessional stopped working with Student after this incident and nothing in the Record suggests that this was a common response to Student's behavior. (FF # 24.)

In addition, emails notifying Parents of the February incident and an incident on January 24 did not include an ABC analysis of what had occurred. (FF # 81, 82).

For these reasons, the SCO finds and concludes that District failed to implement Student's BIP on or around February 7, and failed to provide the home/school communication required by the December BIP, in violation of 34 C.F.R. § 300.323.

ii. Fall 2023

In the fall of 2023, Parents continued to receive various notifications about behaviors without the required ABC analysis. (FF #s 83, 86, 89, 94.) On October 27, Principal notified Parents about a series of incidents, indicating that they all had the same antecedent and that there were no consequences. (FF # 96.) ABC analysis should consider what happened just before each incident. (FF # 15.) In the context of an ABC analysis, a consequence is the outcome that reinforces the behavior, like escaping a demand, not how administration responded. (*Id.*) The SCO finds that this email also did not include an ABC analysis of these incidents. Thus, the SCO finds and concludes that District failed to provide the home/school communication required by the December BIP throughout fall 2023. Parents were provided with an ABC analysis of other incidents. (FF #s 87, 90.)

Nevertheless, Teacher was implementing Student's accommodations in her classroom. Student had a visual schedule with scheduled breaks and opportunities for preferred activities and had regular access to snacks. (FF # 50.) His assignments were shortened, and he was asked to do the more challenging problems. (FF #s 50, 53.) He had a calm down area in the classroom and access to sensory tools. (FF # 56.) He had opportunities for movement breaks both inside and outside the classroom. (*Id.*) Teacher reviewed classroom norms at the start of the semester and posted them in the classroom. (FF # 57.) Case Manager worked with the classroom paraprofessionals to help them build a rapport with Student, and RBT started her time trying to build a rapport with Student. (FF #s 48, 49.)

When Student poked a classroom paraprofessional with a pencil in October 2023, she backed away and ultimately left the classroom. (FF # 59.) Teacher then utilized technology to help

Student transition off the computer. (*Id.*) Planned ignoring and this use of technology were consistent with the requirements of the December BIP (FF #s 14, 59.) Similarly, when Student was using stools to hit the classroom door on October 30, School Psychologist employed collaborative problem solving, visuals, and Plan A/Plan B language. (FF # 79.) Student was also offered breaks, including a movement break outside, and access to preferred activities like reading. (*Id.*) This is consistent with the requirements of the December BIP. (FF #s 14, 17, 18.) The SCO recognizes that students may struggle even when plans are implemented with fidelity for a variety of reasons, including if the student's needs have changed.

Overall, District was not consistently implementing the home/school communication required by the December BIP, and the SCO finds and concludes that District failed to implement Student's BIP, in violation of 34 C.F.R. § 300.323.

D. Implementation of Special Education Instruction

Parents are concerned that Student did not receive his direct and indirect instruction from a special education teacher while Case Manager was out on leave.

i. Indirect Instruction

Here, under the May IEP, Student was entitled to 270 MPM of indirect support, at least 30 MPM of which needed to include consultation and scheduling of paraprofessionals. (FF # 39). In the first month of school, from August 21, 2023 to September 21, 2023, Case Manager provided 460 minutes of indirect support, more than 30 minutes of which was spent supporting paraprofessionals. (FF #s 60, 62.) In the second month of school, from September 22, 2023 to October 22, 2023, Prior Case Manager provided 205 minutes of indirect support. (FF #s 64, 65.) Finally, Prior Case Manager and Case Manager provided 180 minutes of indirect support in Student's final six days of school, when he would have been entitled to only 68 minutes, or about one quarter of the monthly requirement. (FF #s 66, 67.)

Thus, the SCO finds that District failed to provide Student with 65 minutes of indirect support during the second month of school. However, District provided an extra 300 minutes of indirect support in the first and third months. Because District has already provided any missed indirect services, the SCO finds that District implemented Student's indirect services from a special education teacher during fall 2023 and no violation of 34 C.F.R. § 300.323 occurred.

ii. Direct Instruction

Here, under the May IEP, Student was entitled to 60 MPM of direct instruction inside of general education from a special education teacher and 240 MPM of direct instruction outside of general education. (FF # 39.)

During the first month of school, Case Manager provided 60 minutes of instruction inside general

education and 60 minutes of instruction outside of general education. (FF #s 63, 68.) Thus, the SCO finds that District failed to implement 180 minutes of direct instruction outside of general education in Student's first month of school.

During the second month of school, Prior Case Manager provided 25 minutes of instruction inside general education for 10 days from October 3 to October 20, 2023, or a total of 250 minutes. (FF # 70.) However, she provided no direct instruction outside of general education. (FF # 71.) Thus, the SCO finds that District failed to implement 240 minutes of direct special education instruction outside of general education during the second month of school.

Finally, during Student's final five days at School, Prior Case Manager provided 125 minutes of direct instruction inside general education and zero minutes of direct instruction outside of general education, when Student should have received 60 minutes. (FF #s 70, 71.)

As a result, the SCO finds that District failed to implement 480 minutes of direct special education instruction outside of general education, in violation of 34 C.F.R. § 300.323.

E. Education in the LRE

Parents' concern is that Student was not being educated in his LRE in the Fall of 2023 because of the time he was spending outside of the classroom, particularly in the library.

"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). This means that children with disabilities receive their education in the general education setting with typical peers to the maximum extent appropriate, and that they attend the school they would if not disabled. 34 C.F.R. §§ 300.114 and 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, "if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.114(a)(2)(ii).

Accordingly, an IEP must include "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* Students with disabilities must be educated consistent with the LRE described in the IEP. *Id.*

Here, Student's May IEP required that Student be educated in general education at least 80% of the time. (FF # 40.) However, it also required that he be able to take breaks from the classroom as needed and access free reading time during his day. (FF #s 7, 38.) His December BIP required frequent breaks, including scheduled breaks for reading. (FF # 14.) The December BIP also required giving Student space to self-regulate. (FF # 16.)

In the fall of 2023, Student was taking both scheduled and unscheduled breaks, lasting anywhere from 10 minutes to several hours. (FF # 73.) During those breaks, he often visited the library, where he would sometimes stay to read. (FF # 74.) His visits to the library increased in both length and frequency throughout the semester. (FF # 75.)

Student's IEP and BIP clearly stated the extent to which he would not participate in the regular class, including that he would have both scheduled and unscheduled breaks. The SCO finds and concludes that allowing Student to take the required breaks, in the library or elsewhere, did not amount to a failure to educate him in his LRE.

Parents are also concerned that Student was unable to access his classroom during an incident on October 30, 2023. (FF # 77-79.) Teacher's door was rarely closed, but, starting in September, if she closed it because the hallway was noisy, the door was locked. (FF # 76.) Student had previously knocked and entered when finding the door locked. (*Id.*) Because Student appeared escalated on October 30, Teacher did not let him in. (FF # 78.)

According to Student's December BIP, when dysregulated and disrupting the class, if staff was unable to help him regulate within two minutes, Student was to be given the opportunity to transition somewhere outside the classroom to regulate. (FF # 19.) Here, Student was increasingly dysregulated, kicking the door and eventually hitting it with furniture. (FF #s 78, 79.) Keeping Student out of the classroom while he was dysregulated was consistent with his IEP.

Further, he was out of the classroom for one to two hours total during the incident. (FF # 79.) Nothing in the Record suggests that this was a regular occurrence or had ever happened before. Thus, the SCO finds and concludes that keeping Student out of the classroom during the October 30 incident did not amount to a failure to educate him in his LRE.

Overall, the SCO finds and concludes that Student was educated in the LRE described in his May IEP, and no violation of 34 C.F.R. §§ 300.314, 300.317 and 300.323 occurred.

F. 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.*

Here, District failed to implement Student’s December BIP during one incident in February 2023. They also inconsistently implemented one setting event strategy in the December BIP. However, District implemented the majority of Student’s accommodations in most situations. Thus, the SCO finds that District’s failure to implement Student’s December BIP was not material and did not result in a denial of FAPE.

However, District also failed to implement 480 minutes of direct instruction outside the general education setting between August 21, 2023 and October 30, 2023. During that same period, District implemented just 60 minutes of direct instruction outside of general education. (FF # 68.) The SCO finds that the failure to implement nearly 90% of Student’s direct instruction in the special education classroom during the period when he was attending school is more than a minor discrepancy between the services provided and the services required by the May IEP. Thus, the SCO finds that the failure to implement the services in the May IEP was material, resulting in a denial of FAPE.

G. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been 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. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, District failed to provide Student with 480 minutes, or eight hours, of direct instruction from a special education teacher before October 30, 2023. However, Student received substantially more instruction inside the classroom than was required by his IEP, partially mitigating this failure. Nevertheless, during his 10 weeks in school, Student did not make progress on his writing goal and he completed just a fraction of his classroom assignments. (FF #s 54, 116.) Thus, the SCO, in consultation with CDE Content Specialist, finds that Student is entitled to five hours of instruction from a special education teacher.

Conclusion to Allegation No. 2: District was under no obligation to provide most of the information requested by Parents and generally complied with the requirements of 34 C.F.R. § 300.613. However, District failed to allow Parents to review video footage of the October 30 incident, in violation of 34 C.F.R. § 300.613. This violation did not result in a denial of FAPE.

Parents' concern is that District has not responded to many of their requests for records.

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child's education records. 34 C.F.R. § 300.613(a). Accordingly, a school district "must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency." *Id.* A district must comply with a parent's request to review his or her child's education records "without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to § 300.510 and in no case more than 45 days after the request." *Id.*

Education records are "those records that are: (1) [d]irectly related to a student; and (2) [m]aintained by an educational agency or institution or by a party acting for the agency or institution." 34 C.F.R. §§ 99.3 and 300.611(b). A record means "any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche." *Id.* The right to review records includes the "right to a response from the participating agency to reasonable requests for explanations and interpretations of the records." 34 C.F.R. § 300.613(b)(1).

Education records include "email communications maintained as part of [student's] record." *Mountain Bd. Of Coop. Educ. Serv.*, 120 LRP 29269 (SEA CO 2020) (citing *Brownsburg Community School Corporation*, 59 IDELR 146 (SEA IN 2012)). Photos and videos should be considered an educational record if they directly relate to the student. *Frequently Asked Questions on Photos and Videos under FERPA*, 118 LRP 16524 (FPCO 04/19/18). Videos would be considered directly related to a student if, among other things:

- 1) it is used for official purposes involving the student, including disciplinary action;
- 2) it depicts an activity that has or reasonably would result in the district using the photo or video for disciplinary action involving the student;
- 3) it shows a student violating local, state, or federal law;
- 4) it shows the student being injured, victimized, or having a health emergency;
- 5) the student was intended to be the specific focus of the photo or video (e.g. an ID photo);
- 6) it otherwise contains personally identifiable information contained in the student's education record.

Frequently Asked Questions on Photos and Videos under FERPA, 118 LRP 16524 (FPCO 04/19/18).

A. Requests for Additional Information

Here, most of Parents' requests concerned additional information, like an ABC analysis of an incident or questions about implementation of Student's IEP or BIP in specific situations. (FF #s 81-90, 94, 98.)

i. ABC Analysis

Districts are required to provide records they maintain and are not required to create records to respond to parental requests. 34 C.F.R. §§ 99.3 and 300.611(b). Thus, District was not obligated to create an ABC analysis or description of implementation for any specific incident. To the extent an ABC analysis was required by Student's December BIP, that has been addressed in Allegation No. 1. However, nothing in the Record suggests that the information Parents were seeking here existed in any records District was maintaining.

ii. Requests for Explanation

Further, emails only become part of a student's record when they are maintained as such. *Mountain Bd. Of Coop. Educ. Serv.*, 120 LRP 29269 (SEA CO 2020). Nothing in the Record suggests that emails about Student's challenges were maintained in Student's file. As such, Parents were not requesting a reasonable explanation of records, but rather of regular communication, and the provisions of 34 C.F.R. § 300.613(b)(1) do not apply.

iii. Provision of Additional Information

In response to Parents September request about training, District provided information on the training various paraprofessionals had received. (FF #s 84, 85.) This information was provided to Parents eight days after the initial request. (*Id.*) It is not clear whether District maintained this record or created it for Parents, but regardless, it was promptly provided within 45 days and there were no IEP meetings scheduled at that time. Similarly, on October 30, 2023, Parents requested additional information about an incident that day. (FF # 98.) On November 6, School staff provided District with a written description of the events on October 30, 2023. (FF # 100.) Once created, that record was shared with Parents on November 7, 2023, one day before the IEP meeting scheduled for November 8, 2023. (FF #s 99, 101.)

iv. Requests for School-Level Data

On October 2, 2023, Parents requested detailed information about locker incidents at School. (FF # 88.) None of the information about lockers pertained specifically to Student, so even if District keeps the data Parents requested, it would not have been part of Student's education record. (*Id.*) As such, District had no obligation to provide Parents with that information.

v. Record Of Suspension

On October 26, 2023, Parents requested official documentation of the October 27 suspension. (FF # 94.) On October 27, Principal provided Parents with additional information about the behaviors that led to the suspension. (FF # 96.) Districts are only required to provide formal PWN of disciplinary actions that constitute a change of placement, and a one-day suspension is not a change of placement. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22). As such, the SCO finds and concludes that Principal's emails satisfied District's obligation under IDEA to respond to Parents' October 26 request for official documentation of the suspension. (FF #s 94-96.)

vi. Request for Evaluation

On November 5, 2023, Parents requested a complete copy of the evaluation that was completed in spring 2023. (FF # 91.) The entire evaluation was provided by District two days later, on November 7, 2023, one day before their scheduled IEP meeting. (FF #s 91, 99.)

Because Parents sought information that was not contained in any existing records and were timely provided with records that did exist, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. § 300.613, and no violation occurred.

B. Request for Video Recording

First, the SCO must determine whether the video recordings were directly related to Student. 34 C.F.R. §§ 99.3 and 300.611(b); *Frequently Asked Questions on Photos and Videos under FERPA*, 118 LRP 16524 (FPCO 04/19/18).

On November 7, 2023, Parents requested access to the video recordings of the incident on October 30. (FF # 102.) District did not take any disciplinary actions related to October 30 and Student was not injured and was not having a health emergency. (FF #s 78, 79.) District also did not take any disciplinary actions before Student stopped attending school the next day. (FF #s 103, 104.) However, the video depicts an incident that was similar to the behaviors the prior week that resulted in Student's October 27, 2023 suspension, which included running through the halls and rattling doors. (FF # 96.) Thus, the video of the October 30 incident depicts activity that would reasonably result in the use of the photo or video for disciplinary action involving Student. *Frequently Asked Questions on Photos and Videos under FERPA*, 118 LRP 16524 (FPCO 04/19/18). Moreover, the video also shows Student violating city ordinances about disorderly conduct in schools by kicking the door and repeatedly hitting it with stools while class was in session. *Id.*; (FF #s 78, 79). As such, the SCO finds and concludes that the video in question was directly related to Student.

Second, and finally, the SCO must determine whether the video recordings were maintained by District. 34 C.F.R. §§ 99.3 and 300.611(b).

As an initial matter, the SCO finds that it is neither reasonable nor necessary to require a school district to review all video footage and retain everything that directly relates to a student. Nevertheless, videos a school district reviews for use in a disciplinary proceeding are educational records that must be maintained. *Frequently Asked Questions on Photos and Videos under FERPA*, 118 LRP 16524 (FPCO 04/19/18). Similarly, records that are pulled for law enforcement purposes related to pursuing violations of the law are educational records if they directly relate to a student, and they must be maintained. *Id.* Indeed, the right to review records would be meaningless if there were not also a way for parents to request recordings related to their child. Thus, the SCO finds that if specific video footage that is directly related to a student is requested by a parent before it is *automatically* deleted by a school district, that footage also becomes an educational record that must be maintained by the district.

Here, District currently auto-deletes video recordings after 30 days, so most video recordings are not maintained by District. (FF # 102.) However, Parents requested the video footage on November 7, 2023, before it was auto deleted. (*Id.*) Although District initially indicated Parents could view the video, the video was deleted before Parents could review it. (*Id.*) Because Parents requested the video while District still had it, the SCO finds and concludes that it was, at that time, an educational record maintained by District.

Thus, the SCO finds and concludes that District failed to permit Parents to inspect an educational record without unnecessary delay, resulting in a procedural violation of 34 C.F.R. § 300.613.

C. Procedural Violation

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

Here, Parents chose to take Student out of School before requesting the video. (FF #s 102, 104.) Their concerns predated the October 30 incident and were not limited to what happened that day. (FF #s 92-95, 104.) Because Parents were choosing to keep Student home both at the time the video was requested and destroyed, the SCO finds and concludes that the failure to allow Parents to review the video did not impede Student's right to a FAPE or cause a deprivation of educational benefit. Further, although Parents were engaged in an active dispute with District about Student's needs and whether his program was being implemented consistently, the video in question depicted only one incident about which Parents were concerned. (FF #s 92-95, 104.) As such, the SCO finds and concludes that the failure to allow Parents to review video footage of one incident did not *significantly* impede their opportunity to participate in the decision-making process. Thus, no denial of FAPE occurred.

Conclusion to Allegation No. 3: Parents did not request to amend the November 3 PWN. No violation of 34 C.F.R. § 300.618 occurred.

Parents are concerned that District did not respond to a request to amend the November 3 PWN.

The IDEA establishes a procedure by which parents can request amendment of a student's educational records. 34 C.F.R. § 300.618. Specifically:

a parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request that the participating agency that maintains the information to amend the information.

Id. § 300.618(a). The school district must decide within “a reasonable period of time” whether to amend the information. *Id.* § 300.618(b). If the school district declines to amend the records, it must notify the parent of its decision and inform the parent of his or her right to a hearing. *Id.* § 300.618(c).

The SCO must first determine whether Parents requested to amend the November 3 PWN. Here, Parents were frustrated that the November 3 PWN did not explicitly state that they were keeping Student home because School had created a “hostile” environment for Student and that District was ignoring Principal's discrimination. (FF # 106.) Instead, the November 3 PWN said they were keeping Student home because they had concerns about recent incidents and were not comfortable sending him. (FF # 105.) Parents told District the November 3 PWN misrepresented their concerns, but they did not ask District to amend the PWN. (FF # 106.) Instead, they requested a “stay put” from the November 3 PWN. (*Id.*) During the meeting on November 8, Parents asked District if it wanted the chance to revise the November 3 PWN and District said no. (FF # 107.)

The SCO finds and concludes that neither Parents' statement that the November 3 PWN misrepresented their concerns nor their question of whether District wanted to revise it were a request for an amendment of records under 34 C.F.R. § 300.618. Thus, District's obligations under 34 C.F.R. § 300.618 were not triggered. No violation of the IDEA occurred.

Conclusion to Allegation No. 4: District provided Parents with a report on Student's progress in February 2023, but failed to provide a timely report on Student's progress in November 2023, resulting in a violation of 34 C.F.R. § 300.320(a)(3). This violation did not result in a denial of FAPE.

Parents are concerned they did not receive a progress report for the second trimester of the 2022-2023 school year or the first trimester of the 2023-2024 school year.

IEPs must include a description of how a child's progress towards their annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). Thus, progress information must be sent at the time indicated in the IEP. *Dublin City Schs.*, 67 IDELR 77 (SEA OH 2015) (finding that progress reports that were supposed to be issued with quarterly progress reports could not be issued two weeks later.)

Here, the January, February and May IEPs all required the provision of progress reports at each trimester reporting period. (FF #s 6, 28, 38.)

Although Parents did not receive a formal progress report for the second trimester of the 2022-2023 school year, they received a report on Student's progress at the end of the second trimester in the February IEP. (FF #s 26, 27, 112.) IDEA requires that parents be provided with periodic reports on their student's progress. 34 C.F.R. § 300.320(a)(3). There is no requirement that the information be in a specific format or report. *Id.* Thus, the SCO finds that Parents received a report on Student's second trimester progress in the form of the February IEP and no violation of 34 C.F.R. § 300.320(a)(3) occurred.

First trimester progress reports are generally sent in November. (FF # 110.) Parents received the progress report for November 10, 2023 in late December 2023. (FF #s 114, 116.) It was delayed because it was created after Case Manager returned from her leave. (FF # 114.) Because the progress report was issued in late December 2023, about a month after the trimester ended in November 2023, the SCO finds and concludes that Parents did not receive a progress report with the first trimester report cards, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

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

Here, the SCO finds that the failure to timely provide an update on Student's progress did not impede Student's right to a FAPE or cause a deprivation of educational benefit because the one-month delay occurred during a period when Parents were keeping Student home from School. (FF #s 104, 106.) Their concerns were not related to Student's progress on his IEP goals, and nothing in the Record suggests that receiving this information would have changed their decision to keep Student home. (*Id.*) Thus, the SCO finds that the failure to provide a timely progress report did not significantly impede Parents' ability to participate in the decision-making process. For these reasons, the SCO finds and concludes that this procedural violation did not result in a denial of FAPE.

Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic in nature.

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

Here, nothing in the record suggests that the failure to implement Student’s IEP was systemic. Rather, the failure appears to stem from Principal’s lack of understanding of the meaning of ABC analysis and Student’s difficulties with transitioning out of the classroom. (FF #s 56, 71, 96.) The delay in providing Student’s first trimester progress report is also unlikely to impact the future provision of services to other students now that Case Manager has returned from her leave. (FF # 114.) District also appeared to be trying to comply with Parents’ request to view the video recording, prior to the unfortunate delay caused by Thanksgiving break. (FF # 102.)

REMEDIES

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

- a. Failing to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323;
- b. Failing to allow Parents to review educational records, in violation of 34 C.F.R. § 300.613;
- c. Failing to provide Parents with progress reports, in violation of 34 C.F.R. § 300.320(a)(3).

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

1. Corrective Action Plan

- a. By **Monday, March 11, 2024**, 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 CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Senior Manager, SEIS 1 and 2, Principal, Assistant Principal, Case Manager, Prior Case Manager and School Psychologist must review this decision as well as the requirements of 34 C.F.R. §§ 300.323, 300.613 and 300.320(a). If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Monday, March 25, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, April 1, 2024**.

3. Compensatory Education Services

- a. Student shall receive **300 minutes (5 hours) of specialized instruction in executive functioning**. This instruction must be provided by an appropriately licensed special education teacher. These services must target Student's goals. All 240 minutes must be completed by **Friday, August 16, 2024**.
- b. **By Monday, March 25, 2024**, District shall schedule compensatory services in collaboration with Parents. 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 include the dates, times, and durations of planned sessions, to the CDE no later than **Wednesday, March 27, 2024**. If District and Parents cannot agree to a schedule by March 25, 2024, the CDE will determine the schedule for compensatory services by **April 10, 2024**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parents may opt out of some or all of the compensatory services.
- c. Monthly consultation between the provider(s) delivering compensatory services and School's senior manager of Special Education shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation

that these consultations have occurred **by the second Monday of each month**, once services begin, until 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 him toward his IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, during free periods, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). 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 Parents and notify the CDE of the change in the appropriate service log.

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

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
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 9 day of February, 2024.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-12

Response, pages 1-6

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: PWNs
- Exhibit E: Meeting Documentation
- Exhibit F: Service Logs
- Exhibit G: Behavior Logs
- Exhibit H: Attendance
- Exhibit I: Progress Data
- Exhibit J-1: Staff Qualifications
- Exhibit J-2: Provider Schedule
- Exhibit K: Requests for Consent
- Exhibit L: District Calendars
- Exhibit M: Policies
- Exhibit N: Correspondence
- Exhibit O: Staff Contacts
- Exhibit P: Daily Schedule

Reply, pages 1-9

- Exhibit 1: Correspondence
- Exhibit 2: Student Narrative
- Exhibit 3: School Narrative
- Exhibit 4: Recording
- Exhibit 5: Recording
- Exhibit 6: IEP Documentation
- Exhibit 7: Correspondence
- Exhibit 8: Recording
- Exhibit 9: Recording

Telephone Interviews

- Parents: January 18, 2024
- Librarian: January 22, 2024
- Teacher: January 22, 2024
- School Psychologist: January 22, 2024
- Case Manager: January 22, 2024

- Principal: January 22, 2024
- Prior Case Manager: January 22, 2024
- Senior Manager: January 24, 2024
- SEIS 2: January 24, 2024