

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

State-Level Complaint 2023:587
Roaring Fork School District

DECISION

INTRODUCTION

On September 26, 2023, the Parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Roaring Fork School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified eight allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

On October 3, 2023, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in an impasse, and, on November 3, 2023, the SCO resumed the investigation.

The parties previously resolved all IDEA-related concerns that occurred prior to December 15, 2022 via a settlement agreement. As such, on December 12, 2023, Parent requested to reduce the scope of the investigation to focus on issues not resolved by the settlement agreement. Subsequently, the SCO determined that the Complaint identified seven allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153.

On December 13, 2023, in response to Parent’s request for an independent educational evaluation, District filed a due process complaint defending its March 2023 evaluation. As a result, consistent with federal regulations, the SCO set aside Allegation No. 4, which is being addressed in a due process hearing, until the conclusion of the due process hearing. 34 C.F.R. § 300.152(c)(1). While that issue is held in abeyance, this Decision will address the remaining six allegations.

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.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from September 26, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review and revise an IEP that was tailored to meet Student’s individualized needs from February 2023 through May 2023, specifically by:
 - a. Failing to convene an appropriate IEP team, including others at the discretion of the Parent who have knowledge or special expertise regarding Student, in violation of 34 C.F.R. § 300.321(a)(6);
 - b. Failing to consider information, including an independent educational evaluation (“IEE”), provided by Parent, in violation of 34 C.F.R. § 300.324(a)(1);
 - c. Failing to include the special education and related services Student required to meet his behavioral and academic needs, in violation of 34 C.F.R. § 300.320(a)(4);
 - d. Failing to include behavioral strategies and supports that adequately addressed Student’s behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i);
 - e. Failing to develop appropriate measurable postsecondary goals based upon age-appropriate transition assessments and failing to include the transition services needed to assist Student in reaching those goals, in violation of 34 C.F.R. § 300.320(b) and ECEA Rule 2.51(1); and
 - f. Failing to address a lack of expected progress towards the annual goals, in violation of 34 C.F.R. § 300.324(b)(ii).
2. Failed to implement Student’s IEP, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to make Student’s IEP accessible to teachers or service providers responsible for its implementation, from January 2023 through May 2023;

- b. Failing to provide Student with the special education services required by his IEP from January 2023 through May 2023;
 - c. Failing to provide Student with the mental health and/or counseling services required by his IEP from February 2023 through May 2023;
 - d. Failing to provide Student with the testing accommodations required by his IEP from February 2023 through May 2023; and
 - e. Failing to implement the behavior supports and strategies indicated in Student's IEP and BIP, from January 2023 through May 2023.
3. Failed to provide Parent with periodic reports on Student's progress from January 2023 through May 2023, in violation of 34 C.F.R. § 300.320(a)(3)(iii).
4. Failed to evaluate Student in all areas of suspected disability from February 2023 to present, specifically by failing to comprehensively evaluate Student's social emotional and adaptive skills, in violation of 34 C.F.R. § 300.304.
5. Failed to issue PWN containing the required information regarding District's decisions about the provision of FAPE to Student from January 2023 through May 2023, in violation of 34 C.F.R. § 300.503.
6. Changed Student's placement in spring 2023 without including Parent or considering any potential harmful effects, in violation of 34 C.F.R. §§ 300.116, 300.327 and 300.501(c) and ECEA Rule 4.03(8)(b).
7. Failed to transmit copies of Student's special education records for consideration by the appropriate authorities after reporting a crime committed by Student around January 2023, in violation of 34 C.F.R. § 300.535.

FINDINGS OF FACT

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

A. Background

1. Student is seventeen years old and, during the second semester of the 2022-2023 academic year, attended a school ("School") in District. *Exhibit A*, p. 62.
2. Student is identified as a child with an autism spectrum disorder ("ASD") and a specific learning disability ("SLD") in writing. *Id.* at pp. 62, 72.

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

3. Student has a relative and normative strength in visual-spatial skills. *Exhibit C*, p. 9. He is twice exceptional, as he has been identified as gifted. *Id.* at p. 4. He has great taste in music. *Interviews with Parent and board-certified behavior analyst ("BCBA")*. He is good at, and enjoys, chess. *Interviews with school psychologist at School ("School Psychologist"), BCBA and Student's social studies teacher ("Social Studies Teacher")*. When interested in a subject, he is very motivated. *Interviews with Social Studies Teacher and special education teacher who provided compensatory services ("Tutor")*.
4. Student struggles with grade-level writing skills as well as reading comprehension. *Exhibit A*, p. 72. Difficulties with pragmatic language impact his ability to participate in academic and non-academic settings. *Id.* Student also struggles with disengagement due to depression, anxiety, and difficulties with social communication. *Id.*

B. IEE

5. In November 2022, Parent obtained a publicly funded IEE. *Exhibit C*, pp. 1-29. As part of her evaluation, the licensed psychologist ("Independent Evaluator") reviewed Student's developmental, medical and educational history and teacher reports, conducted a parent interview, a clinical interview of Student and a classroom observation, and administered several formal measures of intelligence, executive function, academic achievement, social emotional needs and adaptive skills. *Id.* at pp. 1-2, 7.
6. Based on cognitive testing, Independent Evaluator noted a significant strength in visual-spatial processing, where Student ranked in the 93rd percentile. *Id.* at p. 9. All his remaining scores fell in the average range, although processing speed was a relative weakness, at the 30th percentile. *Id.*
7. Student's academic "achievement fell in the low average range." *Id.* His written language abilities specifically fell in the low range and Student did not use paper and pencil to work out math problems, instead solving them in his head. *Id.* Student's greatest weaknesses were written expression and sentence writing fluency. *Id.* at p. 10. He also requires extra time to process and respond to academic information. *Id.*
8. Based on Parent and teacher reports, Student did not exhibit significant externalizing behaviors or difficulties with behavior regulation. *Id.* However, he did exhibit characteristics of depression in the school setting. *Id.* He struggles across settings with adaptive skills including functional communication and adjusting to change. *Id.*
9. Parent and teachers also reported significant concerns with executive functioning. *Id.* This includes difficulties with shifting focus, recovering from setbacks, cognitive regulation, task initiation, working memory, planning and organizing, monitoring tasks for completion and quality, and emotional regulation. *Id.* at p. 11.

10. The evaluation, including parent and teacher rating scales, indicated moderate to severe characteristics of autism. *Id.* This included difficulties with social engagement and social communication, restrictive and repetitive behaviors, and difficulty with change. *Id.* Challenges with social communication and interaction may look like withdrawal, tiredness, easy frustration, and a need for recovery time after interactions. *Id.* He may also have “difficulty making and keeping relationships both with peers and adults.” *Id.* at p. 12. Narrow interests and rigid thinking make it difficult to transition away from preferred activities like screen time. *Id.*
11. Student also struggled with adaptive skills across environments. *Id.* at p. 11. Difficulties included receptive and expressive communication, including written communication, daily living skills, personal care, and ability to access the community. *Id.*
12. Independent Evaluator also included over seven pages of recommendations. *Id.* at pp. 13-20. She noted that Student had developed maladaptive coping behaviors that reflect work avoidance because of academic frustration. *Id.* at p. 13. She recommended increasing academic support and helping him develop effective coping strategies. *Id.*
13. To address phone usage, she recommended clear classroom rules and using phone access as a reward for completing work. *Id.* This would include short rewards after short segments of work with a longer screen time break after more work segments. *Id.* at p. 14.
14. She recommended conducting an updated functional behavior assessment (“FBA”). *Id.* She suggested structured social emotional curriculums, including “5 is against the law” and “Why Try” and formal daily check-ins to ensure Student has his material and problem solve barriers to learning. *Id.*
15. A multidisciplinary team, including Parent and her attorney (“Parent’s Attorney”), staff from his prior school (“Former School”) in District, School Psychologist, District Staff and Independent Evaluator met on December 1, 2022 to review the IEE and consider Student’s eligibility. *Exhibit E*, pp. 1-5. Together, the team determined that Student was eligible as a Student with ASD and SLD, not a serious emotional disability. *Id.* at p 5.

C. December IEP

16. The new semester started January 10, 2023. *Exhibit K*. On January 12, 2023, District’s director of special education (“Director”) emailed Parent and Parent’s Attorney about a change to the service minutes that had been agreed to that week. *Exhibit M*, p. 7. If his understanding of the change was correct, the IEP was then final. *Id.* He attached a copy of the final IEP (“December IEP”). *Exhibit M*, pp. 8-36. This version of the IEP is identical to the December IEP submitted as part of this investigation. *Compare, Id.* and *Exhibit A*, pp. 1-29. Thus, the SCO finds that the December IEP was finalized on January 12, 2023.

17. According to the December IEP, Student's strengths included visual-spatial skills and age-appropriate cognitive skills. *Exhibit A*, p. 3. He also "responds well when asked a question" if he is engaged. *Id.* Finally, he wants to do well and get positive praise from adults. *Id.*
18. The present levels includes a summary of the results of the IEE and Student's then-current grades. *Id.* at pp. 4-5. He was failing seven of ten classes. *Id.* Student scored below the District average and state cut off for graduation on the PSAT in both English and math. *Id.* at p. 5.
19. Student had made some progress on his writing goal. *Id.* An unidentified teacher noted that Student usually attends and has good ideas but his "phone gets in the way of his learning" and he does not engage much in classwork." *Id.*
20. For transition planning, a special education teacher at Former School conducted a teacher interview, a student transition planning interview, student-parent transition assessment interview and had Student complete an online assessment tool. *Id.* at p. 6. Student wanted a "computer science based career." *Id.* at p. 7.
21. Student had needs in life skills like cooking and cleaning, money management and work experience. *Id.* at p. 8. He also needed help with executive functioning to work independently. *Id.* at p. 8.
22. Student's post-school education goal was to attend a vocational program or college to earn a degree in the field of computer science. *Id.* at p. 11. His career goal was to work in the field of computer science. *Id.* The IEP concludes Student did not need an independent living skills ("ILS") goal. *Id.*
23. Student was said to be on track to graduate with a high school diploma, and a course of study was laid out for the coming years. *Id.* at p. 12. Several courses like financial literacy and computer science were highlighted as supporting Student's post-secondary goal. *Id.* No mention is made of credit recovery or needing extra time in high school. *Id.* at pp. 12-13.
24. Transition services included instruction from a special education teacher and mental health provider on Student's writing and self-determination goals as well as reteaching core content and teaching advocacy and emotional regulation. *Id.* at p. 14. To address needs in money management, completing applications, and work experience, staff would help Student research requirements to enroll in post-secondary programs to work with computers. *Id.* Student would also enroll in financial literacy and a class where he could develop job skills like resume writing. *Id.* Special education staff would also help him develop a system to organize his academic obligations and keep track of assignments. *Id.* They would also work with Student to identify community partners for opportunities in the computer field. *Id.* Connections were made with the division of vocational rehabilitation and a representative attended one meeting. *Id.* at p. 15.

25. The student needs and impact of disability statement indicated that Student's identified disabilities impact his access to his education. *Id.* He needed accommodations and support to demonstrate grade level writing skills and demonstrate reading comprehension. *Id.* The statement also includes some details from the IEE about his needs and causes of disengagement. *Id.* at p. 9. The only special factor was that Student required a BIP. *Id.* at p. 11.
26. A lengthy parent input section notes her desire to see Student reach his potential and get help with executive functioning and writing. *Id.* Parent also raised concerns about the purpose of Student's special education classes that appeared to be "more like open study hall sessions" instead of service delivery. *Id.* at p. 10. She also wanted Student's work to be held to grade level standards and not receive inflated grades. *Id.* She was also concerned about Student being late to or missing classes while at school. *Id.* Parent and Student also wanted to know what credits he had earned. *Id.*
27. The IEP included eight annual goals, with Parent to get weekly progress updates containing both "academic progress reports and IEP Goal progress." *Id.* at pp. 15-19.
28. There was one writing goal. *Id.* at p. 15. From a baseline of zero, Student would write a two-paragraph essay with 95% accuracy in four out of five attempts by meeting specific requirements like including a thesis and correct punctuation. *Id.*
29. There was one reading goal. *Id.* at p. 16. From a baseline of zero out of five and zero percent, Student would demonstrate comprehension after reading a passage in four out of five opportunities with 90% accuracy by meeting three objectives focused on identifying tone, point-of-view, and theme. *Id.*
30. There was one math goal. *Id.* at pp. 16-17. From the same baseline, Student would use order of operations to solve multi-step problems with 80% accuracy in four out of five trials. *Id.*
31. The IEP had two self-determination goals. *Id.* at pp. 17-18. From a baseline of zero percent, Student would effectively use a planning/tracking system shared with his mother "to independently monitor upcoming due dates/tests with 90% accuracy" as evidenced by having no missing assignments. *Id.* at p. 17. From a baseline of zero out of four, Student would learn to differentiate conflict from bullying and appropriately respond in four out of four hypothetical instances. *Id.* at p. 18.
32. Finally, there were three social\emotional wellness goals. *Id.* at pp. 17-19. First, from a baseline of 10%, Student would use coping skills like taking a break or asking for help to complete required tasks and increase his classroom engagement to 90%. *Id.* at pp. 17-18. From a baseline of 84, Student would reduce his tardies from one per day to less than five per semester. *Id.* at p. 19. In addition, from a baseline of zero out of five, Student would be

able to identify the problem and generate two appropriate solutions to the specific problem in five out of five trials. *Id.* at p. 19.

33. The December IEP includes a lengthy list of accommodations nearly three pages long. *Id.* at pp. 19-22. The accommodations address phone usage, alternatives to writing like a scribe or oral testing, 1:1 or small group reteaching, checking in when Student is shutting down, relating instruction to his interests where possible, quantifying the work he is to complete, and much more. *Id.* Most of the accommodations are pulled directly from the IEE. *Compare, Id.* and *Exhibit C*, pp. 15-19. With so many accommodations, the SCO finds it would not be possible for teachers to be aware of all of their responsibilities or to implement them with fidelity. *Interview with CDE Content Specialist 1.*

34. For state testing, including the PSAT, Student was to have five accommodations. *Exhibit A*, p. 24. This included stop-the-clock breaks, use of a calculator, an “other setting” to be specified, extended time, and other timing/scheduling accommodations to be specified. *Id.*

35. According to the service delivery statement, Student was to receive:

- Academic support from a **special education teacher** for 460 minutes per week (“MPW”) outside of general education to work on his writing and self-determination goals and his transition goals;
- Academic support from a **special education teacher/provider** for 170 minutes per day (“MPD”) inside of general education;
- Unspecified “additional **special education instruction** when needed via small group or 1:1 to review and reteach” content from core classes;
- 30 MPW of indirect consultation/case management services from a **special education teacher**;
- Counseling services from a **school psychologist** for 135 MPW. This would include 60 MPW to address anxiety and withdrawal and teach social interaction, possibly through the “Why Try” curriculum. Another 75 MPW would be used for daily check-ins for planning and organizing and bullying prevention;
- 120 minutes per month (“MPM”) of indirect consultative services from a mental health provider to support Student’s teachers and case managers.

Id. at pp. 25-26.

36. Student’s least restrictive environment (“LRE”) was general education 40-79% of the time, specifically 68.8% of the time. *Id.* at p. 27. This would allow Student to receive a high level of support from special education staff to reinforce academic and social emotional skills as he has been struggling to keep up with work. *Id.*

D. December BIP

37. The December BIP is ten pages. *Exhibit B*, pp. 1-10. It was developed based on Parent, Student, and teacher interviews as well as observations and a review of records including the IEE. *Id.* at pp. 1-2. Teachers had a hard time engaging Student in academics; when pushed, he would leave or refuse. *Id.* at p. 1. Based on observations, Student did better with 1:1 adult support from those he trusts, extended processing time, and video references. *Id.*
38. The December BIP identified three problem behaviors with their own hypothesis statements. *Id.* at p. 2. First, Student withdraws and refuses to work when he “experiences frustration around being unable to produce a verbal or written response” in an expected time. *Id.* Student also engages with electronic platforms to shut out information or people who are frustrating him. *Id.* This results in being left alone and an opportunity to regulate using his device. *Id.* Finally, due to his relative weaknesses compared to peers, Student seeks to avoid tasks when he “becomes overwhelmed by social, organizational and emotional (sic).” *Id.*
39. The strategies chart is six pages. *Exhibit B*, pp. 3-8. There are about 20 setting event strategies including helping him organize his materials, breaking down academic tasks visually, daily check-ins, and frequent reinforcement of expected behaviors. *Id.*
40. The average person can only remember three to five components, so a good BIP should have three to five components in each of the categories. *Interview with CDE Content Specialist 2.* For example, there should be no more than five setting event strategies. *Id.* When the BIP is too long, teachers cannot possibly remember what is expected of them. *Id.* Therefore, the plan cannot be implemented with fidelity. *Id.*
41. A full page of setting event strategies related to bullying, but bullying is not related to any of the hypothesis statements. *Interview with CDE Content Specialist 2.* The SCO finds that everything in the BIP should relate back to the hypothesis statement. *Id.*
42. None of the setting event or antecedent strategies seem to directly address Student’s phone use. *Interview with CDE Content Specialist 2.* For instance, the plan could include prompting Student to do something with his phone, like put it in a basket. *Id.* Another strategy would specify what to do if Student refuses. *Id.* Finally, a teaching strategy could include teaching Student how to use phone productively as a research tool or calculator. *Id.* Alternatively, Student could be taught how and when to put his phone away. *Id.*
43. The December BIP identifies several desired behaviors such as teaching Student to take structured breaks, utilize anxiety reduction skills, or self-advocate when he experiences bullying. *Exhibit B*, pp. 3, 8. There are no replacement behaviors. *Interview with CDE Content Specialist 2.* There are also too many desired behaviors for one program to target. *Id.*

44. Prompting Student to use an alternative coping strategy is listed as a teaching strategy. *Exhibit B*, p. 3. However, this is an antecedent strategy. *Interview with CDE Content Specialist 2*. A teaching strategy should specify the coping strategies Student will be taught. *Id.*
45. School Psychologist was responsible for monitoring Student's progress on increasing the use of alternative behaviors and decreasing the occurrence of problem behaviors. *Exhibit B*, p. 9. He was also responsible for communicating the plan to Student's providers at least three times per year. *Id.* at p. 10.

E. Implementation of December IEP – Teacher Knowledge

46. Case managers are responsible for sharing IEP documents and information with students' providers to ensure they are aware of their responsibilities for students with IEPs. *Interviews with Student's first case manager at School ("Case Manager 1"), School's principal ("Principal"), and Director*. They share a "snapshot" of the IEP with goals and accommodations, and hold meetings with teachers to review the plan. *Interview with Director*.
47. At School, Case Manager 1 hand delivers copies of the snapshot to teachers at the beginning of the year or as students transfer into the school or class. *Interviews with Case Manager 1 and Social Studies Teacher*. She also shares a spreadsheet with commonly utilized accommodations and identifies any students in their class who uses that accommodation. *Interview with Case Manager 1*.
48. Before Student started in January 2023, everyone at School who would be working with him met to go over his IEP. *Id.* Because of the complexity of the case, teachers got both the snapshot and a copy of the IEP. *Id.; Exhibit Q*, p. 41. Throughout her time as Student's case manager, she was in frequent contact with his teachers about how to support him. *Id.*
49. School Psychologist provided copies of the December BIP to all of Student's providers, along with an initial training and ongoing support. *Interviews with Case Manager 1 and School Psychologist*.
50. Social Studies Teacher got copies of both the December IEP and BIP at the start of the semester. *Interview with Social Studies Teacher*. Student's English teacher ("English Teacher") got a copy of Student's IEP snapshot before the start of the semester. *Interview with English Teacher*. She did not get a copy of the BIP. *Id.*
51. When asked about the supports provided to Student, both general education teachers identified several supports from the December IEP and BIP, such as breaking down instructions into simple steps and frequent check-ins. *Interviews with Social Studies Teacher and English Teacher*. However, they were unsure or unaware of other requirements. *Id.* For

instance, Student was not allowed to take breaks on his phone in social studies and English teacher did not have a system for nonverbal communication from Student. *Id.*

F. Implementation of December IEP – Special Education

52. Parent’s concern is that Student was not getting individualized instruction to address his needs in the special education classes at School. *Interview with Parent.*
53. School operates on a block schedule with classes meeting for 85 minutes twice a week plus 75 minutes every other Wednesday. *Interview with Case Manager 1; Exhibit 14.* Assuming four weeks per month, the SCO finds that classes met for 830 MPM. School offers one resource class for each grade. *Interview with Case Manager 1.* Every student in the class has an IEP. *Id.*
54. For the first half of the class, a special education teacher provides direct instruction for the subject of greatest need for the group of students, usually reading and writing. *Id.* They occasionally work on math if everyone is in the same class. *Id.* During the second half of the period, students work on classwork with support from special education teachers who also help them prioritize any outstanding assignments. *Id.*
55. Student was enrolled in the 10th grade resource class which was co-taught by Case Manager 1 and another special education teacher (“Special Education Teacher”). *Id.* Student was also in a second, smaller, resource class with Special Education Teacher. *Id.* During this period he was expected to work on classroom assignments with support, but he did not engage. *Exhibit G-2.* The SCO finds that with two resource classes, Student had special education instruction every day, despite School’s block schedule, for 415 MPW.
56. Case Manager 1 provided explicit writing instruction to support Student’s writing goal and helped him organize and keep track of assignments. *Id.*
57. On March 4, 2023, Parent sent an email about the lack of mental health services and accused Case Manager 1 of intentionally triggering Student by getting in his personal space. *Exhibit M*, p. 189. On March 5, 2023, Case Manager 1 emailed Director, Principal and one of parent’s advocates threatening to resign if she had to continue working with Student. *Id.*
58. Case Manager 1 ultimately agreed to continue providing services to Student. *Id.* at p. 203; *Interview with Case Manager 1.* However, she would no longer serve as his case manager. *Interview with Case Manager 1.*
59. Ultimately, another special education teacher (“Case Manager 2”) at School took over as Student’s case manager. *Id.* She was not providing direct services to Student during the day but would “spend time with him after school.” *Interview with Principal.*

60. For Student, and many students with an ASD, explicit specialized instruction in academics is less important than instruction in the skills needed to learn. *Interview with CDE Content Specialist 3*. Student needs help with foundational skills like executive functioning, social skills, and social communication to learn. *Id.*

G. Implementation of December IEP – Mental Health Services

61. School Psychologist was familiar with Student from Former School. *Interview with School Psychologist*. He was working with Student on social mapping and preparing for the day ahead during daily check-ins that amounted to 15 MPD or 75 MPW. *Id.*

62. He also provided Student with an hour a week of direct intervention focused on skill development and his social emotional goals. *Id.* This included things like how to respond to teachers and peers and when/how to use his phone appropriately for self-soothing. *Id.*

63. School Psychologist also consulted with Student’s teachers on a regular basis and worked to help get Student visual access to lessons, such as finding opportunities to watch a movie instead of reading a book. *Id.*

64. School Psychologist went on an extended leave on February 10, 2023, and did not return that school year. *Id.* Student did not receive in person services from a school psychologist for the rest of the semester. *Interviews with Director and Principal; Exhibit M*, pp. 192, 195.

65. From that point forward, Principal and a private counselor (“Counselor”) took over Student’s daily check-ins. *Interview with Principal; Exhibit G-1*. These were brief wellness checks, and the minutes were not documented. *Exhibit M*, p. 180. Counselor was not working on Student’s goals, and these were not IEP service minutes. *Id.* The weekly progress reports do not include any reference to mental health services or support on Student’s social emotional goals. *Exhibit G-1*.

66. After February 10, 2023, there were 14 weeks in the spring 2023 semester. *Exhibit K*. At 135 MPW, Student should have received 1890 minutes of direct support from a mental health provider. *Exhibit A*, p. 26. 75 MPW should have been daily check-ins for “planning and organizing and bully prevention services via social behavioral mapping and self advocacy (sic).” *Id.* at p. 25. 60 MPW should have addressed “anxiety and withdrawal” and “reciprocal social interaction and social behavior.” *Id.* School Psychologist also was required to provide 420 minutes of consultative services to support Student’s other providers.

67. Although not included in the December IEP, School’s speech and language pathologist (“SLP”) started providing services to Student on March 24, 2023. *Exhibit F*, p. 9. Student was working with SLP on social and reciprocal communication. *Exhibit M*, p. 218.

68. SLP was meeting with Student for 30 MPW and indicated Student was progressing. *Exhibit E-6*. She met with Student for direct services six times during the 2022-2023 school year. *Exhibit F*, p. 9. Student missed a seventh session because he was absent. *Id.*

H. Implementation of December IEP – PSAT

69. For standardized tests like the SAT and PSAT, accommodations must be submitted to the College Board for approval. *Interview with Principal*. For a spring administration of the PSAT, accommodations would usually be submitted in November. *Id.*

70. School's understanding was that Student's accommodations had been submitted by Former School. *Interviews with Principal and Case Manager 1*. Another SCO concluded that Former School previously failed to submit Student's accommodations to College Board before a prior administration of the PSAT. *Exhibit P*, p. 27. At that time, the PSAT accommodations in his IEP were small group and extended time. *Id.* at p. 11.

71. Student's only approved accommodations were small group and extra time. *Interview with Principal*. Student was initially placed in a small group setting with 11 other students who would get extra time on the exam. *Id.* There were no breaks available in that setting. *Id.*

72. Student refused to open or start the test, so Principal arranged for him to continue the test in a 1:1 setting. *Id.* Once he was in the 1:1 setting, Student took breaks with the proctor but still refused to start the test. *Id.*

73. The tenth grade PSAT is not used by colleges. *Id.* The purpose is to gather school data on student growth. *Id.*

I. Implementation of December IEP – Behavior Supports

74. Teachers checked in with Student frequently and regularly reminded him to put his phone away or use his computer only to complete assignments. *Exhibit G-2*. Student often did not comply. *Id.*

75. Student struggled to start or complete work independently, and various teachers noted that he only completed work with 1:1 support from the classroom teacher. *Id.*

76. Student usually turned his phone in at the start of class with Social Studies Teacher. *Interview with Social Studies Teacher*. He also often complied with expectations in that class. *Exhibit G-2*. This was the only core content class he passed. *Exhibit J*, p. 13.

77. English Teacher was not familiar with Student's BIP. *Interview with English Teacher*. She could not get Student to produce any work and tried contacting District staff for assistance and did

not get any response. *Id.* She was not aware of an expectation to give Student a notecard to write down questions. *Id.*

78. Neither teacher described a non-verbal communication system for Student to communicate his needs. *Id.*
79. An SCO previously determined that Student’s prior IEP and BIP also lacked appropriate behavior supports and strategies. *Exhibit P*, p. 34.

J. Weekly Progress Monitoring

80. District maintained a spreadsheet to share Student’s weekly progress on various goals. *Exhibit G-1*. Each staff person interviewed thought someone else was responsible for providing Parent access to this spreadsheet. *Interviews with Case Manager 1, Principal and Director*.
81. Parent had not received any progress reports as of March 1. *Exhibit M*, pp. 93, 186. District shared the spreadsheet on March 7, 2023. *Exhibit M*, p. 200; *Interview with Parent*.
82. Starting in February 2023, many rows and columns were left blank. *Exhibit G-1*. From March 6 through April 10, 2023, the spreadsheet is mostly, if not entirely blank. *Id.*
83. The final weeks of school include more anecdotal or subjective information, but almost no data. *Id.* For instance, on April 17, in response to Student’s math goal about using order of operations to solve problems, it is noted that Student is working on circumference and area. *Id.* Further, “with specific direction, [Student] could solve a multi-step problem.” *Id.*
84. On May 8, on his goal to have few or no missing assignments, Student had “entered Wednesday’s schedule in his phone” and did “not embrace the idea of tracking his assignments.” *Id.*
85. The SCO finds that the weekly progress reports have almost no measurable data that can be compared to the baselines in the December IEP. Another SCO concluded that District failed to provide Parent with periodic reports on Student’s progress from September 2021 through November 2022. *Exhibit P*, p. 36.

K. Progress Report

86. District was implementing the December IEP throughout the semester, until a new IEP was finalized on May 26, 2023 (“May IEP”). *Interview with Case Manager 1 and Director; Exhibit M*, pp. 169-170. In May 2023 District issued a formal progress report (“Progress Report”) for Student. *Exhibit J*, pp. 1-12.

87. The Progress Report includes progress on the 13 goals from the May IEP and not the eight goals from the December IEP. *Id.*; *Exhibit A*, pp. 15-19, 78-85.
88. The writing goal to independently write a two-paragraph essay was substantially the same. *Id.* According to the Progress Report Student could write multiple sentences on a topic, but not independently. *Id.* It is unclear how that compares to the baseline of writing two paragraphs in zero attempts, as multiple sentences would likely be considered failing to write two paragraphs. *Exhibit A*, p. 15.
89. The reading goal is also the same, with three objectives regarding understanding tone, a character's point of view, and theme. *Exhibit A*, p. 16; *Exhibit J*, p. 2. In May 2023, Student was reading a book with 1:1 support and could discuss characterization of two of five characters "with a fair amount of cajoling and encouragement." *Exhibit J*, p. 2. It is unclear if this indicates progress on one objective as the goal does not note if prompting was provided. *Exhibit A*, p. 16.
90. The math goal is still to solve multi-step problems using order of operations. *Exhibit A*, p. 17; *Exhibit J*, p. 3. In May 2023, Student was working on geometry and did not see a purpose to doing math. *Exhibit J*, p. 3. The SCO finds that this does not include any measurable data on the goal in question.
91. The next goal was like, but not the same as, the self-determination goal in the December IEP about reducing missing assignments. *Exhibit A*, p. 17; *Exhibit J*, p. 3. In May of 2023 Student was clear on his daily class schedule, but there is no information provided about using a planner or reducing missing assignments. *Exhibit J*, p. 3.
92. The Progress Report does not include any information about coping skills that could be related back to that goal in the December IEP. *Exhibit A*, pp. 17-18; *Exhibit J*, pp. 1-12. There is also no comparable goal around demonstrating problem-solving skills in response to hypothetical conflict. *Exhibit A*, p. 19; *Exhibit J*, pp. 1-12. However, Student had made no progress on a somewhat related objective. *Exhibit J*, p. 6.
93. On a similar goal about differentiating conflict from bullying, Student had made no progress. *Exhibit A*, p. 18; *Exhibit J*, p. 5. On a similar goal to reduce his tardies from one per day, Student had also not made progress. *Exhibit A*, p. 19; *Exhibit J*, p. 4.

L. February 13, 2023, IEP Team Meeting

94. Case managers are responsible for drafting and issuing required PWN. *Interview with Director*. District's Special Education Procedural Manual ("Manual") includes instructions on when to issue PWN and what to include. *Id.*; *Exhibit L*, pp. 13-15.

95. The Manual advises that PWN is required any time District proposes or refuses to change the “identification, evaluation, related services, or educational placement of a child,” consistent with the IDEA. *Exhibit L*, p 14. If action is taken as part of an IEP meeting, the embedded PWN can be used. *Id.* at p. 15. If a decision is made outside of an IEP meeting, a separate PWN should be written. *Id.* at p. 14. The Manual does not explicitly address what to do in the event an IEP team refuses to make any changes during a meeting. *Id.* at pp. 13-15.
96. On February 13, 2023, an IEP team including Director, Parent, Case Manager 1, Student, Principal, and a general education teacher met to consider amending the December IEP. *Exhibit E*, p. 40.
97. Parent requested direct instruction on personal boundaries. *Id.* District indicated this was already happening during Student’s mental health services. *Id.*
98. Parent also requested 1:1 instruction from a special education teacher. *Id.* at pp. 40-41. District wanted more data to consider such a change and refused to change the services in the December IEP. *Id.* at p. 41. District was not willing to make any changes to the IEP. *Id.*
99. District did not issue a PWN after this IEP team meeting. *Response*, p. 2.

M. Development of the May IEP

100. On February 2, 2023, Parent signed consent for District to conduct a reevaluation of Student. *Exhibit 18*, pp. 1-4. Per the consent, District would be evaluating Student in the areas of communicative status, social emotional status and motor abilities. *Id.* at p. 1.
101. On March 23, 2023, District completed a reevaluation, including an FBA conducted by BCBA, who was a private contractor and not a District employee. *Exhibit C*, pp. 32-56. This included several speech and language evaluations and a review of the IEE. *Id.* at pp. 32-37.
102. The May IEP was developed over six IEP meetings between March and May. *Exhibits E-1-6*. Attendance at each meeting varied. *Id.*
103. Case Manager 1 attended the first meeting on March 23, 2023. *Exhibit E-1; Interview with Case Manager 1*. Although Case Manager 1 and Special Education Teacher remained employed at School and could have attended, Case Manager 2 attended the remaining five meetings. *Id.*; *Exhibit E-2-6*. Parent, Director, Principal and Parent’s Advocate attended every meeting. *Exhibit E-1-6*. Student attended portions of each meeting. *Id.* SLP was present for five of the six meetings. *Id.* A school psychologist was present for the first meeting only. *Id.*
104. There was no general education teacher at the fourth meeting on April 13, 2023, where the IEP team primarily reviewed goals. *Exhibit E-4*. Parent agreed via email to proceed with Principal “representing” general education. *Exhibit M*, p. 135. There also was no general

education teacher at the fifth meeting where they discussed accommodations on April 18, 2023. *Exhibit E-5*. Parent did not agree in writing to proceed without one. *Exhibits E and M*. A general education teacher was present for the other four meetings. *Exhibit E-1-3, 6*.

105. BCBA did not attend any of the meetings. *Exhibit E-1-6*. Instead, the director of his organization (“BCBA Supervisor”), also a BCBA, attended. *Id.* BCBA would have attended the meetings, but no one checked his availability and the schedule always conflicted with services he needed to provide elsewhere. *Interview with BCBA*. BCBA and BCBA Supervisor discussed the FBA and proposed BIP before the meetings. *Id.* Parent had many questions about how the FBA became the BIP, as she did not feel the documents matched. *Exhibit E-3*. However, during the meetings BCBA Supervisor referred frequently to needing to check with BCBA about questions that were raised. *Exhibit E-3, 4*.
106. At the second meeting, on April 4, 2023, the IEP team discussed Student’s transition needs. *Exhibit E-2*. Director indicated that based on the data, Student did not need an ILS goal because he is taking the bus independently and grooming himself. *Id.* An occupational therapist (“OT”) observed Student’s independent living skills. *Exhibit C*, p. 41. She noted he could complete a job application with limited support from the OT. *Id.* Student was able to carry and open his lunch independently and navigate the hallways. *Id.* However, he noted he does not use a locker because he would not be able to keep track of items he put there. *Id.*
107. Parent and her advocates disagreed, indicating that Student does not groom himself, cannot cook unsupervised, and has been unable to take the bus independently. *Id.* Instead, Parent is regularly missing work because Student cannot navigate the bus independently. *Id.* Director concluded that if Parent wanted them to consider ILS District would have to review that formally. *Id.* No mention is made of the adaptive skills assessment done by the Independent Evaluator. *Id.*
108. For the course of study, Principal reviewed Student’s progress towards graduation, noting that he had earned 50 credits and no more than one sixth of the required credits in any core subject. *Id.* Principal noted that Student had a lot of catching up to do, but it was not yet impossible. *Id.* Parent asked how they would get him caught up, and Director indicated that it was not a conversation for the IEP team. *Id.*
109. At the meeting on April 11, 2023, they reviewed the FBA and BIP developed by BCBA. *Exhibit E-3*. Parent raised concerns that the BIP seemed to diverge from the FBA with a focus on blaming Student’s phone use rather than focusing on his lack of engagement coming from not having his needs met. *Id.* Parent also requested 1:1 instruction for Student, outside of general education, because BCBA observed that he only engaged in that setting. *Id.*
110. The proposed BIP recommended 1:1 support “as needed,” but Parent wanted greater clarity. *Id.* Principal noted that he already had a paraprofessional supporting him in all his core classes. *Id.* Director also pointed to Student not wanting someone checking on him all the

time. *Id.* Parent and Student clarified that Student does not like too much support in general education, but he likes getting direct support from a teacher outside the classroom. *Id.*

111. In the final meeting on May 2, 2023, the IEP team focused on services for Student. *Exhibit E-6.* Director proposed 60 MPW of direct support from a mental health provider. *Id.* Parent was concerned about the reduction from 135 MPW, but the IEP team pointed to the addition of direct services from BCBA to support the reduction. *Id.* There was no mental health provider present at this meeting. *Id.*
112. For direct special education services, District proposed keeping Student in two resource classes for 405 MPW and an additional 85 MPW with a paraprofessional, as he was then receiving. *Id.* Parent and Parent's Advocate disagreed with the characterization of the services because only half of the class is direct instruction. *Id.* They also disagreed with the sufficiency of the services because Student was not making progress. *Id.* Parent wanted Student to get special education instruction that was individualized to his needs in a 1:1 setting. *Id.*
113. Case Manager 2 proposed enrolling Student in smaller content specific special education classes for math and English the following year to try something different. *Id.* She had not calculated what those minutes would come out to if the IEP team selected that option. *Id.* No final decisions were made, but the IEP team seemed to agree on the classes proposed by Case Manager 2. *Id.* There was no discussion of services inside general education. *Id.*
114. After the meeting, Director sent an email with a proposed service chart which included a resource class for 620 MPM and another "intervention" class for 620 MPM, during which Student could also meet with SLP and a mental health provider. *Exhibit M*, p. 158-159. He noted that Case Manager 2's proposals might have "caused some confusion" and requested an additional meeting. *Id.* at pp. 157-158.
115. Neither Parent nor Parent's Advocate were available for another meeting, so they asked for more information about District's offer of FAPE. *Id.* at p. 157. On May 16, 2023, Director sent Parent another draft of the IEP without further clarification. *Id.*
116. Director could not explain where 620 MPM for direct special education services came from and did not know if that was comparable to one class period. *Interview with Director.* Assuming four weeks in a month, classes at School met for 980 MPM. *Exhibit 14.*
117. On May 27, 2023, Director sent Parent a final copy of the May IEP. *Exhibit M*, p. 170. The school year ended two days later, on June 1, 2023. *Exhibit K.* For the 2023-2024 school year, Student enrolled in a new school. *Complaint*, p. 1.

N. May IEP

118. The May IEP includes Student's strengths and interests from the December IEP. *Exhibit A*, pp. 3,64. Student is also introspective and logical and inquisitive about topics of interest *Id.* at p. 64. Student participates in chess club and is proud of his ability to get and keep a job. *Id.*
119. The present levels section includes a summary of the results of the IEE, Student's then-current grades, and input from his teachers. *Id.* at pp. 65-68. He was failing four of seven classes and teachers struggled to engage him or get him to complete any work without 1:1 support from a teacher. *Id.* at pp. 67-68. Student ultimately failed four classes that semester. *Exhibit J*, p. 13. It also includes a summary of the SLP and OT evaluations. *Exhibit A*, p. 69.
120. Student was not responding to interventions and continued to function at the baseline level of his goals. *Id.* at p. 68. Multiple interventions had been implemented. *Id.* The IEP includes a list of useful strategies in the present levels section. *Id.* at pp. 69-70. These strategies included recognizing signs that Student is shutting down, giving clear and brief instructions in writing, using visuals to prompt language and, when possible, relating topics to Student's areas of interests. *Id.*
121. For transition planning, Case Manager 1 conducted a student questionnaire with the assistance of a BCBA, reviewed prior assessments, and had Student complete the online assessment tool again. *Id.* at p. 70; *Exhibit G-2*. Student initially would not engage, but later completed the questionnaire. *Exhibit G-2*. Student again expressed interest in a computer-based career, like computer programming. *Id.*; *Exhibit A*, p. 71.
122. Student and Parent indicated that Student needed help with organization and executive functioning to be independent. *Id.* at p. 72. The May IEP concludes that Student needs executive skills training to work independently and life skills training like personal finance, application completion, and spelling to live independently. *Id.*
123. Student's post-school education goal was to attend a vocational program or college to earn a degree in the field of computer science. *Id.* at p. 75. His career goal was to work in the field of computer science. *Id.* The IEP concludes Student did not need an ILS goal. *Id.*
124. Student was projected to graduate with a high school diploma, requiring completion of specified courses. *Id.* at p. 76. No mention is made of what credits Student had earned to date or how long it would take him to complete the required credits. *Id.* The SCO finds the course of study should address a student's needs relative to graduation, including considering whether the student is deficient in credits. *Interview with CDE Content Specialist 4*.
125. Like the December IEP, transition services included instruction from a special education teacher and mental health provider on Student's writing and self-determination goals as well

as reteaching core content and teaching advocacy and emotional regulation. *Id.* at pp. 14, 77. SLP would also support Student with perspective taking and conversation skills. *Id.* at p. 77.

126. To support his career goals and address needs in money management, completing applications, and work experience, staff would help Student research requirements to enroll in post-secondary programs to work with computers. *Id.* Special education staff would also help him develop a system to organize his academic obligations and keep track of assignments. *Id.* They would also provide opportunities to connect with local businesses and potentially arrange apprenticeships or internships. *Id.* Connections were made to the division of vocational rehabilitation and a representative attended some meetings. *Id.*
127. Although the formatting changed, the student needs and impact of disability statement is largely the same as in the December IEP and indicated that Student's identified disabilities impact his access to his education. *Id.* at pp. 8-9, 72-73. The only addition is that Student's pragmatic language skills are impacted. *Id.* at p. 72. The only special factor was that Student required a BIP. *Id.* at p. 75.
128. A lengthy parent input section copies Parent's concerns from a March 2023 email. *Id.* at p. 73. Parent raised concerns that staff did not understand Student's disability because it is not visible, so they assume he is choosing not to do work. *Id.* Parent also explained some of the challenges Student has faced in District over the years. *Id.* Her input from January is also included. *Id.* Student's concerns are the same as in the December IEP, including how many credits he has earned. *Id.* at pp. 10, 74.
129. The IEP included 13 annual goals, with Parent to receive weekly progress updates containing both "academic progress reports and IEP Goal progress." *Id.* at pp. 78-85.
130. The writing, reading and math goals are unchanged from December. *Id.* at pp. 15-17, 78-79.
131. The IEP had two "other" goals. *Id.* at pp. 79-80. From a baseline of zero percent, Student would effectively use an organizational system independently to increase work completion by meeting two objectives. *Id.* at p. 80. After trialing different systems, Student would identify one or two that work for him and utilize his preferred system to have no more than one missing assignment in each class. *Id.*
132. He would also improve his attendance from one tardy per day to zero tardies per week. *Id.* Student was most often absent or tardy for his first period class. *Exhibit I*, pp. 1-3. He was also frequently tardy for the period right after lunch. *Id.* Parent reports that Student had difficulty taking the bus to School because he would struggle to read schedules, miss transfers, get off at the wrong stop, or be unable to problem solve if a bus was late. *Interview with Parent; Reply*, p. 29.

133. There was one language goal. *Exhibit A*, p. 82. From a baseline of zero, Student would improve his pragmatic language skills by engaging in reciprocal conversations by meeting three objectives related to taking perspectives, leading a conversation in structured activities, and picking up on nonverbal cues from a group of people. *Id.* at pp. 82-83.

134. Finally, there were seven social\emotional wellness goals. *Id.* at pp. 80-85. These covered topics ranging from bullying, increasing self-esteem, engaging in reciprocal conversations, following receptive instructions, engaging in class work, initiating peer conversations, and initiating academic tasks. *Id.*

135. The December IEP includes a lengthy list of accommodations just over one page long. *Id.* at pp. 85-86. The accommodations address phone usage, alternatives to writing like a scribe or oral testing, targeted reteaching outside of class, reducing homework assignments by 50%, chunking and scaffolding assignments, providing visual supports, movement breaks and extra time. *Id.*

136. According to the service delivery statement, Student was to receive:

- Academic support from a **special education teacher** for 620 MPM outside of general education to work on his academic goal. Direct special education instruction would be provided in an intervention class working on academic goals, executive functioning and homework support;
- Academic support from a **special education teacher/provider** for 2,480 MPM inside of general education;
- 120 MPM of indirect consultation/case management services from a **special education teacher** to support accommodation use in the classroom and support paraprofessionals working in the general education classrooms;
- Counseling services from a **mental health provider** for 120 MPM;
- 60 MPM of indirect services from a **mental health provider** to review goals, accommodations and data on social emotional goals with BCBA and case manager;
- Direct instruction from an **SLP** for 120 MPM outside of general education to work on goals related to pragmatic language and conversation skills;
- 15 MPM of indirect consultative services from an **SLP** to review goal progress with Parent and school team;
- Behavior intervention services from a **Behavior Coach** for 960 MPM outside of general education to be provided by an outside contractor. Behavior and counseling services, along with homework support, would be provided a resource class.

Id. at pp. 89-91.

137. Student's LRE was general education 40-79% of the time, specifically 74.8% of the time. *Id.* at p. 92. This was based on the previous LRE agreement *Id.* The IEP teams never discussed LRE or placement. *Exhibit E-1-6.*

O. May BIP

138. During the six meetings, District also developed a new, eight-page BIP for Student (“May BIP”). *Exhibit B*, pp. 11-8. The May BIP was developed based on student observations, Parent, Student and teacher interviews and a record review, all of which was part of the FBA. *Id.* at p. 11.
139. The May BIP identifies four problem behaviors: academic engagement, receptive instructions (or the ability to follow one or two step directions), social engagement and initiating tasks. *Id.*
140. Lack of academic engagement was hypothesized to result from avoidance of demands and accessing preferred items such as music or videos. *Id.* at p. 12. Not initiating tasks or following instructions were both hypothesized to have the same two functions. *Id.* However, the May BIP also notes that a skill deficit may contribute to Student’s difficulty following directions. *Id.* Lack of social engagement was hypothesized to result from a desire to maintain access to preferred activities and potentially a skill deficit. *Id.* All four behaviors occurred across all settings, except that academic engagement would occur in 1:1 instruction. *Id.*
141. An FBA should allow the IEP team to narrow their focus down to the problem behaviors that are the top priority. *Interview with CDE Content Specialist 2.* It is important to prioritize one behavior at a time, and certainly not more than two, because doing too much will overwhelm both the student and staff. *Id.* Once the behavior has been successfully addressed, the IEP team can move on to another. *Id.*
142. There are two setting event strategies. *Id.* Allowing Student access to snacks when hungry and allowing extra time and reduced demands because Student is reportedly tired. *Id.*
143. Extra time does not address tiredness and might make a student more tired. *Interview with CDE Content Specialist 2.* Instead, Student might need a nap or activities to increase arousal like exercise or activating the pre-frontal cortex. *Id.*
144. There are 10 antecedent strategies. *Exhibit B*, pp. 12-14. These include seating Student near a supportive peer, clear expectations around work completion, opportunities to access technology as reinforcement for work completion, using behavioral momentum by starting with easier tasks, 1:1 support “as needed,” step by step instructions, developing a rapport with Student, and using first/then language. *Id.*
145. Some of these strategies, like building momentum and first/then language, are appropriate. *Interview with CDE Content Specialist 2.* However, it is unclear how teachers would know 1:1 support is “needed.” *Id.* Opportunities to access his technology is a reinforcement strategy, not an antecedent strategy. *Id.* Similarly, building rapport with Student would be an antecedent strategy. *Id.*

146. The May BIP includes six behavior teaching strategies. *Exhibit B*, pp. 12-14. These include Student reviewing the plan with staff, receiving the special education and related services in his IEP, engaging in desired academic activities across all classrooms, initiating work tasks without instruction, engaging with peers at appropriate times, and following 1-2 step instructions. *Id.*
147. The behavior teaching strategies read as instructions to Student rather than an explanation of what staff will be teaching. *Interview with CDE Content Specialist 2*. If Student is only able to follow one or two step instructions, a helpful antecedent strategy might be only giving him one or two step instructions. *Id.*
148. Teaching strategies should include two components. *Interview with CDE Content Specialist 2*. First would be teaching a replacement behavior Student can do right away to replace the problem behavior, like raising his hand instead of blurting out. *Id.* However, the plan should also include teaching a desired behavior that is more of a long-term solution, like accepting that they will not be called on every time they raise their hand. *Id.* The May BIP does not include either. *Id.*
149. The May BIP includes two reinforcement strategies: arbitrary reinforcement and set achievable expectations so Student can access reinforcement. *Exhibit B*, p. 12. There is also a list of reinforcers like breaks, access to phone or computer, and food. *Id.* at pp. 12-13.
150. The criterion for success is a full page long. *Id.* at pp. 16-17. The criteria mirror several of the goals from the May IEP. *Compare, Id.* and *Exhibit A*, pp. 79-85.
151. The criterion for success should assess whether a student has met a goal that is developed based on the hypothesis statement. *Interview with CDE Content Specialist*. It must have a baseline, a goal measure, and a clear indication of how success will be measured. *Id.* With this lengthy list, it reads as if BIP has been written into the criterion for success instead of in the intervention sections of the BIP. *Id.* These flaws in the BIP occurred despite CDE Content Specialist 2 effectively training District staff on how to develop an appropriate BIP before the May BIP was developed. *Interview with CDE Content Specialist 2*.

P. Prior Written Notice – May 2023

152. According to the embedded PWN (“May PWN”) in the May IEP, the IEP “includes services to be provided” and the present levels “includes information about the data used as a basis for the decisions” in the IEP. *Id.* at p. 92. The May PWN lists several factors that were considered and the reasons they were rejected. *Id.* at pp. 92-93.
153. The IEP team considered providing more 1:1 adult support, but Student had a paraprofessional in his core classes and had both a teacher and a paraprofessional in the small intervention class. *Id.* at p. 92. Student does not like having constant adult reminders and

teachers were reporting “some response” to check-ins, reteaching, and 1:1 support. *Id.* Parent requested additional pull-out services, but the IEP team felt he needed qualified content teachers and was “finding some success with peer working groups.” *Id.*

154. An ILS goal had been suggested and the IEE indicated low adaptive skills, including in daily living skills. *Id.* The team agreed to “screen and explore this domain” to understand specific needs in that area. *Id.*
155. Parent requested “modifications,” which were not added to the IEP because the IEP team indicated they were “teaching strategies.” *Id.* at p. 93. Parent would get weekly data on “goal progress, prompts given and accommodations utilized” and data would be gathered on a monthly basis using District’s curriculum based measure. *Id.*
156. Special education classes for math and literacy had been suggested because Student had some success in small group environments. *Id.* However, general education teachers observed “positive interactions and collaboration with peers” in their classes. *Id.* The IEP was also designed to support social interactions and credit towards graduation, so classes would be “conducted with highly qualified teachers” with support from a special education teacher or paraprofessional. *Id.*
157. Other factors considered included Student’s desire to use headphones during assessments, which would have to be approved by the state board. *Id.*
158. Finally, the May PWN notes that parents of eligible students have protections under the procedural safeguards and can get a copy of those safeguards or help understanding the information by contacting the case manager identified in the PWN. *Id.* at p. 93. Case Manager 2 was identified in that section. *Id.*

Q. Change to Student’s Schedule

159. In January 2023, Student was enrolled in a gym class for second period on “gold” days. *Exhibit 14.* He was also enrolled in an English class for fourth period on “gold” days. *Id.*
160. Student often refused to go to his gym class. *Interview with Principal; Exhibit G-1.* He already had more than the 10 gym credits required for graduation. *Interview with Principal.* English Teacher could not get Student to complete any work in her class. *Interview with English Teacher.*
161. On April 16, 2023, Student was allowed to drop his gym class and was transferred into an English class with a different teacher during second period on “gold” days. *Interview with Principal; Exhibit F, p. 1.* He had not had special education support in his gym class, and he continued to have paraprofessional support in his new English class. *Interview with Principal.*

162. This meant Student had a free period at the end of the day on “gold” days. *Interview with Principal*. Students at School commonly have a free period and are still considered full time students. *Id.*

R. Transmission of Records to Law Enforcement

163. Requests from law enforcement or courts are generally handled by the main office in District. *Interview with Director*. Director is unaware of any written policy regarding when or how to provide records in connection with a referral to law enforcement. *Id.*

164. When students are referred to law enforcement by District, the matter is usually handled by the one assigned school resource officer. *Interview with Principal*. Principal is not aware of any requirement to send records in connection with a referral, but always tells law enforcement if the student has an IEP. *Id.* For instance, in this case she notified the officer that Student had an IEP and would probably have a hard time answering questions and engaging in conversation. *Id.*

165. District referred Student to law enforcement on January 24, 2023, as a result of behavior that occurred on a District bus. *Response*, pp. 7, 18. School imposed a nine-day out of school suspension the same day. *Exhibit H*, pp. 2-3. On January 31, Parent’s Attorney asked if police had been provided with copies of Student’s records for consideration. *Exhibit M*, p. 43. As of February 2, District’s attorney (District’s Attorney”) was not aware of whether Student’s records had been sent, but thought staff was discussing it with Parent. *Id.* at p. 42.

166. District officials were concerned about whether records could be disclosed, and which should be included. *CDE Exhibit 1*, p. 4. They sought advice from District’s Attorney. *Id.* District sent Student’s records to law enforcement on or around February 7, 2023. *Response*, p. 18. By the time police received Student’s records, charging decisions were made. *Reply*, p. 39.

167. To date, District is unable to produce any evidence verifying when records were sent to law enforcement. *CDE Exhibit 1*, p. 2. District is also unable to produce a policy or procedure outlining how or when records are shared with law enforcement. *Id.* Finally, District is unable to produce any witnesses who can speak to policy or practice in this area. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The May IEP was not developed by an appropriate IEP team, did not include services that were reasonably calculated to allow Student to make progress, and was not reasonably calculated to address Student’s behavioral or post-secondary needs, in violation of 34 C.F.R. §§ 300.320(a)(4),(b), 300.321(a)(2),(3),(5), and 300.324(a)(2). These violations resulted in a denial of FAPE. The May IEP adequately considered the IEE, consistent

with 34 C.F.R. § 300.324(a)(1). District appropriately reviewed and revised Student’s IEP to address any lack of expected progress, consistent with 34 C.F.R. § 300.323(b)(ii)(A).

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

A. May IEP Development Process

Parent is concerned District did not convene an appropriate IEP team to develop the May IEP.

“Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of . . . FAPE to the child, participate in the child’s IEP Team meeting.” *Letter to Rangel-Diaz*, 58 IDELR 78 (OSEP 2011). The IDEA therefore differentiates between mandatory and discretionary IEP Team members. *See Pikes Peak BOCES*, 68 IDELR 149 (SEA CO 4/19/16). Mandatory IEP Team members include parents, at least one regular education teacher, at least one special education teacher, a district representative with knowledge of the district’s available resources and the authority to commit those resources, and an individual who can interpret evaluation results. 34 C.F.R. § 300.321(a)(1)-(5); ECEA Rule 4.03(5)(a). Members of the IEP team may be excused from a meeting where their area of the curriculum will be discussed, in whole or in part, if 1) the parties agree in writing and 2) the required member submits, in writing, input on the development of the IEP, before the meeting. 34 C.F.R. § 300.321(e)(2). The special education teacher need not be the student’s current special education teacher, but it must be a special education teacher who has worked with the student. *R.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007); *See also, New York City Dep’t of Educ.*, 45 IDELR 236 (SEA NY 2005); *Toledo Pub. Schs.*, 121 LRP 34535 (SEA OH 08/06/21).

Here, the May IEP was developed at over six meetings between March 23, 2023 and May 2, 2023. (FF #s 100-115.) Case Manager 1 attended only the first meeting. (FF # 103.) Although Case Manager 1 and Special Education Teacher remained employed at School and could have attended, the only special education teacher at the remaining meetings was Case Manager 2. (*Id.*) Case Manager 2 did not teach Student’s special education classes. (FF # 55.) She “spent time” with Student after school but was not providing him with services. (FF # 59.) This lack of experience with Student likely contributed to her recommendation to enroll Student in special education classes which District said “caused some confusion.” (FF #s 113, 114.) As such, District’s

finalized IEP included special education services that differed from what was discussed. (FF # 115, 116.) Thus, the SCO finds and concludes that the May IEP in this case was developed without a special education teacher who worked with Student, in violation of 34 C.F.R. § 300.321(a)(3).

There was also no general education teacher at the IEP meetings on April 13 and 18, 2023. (FF # 104.) On April 18, the IEP team discussed the accommodations that would be provided to Student. (*Id.*) Since Student spends most of his day in the general education setting, the SCO finds that accommodations concern the general education teacher's curriculum area. (FF # 36.) Parent did not agree in writing to proceed without a general education teacher on April 18, 2023. (FF # 104.) Thus, the SCO finds and concludes that part of the May IEP was developed without a general education teacher or agreement to excuse their presence, in violation of 34 C.F.R. § 300.321(a)(2).

Finally, BCBA, who conducted the FBA, did not attend any of the meetings, because no one ever consulted his availability before scheduling. (FF # 105.) Instead, BCBA Supervisor attended in his place. (*Id.*) Although BCBA and BCBA Supervisor consulted before the meetings, BCBA Supervisor was frequently unable to answer questions and indicated a need to consult with BCBA before responding. (*Id.*) The SCO recognizes that District cannot compel the attendance of a private contractor, but District also made no effort to secure his presence. (FF # 101, 105.) Because BCBA Supervisor was unable to answer many questions about the FBA, the SCO finds that the May IEP was developed without an individual who could interpret the instructional implications of the FBA, in violation of 34 C.F.R. § 300.321(a)(5).

The SCO recognizes the difficulty of assembling complete IEP teams, especially with the current staff shortages. However, the SCO is particularly concerned about the compounding effects of all these missing members in this specific situation. Because the May IEP was not developed by an appropriately convened IEP team, the SCO finds and concludes that the development process for the May IEP did not comply with IDEAs requirements. *Rowley*, 458 U.S. at 206. Nevertheless, the SCO still turns to the second question of whether the May IEP is substantively appropriate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of the May IEP

An IEP is “the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). Along with a statement of the special education and related services to be provided to the student, an IEP must include measurable goals designed to “[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child's disability. 34 C.F.R. § 300.320(a)(2). The IEP must also include supplementary aids and services that will be

provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4).

i. Consideration of the IEE

Parent’s concern is that the May IEP did not consider the results of the IEE.

In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a)(1). An IEP must include a statement of the student’s present levels of academic achievement and functional performance, including a statement explaining how the child’s disability impacts the student’s involvement and progress in the general education curriculum. *Id.* § 300.320(a)(1). Developing appropriately ambitious goals depends on first gathering and understanding the student’s current performance, including prior rates of progress and information provided by the parents. *Questions and Answers on Endrew F. v. Douglas County School District. Re-1*, 71 IDELR 68 (EDU 2017).

Here, the IEE identified moderate to severe characteristics of autism, difficulties with executive functioning and academic achievement, and concerns around adaptive skills, including communication and daily living skills. (FF #s 7-11.) The IEE also included several pages of recommendations including increased academic support, clear expectations for phone usage, and conducting an updated FBA. (FF #s 12-14.) After review of the IEE, Student was found eligible as a child with ASD for the first time. (FF # 15.) The May IEP includes a summary of the IEE, reading, writing and math goals, accommodations addressing phone usage and executive functioning, and support from a special education teacher for academics and executive functioning. (FF #s 119, 130, 135, 136.) Because the May IEP references the IEE and addresses many of the concerns it raised, the SCO finds that the May IEP considers the IEE results. Accordingly, the SCO finds and concludes that the May IEP does not violate the IDEA’s substantive requirements related to the development of an IEP at 34 C.F.R. § 300.324(a)(1).

ii. Special Education and Related Services

Parent’s concern is that the May IEP did not include appropriate special education and related services to address Student’s academic and behavioral needs.

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). It must “include information about the services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

This statement, commonly known as a service delivery statement, must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017) (noting that “Parents can’t make an informed decision on whether to accept a proposed IEP if the document includes only a vague description of the student’s services”); see also *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18). The service delivery statement must clearly specify the amount and type of services that will be provided to a student. *Adams 12 Five Star Schs.*, 75 IDELR 86 (SEA CO 2019). This includes describing the setting in which a particular service will be provided. See, e.g., *S.H. v. Mount Diablo Unified Sch. Dist.*, 70 IDELR 98 (N.D. Cal. 2017) (finding that the district violated the IDEA when it failed to spell out whether the 40 minutes of speech and language services would be delivered to the student individually or in a group setting).

Here, at the time the IEP was written, Student was enrolled in two special education resource classes. (FF # 55.) The SCO finds that this amounted to 415 MPW or 1,660 MPM of direct instruction from a special education teacher. (*Id.*) Even with this support, he was failing four of seven classes. (FF # 119.) He also had not made measurable progress on any goals. (FF #s 80-93.) He was also entitled to 135 MPW of direct support from a school psychologist, which he was not receiving after February 10, 2023. (FF # 64.) The May IEP included five more goals than the December IEP. (FF #s 27, 129.)

The IEP team discussed enrolling Student in smaller, content specific special education classes, but District instead decided on 620 MPM in an “intervention” class after the meeting. (FF #s 113, 114.) The SCO finds that 620 MPM is less than one full special education class. (FF # 53.) The IEP team also discussed 60 MPW of direct support from a mental health provider based on the addition of BCBA services. (FF # 111.) The May IEP includes 620 MPM of direct services from a special education teacher outside of general education and 120 MPM, or 30 MPW, of direct instruction from a mental health provider. (FF # 136.) This decision was made outside the confines of the IEP meetings and Director could not offer any basis for the 620 MPM. (FF #s 114-116.) For all of these reasons, the SCO finds that the decision to substantially reduce Student’s academic and mental health services when he was failing to make progress in the general education curriculum and on his IEP goals was not reasonably calculated to allow him to make progress.

Thus, the SCO finds and concludes that the service delivery statement of the May IEP was not reasonably calculated to allow Student to make progress on annual goals and to be involved and make progress in the general education curriculum, as required by 34 C.F.R. § 300.320(a)(4). This resulted in a denial of FAPE. See *D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA’s procedural requirements).

iii. Behavioral Strategies and Supports

Parent's concern is that the behavior supports in the May IEP did not adequately address Student's needs.

For a student whose behavior impedes their learning, the IEP must, among other things, 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). IEPs must address any behaviors that are impeding learning, including by causing student to miss instruction or avoid work. *Id.*

Here, Student was not exhibiting externalizing behaviors that would disrupt the classroom. (FF # 8.) However, he was not responding to interventions or engaging in coursework, except with 1:1 support from the classroom teacher. (FF #s 75, 119, 120.) He would not comply with requests to put his phone away or use his computer appropriately. (FF # 74.)

The May BIP was developed to address four problem behaviors: academic engagement, following receptive instructions, social engagement, and work initiation. (FF # 139.) A BIP cannot adequately address so many behaviors at one time. (FF # 141.) Instead, an FBA should be used to narrow the focus of the BIP to the top priority and a new plan can be developed once that behavior has been successfully addressed. (*Id.*)

Also, one of the two setting event strategies is allowing extra time because Student is tired. (FF # 142.) However, extra time does not address tiredness or address arousal and could have the opposite effect. (FF # 143.) The May BIP requires 1:1 support "as needed" as an antecedent strategy, but there is no way for teachers to know when such support is needed. (FF #s 144, 145.) Other setting event strategies are miscategorized as they should have been identified as antecedent strategies or reinforcement strategies. (FF # 145.)

The behavior teaching strategies read as instructions to Student rather than an explanation of what staff will teach him to address the problem behaviors. (FF # 147.) Teaching strategies should include teaching the student an immediately accessible replacement behavior as well as a long-term desired behavior. (FF # 148.) The May BIP includes neither. (*Id.*)

The May BIP also includes a full-page list of criteria for success. (FF # 150.) The criterion for success should assess whether a student has met a goal that is developed based on the prioritized hypothesis statement. (FF # 151.) With such a lengthy list of criteria, it reads as if the BIP has been written into the criteria for success instead of in the intervention sections. (*Id.*)

For these reasons, the SCO, in consultation with CDE Content Specialist 2, finds that the May BIP, and thus the May IEP, is not reasonably calculated to address Student's behavior needs, as required by 34 C.F.R. § 300.324(a)(2). This resulted in a denial of FAPE. *See D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

iv. Postsecondary goals

Parent's concern is that the May IEP does not include an ILS goal or address Student's lack of progress towards graduation.

Beginning with the first IEP developed at age 15, but no later than the end of ninth grade, an IEP is required to include a transition plan. ECEA Rule 4.03(6)(d). Such plan must identify "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills," as well as the transition services, including a course of study, the student needs to reach those goals. *Id.*; see also 34 C.F.R. § 300.320(b). As defined in the IDEA, "transition services" refers to:

(a) A coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

34 C.F.R. § 300.43(a); see also ECEA Rule 2.51(1). A student's individual needs inform the development of the student's annual goals and transition plan. *Id.*; 34 C.F.R. § 300.320(a)(2). Neither the ECEA nor the IDEA require development of an independent living skills goal. ECEA Rule 4.03(6)(d) and 34 C.F.R. § 300.320(b). Instead, an independent living skills goal is discretionary and only required "where appropriate." ECEA Rule 4.03(6)(d); 34 C.F.R. § 300.320(b).

Here, the IEE noted that Student struggled with adaptive skills across environments, including communication, daily living skills, personal care, and ability to access the community. (FF # 11.) The December IEP notes that Student had ILS needs like help with cooking, cleaning, and money management. (FF # 21.) Student was struggling to take the bus independently and was often late for his first period class as a result. (FF #s 107, 132.) All of these are skills Student needed to live independently. See CDE, *Writing Quality Secondary Transition IEPs* at p. 5 (May 2020), available at <https://www.cde.state.co.us/cdesped/qualitysecondaryiepgoals> (providing examples of appropriate independent living skills goals).

Student was able to hold down a job and complete a job application. (FF #s 106, 118.) However, that does not negate the other ILS concerns. The IEP team agreed to further "screen and explore" Student's ILS needs, but these concerns had been on their radar since at least December. (FF #s

11, 21.) If additional information was required, District should have gathered that information before the May IEP was finalized.

In addition, Student had earned 50 credits at the time the May IEP was written and earned no more than one sixth of the required credits in any area required for graduation. (FF # 108.) Although the IEP team discussed that Student had a lot of catching up to do to graduate, Director concluded it was not an IEP team discussion. (*Id.*) The May IEP makes no mention of how many credits Student had earned or how or when he would earn the credits required to graduate. (FF # 124.) A transition plan must address a student's individual needs, including whether they are on track to graduate on time. (*Id.*)

Because District lacked the information to determine Student's ILS needs and did not consider or address a course of study to put Student on a course to graduate, the SCO finds and concludes that the May IEP is not reasonably calculated to address Student's post-secondary needs, as required by 34 C.F.R. § 300.320(b). This resulted in a denial of FAPE. See *D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

v. Lack of Expected Progress

Parent's concern is that the May IEP did not address Student's lack of expected progress towards goals up to that point.

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, Student's December IEP was finalized on January 12, 2023. (FF # 16.) District then began revising the IEP again on March 23, 2023. (FF # 103.) In the first two months of the semester, Student was not responding to interventions and had not made progress on his goals. (FF # 120.) Because District reviewed and revised Student's IEP about two months after it was adopted, the SCO finds and concludes that it revised Student's IEP to address a lack of expected progress, consistent with the requirements of 34 C.F.R. § 300.323(b)(ii)(A). No violation of the IDEA occurred.

Conclusion to Allegation No. 2: District failed to implement Student's December IEP, in violation of 34 C.F.R. § 300.323. This violation was material and resulted in a denial of FAPE.

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

A. Knowledge of the December IEP

The SCO starts by determining whether District satisfied its obligation under 34 C.F.R. § 300.323(d) to ensure that Student’s teachers were aware of their responsibilities under the December IEP and BIP.

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d). This responsibility requires more than just providing them with a copy of the IEP. For instance, districts must ensure that general education teachers and other providers know how or when to implement all the accommodations or modifications. *San Luis Valley BOCES*, CDE Decision 2023: 535 (July 2023) (finding that BOCES failed to ensure teachers were aware of their responsibilities under the student’s IEP where the special education teacher had not read it).

Here, the December IEP was finalized January 12, 2023, two days into the semester. (FF # 16.) District was implementing the December IEP and BIP until the May IEP and BIP were finalized May 26, 2023, three days before the end of the semester. (FF #s 86, 117.)

Case managers are responsible for ensuring a student’s providers are aware of their responsibilities under the students IEP. (FF # 46.) Student’s team at School met to review his IEP before his first day, and teachers were provided with copies of the IEP as well as the snapshot or summary of it. (FF # 48.) Case Manager 1 was also in frequent contact with Student’s teachers about how to support him. (*Id.*) School Psychologist provided teachers with a copy of the December BIP and provided training and ongoing support around implementation. (FF # 49.) Two of Student’s general education teachers recalled receiving copies of Student’s goals and accommodations. (FF # 50.) Only one of the two recalls having seen the December BIP. (*Id.*) Both were able to describe several of the supports required by the December IEP and BIP, but they were unaware of others. (FF #s 51, 77, 78.)

The December IEP includes nearly three pages of accommodations. (FF # 33.) The SCO finds that it would not be possible for teachers to keep track of so many accommodations and implement

them with fidelity. (*Id.*) The December BIP includes six pages of strategies. (FF # 39.) The average person can only remember three to five things, so a good BIP should not have more than three to five strategies in any category. (FF # 40.) If a BIP is too long, teachers cannot remember the requirements and therefore cannot implement them with fidelity. (*Id.*)

The SCO finds that Student’s providers were not aware of all their responsibilities under the December IEP and BIP and that, given the length of the documents, it would not have been possible to be aware of their specific responsibilities. Thus, the SCO finds and concludes that District did not ensure that Student’s teachers understood their responsibilities under the December IEP and BIP, in violation of 34 C.F.R. § 300.323(d).

B. Special Education Services

Parent’s concern is that Student was not receiving *individualized* instruction in his resource classes. (FF # 62.)

Special education services are more than minutes in a classroom. Indeed, “[s]pecial education means specially designed instruction, at no cost to the parents, to meet *the unique needs* of a child with a disability.” 34 C.F.R. § 300.39(a)(1) (emphasis added). Specially designed instruction must meet the child’s unique needs and ensure the child’s access to the general education curriculum by adapting “as appropriate to the needs of an eligible child under this part, the content, methodology or delivery of instruction.” *Id.* at § 300.39(b)(3). Working independently on classroom assignments that are not directly tied to the needs in a student’s IEP is not appropriate specially designed instruction. *Denver Public Schools*, CDE Decision 2022:547 (November 2022).

Under the December IEP, Student was to receive 460 MPW of direct instruction outside the general education setting to address his writing and self-determination goals. (FF # 35.) Student was enrolled in two resource classes taught by special education teachers. (FF # 55.) With School’s block schedule, Student was receiving direct instruction in the resource classes for 415 MPW. (*Id.*) Thus, the SCO finds and concludes that District was not providing Student with 45 MPW of direct special education instruction required by the December IEP.

For half of one resource class, special education teachers provided direct instruction for the subject of greatest need for the class, which was usually reading and writing. (FF # 54.) The rest of the time, the students worked on classwork with support from the special education teachers who helped them prioritize outstanding assignments. (*Id.*) In the other class, Student was again expected to work on classwork with support from a special education teacher. (FF # 55.)

Student’s first self-determination goal was to effectively use a planning/tracking system to have no missing assignments. (FF # 31.) Student, like many students with ASD, needed explicit instruction in how to learn, including skills like executive functioning. (FF #s 31, 50.) Giving students time to work and helping them prioritize specific assignments is not the same as

providing direct instruction on executive functioning skills like developing a planning and organizing system.

Student also had reading, writing and math goals in the December IEP. (FF #s 28-30.) The resource classes at School only worked on math if all the students were in the same class. (FF # 54.) Nothing in the Record suggests Student received specialized math instruction at another time.

Because the special education instruction in resource classes was addressing only some of Student's related goals, the SCO finds and concludes that District was not fully implementing the special education services required by the December IEP, in violation of 34 C.F.R. § 300.323.

The SCO is not concluding that Student did not receive any specialized instruction, or that specialized instruction cannot be provided in a group setting. However, specially designed instruction must be designed to meet a student's unique need and not just the needs of an entire class.

C. Mental Health Services

Parent's concern is that Student did not receive mental health services. Under the December IEP, Student was entitled to 135 MPW of counseling services from a school psychologist. (FF # 35.) These services were further divided into 75 MPW for check-ins, organization, and bullying prevention, and 60 MPW of instruction on anxiety, withdrawal and social interactions. (*Id.*) He was also supposed to receive 120 MPM of indirect consultation between a mental health provider and his teachers. (*Id.*)

School Psychologist went on an extended leave on February 10, 2023 and never returned to School. (FF # 64.) In total, School Psychologist missed 14 weeks of school (FF # 66.) In that time, Student should have received 1,050 minutes of daily check-ins, 840 minutes of direct instruction on anxiety and social interaction, and 420 minutes of consultative services to support other providers. (*Id.*) Thus, the SCO finds and concludes that District failed to provide Student with 1,890 minutes of direct instruction and 420 minutes of consultative services from a school psychologist, in violation of 34 C.F.R. § 300.323.

D. PSAT Accommodations

Parent's concern is that Student did not get his accommodations for the April 2023 PSAT.

The December IEP listed five accommodations for the PSAT, including stop-the-clock breaks, extended time, and testing in an "other setting." (FF # 34.) School staff assumed Former School submitted Student's testing accommodations to the College Board. (FF # 70.) However, Student's December IEP was not finalized until January 12, 2023, and Former School failed to submit his accommodations. (FF #s 16, 70.) According to School, Student's only approved accommodations

were small group and extra time. (FF # 71.) These are accommodations from his prior IEP. (FF # 70.) Thus, the SCO finds that new accommodations were never submitted to the College Board.

As a result, Student was placed in a room with 11 students and no available breaks. (FF # 71.) When Student refused to open the test, Principal tried moving him to a 1:1 setting and letting him take breaks. (FF # 72.) He never started the test. (*Id.*)

Because Student did not receive the accommodations in the December IEP, the SCO finds and concludes that District failed to implement the December IEP with respect to Student's PSAT accommodations, in violation of 34 C.F.R. § 300.323.

E. Behavior Supports and Strategies

The December IEP included nearly three pages of accommodations, some of which, like checking in when Student was shutting down or setting expectations for phone usage, were designed to address Student's behavior needs. (FF # 33.) The December IEP also included three social emotional goals. (FF # 32.) Finally, the December BIP included six pages of strategies to address three problem behaviors. (FF #s 38, 39.) This includes about 20 setting event strategies. (FF # 39.)

As discussed above, Student did not receive direct instruction on his social emotional goals after School Psychologist left on February 10, 2023. (FF #s 64, 65.) The BIP also required teaching Student alternative behaviors like anxiety reduction skills and prompting Student to use coping strategies. (FF #s 43, 44.) Without counseling services, Student was not receiving that instruction, and no one was monitoring Student's progress under the BIP. (FF # 45.)

At least one of his teachers had not received a copy of the December BIP. (FF # 50.) Neither of the teachers interviewed were aware of all their responsibilities under the December BIP. (FF #s 77, 78.) This is likely because the December BIP was longer than a reasonable person could remember and implement with fidelity. (FF # 40.) The same is true of the accommodations in the December IEP. (FF # 33.)

Because Student was not receiving social emotional services for most of the semester and his teachers were not implementing his BIP and accommodations with fidelity, the SCO finds and concludes that District failed to implement the behavior supports and strategies in the December IEP and BIP, in violation of 34 C.F.R. § 300.323.

The SCO cautions District against developing IEPs which cannot be implemented with fidelity (such as one with so many accommodations). 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 must only include the specially designed supports and services that a student needs to receive FAPE and need not include services or supports that are available to all students. *See, e.g., A.C. v. Brandywine Sch. Dist.*, 123 LRP 5169 (D. Del. 02/10/23) (finding a district did not deny FAPE to a sixth-grader with reading difficulties and anxiety when it failed to include specialized math

instruction or RTI services in her initial IEP). 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.*

F. Materiality of Failure to Implement

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

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

Here, District failed to ensure that Student’s teachers understood their responsibilities under the December IEP and BIP. Student also did not receive special education instruction to address his math or executive functioning goal. District failed to provide Student with direct and consultative mental health services for 14 weeks of the semester. (FF # 66.) Student did not work on his three social emotional goals without School Psychologist, and District did not implement the behavior supports in the December IEP and BIP with fidelity. He also did not receive his accommodations on the April 2023 PSAT. (FF #s 70-72.) In total, the SCO finds that this is a substantial proportion of the supports and services he should have been receiving at School.

In that time, there is no evidence that Student made measurable progress on his IEP goals. (FF # 80-93, 120.) Student struggled to complete any work in class, generally only working with 1:1 support from the classroom teacher. (FF # 75.) Student failed four of seven classes that semester.

(FF # 119.) Thus, the SCO finds and concludes that the failure to implement the December IEP and BIP was material, resulting in a denial of FAPE.

G. Compensatory Education

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

District failed to provide Student with 1,890 minutes of direct instruction and 420 minutes of consultative services from a school psychologist. (FF # 66.) During the time School Psychologist was absent, Student continued to have daily check-ins with Principal or Counselor, but they did not work on IEP goals, and neither was a school psychologist. (FF # 65.) Although not included in the December IEP, Student also started working with SLP on social communication. (FF # 67.) Student met with SLP for a total of 180 minutes. (FF # 68.) The SCO finds that these services partially mitigate the failure to implement violation, so an award of the full amount of missed services would not be appropriate. In addition, in consultation with CDE Content Specialist 1, the SCO finds that an award of too many services would overwhelm Student and contribute to ongoing disengagement. Thus, the SCO finds an award of 420 minutes of mental health services to be appropriate.

District also failed to provide Student with special education instruction for at least two of his goals: math and executive functioning. District also failed to provide Student with 45 MPW of specialized instruction required by his December IEP. (FF # 55.) However, Student received instruction in reading and writing and got support with work completion and prioritization. (FF #s 54, 55.) Thus, the SCO, in consultation with CDE Content Specialist 1, finds an award of 420 minutes of special education instruction to be appropriate.

Conclusion to Allegation No. 3: District failed to provide Parent with periodic updates on Student’s progress on his annual goals, in violation of 34 C.F. § 300.320(a)(3). This violation resulted in a denial of FAPE.

Parent’s concern is that she did not receive progress reports while Student was at School.

IEPs must include a description of how a child’s progress towards their annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the student’s annual goals. 34 C.F.R. § 300.320(a)(3).

Here, the December IEP required that Parent receive weekly progress updates regarding Student's eight annual goals. (FF # 27.) The semester started January 10, 2023. (FF # 16.) Although District maintained a spreadsheet with weekly progress reports, no one shared the spreadsheet with Parent until March 7, 2023. (FF #s 80, 81.) The entries from March 6 through April 10 are almost entirely blank. (FF # 82.) The remaining entries, from April 17 through the end of the year, contain largely anecdotal or subjective information about Student's progress. (FF #s 83, 84.) Overall, the SCO finds that the weekly progress reports do not include measurable data that could be compared to Student's baselines. (FF # 85.)

Further, the formal progress report issued by District in May 2023 reports Student's progress on the goals in the May IEP that was finalized days before. (FF #s 86, 87.) To the extent that these goals were like the goals in the December IEP, the information reported was not measurable or comparable to the baselines from Student's goals. (FF #s 88-93.)

According to the May IEP, Student had not made progress on any of his goals. (FF # 120.) It is not clear where this data comes from, but at best District was not tracking Student's progress and at worst he did not make progress all semester. However, to the extent that there is no real data in any of the three updates, the SCO finds that District was not monitoring Student's progress.

Because Parent did not receive progress reports for three months, and the progress reports she did receive did not contain measurable data, the SCO finds and concludes that District failed to provide Parent with the weekly progress updates required by the December IEP, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

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

Here, throughout the period in question, Parent and District were in the process of developing a new IEP for Student. In those meetings, Parent was advocating for additional services because Student was not making progress. (FF #s 111, 112.) Nevertheless, the May IEP ultimately reduced Student's special education and mental health services. (FF #s 35, 136.) Because the May IEP was developed without adequate information about Student's progress on his prior goals, the SCO finds that this failure impeded his right to a FAPE. Because Parent did not receive progress data while she was advocating for increased services, the SCO finds that this failure significantly impeded her ability to participate in the decision-making process regarding the development of the May IEP. Thus, the SCO finds and concludes that the failure to monitor or report Student's progress resulted in a denial of FAPE.

Conclusion to Allegation No. 5: District failed to issue PWN of its refusal to change the provision of FAPE after the February 13, 2023 IEP team meeting, in violation 34 C.F.R. § 300.503(a). This violation did not result in a denial of FAPE.

Parent's concern is that she did not receive PWN of District's decisions during the numerous IEP team meetings to develop the May IEP, and that the eventual PWN included with the May IEP was not accurate.

PWN must be issued a reasonable time before a district proposes or refuses to change "the educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) a statement that the parents of a child with a disability have protections under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district's proposal or refusal. 34 C.F.R. § 300.503(b)(1-7). The notice must be "written in language understandable to the general public." *Id.* at § 300.503(c).

Adequately identifying the specific action being proposed or refused is essential because the primary purpose of PWN is to help parents understand the basis for disagreement and whether to seek resolution of the dispute through the available procedural safeguards. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007); *Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18).

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

A. PWN After the February 13 IEP Team Meeting

During an IEP team meeting on February 13, 2023, Parent requested a change to Student's special education services. (FF #s 96, 98.) Specifically, she wanted Student to get more instruction in a 1:1 setting instead of a small group. (FF # 98.) District refused to make this or any other change to Student's December IEP. (*Id.*) District did not issue any PWN after this meeting. (FF # 99.) Thus, the SCO finds and concludes that District failed to issue PWN of the decision not to change the provision of FAPE to Student, in violation of 34 C.F.R. § 300.503(a).

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

Here, District failed to issue PWN of its decision not to include special education services in a 1:1 setting. (FF # 99.) The purpose of issuing PWN is to ensure parents understand the disagreement and can decide whether to seek dispute resolution. *See Letter to Boswell*, 49 IDELR 196 (OSEP 2007). In this case, Parent was aware of the disagreement as she continued to advocate for the same change in the other IEP team meetings that semester. (FF #s 110, 112, 153.) Parent was also working with Parent's Attorney and an advocate at that time to help her understand and exercise her rights. (FF # 15, 165.) Finally, Parent exercised her dispute resolution options by filing a state complaint both before and after this disagreement. (FF # 70.) Because, in this case, Parent was clear on what the disagreement was and had experience exercising her dispute resolution options, the SCO finds and concludes that District's failure to issue a PWN did not significantly impede her ability to participate in the decision-making process or otherwise impede Student's access to a FAPE and no denial of FAPE occurred.

B. PWN during the IEP Development Process

Throughout the meetings held to develop the May IEP, District offered various proposals and did not agree to several of Parent's requests. (FF #s 105-113.) However, those decisions were not final until after the IEP was finished. For instance, on May 4, 2023 District proposed 60 MPW of mental health services, but the May IEP ultimately included 120 MPM. (FF #s 111, 136.) To the extent that Parent's concern is that District did not issue PWN until after the IEP was finalized, Districts are not obligated to issue PWN until they have decided to do, or not do, something. 34 C.F.R. § 300.503(a). There is no obligation to issue PWN before a decision is made. Thus, District was not obligated to issue PWN prior to the conclusion of the IEP development process and no violation of 34 C.F.R. § 300.503(a) occurred.

C. Adequacy of the Embedded PWN

District issued PWN at the end of the IEP development process for the May IEP. (FF #s 152-158.) This PWN was embedded in the May IEP. (FF # 152.) The IEP itself served as the description of the actions proposed by District as well as the basis for those decisions. (FF # 152.) The embedded PWN then lists several actions District considered and refused, as well as the reasons why. (*Id.*) This includes not providing additional 1:1 support or pullout services because Student did not like constant adult reminders and was "finding some success" with the current services. (FF # 153.) District also decided against special education math and literacy classes and modifications because teaching strategies could be implemented instead. (FF #s 155, 156.) According to the embedded PWN, other factors considered included Student's desire to use headphones during

assessments, which would be up to the state board. (FF # 157.) Finally, the PWN indicates that Parent had protections under the procedural safeguards, which she could get a copy of or help understanding from Case Manage 2. (FF # 158.)

Thus, the SCO finds that the May IEP and embedded PWN met all the requirements for PWN and no violation of 34 C.F.R. § 300.503(a) occurred.

Conclusion to Allegation No. 6: District did not change Student’s placement, and thus no violation of 34 C.F.R. §§ 300.116(a)(1) or 300.327 occurred.

Parent’s concern is that District amended Student’s services outside of an IEP team meeting when he was allowed to drop his gym class, thereby changing his placement.

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

Here, Student was allowed to drop his gym class on April 16, 2023. (FF # 161.) As a result, Student had one free period for the rest of the year. (FF # 162.) Student was not receiving any special education services in his gym class. (FF # 161.) As Student was spending 68% of his time in general education, dropping one general education class did not change his LRE of general education 40-79% of the time. (FF # 36.) Thus, the SCO finds that Student’s special education and related services did not change. Because the schedule change in this specific situation did not change Student’s special education services, the SCO finds and concludes that it did not constitute a placement change and the decision did not need to be made by an IEP team including Parent. No violation of 34 C.F.R. §§ 300.116(a)(1) or 300.327 occurred.

Conclusion to Allegation No. 7: District failed to comply with its obligation to transmit Student’s records to police after a referral, in violation of 34 C.F.R. § 300.535. This violation did not result in a denial of FAPE.

Parent’s concern is that District did not transmit Student’s records to law enforcement after referring him for criminal charges.

A district reporting a crime committed by an IDEA-eligible student to law enforcement authorities must also ensure that copies of the student’s special education and disciplinary records are transmitted to the same authorities for consideration. 34 C.F.R. § 300.535(b)(1). Records can only be transmitted to the extent permitted by the Family Educational Rights and Privacy Act

("FERPA"). *Id.* at § 300.535(b)(2). To be consistent with FERPA, a district must obtain prior written consent from a parent to disclose a student's education records unless an exception applies. 34 C.F.R. § 99.30. Because the transmittal of records in this provision does not constitute an exception to FERPA, a district may only disclose the records in a manner consistent with FERPA. *Id.* at § 99.31.

It is the district's, and not the parent's, responsibility to facilitate or ensure the transmission of relevant records to law enforcement. *Klein Indep. Sch. Dist.*, 121 LRP 34545 (SEA TX 09/03/20) ("The IDEA does not place the burden on a parent to ensure records potentially relevant to criminal proceedings involving the student are provided it is the [d]istrict's obligation to do so."). As such, the district must take the necessary steps to do so, "including seeking parental consent." *Id.*; *Menominee Area Pub. Schs.*, 114 LRP 34039 (SEA MI 06/18/14).

Here, Student was referred to law enforcement for behavior on January 24, 2023. (FF # 165.) Neither Director nor principal was aware of any process for sending special education records in conjunction with a referral to law enforcement. (FF #s 163, 164.) Parent's Attorney inquired about whether Student's records had been shared with police a week later, on January 31. (FF # 165.) District officials were uncertain whether they could share records or which records could be shared. (FF # 166.) They sought advice from District's Attorney on how to proceed. (*Id.*)

District was unable to produce any records or witnesses to confirm when and how Student's records were shared with law enforcement. (FF # 167.) However, Student's records were shared with law enforcement on or around February 7, 2023, after charging decisions had already been made. (FF # 166.)

District does not have any policies or procedures governing the transmission of records in conjunction with a referral to law enforcement. (FF #s 163, 164, 167.) Nothing in the Record suggests that District made any effort to seek Parent's consent to transmit records before Parent's Attorney brought up the requirement. (FF #s 165-167.)

Because District does not have any relevant policies and procedures and did not make any efforts to transmit the records before Parent's inquiries, the SCO finds and concludes that District failed to meet its obligation to share Student's records with law enforcement, in violation of 34 C.F.R. § 300.535. However, District has since complied with this requirement. (FF # 166.)

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

The SCO cannot assess whether the failure to transmit Student's records impacted the outcome of the court proceedings. However, nothing in the Record suggests that the court proceedings have had any impact on Student's access to a FAPE or educational benefit, or Parent's ability to participate in the decision-making progress. Student remained at School that semester and any school-based disciplinary decisions were made immediately after the conduct, not after court proceedings. (FF # 165.) Parent went on to participate in numerous IEP team meetings throughout the semester. (FF #s 96, 102, 103.) Thus, the SCO finds and concludes that this violation did not result in a denial of FAPE.

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

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

A. Behavior Supports

The concern is that District's failure to develop an IEP with appropriate behavior supports and strategies is systemic. Although the appropriateness of the December 2022 BIP was not directly assessed here, it was designed to address three problem behaviors and included six pages of strategies, when the average person can only remember three to five components. (FF #s 38-40.) It also included strategies which did not relate back to any of the problem behaviors/hypothesis statements. (FF # 41.) None of the setting event or antecedent strategies directly addressed Student's phone usage. (FF # 42.) Student's prior BIP was also not appropriately designed to address his needs. (FF # 79.) Because District has developed three consecutive IEPs for Student that did not appropriately address his behavior needs, the SCO is concerned that District is also developing plans that fail to address the needs of other students. As such, the SCO will order remedies designed to ensure that District develops appropriate behavior support and strategies for all IDEA-eligible students.

B. PWN of Refusal

District's Manual accurately advises that PWN must be issued any time District proposes or refuses to change the provision of FAPE for a student. (FF # 95.) It goes on to advise staff that they can use the embedded PWN for actions taken during an IEP meeting and a separate PWN for actions taken outside of an IEP meeting. (*Id.*) However, the Manual does not address what to do if no changes are made during an IEP meeting. (*Id.*) If District is refusing to make changes

requested by a parent or another team member, that refusal still needs to be documented. 34 C.F.R. § 300.503(a). However, as was the case here, an embedded PWN is unlikely to be generated or shared with a parent if the IEP is not updated. The concern for the SCO is that other parents are also not getting PWN of decisions made during an IEP meeting, if the IEP is not updated. As such, the SCO will order remedies designed to ensure that District policy and guidance accurately reflects the requirements of the IDEA.

C. Transmission of Records to Law Enforcement

The concern for the SCO is that District staff appear to have been unaware of their obligation to share student records with law enforcement in conjunction with referrals. (FF #s 163, 164.) Nothing in the Record suggests that District was taking any steps to comply with this requirement before it was brought to their attention by Parent's Attorney. (FF # 165.) They had to seek counsel of an attorney before knowing how to proceed in this situation. (FF # 166.) They have also been unable to produce any policies or procedures on this issue or any District staff who can speak to practice in this area. (FF # 167.) The concern for the SCO is that District is not sharing relevant education records of students with disabilities with law enforcement unless their parents know to follow up on the matter. This is a district obligation, not a parental responsibility. *Klein Indep. Sch. Dist.*, 121 LRP 34545 (SEA TX 09/03/20) As such, the SCO will order remedies designed to ensure that District staff understand their obligations going forward.

D. Other Violations

Nothing in the Record suggests that the other violations are systemic in nature. Instead, the SCO finds that these violations were likely the result of Student's complex and recently identified needs as well as the extremely high level of conflict between the parties. The SCO thus finds that these violations are unlikely to impact the future provision of services in District.

REMEDIES

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

- a. Failing to convene an IEP team with all the required members, in violation of 34 C.F.R. § 300.321(a);
- b. Failing to develop an IEP that was appropriately tailored to Student's needs, in violation of 34 C.F.R. §§ 300.320(a)(2), (4), (b) and 300.324(a)(2);
- c. Failing to properly implement Student's IEP, in violation of 34 C.F.R. § 300.323;
- d. Failing to provide Parent with progress reports, in violation of 34 C.F.R. § 300.320(a)(3).
- e. Failing to issue adequate PWN, in violation of 34 C.F.R. § 300.503(a);

- f. Failing to transmit Student’s records to police, in violation of 34 C.F.R. § 300.535.

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

1. Corrective Action Plan

- a. By **Wednesday, January 31, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Principal, Case Manager 1, and Student’s current special education providers, including special education teachers, mental health providers and SLP must review this decision, as well as the requirements of 34 C.F.R. § 300.320(a), 300.321, 300.323, 300.324(a), 300.503 and 300.535. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Thursday, February 29, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Thursday, March 7, 2024**.

3. Training

- a. Attendance and completion of training provided by CDE on development of positive behavioral supports. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.324 and the related concerns noted in this decision. Director of Special Education and CDE Special Education Monitoring and Technical Assistant Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for all special education staff at School and Student’s current school, Director of Special Education, and all District coordinators (or District equivalent). Such training shall be completed no later than **Friday, March 15, 2024**.

- b. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, March 21, 2024**.

4. Procedures

- a. By **Wednesday, February 28, 2024**, District must submit updated written guidance to ensure compliance with 34 C.F.R. § 300.503.
 - i. At a minimum, the updated procedure must offer clear guidance on issuing PWN when District refuses to change the provision of FAPE to a student.
 - ii. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
 - iii. District must ensure that all special education providers in District, as well as all administrators responsible for law enforcement referrals, receive a copy of the procedure no later than **Wednesday, March 27, 2024**. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Wednesday, April 3, 2024**.
- b. By **Wednesday, March 13, 2024**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. §§ 99.30 and 300.535.
 - i. At a minimum, the updated procedure must offer clear guidance on when education records should be transmitted to law enforcement after a referral, as well as how and when to seek parental consent for such a disclosure.
 - ii. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
 - iii. District must ensure that all special education providers in District, as well as all administrators responsible for law enforcement referrals, receive a copy of the procedure no later than **Wednesday, April 10, 2024**. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Wednesday, April 17, 2024**.

5. Reevaluation and Review of IEP

- a. By **Wednesday, February 7, 2024**, District must identify an educator with expertise in ASD, including specialized CDE training, (“Expert”) to review Student’s IEP and BIP and, if necessary, observe Student, to provide input on the IEP development process.
 - i. This person can be a District employee. However, District’s proposed Expert, along with their credentials, must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for approval. CDE will either approve Expert or identify an appropriate expert by **Monday, February 19, 2024**.
- b. District must convene Student’s IEP Team, at a mutually agreeable date and time, no later than **Thursday, March 21, 2024**. In consideration of Student’s current academic performance, Student’s IEP Team must review and, as necessary, revise Student’s current IEP and BIP, in accordance with 34 C.F.R. § 300.320, to address Student’s unique needs and the concerns identified in this Decision.
 - i. Expert must participate in the IEP team meeting and provide input on how to appropriately support him in the school setting. However, Expert cannot replace a special education teacher who has worked with Student, unless they have provided direct education services prior to the IEP meeting.
- c. By **Thursday, April 11, 2024**, District must provide copies of the finalized IEP and BIP as well as attendance records from the IEP team meeting to the CDE Special Education Monitoring and Technical Assistance Consultant.

6. Compensatory Education Services for Student

- a. Student shall receive **420 minutes (7 hours) of specialized instruction in executive functioning**. This instruction must be provided by an appropriately licensed special education teacher. These services must target Student’s deficits in executive functioning skills and cannot just focus on work completion.
 - i. No more than 30 minutes of compensatory special education instruction can be provided per week during the school year. All 420 minutes must be completed by **September 30, 2024**.
- b. Student shall receive **420 minutes (7 hours) of direct counseling services from a mental health provider**. This instruction must be provided by an appropriately licensed mental health provider. These services must target Student’s social emotional goals. All 420 minutes must be completed by **Tuesday, April 30, 2024**.

- i. No more than 30 minutes of compensatory counseling services can be provided per week during the school year. All 420 minutes must be completed by **September 30, 2024**.
- c. **By Friday, February 16, 2024**, District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Tuesday, February 20, 2024**. If District and Parent cannot agree to a schedule by February 16, 2024, the CDE will determine the schedule for compensatory services by **March 5, 2024**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parent and documents such efforts. A determination that District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. Parent may opt out of some or all of the compensatory services.
- d. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- e. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance him toward his IEP goals

and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, during free periods, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

7. Progress Reports

- a. Starting January 31, 2024, District must provide CDE with copies of Student's weekly progress reports at the end of every month. District must continue providing CDE with copies of Student's progress updates through November 30, 2024. District must also provide CDE with copies of any formal progress reports issued during this time.
- b. If the frequency of progress reporting in Student's IEP changes, District must continue to provide CDE with progress reports consistent with the requirements of the IEP, but no less than quarterly.
- c. In conjunction with the progress updates, District must provide CDE with evidence of how and when the progress updates were shared with Parent.
- d. Upon review, if CDE has concerns with the timeliness or contents of the progress reports District may be required to take additional steps, including but not limited to, revising and reissuing the progress reports or providing further training or guidance to staff on progress reporting. A determination that the progress reports are untimely or lacking necessary detail rests solely with the CDE.

8. Testing Accommodations

- a. By **January 31, 2024**, District must provide CDE with 1) evidence of the testing accommodations required by Student's then-current IEP, 2) evidence of what accommodations were requested from the College Board and when and 3) evidence of which accommodations were approved by the College Board.
- b. Upon review, if CDE has concerns with the consistency between the accommodations requested or granted and the accommodations required by Student's IEP, District may be required to take additional steps,

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

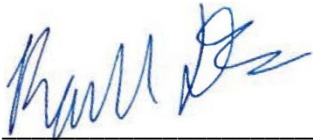
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 26 day of December, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-50

- Exhibit 1: IEE
- Exhibit 2: IEP
- Exhibit 3: IEE
- Exhibit 4: Parent Letter
- Exhibit 5: Parent Concerns
- Exhibit 6: Draft IEP
- Exhibit 7: Meeting Notes
- Exhibit 8: Meeting Notice
- Exhibit 9: FBA
- Exhibit 10: Evaluation

Response, pages 1-19

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: None
- Exhibit E: Meeting Documentation
- Exhibit E-1: Recording
- Exhibit E-2: Recording
- Exhibit E-3: Recording
- Exhibit E-4: Recording
- Exhibit E-5: Recording
- Exhibit E-6: Recording
- Exhibit F: Service Logs
- Exhibit G: Accommodations logs
- Exhibit H: Behavior Records
- Exhibit I: Attendance Records
- Exhibit J: Progress Data
- Exhibit K: School Calendar
- Exhibit L: Policies
- Exhibit M: Correspondence
- Exhibit N: None
- Exhibit O: None
- Exhibit P: Other
- Exhibit Q: Correspondence

Reply, pages 1-40

- Exhibit 11: Transcript
- Exhibit 12: Report Card
- Exhibit 13: Feedback
- Exhibit 14: Schedule
- Exhibit 15: Schedule Change
- Exhibit 16: Schedule Change
- Exhibit 17: Correspondence
- Exhibit 18: Supplemental Reply

Telephone Interviews

- Parent: November 29, 2023
- Tutor: November 30, 2023
- Case Manager 1: November 30, 2023
- Principal: November 30, 2023
- BCBA: November 30, 2023
- Director: November 30, 2023
- School Psychologist: December 4, 2023
- Parent's Advocate: December 5, 2023
- Social Studies Teacher: December 5, 2023
- English Teacher: December 5, 2023

CDE Exhibits

- CDE Exhibit 1: Correspondence