

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

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**State Complaint SC2025-603**  
**Pueblo County School District 70**

**DECISION**

**INTRODUCTION**

On August 26, 2025, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state complaint (“Complaint”) against Pueblo County School District 70 (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A final written decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

**RELEVANT TIME PERIOD**

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was properly filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after August 26, 2024. Information prior to August 26, 2024 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)<sup>2</sup> of the IDEA:

1. District did not review and, as appropriate, revise Student’s Individualized Education Plan (“IEP”) from August 26, 2024 to October 3, 2024 to address:

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

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

- a. Information about Student provided by Parents—specifically regarding safety and behavior needs—as required by 34 C.F.R. § 300.324(b)(1)(ii)(C); and
  - b. Behavior impeding Student’s learning, as required by 34 C.F.R. § 300.324(b)(1)(ii)(D).
2. District did not fully implement Student’s IEP from August 26, 2024 to October 3, 2024 because it:
    - a. Did not make the IEP accessible to teachers and service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d);
    - b. Did not provide the accommodations listed in the IEP—specifically, access to an alternative or augmentative communication (“AAC”) device, access to snacks and water, and bathroom breaks—as required by 34 C.F.R. § 300.323(c); and
    - c. Did not educate Student in the least restrictive environment (“LRE”) listed in the IEP—specifically, time in the general education classroom—as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c).

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is six years old and attended kindergarten at a significant support needs (“SSN”) center-based program at a District elementary school (“School”) from August 12, 2024 to October 3, 2024. *Exhibit A*, p. 1; *Exhibit M*, p. 3. During this time, Student attended 22 out of 30 school days. *Exhibit I*, pp. 4-6; *Exhibit K*; *Interview with District Special Education Director (“Director”)*; *Response*, p. 2. On October 3, Parents withdrew Student from School, citing that it was not “safe or conducive to learning.” *Exhibit M*, p. 3; *Interview with Parents*. She is now enrolled in a different district. *Interview with Parents*.
2. Student qualifies for special education under the disability category of Autism Spectrum Disorder (“ASD”). *Exhibit A*, p. 3.
3. Student is a fast learner, has a great sense of humor, and loves playing with water, dancing, and listening to music. *Interviews with Parents*, *Private Board Certified Behavior Analyst (“Private BCBA”)*, and *District Board Certified Behavior Analyst (“District BCBA”)*.

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

4. Student is non-verbal, and her difficulties in functional communication affect her ability to interact with peers, communicate with adults, and express her daily-living needs, such as hunger and toileting. *Interviews with Parents, District BCBA, Student’s kindergarten teacher and case manager (“Case Manager”), and Student’s paraprofessional (“Paraprofessional”).*
5. This investigation involves the review, revision, and implementation of one IEP, dated October 31, 2023 (the “IEP”), in effect when Student attended School. *See Exhibit A*, pp. 1-26.

#### **B. District’s Policies, Practices, and Procedures**

6. Following the Colorado legislature’s 2022 passage of House Bill 22-1260—legislation pertaining to student access to medically necessary services within schools—District developed Policy JLCDC, “Medically Necessary Treatment in School Setting.” *Exhibit L*, pp. 1-4. This policy makes it the responsibility of a student’s IEP team to “determine whether any medically necessary treatment must be provided to the student within the school setting in order for the student to access their education.” *Id.* at p. 1.
7. The policy does not prevent District “from using its own staff, if qualified . . . to provide medically necessary treatment that a student’s IEP team . . . has determined must be provided in the school setting.” *Id.* at p. 2. Further, the policy does not require District to permit a third-party “to determine or provide special education or related services in the school setting in a way that interferes with [District’s obligations] and authority under federal law.” *Id.*
8. Under this policy, District allows private health-care specialists, such as behavior technicians, access to the school setting to provide medically necessary treatment or to observe students and collaborate with District personnel “subject to . . . procedures concerning visitors to schools and all other applicable policies . . .” *Id.*
9. District requires that parents complete a “Medically Necessary Treatment in School Setting Physician/Licensed Health Care Provider Statement” form with certification from a physician or health care provider that student requires medically necessary treatment that “can only” be provided during school hours and in the school setting. *Id.* at pp. 5-7.
10. Regarding special education practices, District provides a special education handbook to all District special education teachers and paraprofessionals. *Interview with Director; see Exhibit T*, pp. 26-33. The handbook includes procedures and practices related to the IEP development process and IEP implementation. *Id.*
11. District offers training at the beginning of each school year to all special education teachers and paraprofessionals. *Interview with Director*. This training covers IEP implementation, including making IEPs accessible to those responsible for implementation, and IEP development. *Id.* District also held a training in Fall 2024 on IEP development. *Id.*
12. District special education coordinators serve as “IEP approvers” to ensure that IEPs developed by IEP Teams are compliant with IDEA procedures. *Interviews with Director and District*

*special education coordinator (“Coordinator”).* Approvers review IEPs—developed and written by school IEP teams—to ensure they include required content and components. *See id.*

### C. The IEP

13. An IEP team—including Parents, Director, Student’s preschool special education teacher (“Preschool Case Manager”), general education teacher, speech language pathologist, and two school psychologists—developed the IEP when Student attended a preschool SSN program at another District elementary school (“Preschool”). *Exhibit A*, p. 4.
14. The IEP summarizes Student’s present levels of educational performance, describing her strengths, interests, preferences, results of evaluations and assessments, and input from teachers. *Id.* at pp. 5-14.
15. Regarding communication levels, Parents reported that Student could “show that she is hungry or thirsty,” “drink[] from a child[-]sized cup without help,” and “indicate she needs to use the restroom.” *Id.* at pp. 9, 12. Preschool Case Manager also reported that Student could request “a desired action, person or object, by . . . reaching for the item or taking the item herself” and “items not present or wants/needs by using the iPad or pictures.” *Id.* at p. 13. Similarly, she would “point to pictures or object to indicate a choice,” such as a snack choice. *Id.* Observations also reflect that she could make “an intentional choice related to snack time,” “indicate what snack she want[ed] by pointing to the item or pointing to a picture on the iPad.” *Id.* at p. 14.
16. This section also documents how Student used functional communication in Preschool: she expressed refusal by “pushing items away, screaming, throwing self on floor;” made requests by “reaching for the item or taking the item herself [or requesting] items not present or wants/needs by using the iPad or pictures;” and provided information by “point[ing] to pictures or objects to indicate a choice.” *Id.* at p. 13.
17. The IEP describes her needs and impact of disability. *Id.* at p. 14. She required “significant adult supervision to safety[-]monitor behaviors such as eloping, and engaging in other unsafe behaviors,” “assistance in personal hygiene routines such as washing hands and reminders to use toilet,” and “significant adult support in the areas of academics, social-emotional skills, life skills, and communication.” *Id.* Student needed to “continue to develop her ability to communicate her needs and wants, whether that be through signing, pointing to pictures or verbalizing.” *Id.*
18. Student “has unique communication needs” and “uses a combination of single words and signs to communicate. She will need to use words, signs and access to a picture exchange system to communicate wants, needs, and to demonstrate her knowledge.” *Id.* at p. 16.
19. Student did not exhibit behavior requiring a Behavior Intervention Plan (“BIP”). *Id.*

20. The IEP includes five annual goals: two each in pre-academics and communication and one in social/emotional wellness. *Id.* at pp. 16-19.

21. The IEP includes several accommodations, including reminders to use the toilet. *Id.* at p. 19.

22. Under the IEP, Student required the following services:

- Classroom Support: 659 minutes per week of direct instruction from an early childhood special educator ["ECSE"] outside the general education classroom; 40 minutes per week of direct instruction from an ECSE inside the general education classroom;
- Speech and Language: 90 minutes per month of direct instruction from a speech language pathologist or speech language pathology assistant, outside the general education classroom.

*Id.* at p. 22.

23. The IEP's service delivery statement notes that Student "will visit the general education classroom with the ECSE [or a paraprofessional] during targeted opportunities such as center play, small group, recess, and other activities for at least 40 minutes weekly" with the goal of increasing time in the general education classroom "according to her abilities." *Id.* at p. 21. This section further notes that Student required assistance with hygiene routines and would be monitored by "staff for safety/dangerous behavior as needed on a daily basis." *Id.*

24. Finally, the IEP concludes that Student's LRE was a separate class within Preschool's SSN program with 5.6% of time in the general education environment. *Id.* at p. 24. The IEP team selected this LRE because of "increased adult support to meet [Student's] unique needs and to support her development. The SSN program will allow [Student] to participate in small groups and will provide opportunities to work with teachers one-on-one." *Id.* The disadvantage of this LRE—"limited access to peer modeling of expected social behavior"—would be mitigated by Student's "scheduled opportunities to engage with typically developing peers each day." *Id.*

#### **D. Start of the 2024-2025 School Year**

##### **Student's Transition to Kindergarten**

25. On May 21, 2024, Student's Preschool IEP Team held a meeting with Parents to discuss her transition from Preschool to School. *Interviews with Parents and Coordinator; Exhibit M*, pp. 41-42; *Exhibit 1*, pp. 140-143. The purpose of the meeting was for Parents to "meet the kindergarten team and ask questions about what services in kindergarten might look like. [Student's] new team [would] also be able to ask about her strengths, preferences, and needs in the SSN classroom and the general education classroom." *Exhibit M*, p. 42.

26. Another School special education teacher (“SSN Teacher”), not Case Manager, attended this meeting. *Id.* At that time, SSN Teacher served all students enrolled in School’s SSN program. *Interviews with Coordinator and Director.* However, due to higher enrollment in the 2024-2025 school year, District created two separate SSN classrooms and hired Case Manager to support kindergarteners, including Student. *Id.*
27. School’s SSN program is designed to support students with autism. *Interviews with Principal and Director.* District structures its SSN classrooms using the clinical Treatment and Education of Autistic and Communication Handicapped Children (“TEACCH”) method. *Interview with Director.* Accordingly, Student’s classroom had designated sensory areas, individual work areas, collaborative spaces for learning, and visual schedules to support children, like Student, with functional communication challenges. *Id.*
28. Student started at School on August 12, 2024. *Exhibit K*, p. 1. She was scheduled to attend its SSN program for half days, from 7:40 to 11:30 AM four days per week. *Exhibit I*, pp. 1-2; *Interview with Director.* District has a four-day school week. *Interview with Principal; see Exhibit K.* In the afternoon, one of Student’s private registered behavior technicians (“Private RBT 1” and “Private RBT 2”) picked Student up from School for Applied Behavior Analysis (“ABA”) therapy. *Response*, p. 2; *Interviews with Principal, Private BCBA, and Parents.*
29. Student’s classroom included nine students, Case Manager, and between three and four paraprofessionals. *Interview with Director.* This environment and student-to-staff ratio was similar to Student’s Preschool classroom. *Id.*

#### August 21, 2024 IEP Team Meeting

30. On August 21, 2024—the seventh day of school—Student’s IEP Team convened at Parents’ request to discuss Student’s IEP and needs. *Exhibit M*, pp. 77, 87-88; *Interviews with Parents, Coordinator, and Principal; see Exhibit K*, p. 1.
31. At the meeting, Parents requested that Student have access to snacks and water and designated breaks for eating. *Interviews with Parents, Case Manager, and Coordinator.* District assured Parents that all students in the classroom have continual access to snacks and water, designated food breaks throughout the day, and would be provided snacks whenever requested. *Interviews with Case Manager, Principal, and Coordinator; see Exhibit I*, p. 1.
32. The IEP Team agreed that Student required continual access to an AAC device given her reliance on the device for communicating wants and needs. *Interviews with Parents, Case Manager, District BCBA, District Assistive Technology Specialist (“AT Specialist”), and Principal; see Exhibit 2*, p. 5.
33. The IEP Team also discussed whether Student’s Private RBTs could attend School with Student daily. *Interviews with Parents, Coordinator, Principal, and Director; see Exhibit D*, p. 5.

34. Parents wanted her Private RBTs to attend School with Student immediately because of sudden and intense behaviors—such as screaming and crying on the way to School, devouring food after School, grunting, and aggression—that Parents and Private RBTs noticed at home and in ABA therapy since she started School. *Interviews with Parents and Private BCBA.*
35. Because Student’s Private RBTs had already worked with Student for two years, the goal was to create a “fade out” plan where either Private RBT 1 or Private RBT 2 would attend School with Student to coach Case Manager and Paraprofessional on how to manage Student’s behaviors. *Id.* To Parents, having Student’s Private RBTs attend “was the most important thing” and was medically necessary for Student. *Interviews with Parents.*<sup>4</sup>
36. District was open to Private RBTs supporting, but it first wanted to ensure that any arrangement would follow District procedures for non-staff visitors. *Interviews with Coordinator, Principal, and Private BCBA; See Exhibit D, p. 5; Exhibit L, pp. 1-7.*
37. District also wanted to set expectations for the scope of Private RBTs’ role in the classroom. *Interview with Principal.* District was hesitant to allow Student’s Private RBTs to attend because unfamiliar adults could distract or confuse other students. *Id.* Given the start-of-year timeframe, District also wanted more time to assess whether its current staffing was adequate to address Student’s behavior and to see if Student’s behavior would improve after she settled into routine. *Interviews with Coordinator, Principal, and Director.*
38. The IEP Team agreed for Private RBT 1 to conduct an observation of Student in the school setting before determining the details of Private RBTs’ attendance. *Interviews with Parents, Coordinator, Principal, and Director.* District advocating for more time to assess the request and to ensure it was following its own protocol was appropriate and consistent with District’s policy on medically necessary treatment. *Interview with CDE Specialists 1 and 2.*
39. Student’s IEP Team did not amend or revise Student’s IEP following this meeting to reflect any decisions made regarding the offer of FAPE. *Interviews with Parents, Case Manager, Coordinator, and Director.*

**E. Student’s Behavior: August 26 to September 12, 2024**

40. Parents’ concern is that School did not review and revise, as appropriate, the IEP to address information they provided about Student’s safety and behavior needs, including their request for Private RBTs to attend School daily. *Interview with Parents; Complaint, pp. 3-4.*

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<sup>4</sup> Parents obtained a physician’s note indicating that their request was medically necessary, but they did not complete the District’s required “Medically Necessary Treatment in School Setting Physician/Licensed Health Care Provider Statement” because they decided to disenroll Student. *Interview with Parents and Director; see Exhibit L, pp. 5-7.*

41. Student attended seven out of 11 days of School between August 26 and September 12 because she was sick. *See Exhibit I, p. 6; Exhibit K; Interviews with Director and Parents.*
42. During this timeframe, Parents observed that Student’s behavior at home was “regressing,” “disturbing,” “not right,” and “off” since starting at School. *Interview with Parents.* Student was having increased and more severe “meltdowns”—including screaming and yelling, aggression, grunting, and anger—at home and in ABA therapy. *Interview with Parents.*
43. Parents were also concerned about Student’s behavior at School based on daily “Know My Day” reports from Case Manager. *Interview with Parents; see Exhibit M, pp. 106-122; Exhibit 1, pp. 1-19.* Parents reached out to Case Manager for clarification about Student’s behavior, to express concern, and to offer help. *Interview with Parents; see Exhibit M, pp. 126-128.* Overall, Parents were concerned about the frequency and intensity of Student’s known behaviors, such as spitting and eloping, and the occurrence of new behaviors such as throwing. *Interviews with Parents; see Exhibit 1, pp. 24-26.*
44. Case Manager did not communicate with Parents at the frequency and with the detail that Preschool Case Manager had; as such, Parents sensed “red flags” and that they were not receiving accurate information about Student’s days. *Interviews with Parents, Coordinator, and Director; see, e.g. Exhibit 1, pp. 69, 71-72.*
45. School staff reported that Student’s behaviors during this timeframe were challenging. *Interviews with Case Manager, Paraprofessional, and District BCBA.* Student was spitting, screaming, throwing items, and eloping in the classroom. *Interview with Case Manager; see Exhibit M, pp. 107-113.* District BCBA noted that she was engaging in “dropping” behaviors and running away from staff within the classroom to escape demands. *Interview with District BCBA.* Paraprofessional reported similar behavior. *Interview with Paraprofessional.*
46. District BCBA and Paraprofessional reported that Student’s behaviors could be unsafe at times: for instance, Student put rocks into her mouth on the playground and would drop the ground quickly and risk scraping her legs. *Interviews with District BCBA and Paraprofessional.*
47. District BCBA, Paraprofessional, and Case Manager collaborated to support Student’s behaviors. *Interviews with District BCBA, Paraprofessional, and Case Manager.* While noting the behaviors were challenging and could be unsafe, School staff reported that they were not especially high-risk. *Interviews with District BCBA, Case Manager, Paraprofessional, and Coordinator.* Given anticipated regression at the start of the year, collaboration to establish effective behavior management techniques, and confidence that Student would settle into a routine with time and more frequent attendance, District expected that Student’s behavior would improve. *Interviews with District BCBA, Coordinator, Director, and Case Manager.*

September 10, 2024: Behavioral Observation

48. Parents and District agreed for Private BCBA to observe Student in the School setting to develop a better sense of Student’s behavioral needs before Private RBTs would attend School with Student. *Interviews with Parents, Principal, Director, and Private BCBA.*
49. Private BCBA conducted the observation on September 10. *Exhibit M*, pp. 20-30. Private BCBA has been a licensed BCBA since 2019 and worked for ten years prior as an RBT in a range of settings, including schools. *Interview with Private BCBA.* Case Manager, Paraprofessional, and District BCBA were present during the observation. *Interviews with District BCBA and Private BCBA.*
50. Private BCBA observed Student avoiding tasks, spitting and throwing items at staff and peers, dropping to the floor, running away from School staff throughout the classroom and down the hallway, and pushing others. *Exhibit M*, pp. 23-30. On the playground, Private BCBA observed Student falling to the ground, throwing wood chips at Case Manager, and putting wood chips in her mouth. *Id.* at pp. 24-25.
51. The behaviors exhibited during the observation, while intense and slightly regressed, were typical and expected for Student—especially considering anticipated regression given a new environment, absences, and half-day attendance at Parents’ choosing. *Interviews with Private BCBA, District BCBA, Case Manager, and CDE Specialists 1 and 2.* The behaviors Private BCBA observed “were common since it was a new location; we knew there was going to be an increase in behaviors. That is why we wanted to go in [to School with Private RBT support]: to prevent magnitude of [Student’s] behaviors because they can be intense and we were seeing slight regression.” *Interview with Private BCBA.*
52. During her observation, Private BCBA and District BCBA discussed behavioral strategies to implement with Student. *Interviews with Private BCBA and District BCBA.* District BCBA was receptive to Private BCBA’s input. *Id.* He shared, modeled, and implemented Private BCBA’s recommendations, such as planned ignoring, with Case Manager and Paraprofessional during the observation and after. *Interviews with District BCBA and Paraprofessional.*
53. On September 10, 2024, Parents requested an IEP Team meeting “as soon as possible” to discuss Private BCBA’s observation. *Exhibit M*, p. 57. The next day, School scheduled an IEP meeting for September 12, 2024. *Id.* at p. 13.

#### **F. September 12, 2024: IEP Team Meeting**

54. Parents, Private BCBA, Case Manager, Principal, Coordinator, and Director attended the September 12 IEP Team meeting to discuss Private BCBA's observation, Student's behavior, and Parents' concerns. *Exhibit M*, at p. 13; *Exhibit C*, p. 2; *Exhibit D*, pp. 2-5.
55. Private BCBA recommended: School use physical prompts to guide her if eloping; Private RBTs model strategies to School; use of fewer words; shorter work time; noise-cancelling headphones; sensory items; a "first-then" visual; scheduled breaks; and use of a sensory room as a positive reward. *Exhibit D*, p. 4; *Exhibit S*, p. 1; *Interviews with Private BCBA, Parents, Director, and Coordinator*. Most of these recommendations were already included in Student's IEP. See *Exhibit A*, p. 19.
56. School was receptive to all recommendations and agreed to try noise-cancelling headphones, Student-preferred sensory items for positive reinforcement, and adding scheduled breaks into Student's schedule. *Exhibit D*, p. 4; *Exhibit S*, p.1; *Interviews with Coordinator, Principal, Director, and Private BCBA*. School also agreed to gather data on Student's elopement to "develop a formal behavior plan if needed." *Id.*
57. Finally, the IEP Team agreed that Student's Private RBTs would attend School twice a week, on Mondays and Wednesdays, from 8:30 AM to 12:00 PM starting on September 16. *Exhibit S*, p. 1; *Exhibit D*, p. 4; see *Exhibit K*. Either Private RBT 1 or Private RBT 2 would attend to "provide guidance and suggestions" for working with Student. *Exhibit D*, p. 4; *Interviews with Private BCBA, Parents, Director, Principal, and Coordinator*. Per District policy, District required Private RBTs to complete all steps required for non-staff visitors. *Interview with Parents, Coordinator, and Director*.
58. District did not amend or revise Student's IEP following this meeting. *Interviews with Parents, Coordinator, Case Manager, and Director*.
59. Coordinator stated that an IEP modification would not have been necessary following this meeting because most recommendations discussed—such as sensory fidgets, and shorter work chunks—were already captured by Student's IEP. *Interview with Coordinator*. Coordinator also perceived that other agreed-upon supports were temporary measures that School would attempt and, if successful based on data, would then incorporate into an updated IEP. *Id.*
60. Director acknowledged that District could have amended Student's IEP to at least add use of noise-cancelling headphones as an accommodation. *Interview with Director*. However, Director stated that School needed time to evaluate the effectiveness of Private BCBA's recommendations, gather data, and get to know Student before undertaking an entire IEP update—especially given that Student's annual review was scheduled for October 2024. *Id.*

### **G. Student's Behavior: September 16 to October 3, 2024**

61. Student attended 11 of 12 days of School during this period. *See Exhibit I, p. 6; Exhibit K; Interview with Director.* Private RBT 1 or Private RBT 2 attended School on Mondays and Wednesdays from 8:00 AM to 12:30 PM starting on September 16. *See Exhibit D, p. 4.*
62. Student used noise-cancelling headphones in School. *See Exhibit 1, pp. 1, 6, 9.* Additionally, Case Manager updated Student's "Know My Day" report to feature more detailed reporting on specific behaviors, such as elopement and spitting. *Compare Exhibit 1, pp. 1-7 with id. at pp. 11-18.* Case Manager, Paraprofessional, and District BCBA also worked with Private RBTs on recommended behavior management strategies. *Interviews with Case Manager, Paraprofessional, District BCBA, Coordinator, and Director.*
63. Parents expressed concern with Student's behaviors and School's response given feedback from Private RBTs. *Interviews with Parents; see Exhibit 1, pp. 100-102.*
64. From School's perspective, Student's behavior, though still challenging, was starting to improve slightly with time and as staff became more familiar with Student, used her AAC, and implemented recommendations from Private BCBA. *Interviews with District BCBA and Paraprofessional.* Student was still exhibiting prior observed behaviors but had more reported overall "good" or "great" days compared to "fair" or "struggle" days. *See Exhibit 1, pp. 1-11.*
65. School wanted to collect data on Student's behaviors to determine if Student required a BIP. *Interviews with District BCBA, Coordinator, and Director.* District BCBA saw room for improvement and anticipated that Student might benefit from a BIP depending on the data. *Interview with District BCBA.*
66. On September 26, Coordinator, School Psychologist, and Case Manager discussed performing "observations for [Student] to begin developing a [BIP] if needed." *Exhibit M, p. 46.*
67. On September 30, District sent a PWN to Parents proposing to conduct a Functional Behavioral Analysis ("FBA") to "collect data to determine if a [BIP] should be added to [Student's] IEP." *Exhibit C, p. 3; see Exhibit M, pp. 8, 124.* District proposed this action because Parents and Private BCBA "brought up concerns related to behaviors of concern which include spitting and eloping" at the September 12 IEP meeting. *Exhibit C, p. 3.* District noted that "data should be collected to determine the frequency and intensity of the behaviors mentioned to determine if they arise to the level of concern that warrants a formal plan." *Id.*
68. On October 1—the next school day—District Psychologist emailed Parents to remind them of Student's upcoming annual IEP review meeting tentatively scheduled for October 16. *Exhibit M, p. 18.* District Psychologist stated that School had sent home consent to collect formal behavioral data and that that Parents' "input is a vital part of this process, and we value any insights you can provide" and asked Parents to reach out with any questions or concerns. *Id.*

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

69. District staff—including special education teachers, behavior technicians, assistive technology specialists, speech language pathologists, and administrators—have access to IEPs through Enrich. *Interviews with Case Manager, Coordinator, Principal, and Director.*
70. At School, case managers are responsible for providing IEP snapshots to all teachers, paraprofessionals, and service providers working with a student. *Interview with Principal.* IEP snapshots include key information from a student's IEP, such as goals, accommodations, modifications, behavioral challenges, and supports. *Interview with Case Manager.*
71. Here, Case Manager provided printed copies of Student's IEP snapshot to her general education teachers, Paraprofessional, and Principal. *Interviews with Case Manager, Paraprofessional, and Principal.* AT Specialist, District BCBA, and Principal also accessed and were familiar with the IEP in Enrich. *Interviews with AT Specialist, District BCBA, and Principal.*

## **I. IEP Implementation: Accommodations**

72. Parents' concern is that School did not provide three accommodations to Student between August 26 and October 3, 2024: (1) access to an AAC device, (2) access to snacks and water, and (3) bathroom breaks. *Interview with Parents; Complaint, pp. 2-3.*

### **AAC Device**

73. Access to an AAC device is not explicitly listed in Student's IEP. *See Exhibit A, p. 19.* The IEP only notes that she "will need to use words, signs, and access to a picture exchange system to communicate wants, needs, and to demonstrate her knowledge." *Id.* at p. 16.
74. However, based on agreement at the August 21 IEP Team meeting and School's corresponding actions to ensure provision of an AAC device to Student, the CDE finds that District determined continual access to Student's AAC device would be required as part of the IEP. *See Interviews with Parents, Principal, Coordinator, Director, AT Specialist, and Case Manager.* District did not update Student's IEP to reflect this determination. *Interviews with Parents, Case Manager, Coordinator, and Director.*
75. AT Specialist is responsible for supporting students who use assistive technology, such as AAC devices, setting up equipment, and training staff on the use of assistive technology. *Interview with AT Specialist.* Here, AT Specialist ensured that Student's classroom featured multiple communication supports, such as visual schedules, communication boards, pictures, and classroom technology with AAC applications available. *Id.*
76. Before the school year began, AT Specialist was notified that Student was planning to attend School and would need support with her AAC device. *Id.* On August 21, the second week of School, AT Specialist conducted a Student-specific training for her teachers, including Case Manager and Paraprofessional, to demonstrate how to use an AAC device, to provide best

practices for incorporating AAC device usage into her schedule, and to answer questions. *Id.*; see *Exhibit R*, pp. 1-8.

77. Student brought her own AAC device to School in her backpack. *Interviews with Parents and AT Specialist*. Parents provided the password to unlock Student’s AAC device before the first day of school and again to District at the August 21 IEP meeting. *Interviews with Parents, Private BCBA, and AT Specialist*; see *Exhibit R*, p. 2.
78. Student did not use her AAC device until about “three weeks into the school year” because Case Manager did not have the password and could not unlock the device. *Interviews with Case Manager, Parents, and Private BCBA*. Director acknowledged that Student did not use her AAC device for a brief period—but likely not three full weeks—because of a password issue. *Interview with Director*.
79. Paraprofessional had been in Student’s classroom since the beginning of the year, but she began directly supporting Student on September 12 in response to Parents’ request for a change in paraprofessional. *Exhibit M*, pp. 19, 96; see *Exhibit I*, p. 1; *Interview with Parents*. Paraprofessional used Student’s AAC device with her every day that she supported Student. *Interviews with Paraprofessional and District BCBA*; see *Exhibit M*, p. 19. Paraprofessional wore the device around her neck or placed it on Student’s desk. *Interview with Paraprofessional*. Student would sometimes resist using her AAC device, but other times used it to indicate she needed to use the bathroom or was hungry or thirsty. *Id.*
80. School’s speech language pathologist had the code for Student’s AAC device and documented that Student used her AAC device during sessions on September 18, September 25, and October 2. *Exhibit F*.
81. Based on these findings, the CDE finds that District did not implement this accommodation for, at most, the seven school days that Student attended between August 26 and September 11 before Paraprofessional began directly supporting her. The CDE finds that District implemented this accommodation consistently for the 12 days that Student attended between September 12 and October 3.

#### Access to Food and Water

82. Student’s IEP does not require access to food and water or scheduled food breaks. See *Exhibit A*, pp. 1-26.
83. At the August 21 IEP Team meeting, Parents requested that Student have continual access to food and water and dedicated food breaks. *Interviews with Parents, Case Manager, and Coordinator*. As District conveyed to Parents at the meeting, School already provided these arrangements to all students in her classroom. *Interviews with Case Manager, Principal, Coordinator, Paraprofessional, and District BCBA*; see *Exhibit I*, p. 1. The IEP Team thus did not amend the IEP in this respect. *Interviews with Case Manager, Coordinator, and Director*.

84. Nevertheless, Student had continuous access to food from her lunchbox and classroom snacks and water from her personal water bottle and classroom water. *Interviews with Case Manager, District BCBA, and Paraprofessional; see Exhibit 1, pp. 1-16; Exhibit M, pp. 28, 112, 118, 132.* Student also had designated food breaks nearly every hour. *Exhibit I, pp. 1-2; Interview with Paraprofessional; Exhibit M, pp. 21-25, 28-29.*
85. Based on these findings, the CDE finds that District, though not required to do so by the IEP, provided Student with access to food and water or scheduled breaks.

#### Bathroom Breaks

86. Student's IEP requires that District provide "reminders to use the toilet." *Exhibit A, p. 19.*
87. This accommodation was discussed during the August 21 IEP meeting, including whether staff should escort Student to the bathroom and whether she could express when she needed to use the bathroom. *Interviews with Parents and Case Manager; Exhibit D, p. 5.* Parents expected her to have "bathroom breaks every hour." *Exhibit 1, p. 101; Interviews with Parents.*
88. There are two restrooms available inside the classroom for student use. *Interviews with Case Manager, Paraprofessional, and District BCBA.* Case Manager and Paraprofessional offered designated bathroom breaks with prompting to Student every hour, at least three times per her half-day schedule. *Interviews with Case Manager and Paraprofessional; see Exhibit M, pp. 126, 129.* Student's written schedule included a bathroom break between 9:10 and 9:30 AM. *Exhibit I, p. 1.*
89. In addition to designated bathroom breaks, Case Manager and Paraprofessional took Student to the bathroom any time she indicated that she needed to use it, either through her AAC device, walking over to the bathroom, or pointing to a picture in the classroom. *Interviews with Case Manager and Paraprofessional; see Exhibit 1, pp. 1-7, 10, 12, 14, 17.* As such, Student sometimes used the bathroom at School more frequently than every hour. *Id.*
90. The Record indicates that School staff prompted Student to use the restroom during structured bathroom breaks, which occurred nearly every hour, and took Student to the restroom when she indicated she needed to use it. *See Exhibit 1, pp. 1-17; Exhibit M, pp. 126, 129; Interviews with Case Manager and Paraprofessional.* Based on these findings, the CDE finds that District implemented this accommodation between August 26 and October 3, 2024.

#### **J. IEP Implementation: LRE**

91. The IEP requires that Student participate in the general education environment 5.6% of the time, which equates to 50 minutes per week. *Exhibit A, p. 24.* The IEP's service delivery statement specifies that Student will "visit the general education classroom [with a teacher

or paraprofessional] during targeted opportunities such as center play, small group, recess, and other activities for at least 40 minutes weekly.” *Exhibit A*, pp. 21-22.

92. School planned for Student’s time in general education to start at 10 to 15 minutes per day and to “increase according to her abilities” as the year went on. *Id.* at p. 21; *Exhibit M*, pp. 132-133. As such, Student would start by participating in general education for between 40 and 60 minutes per week. *See id.* Parents would then be notified “regarding plans to increase time in general education.” *Exhibit A*, p. 21.
93. Parents contend that School staff made Student “earn” time in general education and did not give Student the opportunity to attend general education classes because, if Student was exhibiting escalated behaviors, they would remove her from the general education environment or not attempt to take her. *Interviews with Parents; see Exhibit M*, pp. 94-96.
94. Paraprofessionals attempted to take Student to general education classroom every day. *Id.* at pp. 94-96; *Interviews with Case Manager and Paraprofessional*. Student would often have “meltdowns,” such as dropping, screaming, and eloping, outside of the general education classroom door. *Interview with Paraprofessional; Exhibit M*, pp. 94-96.
95. Consistent with the IEP, School anticipated that Student would spend more time in the general education environment once she got more comfortable. *Interviews with Paraprofessional and Principal*. Student was struggling to adjust to a routine, including gaining comfort with the general education environment, in part because of her full-day absences and abbreviated half-day schedule at Parents’ choosing. *Exhibit M*, p. 94; *Interview with Principal*.
96. Considering these challenges, School’s plan was appropriate, especially for a kindergartener with ASD. *Interview with CDE Specialist 1*. Given the difficulty of adjusting to new environments at the beginning of a year, schools can first introduce students to general education by having them “walk past, peak in, wave, or drop off material.” *Id.* The next week, a school might introduce student during one activity, such as circle time, or have them say “hi” to two peers. *Id.* From there, depending on progress and after about three weeks, schools can work up to the full LRE. *Id.* Indeed, it is important that schools do not force students into a general education environment because students could associate it with negative experiences. *Id.* Schools should document this progression for parents and ensure that any progression intentionally builds toward a student’s LRE. *Id.*
97. Based on these findings, the CDE finds that District educated Student in the LRE required by the IEP for the 18 days of school Student attended between August 26 and October 3.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District reviewed and revised, as appropriate, Student’s IEP to address Parents’ concerns and behavior impeding Student’s learning from August 26 to October 3, 2024, as required by 34 C.F.R. § 300.324(b). District complied with the law.**

**A. Jurisdiction to Resolve Allegation Regarding Medically Necessary Treatment**

The state complaint process authorizes the CDE to investigate concerns regarding special education and related services under the IDEA or ECEA Rules, but not concerns about whether a school district has complied with Section 504 of the federal Rehabilitation Act of 1973 (“Section 504”) or Title II of the Americans with Disabilities Act of 1990 (“the ADA”) in responding to a parent’s requests under House Bill 22-1260. *See* 34 C.F.R. § 300.153(b)(1).

In relevant part, House Bill 22-1260 amended the ECEA Rules to require that school districts “adopt a policy that addresses how a student who has a prescription from a qualified health-care provider for medically necessary treatment receives such treatment in the school setting,” as required by Section 504 and the ADA. *Colo. Rev. Stat.* § 22-20-121(2(a)). Indeed, “[districts] should always consider whether a request under HB22-1260 implicates its FAPE obligations but should not treat FAPE as the only relevant inquiry.” *Id.* Since the “inquiry for FAPE and the inquiry for reasonable accommodations are not the same, [district] policies must ensure that [districts] honor not only their obligation to provide FAPE but also their separate obligation to provide reasonable modifications.” *CDE Guidance on HB 22-1260 and Medically Necessary Services*, at p. 2 (January 7, 2025) <https://www.cde.state.co.us/cdesped/revhb22-1260–access-medically-necessary-services–jan2025>.

In this case, although Parents’ concerns stem in part from their request related to HB 22-1260, the Complaint raises, and thus this investigation involves, the related—but not identical—inquiry of whether the services requested by Parents are a necessary component of an IEP that provides Student a FAPE. *Id.* at p. 1. Because the Complaint implicates District’s FAPE obligations under IDEA, the CDE has authority to investigate Parents’ concerns. 34 C.F.R. § 300.101(a).

**B. Legal Obligation to Review and Revise IEPs**

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. ex rel Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* at 400. To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address any lack of expected progress toward the annual goals, the results of any reevaluation, “[i]nformation about the child provided to, or by, the parents,” “[t]he child’s anticipated needs,” or other matters. *Id.*; *see Endrew F.*, 580 U.S. at 400.

### C. Information about Student Provided by Parents

Parents' concern is that District did not review and revise, as appropriate, Student's IEP to address information about Student's safety and behavior needs they provided—namely allowing her Private RBTs to attend School with her to support behavioral regression. (FF #s 40, 42-44.)

Under the IDEA, an IEP team must carefully consider the input of the student's parents when reviewing and revising an IEP. See 34 C.F.R. §§ 300.324(b)(1)(ii)(C), 300.305(a)(2). Meaningful parent participation occurs where the IEP team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe District Schools Unified School District No. 233*, 144 F.3d 692, 703 (10th Cir. 1998).

Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County School District RE-1*, 118 LRP 28108 (SEA CO 3/22/18). Still, parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, shows parental participation. *Id.*

Parents do not have "veto power" over IEP team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15). An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . . ." *Id.*

Here, at the August 21 IEP meeting, Parents requested that Student's Private RBTs attend School with Student every day given Student's behavioral regression. (FF #s 33-35.) School did not immediately agree to this request for legitimate reasons: concerns about the effect of private providers on other students with ASD in an already-supported classroom, compliance with District policies on non-staff visitors, and wanting more time to assess whether District could effectively support Student given the back-to-school timeframe. (FF #s 36-38.)

Still, District considered Parents' request consistent with District policies. (FF #s 6-9, 36-37.) First, District and Parents agreed for Student's Private BCBA to observe Student in the school setting to determine whether private behavioral support was necessary. (FF #s 38, 48.) Private BCBA conducted her observation on September 10, 2024. (FF # 49.) Two days later, School convened a follow-up IEP Team meeting, which Private BCBA attended, to discuss the observation and Parents' continued concerns regarding Student's behavior. (FF # 53-55.) Parents participated in this September 12, 2024 meeting. (FF # 54.) During this meeting, Parents again requested for Student's Private RBTs to attend School with Student. (FF # 57.) District and Parents agreed for

Student's Private RBTs to attend with her two days per week (out of the four that Student attended) on a temporary basis to provide strategies for School staff to use with Student in the school setting. (*Id.*) Student's Private RBTs began attending School with Student on September 16: the next school day following the September 12 IEP meeting. (FF # 61.) Across the eight weeks when Student attended School, District worked closely with Parents and attempted to address their concerns. (FF #s 30, 36, 38, 48, 52-54, 56-57, 61-68.)

Accordingly, the CDE finds and concludes that District considered Parents' concerns and addressed them in attempting to review and revise, as appropriate, Student's IEP, as required by 34 C.F.R. § 300.324(b).

#### **D. Behavior Impeding Learning**

For a student whose behavior impedes their learning, such as by causing the student to miss instruction or avoid work, the IEP team must also "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324(a)(2). The IDEA does not require an IEP team to use a particular tool or assessment when considering positive behavioral support; however, "conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,683 (Aug. 14, 2006). Development of a BIP is an "acceptable way of considering a child's behavioral needs," though it is not required. *Coleman v. Wake Cnty. Bd. of Educ.*, 120 LRP 4253, at \*9 (E.D. N.C. 2020).

Here, Student's behavior affected her ability to engage in classroom learning and to participate in general education. (FF #s 43, 45-47, 50-51.) Student struggled with elopement within the classroom, spitting, dropping behaviors, throwing, and meltdowns when faced with non-preferred tasks. (FF #s 45-46, 50.) Student's behaviors, while challenging to manage and sometimes unsafe, were nonetheless expected and typical of a student her age with ASD. (FF #s 47, 51.) District staff and Private BCBA noticed behavioral regression, but anticipated this regression given Student's age, disability, and transition to a new environment. (*Id.*)

In response to Student's behaviors—and in the 18 days of School that Student attended between August 26 and October 3, 2024—School coordinated an observation with Student's Private BCBA on September 10, convened an IEP Team meeting to discuss Private BCBA's observation and recommendations on September 12, and, by September 30, sent consent to Parents for permission to conduct an FBA to gather behavioral data and determine whether Student needed a BIP. (FF #s 48, 53-57, 62, 65-68.) Because Student disenrolled on October 3, School did not have a chance to proceed with this course of action. (FF #s 1, 68.) District was in the process of assessing Student's behavior to determine which positive behavioral interventions, supports, and strategies would best support Student. (FF #s 65-68.) In the interim, before District could complete its FBA, District was also receptive to recommendations provided by Private BCBA. (FF #s 55-56, 59-60, 62.)

For these reasons, the CDE finds and concludes that District considered the use of positive behavioral interventions and supports and other strategies in attempting to review and revise, as appropriate, Student’s IEP between August 26 and October 3, 2024, consistent with 34 C.F.R. § 300.324(b).

**Conclusion to Allegation No. 2: District did not fully implement Student’s IEP from August 26 to October 3, 2024, as required by 34 C.F.R. 300.323. District’s noncompliance did not result in a denial of FAPE.**

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

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Endrew F.*, 580 U.S. at 392 (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 school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

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

The CDE must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d): ensuring that staff had access to and an understanding of Student’s IEP. Here, Case Manager, District BCBA, AT Specialist, and Principal each had direct access to Student’s IEP on Enrich. (FF # 69.) Additionally, Case Manager provided IEP snapshots, which included information on Student’s accommodations, to Paraprofessional. (FF # 70.) Case Manager and Paraprofessional also attended District training on IEP implementation in August 2024. (FF # 11.) Thus, the CDE finds and concludes that District complied with 34 C.F.R. § 300.323(d).

#### **C. IEP Implementation: Accommodations**

The CDE must next determine whether District made accommodations available to Student consistent with the IEP. 34 C.F.R. § 300.323(c)(2). Here, Parents raised concerns about three accommodations: access to an AAC device; access to snacks and water; and bathroom breaks. (FF # 72.)

As described in the Findings of Fact, District provided access to snacks and water and bathroom breaks, but it did not ensure access to an AAC device for at most seven days of school. (FF #s 73-90.)

Student's IEP did not explicitly require access to an AAC device as an accommodation. (FF # 73.) However, the CDE constructively finds that access to an AAC device was required under 34 C.F.R. §§ 300.324(a)(2)(v) and 300.105(a), which call for an IEP team to consider "whether the child needs assistive technology devices and services" and a district to ensure that assistive technology devices "are made available to a child with a disability" if included in that child's special education, related services, or supplementary aids. 34 C.F.R §§ 300.324(a)(2)(v), 300.105(a); see also *Letter to Anonymous*, 18 IDELR 627 (OSEP 1991) (finding that where an AT device is necessary for FAPE, the IEP must include a specific statement providing for that AT device).

Here, at the August 21 IEP Team meeting, Parents and District agreed that Student required access to an AAC device to receive FAPE. (FF #s 32, 74.) District acted accordingly. (FF #s 75-81.) Indeed, before Student started at School, AT Specialist knew that Student would be attending and would require an AAC device. (FF # 76.) AT Specialist also provided Student-specific training to Case Manager and Paraprofessional to ensure they understood how to use Student's AAC device. (*Id.*) All District staff reported that they understood Student required consistent access to her AAC device. (FF # 74.) However, due to a missing password, Student did not have access to her AAC device for about three weeks at the beginning of the school year. (FF # 78.) Student had access to her AAC device by September 12, when Paraprofessional started working directly with Student. (FF # 79.) For those reasons, the CDE finds and concludes that School did not provide access to Student's AAC device for at most seven days between August 26 and September 12. (FF #s 78-81.)

Following agreement at the August 21 meeting, District was required to revise Student's IEP to include access to an AAC device. 34 C.F.R. §§ 300.324(a)(2)(v), 300.324(b)(2). Because this noncompliance occurred outside of CDE's one-year lookback window and Student no longer attends a District school, no remedies will be ordered on this issue. See 34 C.F.R. § 300.153(c).

#### **D. IEP Implementation: Least Restrictive Environment**

The CDE must finally determine whether District satisfied its obligation under 34 C.F.R. §§ 300.320(a)(5) and 300.323(c). An IEP must describe a student's LRE, which is the maximum appropriate participation, for that student, in the regular educational environment. 34 C.F.R. §§ 300.114(a), 300.117. The IEP must explain "the extent, if any, to which the child will not participate with nondisabled children in the regular class." *Id.* § 300.320(a)(5). Students with disabilities must be educated in the LRE specified by their IEP. *Id.* §§ 300.320(a)(5), 300.323(c)(2).

Here, Parents allege that Student did not participate in general education as required by the IEP—not that Student's LRE was inappropriate. (FF # 93.) Student's IEP required that Student participate in general education 5.6% of the time, which equates to 50 minutes per week.

(FF # 91.) School planned to start Student with between 10-15 minutes per day (40-60 minutes per week) in the general education classroom and to increase time as Student adjusted to the new School environment. (FF #s 91-92.)

School attempted to take Student to the general education classroom every day, but she often refused to enter the classroom. (FF # 94.) Given that Student was still transitioning to School and had attended School infrequently due to illness, it was important that staff not force Student into the general education classroom if she refused to attend, as forced participation could lead Student to associate the general education classroom with negative experiences. (FF #s 94-96.)

For these reasons, the CDE finds and concludes that District fully implemented Student's IEP in this respect from August 26 to October 3, 2025, as required by 34 C.F.R. § 300.323(c)(2).

#### **E. Materiality of Nonadherence to the IEP**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 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. District 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. Appx. 202, 205 (2d Cir. 2010).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

Here, District did not provide Student access to her AAC device for, at most, seven school days, as required by her IEP. (FF # 81.) Student's AAC device was important given her non-verbal communication status and, indeed, Student's behaviors improved after School began consistently implementing this accommodation. (FF #s 64, 73.) However, in the seven days when School was not implementing this accommodation, Student still used visual schedules, images, and signs around the classroom to communicate her wants and needs. (FF #s 15-16, 27, 75, 89.) Moreover, School implemented the other at-issue accommodations with fidelity from August 26

to October 3, 2024. (FF #s 82-90.) For these reasons, the CDE finds and concludes that this noncompliance was not material and thus did not result in a denial of FAPE.

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

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

Here, District has procedures in place regarding IEP implementation and offered training to all special education staff on implementation of IEP accommodations. (FF #s 10-12.) Student’s providers, including Case Manager, Paraprofessional, and AT Specialist, were familiar with Student’s IEP and understood their responsibilities under the IEP. (FF #s 69-71.) Student was not provided her AAC device because Case Manager did not have the password to unlock the device, not because District did not understand its IEP implementation responsibilities or had ineffective protocol in place. (FF # 78.) As soon as Case Manager received the password, School began to implement this accommodation consistently. (FF # 79.) Additionally, AT Specialist had Student’s password, provided a Student-specific training to School staff, and was prepared for Student’s attendance and need for access to an AAC device before the beginning of the year. (FF #s 76-77.) Thus, the CDE finds and concludes that the noncompliance is not systemic.

### **REMEDIES**

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

1. Implementing the IEP, as required by 34 C.F.R. § 300.323(c).

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

#### **1. Final Decision Review**

- a. District Special Education Director, Coordinator, AT Specialist, Case Manager, and Paraprofessional must review this Decision, as well as the requirements of 34 C.F.R. § 300.323(c) by **November 21, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **December 5, 2025**.

**NOTE:** CDE Special Education Monitoring and Technical Assistance Consultant will contact District with specific instructions for securely submitting the documentation detailed above. If District does not meet the timelines set forth above, it may adversely affect District’s annual determination under the IDEA and subject District to enforcement action by the CDE.

**CONCLUSION**

The Decision of the CDE is final and is not subject to appeal. *CDE’s State Complaint Procedures*, Section E, ¶ 2. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *Id.*; *see also* 34 C.F.R. § 300.507(a); 71 Fed. Reg. 156, 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer (“SCO”).

Dated this 24th day of October, 2025.



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Elizabeth “EP” Stonehill  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-7**

- Exhibit 1: Communications and RBT Reports
- Exhibit 2: Response to District Exhibits

### **Response, pages 1-8**

- Exhibit A: IEP
- Exhibit B: Statement on BIP
- Exhibit C: Prior Written Notices
- Exhibit D: Documentation from IEP Meetings
- Exhibit E: Records of Disciplinary History
- Exhibit F: Service Logs
- Exhibit G: Documentation on Student's Health
- Exhibit H: Evaluation
- Exhibit I: Copy of Schedule and Attendance Records
- Exhibit J: Progress Monitoring Data
- Exhibit K: District Calendar
- Exhibit L: Medically Necessary Policy
- Exhibit M: Correspondence
- Exhibit N: District Contact Information
- Exhibit O: Verification of Delivery
- Exhibit P: Release of Confidential Information
- Exhibit Q: BCBA Observation
- Exhibit R: Assistive Tech Documents
- Exhibit S: Principal's Notes
- Exhibit T: Additional District Policies

### **Telephone Interviews**

- Parents: September 29, 2025
- Case Manager: September 30, 2025
- Principal: September 30, 2025
- District BCBA: September 30, 2025
- Paraprofessional: September 30, 2025
- Coordinator: September 30, 2025
- Director: September 30, 2025
- Private BCBA: October 1, 2025
- CDE Specialist 1: October 3, 2025
- CDE Specialist 2: October 14, 2025