

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

State-Level Complaint 2024:583
Jefferson County R-1

DECISION

INTRODUCTION

On August 11, 2024, 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 Jefferson County R-1, Jeffco Public Schools (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

The CDE’s goal with this investigation and written decision is to build capacity among all participants in the special education process and to provide opportunities for professional growth to educators. The CDE views the state complaint process as an opportunity for participants in the IEP process to learn about special education, identify points for improvement, and tap available resources, all to improve outcomes for students with disabilities.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after August 11, 2023. Information prior to August 11, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

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.

² The CDE’s state complaint investigation will determine if District complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

- a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, from August 2023 through May 2024 as required by 34 C.F.R. § 300.323(d).
 - b. Did not ensure the Affective Needs (“AN”) classroom teacher implementing Student’s special education and related services possessed the required certifications and licenses from January 25, 2024 through May 24, 2024, as required by 34 C.F.R. §§ 300.156, and 300.207 and 300.323(c), and ECEA Rule 3.04.
 - c. Did not provide Student with the behavior supports listed in the IEP and Behavior Intervention Plan (“BIP”), specifically appropriate use of point sheets, building rapport, allowing Student time to calm down and using the specific interventions for property damage, disruptions, verbal taunting and physical aggression from August 2023 through May 2024, as required by 34 C.F.R. § 300.323(c).
 - d. Did not provide Student with the support of a paraprofessional listed in the IEP, from August 15, 2023 through December 31, 2023, as required by 34 C.F.R. § 300.323(c).
 - e. Did not educate Student in the least restrictive environment (“LRE”) listed in the IEP from August 2023 through May 2024—specifically because Student was kept in the special education classroom or sent home—as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c).
2. District did not review and, as appropriate, revise Student’s IEP from August 2023 through May 2024 to address a lack of appropriate progress in math, as required by 34 C.F.R. §§ 300.320 and 300.324.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

A. Background

1. Student is 13 years old, and, during the 2023-2024 school year, was in sixth grade at a center-based program (“AN Center”) at a District middle school (“School”). *Response*, p. 2.
2. Student is eligible for special education services as a student with a serious emotional disability, a specific learning disability and a speech or language impairment. *Exhibit A*, p. 2.
3. Student is a sweet, social child who enjoys making connections with others. *Interviews with Parents, Principal at School (“Principal”), Student’s special education math teacher (“Math Learning Specialist”), and a paraprofessional from the AN Center (“Paraprofessional”).* He has

³ The appendix, attached and incorporated by reference, details the entire Record.

great leadership potential. *Interviews with Parents and Math Learning Specialist*. He has made tremendous growth over the past five years. *Interview with Parents; Exhibit A*, p. 4.

4. Student struggles with emotional regulation and trust. *Interviews with Parents, Principal and Math Learning Specialist*. Student also has substantial academic skill deficits, including in math. *Exhibit A*, p. 11.

B. 2023 IEP

5. At the start of the 2023-2024 school year, Student's then current IEP ("2023 IEP") was from 2023, when Student attended a District elementary school ("Elementary School"). *Id.* at p. 2. According to the 2023 IEP, Student enjoyed video games, playing with his dogs and playing with friends in the neighborhood. *Id.* at p. 4. The present levels section included a summary of District and private evaluations from 2019 through 2022. *Id.*
6. Updates from 2023 noted that Student demonstrated growth at Elementary School and "thrives in the school environment when he receives verbal praise and acknowledgement of his positive behavior." *Id.* at p. 5. Student had made progress on or met two social emotional goals. *Id.* At Elementary School, he was doing well with attention to academic tasks and his "negative behaviors [were] generally short and no attention [was] given to them." *Id.* at p. 7.
7. The 2023 IEP also reported Student's progress on math and reading goals and included updates from his general and special education teachers. *Id.* at pp. 6-7. Student had "made tremendous reading growth" but struggled more with math. *Id.* at p. 7. Student met his communication goals and based on his progress to date, an occupational therapist recommended ongoing support fading to indirect services. *Id.* at pp. 7-10.
8. The Student Needs and Impact of Disability Statement reiterated Student's needs in the areas of communication, occupational therapy ("OT"), academics—such as reading, writing and math, and social emotional—including social communication and complying with behavior expectations. *Id.* at p. 11. Student required special transportation and a behavior intervention plan ("BIP"). *Id.* at p. 11.
9. According to the Parent Input section, Parents were happy with Student's progress in the AN center at Elementary School and Student did "well in a positive, flexible, and consistent environment." *Id.* at p. 10.
10. The 2023 IEP included two social emotional goals, a self-determination goal, two communication goals, a reading goal, a writing goal, and a math goal. *Id.* at pp. 12-16.
11. The 2023 IEP included a long list of accommodations addressing, in part, Student's expressive and receptive communication needs, his academic needs, and his social and emotional functioning needs. *Id.* at pp. 15-16. Relevant here, the 2023 IEP required: access to snacks, frequent reminders for expected behaviors and connected positive reinforcement, clear and expected schedule, preparation for changes in routine, noncontingent positive attention,

seating by a positive peer role model, avoid power struggles when behaviors do not involve safety or the purpose of the request (e.g. allow Student to shuffle in the hallway vs walking), provide choices, frame expectations as statements, access to noise cancelling headphones and opportunities to work for rewards for positive behavior. *Id.* at pp. 16-17.

12. According to the service delivery statement, Student would have “dedicated adult support through an independent support paraeducator (“ISP”) throughout his school day” for “behavioral regulation and inclusion.” *Id.* at p. 19. He would also receive 1,300 minutes per week (“MPW”) of direct support from a special education teacher inside general education classes and 600 MPW (two hours per day) of direct support from a special education teacher outside of general education, as part of Elementary School’s AN program. *Id.* at p. 20. The program included a high degree of structure and instruction focused on social and coping skills as part of the daily routine. *Id.* at p. 19.

13. In addition, the 2023 IEP included:

- 240 minutes per month (“MPM”) of direct support from a mental health provider to address the social emotional and self-determination goals. *Id.* at pp. 19-20.
- 160 MPM of direct support from a speech and language pathologist to address Student’s receptive, expressive and pragmatic language skills. *Id.*
- 120 MPM of direct support from an occupational therapist to address his writing goal as well as other challenges. *Id.*

14. Overall, the 2023 IEP team determined that Student’s LRE was general education 40-79% of the time, where he would receive services in a center-based program with a high degree of structure and intensive affective education to help students complete tasks and manage behavior. *Id.* at p. 21. “Inclusion into General Education Classrooms [would] occur as appropriate when behavior patterns enable participation in the general education setting without seriously interfering with one’s own learning or the learning or teaching of others.” *Id.* Specifically, he was to spend 63.5% of his time in general education. *Id.* at p. 22. Student had not yet displayed consistent skills necessary to transition out of the AN program. *Id.*

C. 2023 BIP

15. Student’s 2023 BIP identified three problem behaviors with three separate hypotheses statements. *Exhibit B*, p. 2. Taunting peers was theorized to be reinforced by attention and escaping nonpreferred tasks. *Id.* Class disruption and property destruction was believed to be maintained by attention, escape from nonpreferred or “perceived difficult” tasks and access to preferred items. *Id.* Finally, physical aggression was reinforced by social attention and escape from “aversive situations, usually involving a conflict with a peer.” *Id.*

16. The 2023 BIP included three setting event strategies to reduce the impact of triggers. *Id.* at p. 3. The first strategy was a daily check-in, followed by de-escalation strategies if needed, and a review of classroom expectations. *Id.* Next, adults should build rapport with Student before placing demands at the start of the relationship and before starting each session. *Id.* Finally, adults should maintain consistent expectations and explain desired behaviors daily. *Id.*
17. There were 18 antecedent strategies to decrease the likelihood of behaviors, several of which were repetitions of the 2023 IEP's accommodations. *Compare, Id.*, at pp. 3-4 and *Exhibit A*, pp. 16-17. Unique strategies included: clear expectations around transitions and the amount of work that must be completed, direct instruction about peer conflicts, reinforcement of positive behaviors, breaks in a designated space when dysregulated, visual access to a reinforcement chart, check-ins in the morning and after lunch, a list of school safe topics of conversation, choices, validating what Student is feeling, built in opportunities to talk and "giving choice of deep breaths or playing with hard putty and labeling what behaviors are noticed to identify dysregulation." *Exhibit B*, pp. 3-4.
18. The behavior teaching strategies to replace problem behaviors with appropriate replacement behaviors included plans to teach Student appropriate ways to (1) escape demands, (2) gain attention, and (3) access preferred items. *Id.* These strategies would be taught through direct instruction with support gradually fading. *Id.*
19. The reinforcement strategies included specific praise of replacement skills and quiet redirection next to Student and not in front of peers. *Id.* at p. 3. In addition, the 2023 BIP included specific directions for responding to disruptions, property destruction, verbal taunting, and physical aggression. *Id.* at pp. 3-5.
20. In response to disruptions, staff will: (1) praise positive behavior in peers while ignoring Student's disruption; (2) redirect Student by pointing to his work, using the "SHHHH" gesture or placing a hand on his shoulder or desk "with a calm and neutral tone and demeanor;" (3) tell Student when the preferred item will be available later and then use gestures to prompt the expectation; (4) provide neutral praise when Student stops disrupting; and (5) offer enthusiastic praise when he returns to the task. *Id.* at p. 3.
21. For property destruction, staff must: (1) ignore the behavior and wait about five-seconds; (2) redirect Student to the task at hand with prompts like "what do you need right now?" or "How can I help you?;" (3) provide neutral praise after the behavior stops; and (4) deliver enthusiastic praise and dojo points if he returns to the task at hand. *Id.* at p. 4. After completing the task, staff will have Student cleanup/restore the property he destroyed. *Id.*
22. When responding to verbal teasing, staff shall: (1) start by ignoring the behavior; and (2) if the behavior continues, prompt Student to try again with a calm and neutral tone. *Id.* If the behavior recurs frequently, staff will prompt "how can I help you?" or it "looks like you might need ____." *Id.* Again, once the behavior stopped, adults must provide neutral praise,

followed by enthusiastic praise when he returned to the task. *Id.* Staff would also ignore sexual comments and then prompt Student to take a break. *Id.*

23. If Student was physically aggressive, staff would: (1) ignore the behavior; (2) redirect Student to the task in a neutral tone and demeanor; (3) provide chunked, single step, instructions; and (4) praise Student for “safe hands and/or body” once the behavior stops. *Id.* at p. 5.
24. If Student was trying to escape an aversive social situation, staff will ask him to identify “a better solution.” *Id.* At least 20-30 minutes after a maladaptive behavior, adults must review the scenario with Student to identify the correct replacement behavior that should have been used. *Id.*
25. The 2023 BIP also included a Crisis Intervention Plan noting that if physical behaviors were persistent and could harm others, crisis prevention intervention procedures would be used. *Id.* If sexual comments, with examples listed, were making others feel “uncomfortable or unsafe,” Student would be directed to take a break. *Id.*

D. Staff Awareness of the 2023 IEP and BIP

26. Case managers in District are responsible for ensuring staff are aware of their responsibilities under a student’s IEP. *Interview with District’s Director of Special Education (“Director”).* Written guidance from District directs special education teachers to create a “snapshot” of students’ IEPs and go over their accommodations and goals with other staff. *Id.* This should happen in person, at the start of the year. *Id.*
27. School staff meet before the start of every school year for “kid talks.” *Interview with Math Learning Specialist.* Special education teachers meet with teams of teachers to go over the IEPs for any students on that team. *Id.*
28. In this case, Student’s general education teachers, including elective teachers, met with Math Learning Specialist, the AN Center teacher (“Case Manager”) who was Student’s case manager, the English language arts (“ELA”) special education teacher and School’s social worker (“Social Worker”). *Interviews with Math Learning Specialist and Student’s math teacher (“Math Teacher”).* Together, before the start of the year, they reviewed Student’s IEP and BIP, talking about his strengths and needs and where to find more information. *Id.*
29. Principal and the sixth-grade assistant principal (“Assistant Principal”) also attended this meeting. *Interview with Principal.* Principal also trains the office staff on how to support the students, like Student, who are coming in and out of the office for support or a safe space. *Id.*
30. A few weeks into the school year, Student’s general education teachers asked for another meeting with Case Manager and Social Worker to talk about how to support Student. *Interview with Math Teacher.* Teachers were in ongoing discussions with AN Center staff about how to support him. *Id.*

31. Paraprofessionals working in the AN Center, including ISPs, got a summary of Student's IEP including his goals, accommodations, and BIP when they started work, followed by a sit-down meeting with Case Manager and Social Worker to go over what works or does not work for each student, including Student. *Interview with Social Worker*. Case Manager and Social Worker then provided ongoing support to the paraprofessionals, including pushing in to general education classes to observe and provide feedback. *Id.*

E. Building Rapport with Student at School

32. As a result of past trauma, Student has a harder time trusting women. *Exhibit J*, p. 805. He did well at Elementary School, where he had a male teacher. *Id.*; *Interview with Parents*. He also attended more classes and had better days when he had a male ISP in January. *Exhibit F*, p. 12; *See e.g., Exhibit J*, pp. 363, 364, 365.

33. Social Worker built rapport with Student by talking about things he liked, including basketball and games like "Uno." *Interview with Social Worker*. She would also spend time playing ball or walking around the building with Student. *Id.* She also made her office a preferred space for students, with puzzles and cozy spaces. *Id.*

34. Math Teacher connected with Student over professional sports like football and basketball. *Interview with Math Teacher*. She also had a basketball hoop in her room and students could earn a chance to play. *Id.* Each Friday she would have students complete a brief check-in about their lives outside the classroom. *Id.* Student seemed to really like this. *Id.* Student and Math Teacher would also joke about her children surprising her at School. *Id.*

35. Math Learning Specialist built a relationship with Student by talking about non-academic subjects and getting to know him as a person. *Interview with Math Learning Specialist*. She focused on things he enjoyed and reinforced good behavior. *Id.* She welcomed him enthusiastically and reminded him he had a clean slate each day. *Id.*

36. Principal found Student easy to build rapport with because he was easy to talk to. *Interview with Principal*. He responded well to rewards of any kind, but especially anything with sugar. *Id.* She kept a drawer filled with fidgets and balls in her office, for students to play with. *Id.* Both Principal and Case Manager went to watch Student play in basketball games with his recreational league. *Id.*; *Exhibit J*, pp. 496 and 814.

37. After a series of incidents in September, Parents emailed Case Manager and Principal about meeting to understand how Student was being supported at School. *Exhibit J*, p. 1313.

38. Principal went over the accommodations in Student's 2023 IEP as well as the supports School was finding to be most effective. *Id.* at pp. 1311-1312. For example, Student was spending more time in the AN Center, building a relationship with Case Manager. *Id.* He was able to earn rewards daily for his point sheet and was working towards a larger reward of his choosing through the token economy. *Id.* He had frequent breaks and check-ins, as well as

paraprofessional support in class. *Id.* He had access to snacks and noise-celling headphones and was completing small tasks for teachers to build trust and relationships. *Id.*

39. Despite this support, Principal explained that most of the incidents were happening in the AN Center or other locations outside of general education. *Id.* at p. 1311. School was open to other suggestions of how to support Student. *Id.* Parents noted that Student tends to test boundaries until trust is established. *Id.* They suggested additional trauma training and working with Student’s private therapist. *Id.* at p. 1310-1311.

F. Positive Reinforcement

40. The development and use of point sheets varies depending on the individualized needs of students. *Interview with Director.* However, the goal is to help students think more positively about their behavior and encourage the use of replacement behaviors by allowing students to earn points which usually then translate to opportunities to earn rewards. *Id.*
41. School’s AN Center used point sheets to facilitate daily communication with parents and facilitate data collection for IEP goals. *Interview with Social Worker.* In addition, every Friday students could earn rewards for behavior, with students eligible for different rewards depending on their weekly average. *Id.* The point sheets varied based on the student’s individual goals, but the thresholds for rewards were the same across the board. *Id.*
42. Parents raised concerns that Student did not receive positive reinforcement through his point sheets. *Interview with Parents; Exhibit J*, pp. 50, 53, 74 and 359. School tried to increase their use of positive reinforcement on point sheets, but positive reinforcement was more consistently given in the moment. *Interview with Social Worker.*
43. Verbal praise was provided frequently by Case Manager, the substitute AN Center teacher (“Substitute”), Paraprofessional and Math Learning Specialist for expected behaviors. *Interviews with Social Worker, Paraprofessional and Math Learning Specialist; Exhibit J*, pp. 359, 361, 391. For instance, Substitute provided verbal praise throughout the day as she and Student reviewed the point card, making a point to celebrate when Student earned two or three points (out of three) on a given metric. *Exhibit J*, p. 54. Math Teacher provided Student with candy and positive compliments for good behavior. *Interview with Math Teacher.*
44. Students could earn currency for School’s token economy, allowing them to “buy” rewards like candy and snacks. *Interview with Social Worker.* Students in the AN Center were very engaged with the token economy. *Id.* AN Center provided students, including Student, with tokens frequently for expected behavior. *Id.* Math Learning Specialist was also quick to offer tokens to students in the math class. *Interview with Math Learning Specialist.*

G. Adult Support in General Education

45. When District is unable to hire necessary ISPs or other paraprofessionals, they look at the other resources in the building to try and fill that role with existing staff. *Interviews with*

Director, District's Assistant Director of Special Education ("Assistant Director") and Principal. When an ISP is needed, they always try and have a "plan b, c, and d" to ensure continued support, although it may be through multiple adults. Interview with Director.

46. The 2023-2024 school year started on August 15, 2023. *Exhibit H.* Student's assigned ISP quit after three days, on August 17, in part because Student was being "very vocal about not wanting or feeling like he needs an ISP." *Exhibit J*, p. 727. Case Manager proposed a meeting with Parents to discuss next steps. *Id.*
47. At that meeting, the parties initially agreed to have Student try going without an ISP as he had been doing so well at Elementary School. *Interviews with Parents, Principal and Assistant Director; Exhibit J*, p. 728. Instead of an ISP, he would get check-ins and support from the AN Center's paraprofessionals. *Exhibit J*, p. 808. They did not modify Student's IEP. *Exhibit A.*
48. During this time, paraprofessionals from the AN Center sometimes attended classes with him, but they were usually also supporting another student in the class or in another classroom at the same time. *Exhibit F*, pp. 5-7; *Interviews with Paraprofessional and Math Teacher.*
49. Paraprofessional supported Student in some classes throughout the year. *Exhibit F*, p. 5; *Interview with Paraprofessional.* Student would be provided choices, like working in the AN Center or his classroom. *Interview with Paraprofessional.* She reinforced positive behaviors and reminded Student of expectations. *Id.* She also redirected him to tasks in response to disruptive behavior or remove him from the classroom if that was unsuccessful. *Id.*
50. After several incidents in the first weeks of school, on September 11, 2023, Parents indicated that Student was not adjusting well to not having a paraprofessional. *Exhibit J*, p. 431. The posting to hire a new ISP for Student remained open throughout the semester. *Interviews with Assistant Director and Principal; Exhibit J*, pp. 1304, 1635. They tried hiring people, but they would never show or only last a couple of days. *Id; Exhibit J*, pp. 467, 1317, 1771.
51. A new ISP with a background in behavior was hired to start on December 19, 2023. *Exhibit J*, p. 516. Student was suspended out of school on that day and winter break started on December 20, 2023. *Exhibit E*, p. 3; *Exhibit H.*

Although District provided schedules indicating the adult support being provided to Student, the schedules also showed the adult supporting students in multiple classrooms at once. *Exhibit F*, p. 5. They also did not indicate any support during period five. *Id.* at pp. 5-6. They further reflected staff providing support when they were only employed for a portion of the time period in question. *Id.* at pp. 6-7; *Interviews with Principal and Paraprofessional.* The SCO finds that these schedules reflect inconsistent and incomplete support, and thus that Student did not have consistent adult support between August 18, 2023 and December 19, 2023. *Exhibit H.*

H. Disciplinary Removals

52. Student struggled with the transition to School. *Interviews with Parents and Social Worker*. Student required consistent adult expectations, daily reminders of classroom expectations and rapport building before demands are placed and at the start of each session. *Exhibit B*, p. 3. He struggled with the transition to multiple teachers with different styles and expectations, along with multiple transitions throughout the day. *Interview with Social Worker*. However, he was very good at knowing which adults or spaces to seek out when dysregulated and accessing those spaces. *Interviews with Social Worker and Paraprofessional*.
53. During the first half of the year, Student got in trouble for a variety of behaviors, including classroom disruptions, property destruction and verbal and physical conflicts with peers. *Exhibit E*, pp. 3-7; *See, e.g., Exhibit J*, pp. 426, 1421, 1428, 1429, 1440, 1610, 1624, 1625, 1626, 1465, 1469. According to his attendance records, he received four days of out-of-school suspension (“OSS”) and three and a half days of in-school suspension (“ISS”) during that period. *Exhibit F*, pp. 12-15.
54. In addition, District acknowledges having Parents pick up Student twice when he was not suspended out of school. *Response*, p. 7. Although October 11, 2023 was recorded as an ISS, Student was suspended out of school. *Exhibit E*, p. 4; *Exhibit F*, p. 14; *Exhibit J*, p. 1624; *Exhibit 8*, p. 1. The SCO finds that this constitutes one day of OSS, not ISS.
55. On November 2, 2023 Parents were called to pick Student up from School because he was “yelling, cursing” and threatening to damage Case Manager’s computer. *Exhibit J*, pp. 2196-2197. Student would “not take a break, kick, throw a ball, or leave the [AN Center] to get into a safer space.” *Id.* Principal determined it was a safety concern because staff could not get help him regulate for such a long period of time. *Id.* School recorded it as an excused absence for half the day, noting that Parent picked Student up. *Exhibit F*, p. 13. The SCO finds that this constitutes a half day of OSS.
56. In November 2023, Student’s science class had a field trip to the zoo. *Interview with Parents; Exhibit J*, p. 528. Student would only be permitted to attend the field trip if he earned 85% or higher on all his point sheets between November 6 and November 15, 2023, six school days. *Exhibit J*, p. 2207; *Exhibit H*. The night before the field trip, Case Manager informed Parents that Student had not met the expectations to attend the field trip. *Exhibit J*, pp. 528-529. In lieu of Student participating in the field trip, Parents were instructed to keep him home and his absence was excused. *Id; Exhibit F*, p. 13. The SCO finds that excluding Student from the school day because of behavior constitutes another day of OSS.
57. Student was not suspended out-of-school for the rest of the year. *Exhibit E*, pp. 2-3; *Exhibit F*, pp. 9-12. He served one additional half day of ISS in May of 2024. *Exhibit F*, p. 9; *Exhibit J*, p. 1420. There is no evidence Parents were called to pick up Student at any other point. In total, the SCO finds that Student served three days of ISS and six and a half days of OSS.

I. AN Center Teachers

58. Building administrators are generally responsible for locating long-term substitutes for special education teachers in their buildings. *Interviews with Director and Assistant Director*. If they are unable to locate an appropriately licensed substitute, they can ask District's special education department for support. *Interview with Assistant Director*. In such cases, District will check for available contractors and/or work with building staff to see where other licensed special education teachers in the building can fill gaps. *Id.*
59. If they are unable to find a licensed special education teacher to provide services, District will put the substitute under the supervision of a licensed special education teacher who will help with scheduling and lesson planning. *Interview with Director*. Staff are then advised to continue monitoring progress so any regression can be identified and addressed. *Id.* District generally relies on other special education teachers in the building for this monitoring. *Id.*
60. Although there is an overall shortage of substitute teachers, School works hard to retain their list of substitute teachers, who are often former employees. *Interview with Principal*. With long-term vacancies, School starts by reviewing their list of substitutes to identify a candidate. *Id.* If they are unsuccessful, they get a list of candidates from District's human resources department. *Id.* It is especially hard to find substitutes for special education teachers. *Id.*
61. Case Manager went on extended leave on January 27, 2024. *Response*, p. 4. She returned on April 23, 2024. *Exhibit J*, p. 398. During this period, there were 53 school days. *Exhibit H*.
62. After going through their list as well as District's, School hired Substitute, a former paraprofessional, who is a licensed substitute teacher. *Response*, p. 5. Substitute is not licensed to teach special education. *Exhibit J*, pp. 1276-1278; *CDE Exhibit 1*.
63. During this period, Substitute covered the AN Center, with the support of Social Worker. *Response*, pp. 4-5, 12; *Interviews with Social Worker and Math Learning Specialist*. Math Learning Specialist's support of Student did not change while Case Manager was on leave. *Interview with Math Learning Specialist*.

J. Math Class

64. Student was enrolled in a co-taught, sixth grade math class. *Interviews with Math Teacher and Math Learning Specialist*. Math Learning Specialist was present three days per week. *Id.* They started class with a warm-up, followed by direct instruction if needed and then group work at white boards located throughout the classroom. *Id.* Math Teacher and Math Learning Specialist would move through the room supporting the small groups. *Id.* They would also pull students for 1:1 or small group instruction as needed. *Id.*
65. Math Learning Specialist tried to work with Student on his addition and subtraction goal, but he was very resistant to working individually with her. *Interview with Math Learning*

Specialist. Instead, when she was working with his group, she would specifically call on him for addition or subtraction steps. *Id.*

66. Student was often off task or disruptive, but always left the classroom before any more significant escalations occurred. *Interview with Math Teacher*. When Student was off task in class, Math Teacher walked over and quietly pointed to the correct page or provided reminders of the expectations. *Id.* Math Learning Specialist would provide Student with choices of what to work on and would focus on positive feedback instead of drawing attention to negative behaviors. *Interview with Math Learning Specialist*. If Student was off task, she often reinforced positive behavior in other students using School's token economy. *Id.*
67. Student's attendance in math was very inconsistent. *Interview with Math Teacher*. He initially came regularly, but he was only present about once a week in October through December. *Id.* He did not go to math twice in September, but including illnesses and suspensions, he missed math 13 times in October, 10 times in November and seven times in December, or 30 out of 49 days. *Exhibit F*, pp. 13-15; *Exhibit H*.
68. His attendance briefly improved with a new ISP in January, but once that ISP stopped working with him, Student almost never returned to math class. *Interview with Math Teacher*. Student missed two math classes in January. *Exhibit F*, p. 12. Between February and May he missed math class 40 times, almost always because he stayed in the AN Center. *Id.* at pp. 9-12. During that time, there were 68 school days. *Exhibit H*.
69. Because Student attended math so infrequently, most of the progress monitoring on his math goal took place in the AN Center. *Interview with Math Learning Specialist*. The AN Center purchased a workbook of third/fourth grade level math to use with students. *Interview with Social Worker*. Student worked on it when they could get him to complete work, about half a dozen times in the semester. *Id.*
70. Student reported to Parents that the only time he got instruction on math in the AN Center was when he had tests in class. *Exhibit J*, p. 337. The class did not have assignments or homework Student could work on in the AN Center, but Math Learning Specialist did get some tests that Student had completed in the AN Center. *Interview with Math Learning Specialist*.
71. Parents expressed concern that Student was enrolled in a sixth-grade math class that they believed to be above his ability level. *Exhibit J*, p. 554. In January 2024, they requested that Student receive 1:1 instruction in math from a "real math tutor or teacher." *Id.* They reiterated their concerns about Student's lack of progress in math in emails and during meetings with Assistant Director. *Interviews with Parents and Assistant Director; Exhibit J*, pp. 336, 374. Assistant Director indicated that Student would work on foundational math skills in the AN Center. *Interview with Assistant Director*.
72. During an IEP meeting in February 2024, they again raised concerns about his ability to make progress in a grade level math class given his ability level. *Exhibit A*, p. 32. They requested

that Student receive math instruction from a “tutor or private math teacher” and stated that he could not learn from online programs. *Id.*

73. In response to the concerns they raised in the IEP meeting, Parents were invited to observe the “instructional practices” used in School’s math classes. *Exhibit J*, p. 1521. No changes were made to Student’s IEP or math supports. *Interviews with Parents and Assistant Director.*

K. General Education Attendance

74. Student also struggled with attendance in other classes. *Interview with Social Worker; Exhibit F*, pp. 9-15. He sometimes refused to go to class. *Id.* Student would also return to the AN Center, or sometimes go to Principal’s office, when he was dysregulated. *Interview with Social Worker.* With time, he could usually regulate himself, but this sometimes took hours. *Id.*

75. Student had six classes per day, each of which was approximately one hour long. *Exhibit F*, pp. 2-3. For the first two trimesters, he was enrolled in four core academic classes, an elective and one special education class with Case Manager. *Id.* One special education class per day equates to 300 MPW outside of general education. *Id.* For the third trimester, Student was not enrolled in any special education classes. *Id.* at p. 3.

76. At the beginning of the year, Student was occasionally late, but generally attended his classes. *Id.* at pp. 14-15. However, starting September 15, 2023, Student was routinely marked as absent from classes but present in School, usually the AN Center. *Id.* at pp. 9-15. He missed one class the week of September 11, two the week of September 18, three the week of September 25, four the week of October 2, five the week of October 9 and three during the shortened week of October 16. *Id.* at pp. 13-15.

77. Starting the week of October 9, seven weeks into the year, Student missed an average of one class per day for the remaining five weeks of the trimester. *Id.* at pp. 3, 13-15.

78. He continued to miss an average of one class per day for the remaining four weeks of the calendar year. *Id.* at pp. 12-13. His attendance was better for two weeks after winter break and he only spent one extra period in the AN Center during that time. *Id.* at p. 12. During Case Manager’s last week, Student stayed in the AN Center for eight extra classes. *Id.* After that, he missed almost two classes per day for the remaining five weeks in the second trimester on February 23, 2024. *Id.* at pp. 3, 11-12.

79. From February 26, 2024 through the start of spring break three weeks later, he continued to miss about two classes per day. *Id.* After spring break, Student missed almost every general education class for the rest of the year—nine weeks. *Id.* at pp. 9-11; *Interview with Social Worker.* Case Manager was back for five of those weeks. *Exhibit J*, p. 398

80. Student failed five of his 18 classes and earned Ds in another eight. *Exhibit F*, p. 17.

L. Progress on 2023 IEP Goals

First Social Emotional Goal

81. The goals in Student's 2023 IEP were developed in January 2023. *Exhibit A*, p. 11. Student's first social emotional goal was demonstrating "positive/expected behaviors (examples: Following directions, using kind words, respecting classroom materials, positive interactions with others)" 90% of the day, up from 80%, based on daily point sheets. *Id.*
82. At the end of the 2023-2024 school year, Student was demonstrating positive interactions 85% of the time, although he was having "some struggles with being kind or following rules." *Exhibit G*, p. 2. In September 2023, Student was demonstrating positive behaviors 82% of the time according to point sheets. *Id.* However, his scores dropped continuously from September to October to November 2023, at which point he was demonstrating expected behaviors 56% of the time, and particularly struggling with following directions, using kind words and encouraging peers to participate in unexpected behaviors. *Id.*
83. Student's scores then increased in December 2023 and February 2024, at which point he was again demonstrating expected behaviors 81% of the time. *Id.* Although School indicated that Student continued to make progress after February, they do not offer any updated score to support that. *Id.*

Second Social Emotional Goal

84. His second social emotional goal was to "appropriately handle conflicts" in a small group setting, as measured by earning six points on an included eight-point rubric. *Exhibit A*, pp. 12-13. There was no baseline for this new goal. *Id.* Through the end of the 2022-2023 school year, Student earned threes and fours on this goal. *Exhibit G*, p. 3.
85. Although Student was "often resistant to the process," he continued to score threes and fours on the rubric through December 2023, maintaining previous progress. *Id.* In spring 2024, with prompting, Student was "more adept at identifying triggers" and talking through the size of the problem. *Id.* He earned fours and then his first five on the rubric in May 2024. *Id.*

Self-Determination Goal

86. Student's self-determination goal was to "demonstrate independence in the classroom from his 1:1, through the use of expected behaviors (appropriate interactions with others, following directions, on task, safe hands and feet) 2 out of 5 days of the week" from a baseline of having a 1:1 daily. *Exhibit A*, pp. 13-14. In Spring 2023, Elementary School noted Student "thrives on positive praise from adults" and was starting to demonstrate independence in the classroom. *Exhibit G*, p. 4. No numerical value was assigned to his ability. *Id.*
87. In November 2023, School noted that Student had not made sufficient progress on this goal, noting his decreasing scores on his point sheets. *Id.* The progress report noted that although

Student had tried going without an ISP, Student's "team [had] recognized the need for [Student] to have this level of support" going forward. *Id.* By May 2024, he still had not made sufficient progress as he was spending "an average of 90% of the day in the [AN Center] and complete[d] classwork an average of 15% of the time." *Id.*

Reading Goal

88. Student's reading goal was to "correctly answer cause/effect questions at the 4th grade reading level" with 70% accuracy, up from 30%. *Exhibit A*, p. 15. In spring 2023, he made insufficient progress, seeming to "guess a lot" when answering the questions. *Exhibit G*, p. 7.
89. In November 2023, he still had not made sufficient progress and was still having a hard time with the skill. *Id.* Although he started the year demonstrating about 40-45% accuracy, by November, his accuracy had again fallen, fluctuating between 0 and about 30% through February 2024. *Id.* However, in May 2024, School noted that when "focused" and "motivated" student was "able to answer some cause/effect questions" with 60% accuracy. *Id.*

Math Goal

90. His math goal was to "correctly answer double digit addition and subtraction problems with carrying and regrouping at a 70% accuracy rate, up from 20%. *Exhibit A*, p. 14. In Spring 2023, Student showed some growth in his ability to add, but he was more inconsistent with subtraction. *Exhibit G*, p. 8. He was answering questions with 35% accuracy. *Id.*
91. During the 2023-2024 school year, Student showed some growth through December 2023, with his accuracy slowly climbing from 30% to 50%. *Id.* Case Manager noted that Student often rushed and would forget steps. *Id.*
92. From January through March 2024, his abilities stayed around 50%, dropping to 40% in March. *Id.* However in May 2024 Student was noted to have "made huge progress on this goal," completing carrying and regrouping problems with 100% accuracy. *Id.*
93. Parents enrolled Student in private math tutoring outside of school on April 17, 2024. *Exhibit J* p. 396. From April 17, 2024 through September 30, 2024, Student attended two sessions per week. *Interview with Parents*. Invoices provided by Parents document that this tutoring has cost them \$239.25 per month, or a total of \$1,196.25. *Exhibit 24*. As Student has now met his math goal, District offered to reimburse Parents for the cost of the tutoring. *Response*, p. 12. Student's current IEP has him continuing to work on this same goal. *Exhibit A*, pp. 35-36.

Writing Goal

94. His writing goal was to "write a grammatically correct sentence (capitalization, grammar and punctuation)" with 80% accuracy, up from 40% accuracy. *Exhibit A*, p. 16. In spring 2023 Student was producing written work when asked and his grammar was improving, including capitalization, punctuation and use of proper nouns. *Exhibit G*, p. 9. In February 2023, he was

producing grammatically correct sentences with 50% accuracy, but no numerical value was provided for May. *Id.*

95. In fall 2023, Student’s work was “inconsistent depending on his mood” and he was demonstrating 40% accuracy. *Id.* His scores then fluctuated through February 2023, but generally trended upwards, with Student achieving 67% accuracy in February. *Id.* By the end of the year, he was able to produce sentences with 70% accuracy, although his work continued to depend on his mood. *Id.*

M. Other Students in the AN Center

96. While Case Manager was on leave, the AN Center included 10 other students (“Other Students”) in addition to Student. *Response*, pp. 11-12; *Exhibit L*. Student F enrolled in District on February 29, 2024, one month into Case Manager’s leave. *Exhibit M*, p. 179. None of the Other Students required an ISP according to their IEPs. *Id.* at pp. 1-191.

97. Student A’s IEP did not require any direct instruction from a special education teacher, outside of general education. *Id.* at p. 90. Nine of the Other Students’ IEPs required anywhere from 400 MPM to 960 MPW of direct instruction from a special education teacher outside of general education to work on a variety of social emotional, self-determination and academic goals. *Id.* at pp. 1-191. For instance, Student B’s IEP included 400 MPM of direct instruction from a special education teacher outside of general education to “address Student’s writing goal.” *Id.* at p. 134. Student C required 200 MPW of direct instruction with a special education teacher outside of general education “to provide additional work time with extra help and SEL lessons outside” of general education. *Id.* at p. 45. Students D and E each required 540 MPW of direct instruction in math and ELA outside of general education, in addition to 420 MPW of direct instruction in the AN Center. *Id.* at pp. 114,115, 175, 176.

98. While Case Manager was on leave for 53 days or three months, these Other Students did not receive any direct instruction from a special education teacher outside of general education. *Response*, p. 12; *Interview with Math Learning Specialist*. Thus, the SCO finds that Other Students B-J did not receive the direct instruction from a special education teacher consistent with their IEPs during this time.

99. In spring 2024, three Other Students failed to make progress on at least one goal while another four regressed on at least one goal and no progress was reported for an eighth. *Exhibit N*. Like Student, at least two Other Students were noted to have decreasing attendance in their general education classes throughout the spring. *See, e.g., Exhibit N*, pp. 18 and 35. However, Students A and B both made progress on their goals. *Exhibit M*, pp. 90, 134; *Exhibit N*, pp. 11-13, 21-22.

100. While this Complaint was pending, District reached out to the parents of Other Students (“Other Parents”) about their interest in compensatory services. *Exhibit P*. District was able to speak with the parents of seven of the Other Students, six of whom expressed interest in

compensatory services. *Id.* The parents of Student G, who was required to receive one hour per week of direct instruction, or 11 hours total during the period in question, were not interested in any compensatory services. *Exhibit M*, pp. 74-75; *Exhibit P*, p. 3.

101. Based on these conversations, District proposed a package of compensatory services for eight of the ten Other Students, including those whose parents they could not reach. *Exhibit P*. For two Other Students, District proposed participation in a yet to be identified “Social Emotional Learning (SEL) summer program.” *Id.* at p. 3. District’s proposal was the same number of hours for Student B, who made progress, and Student I, who regressed. *Id.* at pp. 1-2. The proposed award was also the same for Student E and Student F, although Student E missed almost three times as many hours of instruction. *Id.* at pp. 1, 4.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1(a): District ensured Student’s IEP and BIP were available to the staff responsible for their implementation, as required by 34 C.F.R. § 300.323(d). District complied with IDEA.

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

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

In this case, all of Student’s teachers met with Case Manager and Social Worker to review Student’s 2023 IEP and BIP. (FF # 28.) They had a second meeting a few weeks into the school year to talk about how best to support him. (FF # 30.) Teachers were also in ongoing contact with the AN Center staff about Student. (*Id.*) Principal and Assistant Principal also participated in the first meeting, and Principal also trained office staff to be able to support Student. (FF # 29.) Finally, the paraprofessionals in the AN Center got a copy of Student’s IEP summary on the first day of school and received ongoing training and support from Social Worker and Case Manager. (FF # 31.) Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323(d).

Conclusion to Allegation No. 1(b): District did not ensure that Substitute—the teacher providing the special education services in Student’s IEP—possessed the required certifications and licenses from January to April 2024, as required by 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04. This resulted in a denial of FAPE for Student and Other Students.

A. Implementation of Specialized Instruction

Parents’ concern is that Substitute did not possess the required license or certification while covering for Case Manager during her extended leave.

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

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

The IDEA does not excuse a district’s failure to comply with its requirements regarding the licensure/certification of special education teachers based on staff shortages. *Memorandum to State Directors of Special Education*, 81 IDELR 287 (OSEP 2022); *In re Student with a Disability*, 123 LRP 15403 (SEA NV 03/24/23) (finding charter school violated IDEA in employing substitute teachers with only standard substitute licenses, and no certification in special education, despite staffing shortage of licensed special education teachers); *see also El Paso Cnty. Sch. Dist. 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

Here, Student’s 2023 IEP required 600 MPW of direct support from a special education teacher outside of general education. (FF # 12.) Substitute was the only teacher providing instruction in the AN Center from January 27, 2024 through April 23, 2024, or three months or 53 days. (FF #s 63-65.) Substitute did not possess any certification or licensure in special education during this time. (FF # 64.) To the extent Student was enrolled in co-taught classes, those special education teachers did not provide any additional support during Case Manager’s leave. (FF # 65.) Moreover, because Student was attending math class so infrequently, Math Learning Specialist also left the monitoring of Student’s math goal to AN Center staff. (FF # 71.)

Since Substitute did not possess the required certifications and licenses for 53 days during the 2023-2024 school year, as required by 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04, the SCO finds and concludes that District did not implement two hours per day of special education instruction for 53 days, or a total of 106 hours, as required by 34 C.F.R. § 300.323. (FF #s 12, 63).

B. Materiality of Noncompliance

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. The failure to implement a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE).

“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.” *Van Duyn ex rel. Van Duyn*, 502 F.3d at 822. The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

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

Here, Student’s IEP required two hours per day of direct instruction from a special education teacher outside of the general education setting. (FF # 12.) For three months in a nine-month school year, Student did not receive any instruction from a special education teacher outside of general education. (FF #s 63-65.) The SCO finds that not receiving 106 hours of direct instruction is more than a minor deviation in his services. Moreover, during this time, Student made limited progress on one social emotional goal and did not make progress on his other social emotional goal or his self-determination goal. (FF #s 83-89.) Therefore, the SCO finds and concludes that District’s noncompliance with IEP implementation was material and resulted in a denial of FAPE.

C. Other Students

i. Implementation of Special Education Instruction

Here, the IEPs of nine Other Students required direct instruction from a special education teacher outside of the general education setting. (FF # 98.) Without an appropriately licensed special education teacher, District was also unable to provide those Other Students—Students B-J—with the special education services outside of general education that were required by their IEPs. (FF # 99.) Thus, the SCO finds and concludes that District did not implement their IEPs between January and April 2024, as required by 34 C.F.R. § 300.323(c)(2).

ii. Materiality of Noncompliance

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

Here, the noncompliance lasted for three months of a nine-month school year and involved an “essential element” of the IEPs for these Other Students. (FF #s 98-99.); *See Neosho R-V Sch. Dist.*, 315 F.3d at 1027. In addition, while Student B made progress, Students C-J did not make appropriate progress on at least some of their goals while Case Manager was absent. (FF # 100.)

Thus, the SCO finds and concludes the noncompliance was material and resulted in a denial of FAPE for Students C-J.

iii. Compensatory Services

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

Here, the SCO finds and concludes that an award of compensatory services is necessary to place the following Other Students in the positions they would have been in if not for noncompliance. While the SCO appreciates District’s efforts to contact Parents and propose remedies, the SCO finds that the proposed remedies are not appropriate to place Other Students in the position they would have been in if not for noncompliance. Specifically, the SCO finds and concludes that District’s proposed compensatory services exceed the needs of some Other Students and does not meet the needs of some Other Students. (FF # 102.)

Instead, the SCO finds and concludes that the following Other Students are entitled to direct instruction from a special education teacher to address progress on academic goals: **Student D** (25 hours); **Student E** (25 hours); **Student F** (20 hours); **Student H** (6 hours); and **Student I** (15 hours). In addition, the following students are entitled to direct instruction from a special education teacher and/or mental health provider to address progress on social emotional or self-determination goals: **Student C** (10 hours); **Student D** (15 hours); **Student E** (15 hours); **Student I** (10 hours); and **Student J** (10 hours). In determining each award, the SCO considered proposed compensatory services, the services required by Other Students' IEPs, and whether there was no progress, regression, or indeterminate progress due to a lack of reports. The parents of Student G were not interested in compensatory services. (FF # 101.)

Conclusion to Allegation No. 1(c): District provided Student with the behavior supports in his IEP and BIP, as required by 34 C.F.R. § 300.323(c). District complied with IDEA.

A. Building Rapport

Parents' concern is that School staff was not taking time to build rapport with Student.

Here, Student's 2023 IEP required noncontingent positive attention and his 2023 BIP required building rapport at the start of the relationship and at the start of each session. (FF #s 11, 16.) Student's providers built rapport with him by discussing preferred topics, like sports. (FF #s 33-36.) Math Teacher and Math Learning specialist had students complete a weekly check-in, to get to know their students. (FF # 34, 35.) Principal and Case Manager also watched Student play in basketball games with his recreational league. (FF # 36.) In response to increasing challenges, Student also spent extra time in the AN Center trying to build a relationship with Case Manager. (FF # 38.) Indeed, working to build rapport does not ensure that rapport will happen. Student takes time to establish trusting relationships, and he is generally slower to trust women. (FF #s 32, 39.) Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323.

B. Point Sheets

Parents' concern is that District was not using Student's point sheets to provide written positive feedback to Student.

Here, Parents wanted staff to provide positive reinforcement in writing, as part of his point sheets, and staff would try to comply. (FF # 42.) However, the 2023 IEP did not require that positive reinforcement be provided in writing or as part of the point sheets. Instead, Student's 2023 IEP and BIP required positive reinforcement for expected behaviors and opportunities to earn rewards for positive behaviors. (FF #s 11, 17.) Student received positive reinforcement verbally for expected behaviors. (FF # 43.) He was also able to earn rewards through School's token economy. (FF #s 38, 44.) Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323.

C. Response to Behaviors

Parents' concern is that District was not responding to Student's behaviors by following the guidelines in Student's BIP or giving him space to calm down.

Here, Student's 2023 IEP and BIP required avoiding power struggles where possible, giving Student choices, providing breaks in a designated space when escalated, redirecting Student while ignoring behaviors like disruptions or verbal teasing, responding with a calm and neutral tone and providing praise when unexpected behaviors stop or expected behaviors occur. (FF #s 11, 17, 20-24.)

Student was provided with choices and positive reinforcement. (FF #s 49, 67.) Staff provided gentle redirection, including reinforcement of positive behaviors in nearby peers. (*Id.*) Student was also very good at knowing which spaces or adults to seek out when he was dysregulated. (FF #s 53, 75.) He generally left class before having more significant behaviors. (FF # 67.) Perhaps as a result, his most significant behaviors usually occurred in the AN Center. (FF # 39.) There is no evidence to suggest that staff was not following Student's 2023 IEP and BIP. Instead, Student was struggling to establish trusting relationships with staff and to adjust to having six different classes with different teachers and expectations. Thus, the SCO finds and concludes that District complied with 34 C.F.R. § 300.323.

Conclusion to Allegation No. 1(d): District did not provide Student with the paraprofessional support in his IEP from August through December 2023, as required by 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE.

A. Implementation of Paraprofessional Support

Parents' concern is that Student did not have an ISP throughout the first half of the 2023-2024 school year.

Here, Student's 2023 IEP required "dedicated adult support" from an ISP "throughout his school day." (FF # 12.) Although he started the year with an ISP, she quit after the third day. (FF # 46.) After that, Student had intermittent support from other adults in the building for the rest of the calendar year. (FF #s 47-52.) Although the parties decided to see how Student fared without an ISP, they never modified his IEP. (FF # 47.) Parents and District also both agree that he still requires that level of support. (FF #s 50 and 88.) Because Student did not have dedicated adult support throughout his day, the SCO finds and concludes that District did not implement Student's dedicated support for four months, as required by 34 C.F.R. § 300.323.

B. Materiality of Noncompliance

The legal framework outlined in Allegation No. 1(b) regarding materiality of noncompliance with respect to IEP implementation applies here.

Here, Student’s IEP required adult support throughout his day. (FF # 12.) Instead, for most of the time from the start of the year through winter break, he had either shared support or no support in the general education setting. (FF # 46-52.) During this time, Student was struggling with behaviors that resulted in six and a half days of OSS and two days of ISS. (FF #s 54-58.) He was also having increasing difficulty going to/staying in the general education setting, resulting in increasing absences. (FF # 75-80.) The SCO finds that a lack of consistent adult support for half the school year is more than a minor deviation in Student’s services. Therefore, the SCO finds and concludes that District’s noncompliance with IEP implementation was material and resulted in a denial of FAPE.

Conclusion to Allegation No. 1(e): District did not educate Student in his LRE from August 2023 through May 2024, as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c). This resulted in a denial of FAPE.

A. Sending Student Home

Parents’ concern is that Student was not educated in his LRE because he was sent home or told to stay home because of his behavior.

Implicit in IDEA’s disciplinary provisions is a “principle that disfavors [using] discipline to make changes in the educational placement of a child with a disability. Rather, where a child with a disability has issues with behavior or self-control, [IDEA] shows a preference for dealing with those issues via the IEP process rather than via the disciplinary process.” *CDE, Guidance Memorandum Re: Discipline of Students with Disabilities*, at 1. Thus, discipline of a student with a disability may result in a change to the child’s placement and entitle the student to procedural protections under the IDEA. *See* 34 C.F.R. §§ 300.530, 300.536. A disciplinary change of placement occurs if: (1) a student has been removed from his current educational placement for more than 10 consecutive school days, or (2) a student has been subjected to a series of short-term removals that total more than 10 school days and constitute a pattern. *Id.* § 300.536(a).

School districts must consider both formal removals (such as suspensions) and informal removals. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161, Question A-6 (OSEP 2022), Question C6. Informal removals include “action[s] taken by school personnel in response to a child’s behavior that excludes the child for part or all of the school day, or even an indefinite period of time.” *Id.* at p. 54.

Here, considering formal and informal removals, Student was removed from school for a total of six and a half days. (FF #s 54-61.) He also served an additional three days of ISS. (*Id.*) Whether ISS constitutes a day of removal for these purposes requires a case-by-case analysis of the facts. 71 Fed. Reg. 46715. However, that analysis is not necessary in this case because Student was removed for, at most, nine and a half days. (FF # 61.) Because Student was not removed for more than 10 days, the SCO finds and concludes that a disciplinary change of placement did not occur. 34 C.F.R. § 300.536(a). Thus, District complied with 34 C.F.R. §§ 300.320(a)(5), 300.323(c).

B. Student Not Attending Classes

Parents' concern is that Student was not educated in his LRE because he spent most of his time in the AN Center instead of attending his general education classes.

"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.*

In this case, Student's LRE in his 2023 IEP was general education 63.5% of the time, with Student receiving several services outside of the general education setting, including 600 MPW of direct support (two hours per day) from a special education teacher outside of the general education setting. (FF #s 12-14.) Student was enrolled in one special education class per day, amounting to 300 MPW with a special education teacher. (FF # 76.) For the first month of school, Student generally attended his classes, so he was only spending 300 MPW with Case Manager. (FF # 77.) Over the next four weeks, he refused to go to class and spent an extra 10 periods or 600 minutes with Case Manager. (*Id.*) For the remainder of first trimester, Student spent an extra class with Case Manager every day. (FF # 78.) Thus, the SCO finds that for the first trimester, Student received 1,800 fewer minutes outside of general education than his 2023 IEP described.

For the first four weeks of second trimester, Student was in the AN Center for two periods per day, or 600 MPW, consistent with the 2023 IEP. (FF # 79.) Then, he was in the AN Center for 1,440 minutes over three weeks in January, so he missed out on 360 minutes of direct instruction from a special education teacher. (*Id.*) For the next eight weeks, Student was in the AN Center for a total of three periods per day, which means he was in general education 300 minutes less per week—2400 minutes total—than his 2023 IEP required. (*Id.*) However, as was discussed in the conclusion to Allegation No. 1(b), he was also not receiving any direct services from a special education provider. For the next nine weeks, he was almost never in his general education classes, missing out on significant time in general education. (FF # 80.) This also means that for the last five weeks of the year, he was getting an extra 1,200 MPW with a special education teacher, or an extra 100 hours total.

Because Student was almost always spending either more or less time in general education than his 2023 IEP described, the SCO finds and concludes that Student was not educated in the LRE described in his IEP, as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c).

C. Procedural Noncompliance

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child's right to a FAPE, significantly impedes the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

In this case, Student was initially not educated in his LRE because he was spending more time in general education than was contemplated by his 2023 IEP. During this period, he experienced numerous behavioral challenges that resulted in a combined eight and a half days of OSS and ISS. (FF #s 54-58.) He also had increasing difficulty maintaining in the general education environment, causing him to miss more and more classes, until he was skipping at least one class a day by mid-October. (FF #s 77-79.) The SCO recognized that Student's difficulties with the transition to middle school and the lack of consistent adult support likely also contributed to these challenges. (FF # 53.) However, he was not receiving required special education instruction to help support him through this transition. Thus, the SCO finds that not implementing Student's IEP caused a deprivation of educational benefit for Student.

Eventually, as Student's needs continued to increase, he was missing more and more classes, until he was spending less time in general education than contemplated by his 2023 IEP. (FF #s 79, 80.) At that point, Student was removed from the general education classroom because he was unable to maintain or learn in that environment. Therefore, these removals did not result in a denial of FAPE or a deprivation of educational benefit. However, removing Student from the general education classroom outside the confines of a properly convened IEP team meeting significantly impeded Parents' opportunity to participate in the decision-making process, as they were unable to participate in conversations about how best to support Student. For these reasons, the SCO finds and concludes that the noncompliance resulted in a denial of FAPE.

Conclusion to Allegation No. 2: District did not review, and as necessary revise, Student's 2023 IEP to address a lack of appropriate progress in math, as required by 34 C.F.R. § 300.324(b).

Parents' concern is that District did not appropriately revise Student's 2023 IEP to address his lack of progress in math.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Along with a statement of the special education

and related services to be provided to the student, an IEP must include measurable goals designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. *Id.* at § 300.320(a)(2). To allow for the evaluation of a student’s progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff’d*, 38 IDELR 63 (6th Cir. 2003, *unpublished*).

The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

Here, in January 2024, Parents raised concerns that Student’s math class was too hard, and that he needed 1:1 direct instruction at his level. (FF # 72.) His IEP goal from January 2023 was to correctly answer addition and subtraction problems with carrying and regrouping with 70% accuracy, up from 20%. (FF #s 82, 91.) In a year, he had made some progress but was still only solving problems with 50% accuracy. (FF # 92.) At that point, Student was missing about 60% of his math classes. (FF # 68.) When he was there, he was resistant to working with Math Learning Specialist on his goals. (FF # 66.) He was also frequently off task or disruptive. (FF # 67.)

Parents reiterated their concerns about Student’s limited math progress in an IEP meeting in February 2024. (FF # 73.) At that point, Student had not made any progress on his math goal since December 2023, and he continued to miss about 60% of his math classes. (FF #s 69, 93.) No changes were made to Student’s math goals or services after that meeting, and he continued to work on the same goal through the end of the 2023-2024 school year. (FF #s 74, 94.) A month after starting outside math tutoring, Student was able to master this goal. (FF #s 93, 94.) Nevertheless, Student’s current IEP has him continuing to work on this same goal. (FF # 94.)

For these reasons, the SCO finds and concludes that District did not review and as appropriate revise Student’s IEP to address his lack of progress in math from February 2024 to present, as required by 34 C.F.R. § 300.324(b).

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural noncompliance is only actionable to the extent it impedes the child’s right to a FAPE, significantly impedes the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE or causes a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008).

Here, Student made limited to no progress in math in the spring 2024 with the services in his IEP. (FF # 93.) He was also barely attending math class. (FF # 69.) However, he was quickly able to master the goal after starting private tutoring, showing that he could make progress on this goal. (FF #s 93, 94.) Thus, the SCO finds that District’s noncompliance impeded Student’s right to a FAPE and resulted in a deprivation of educational benefit.

Reimbursement and Compensatory Services: The noncompliance results in a need for reimbursement and compensatory services.

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of 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, Student missed out on a significant amount of direct special education and general education instruction. He ended up receiving Ds or Fs in almost all his classes. (FF # 81.) Over the course of a year and half, he made limited or no progress on several goals. (FF #s 82-96.) His IEP also was not revised to address a lack of expected progress in math.

With the benefit of individualized math tutoring, Student was able to quickly meet his math goal. (FF #s 93, 94.) District has agreed to reimburse Parents for the costs of Student’s math tutoring. As a result, the SCO finds that Parents are entitled to reimbursement of tutoring expenses through September 2024, in the amount of \$1,196.25.

Student’s lack of direct instruction also impacted his progress on his social emotional and self-determination goals. Here, the SCO finds and concludes that an award of 15 hours of compensatory services—specifically direct instruction from a licensed special education teacher or mental health provider—is necessary to place Student in the position he would have been in if not for District’s noncompliance.

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

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in BOCES. 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).

There is nothing in the Record which suggests that not implementing Student's ISP had any impact on the provision of services to other students in District or that other students were not getting the adult support required by their IEPs. (FF # 97.) Similarly, there is nothing in the Record which suggests that District did not revise any other IEPs as necessary.

Here, School had a process and took several steps to hire an appropriately licensed long-term substitute for Case Manager. (FF #s 59-63.) However, they were unable to identify anyone. (*Id.*) The lack of an appropriately licensed teacher impacted Other Students, and thus the SCO finds and concludes that it was systemic. (FF #s 97-100.) Since the systemic noncompliance for Other Students is addressed in this Decision, no further remedy is required.

REMEDIES

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

1. Ensuring a teacher possessed the required certifications and licenses, as required by 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.
2. Implementing the IEP, as required by 34 C.F.R. § 300.323.
3. Educating in the LRE described in the IEP, as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c).
4. Reviewing and as necessary revising the IEP to address lack of progress toward annual goals, as required by 34 C.F.R. § 300.324(b).

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

1. Corrective Action Plan

- a. By **Monday, November 11, 2024**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Assistant Director, Principal and all assistant directors of special education in District must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.156, 300.207, 300.320(a), 300.323, 300.324(a)(2), and ECEA Rule 3.04. This review must occur no later than **Friday, November 22, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Monday, December 2, 2024**. If the individuals identified in this paragraph are no longer employed by District when the review occurs, staff occupying identical roles must review the Decision. If District no longer has any of these roles, District may substitute individuals occupying roles with similar responsibilities.

3. IEP Meeting

- a. District must convene Student's IEP team, at a mutually agreeable date and time, by **Friday, December 13, 2024**. In consideration of all progress data, any recent evaluations of Student, and any information provided by Parents, Student's IEP team must review and, as necessary, revise Student's IEP, consistent with the requirements of the IDEA, to address Student's unique needs and the concerns identified in this Decision including: (1) reviewing Student's math goal and services; (2) ensuring the service delivery statement accurately documents the special education and related services to be provided to Student; and (3) considering any supplementary aids and services, including but not limited to behavioral supports, that Student needs to access his services.
 - i. This IEP review can be completed in conjunction with the consideration of the outstanding IEE of Student or in a separate IEP meeting.
 - ii. If Parents refuse to participate in the IEP meeting, District may convene a meeting without them, provided District diligently attempts to secure their participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure their participation rests solely with CDE. Regardless, District must still convene Student's IEP team in consideration of the concerns identified in this Decision.
- b. By Friday, December 20, 2024, District must provide notice of the IEP meeting as well as proof it was scheduled at a mutually agreeable date and time, proof of IEP team members, such as a signature page, a finalized IEP and BIP and a PWN documenting consideration of Parents' concerns and the concerns addressed in this decision, including the provision of services outside of general education, to the CDE Special Education Monitoring and Technical Assistance Consultant.

4. Reimbursement

- a. By **Monday, November 25, 2024**, District shall reimburse Parents \$1,196.25 for the math instruction provided to Student between April 2024 and September 31, 2024. As evidence of this reimbursement, by Monday, December 2, 2024, District shall submit a copy of the check for services to the CDE.

5. Compensatory Education Services for Student

- a. Student shall receive **15 hours of direct specialized instruction by an appropriately licensed special education teacher or mental health provider selected by District**. These services must be designed to advance Student toward current annual IEP goals related to social and emotional learning and self-determination.
- b. All compensatory services must be provided to Student no later than **August 15, 2025**.
- c. By **Monday, November 25, 2024**, Parents shall provide written consent for the provision of compensatory services to the CDE and District. If Parents do not provide written consent for services by this date, District will be excused from providing compensatory services. Unless otherwise specified by the District, this written consent shall be provided by Parent to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
 - i. Parents may opt out of some or all of the compensatory services.
- d. If written consent for the provision of compensatory services is received by **Monday, November 25, 2024**, District shall schedule compensatory services in collaboration with Parents. District shall submit the schedule of compensatory services to the CDE by **Friday, December 6, 2024**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
 - i. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - ii. If the District and Parents cannot agree to a schedule by **Friday, December 6, 2024**, District and Parents must meet either in-person or via video conference to resolve scheduling complications by **Friday, December 13, 2024** and submit the schedule by **Wednesday, December 18, 2024**.

- iii. If the District and Parents cannot agree to a schedule by **Friday, December 13, 2024**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parents, including but not limited to, copies of correspondence sent to the Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Friday, December 20, 2024**.
- iv. By **Friday, January 3, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services.
- e. The parties shall cooperate in determining how compensatory services will be provided. If Parents refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that District diligently attempts to meet with 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.
- f. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- g. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- h. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).
- i. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service

scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents, as well as notify the CDE of the change in the appropriate service log.

6. Compensatory Education Services for Other Students

- a. The following Other Students shall receive direct specialized instruction from an appropriately licensed special education teacher selected by District in these amounts: **Student D** (25 hours); **Student E** (25 hours); **Student F** (20 hours); **Student H** (6 hours); and **Student I** (15 hours). These services must be designed to advance Other Students toward current annual academic IEP goals.
- b. The following Other Students shall receive direct specialized instruction from an appropriately licensed special education teacher and/or mental health provider selected by District in these amounts: **Student C** (10 hours); **Student D** (15 hours); **Student E** (15 hours); **Student I** (10 hours); and **Student J** (10 hours). These services must be designed to advance Other Students toward current annual IEP goals related to social and emotional learning and self-determination and can be provided in a group setting, at District's discretion.
- c. All compensatory services must be provided to Other Students no later than **August 15, 2025**.
- d. By **Monday, December 2, 2024** Other Parents shall provide written consent for the provision of compensatory services to the CDE and District. If Other Parents do not provide written consent for services by this date, District will be excused from providing compensatory services, provided District has made diligent attempts to reach those Other Parents. Unless otherwise specified by the District, this written consent shall be provided by Other Parents to Director. District must then provide to CDE Special Education Monitoring and Technical Assistance Consultant either: (1) the written consent or (2) all documentation evidencing diligent attempts to contact Other Parents including but not limited to, copies of correspondence sent to Other Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls). A determination that District has made diligent efforts to contact Other Parents and should be excused from providing compensatory services rests solely with the CDE.
 - i. Other Parents may opt out of some or all of the compensatory services.
- e. If written consent for the provision of compensatory services is received by **Monday, December 2, 2024**, District shall schedule compensatory services in collaboration with Other Parents. District shall submit the schedule of

compensatory services to the CDE by **Friday, December 20, 2024**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.

- i. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - ii. If the District and Other Parents cannot agree to a schedule by **Friday, December 20, 2024**, District and Other Parents must meet either in-person or via video conference to resolve scheduling complications by **Friday, January 17, 2025** and submit the schedule by **Wednesday, January 22, 2025**.
 - iii. If the District and Other Parents cannot agree to a schedule by **Friday, January 17, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with those Other Parents, including but not limited to, copies of correspondence sent to the Other Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Friday, January 17, 2025**.
 - iv. By **Friday, January 31, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services to that Other Student.
- f. The parties shall cooperate in determining how compensatory services will be provided. If any Other Parents refuses to meet with the District within this time, the District will be excused from delivering compensatory services to that Other Student, provided that District diligently attempts to meet with Other Parents and documents such efforts. A determination that District diligently attempted to meet with Other Parents and should thus be excused from providing compensatory services to a specific Other Student, rests solely with the CDE.
- g. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Other Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished.

Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- h. To verify that Other Students have received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- i. These compensatory services will be in addition to any services Other Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. These compensatory services must be provided to Other Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Other Students are not deprived of the instruction they are entitled to (including time in general education).
- j. If for any reason, including illness, Other Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Other Parents, as well as notify the CDE of the change in the appropriate service log.

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

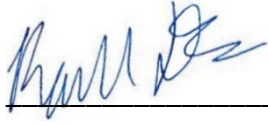
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 10th day of October, 2024.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-9

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence
- Exhibit 3: Point Sheet
- Exhibit 4: Correspondence
- Exhibit 5: Incident Report
- Exhibit 6: Correspondence
- Exhibit 7: Behavior Report
- Exhibit 8: Point Sheet
- Exhibit 9: Correspondence
- Exhibit 10: Correspondence
- Exhibit 11: Correspondence
- Exhibit 12: Correspondence
- Exhibit 13: Progress Report
- Exhibit 14: Correspondence
- Exhibit 15: Correspondence
- Exhibit 16: Correspondence
- Exhibit 17: Correspondence
- Exhibit 18: Progress Report
- Exhibit 19: Correspondence
- Exhibit 20: Correspondence
- Exhibit 21: Correspondence

Response, pages 1-12

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluation
- Exhibit D: Notices of Meeting
- Exhibit E: Behavior Details
- Exhibit F: Attendance, Grades, etc.
- Exhibit G: Progress Report
- Exhibit H: Calendar
- Exhibit I: Policy
- Exhibit J: Correspondence
- Exhibit K: Verification of Delivery
- Exhibit L: List of Students
- Exhibit M: IEPs
- Exhibit N: Progress Reports
- Exhibit O: Schedules

- Exhibit P: Compensatory Services Proposal

Reply, pages 1-31

- Exhibit 22: Prior Complaint
- Exhibit 23: Verification of Delivery
- Exhibit 24: Invoices
- Exhibit 25: Contract

CDE Exhibits

- CDE Exhibit 1: Teacher Certification

Telephone Interviews

- Parents: September 11, 2024
- Assistant Director: September 16, 2024
- Director: September 16, 2024
- Principal: September 16, 2024
- Social Worker: September 16, 2024
- Math Teacher: September 16, 2024
- Math Learning Specialist: September 18, 2024
- Paraprofessional: September 18, 2024