

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

State-Level Complaint 2024:507
Denver Public Schools

DECISION

INTRODUCTION

On January 29, 2024, 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 Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified five allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 29, 2023 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 April 2023 through present, specifically by:
 - a. Failing to consider information, including the most recent evaluation and Student’s academic needs, in violation of 34 C.F.R. § 300.324(a); and

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

- b. Failing to include the special education and related services and supplementary aids and services to be provided to Student, in violation of 34 C.F.R. § 300.320(a)(4).
2. Failed to implement Student’s IEP from April 2023 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to make Student’s IEP accessible to the teachers and service providers responsible for its implementation; and
 - b. Failing to provide Student with the following accommodations required by his IEP and behavior intervention plan (“BIP”): rewards, breaks, sensory tools, extra time, quiet workspace, space to self-regulate and accommodations in gym.
3. Failed to provide Parent with a copy of Student’s IEP from April 2023 to January 2024, in violation of 34 C.F.R. § 300.322(f).
4. Failed to monitor Student’s progress, and provide Parent with periodic reports on progress, from April 2023 to present, in violation of 34 C.F.R. § 300.320(a)(3).
5. Failed to convene an IEP team meeting at Parent’s request from August 2023 to present, in violation of 34 C.F.R. §§ 300.324(a)(1)(ii) and (b)(1).

FINDINGS OF FACT

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

A. Background

1. Student is eight years old and, during the 2023-2024 school year, was in third grade at a District school (“School”). *Response*, p. 1.
2. Student is eligible for special education services as a student with a developmental delay. *Exhibit A*, p. 1.
3. Parent (subsequently referred to as “Mother”) and Student’s father (“Father”) share custody and joint decision-making on education issues. *Response*, p. 1; *Interview with Mother*.
4. Student is expressive, social, and caring. *Interviews with Mother and Student’s third grade teacher (“Teacher”)*. He has a very good memory for certain details. *Id.* Math is a particular strength for him. *Interview with Teacher*.

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

5. He does well with routines and struggles with transitions and deviations from his routines. *Interviews with Mother and Teacher*. He tends to persevere or get stuck when things do not go the way he wants or expects. *Id.* He has “big emotions” and can be quick to dysregulate. *Interviews with Teacher and the school psychologist at School (“School Psychologist”).*

B. Evaluation

6. Student was most recently evaluated by a prior school in May 2022 (“2022 Evaluation”). *Exhibit C*, pp. 1-27.
7. The 2022 Evaluation reviews Student’s academic, social-emotional and motor abilities. *Id.* at pp. 1-2. Academically, he had relative strengths in math, oral language, and phonological processing, testing in the average or above average range. *Id.* at p. 1.
8. However, reading was a relative weakness, even with targeted interventions. *Id.* Overall, on the Wechsler Individual Achievement Test, Student’s total reading score was below average at the fifth percentile, although he refused to complete some subtests he perceived as too hard. *Id.* at pp. 3-4. Student also struggled with spelling, although he scored at the 23rd percentile. *Id.* at pp. 1-4.
9. Teacher and parent rating scales completed by Mother indicated that Student struggled with both internalizing and externalizing behaviors, including hyperactivity, aggression, anxiety, and depression. *Id.* at p. 1. Rating scales also indicated challenges with executive functioning both at home and school. *Id.* at p. 2. Difficulties with reciprocal social behaviors were likely to have a mild to moderate impact on his daily social interactions. *Id.*
10. Testing did not indicate any motor concerns. *Id.* However, a teacher rating scale indicated definite dysfunction in sensory processing, with the greatest concerns in the areas of social participation and vision. *Id.* at p. 26. He was also noted to frequently chew on clothing, pencils, or classroom materials. *Id.* at p. 27.

C. Scheduling the April 2023 IEP Meeting

11. District practice is to provide all IEP documentation to both parents and invite both parents to meetings, unless they have court documentation limiting the rights of one parent. *Interviews with District’s senior manager of special education in charge of School (“Senior Manager”) and District’s special education instructional specialist over School (“SEIS”).* IEP meetings should be scheduled at a time that works for both parents and both parents should get a copy of the IEP, regardless of whether they attend. *Id.*
12. District generated notices of meeting on March 21, 2023, for an IEP meeting on April 27 at 7:30 a.m. *Exhibit J*, pp. 23-24. Then, on April 24, 2023, Mother and Father received a calendar invite from Student’s special education teacher and case manager (“Case Manager”) for an

IEP meeting at 3:30 p.m. on April 27, 2023. *Exhibit J*, p. 21. Student's then-current IEP was dated May 27, 2022. *Exhibit A*, p. 11.

13. At that time, Father had taken out an emergency order restricting Mother's parenting time, which prohibited her from seeing Student. *Interview with Mother*. School was aware of these custody proceedings. *Exhibit J*, p. 15. Because of the order, she did not think she could attend the IEP meeting, so she tried contacting School to discuss her options for rescheduling. *Interview with Mother*. No one responded to her. *Id.* The restrictions were dropped at the first court hearing which occurred after the IEP meeting. *Id.*

D. 2023 IEP

14. On April 27, 2023, School Psychologist, Case Manager, Student's second grade teacher, and Father met to develop a new IEP ("2023 IEP") for Student. *Interview with School Psychologist*. Because she did not know if she could legally participate, Mother did not attend the scheduled IEP meeting. *Interview with Mother*. At the time, Student had only been attending School for about two months. *Interview with School Psychologist*. During his first two to three weeks at School, they saw some dysregulation. *Id.* However, once Student learned the boundaries and expectations in the new setting, he did not have much trouble. *Id.*
15. The present levels section of the 2023 IEP includes Student's prior reading goal, and his progress on that goal, noting that he was able to read 40 words per minute ("WPM") on a first grade-level passage, up from 12 WPM. *Exhibit A*, p. 3. He could also read 18 WPM on a second grade-level passage but made more mistakes. *Id.* The 2023 IEP includes qualitative information about his reading comprehension and writing, without any quantitative data. *Id.*
16. The 2023 IEP includes an update on Student's social-emotional functioning. *Id.* at pp. 3-4. No information is included about the prior goal or baselines. *Id.* However, the 2023 IEP notes that Student can identify and manage feelings 80% of the time, engage in prosocial play "more than 80% of the time" and stay in class and comply with teacher expectations 75% of the time. *Id.* Finally, the 2023 IEP indicates that mental health services would continue because Student had only attended School for two months. *Id.* at p. 4.
17. No information from the prior school or evaluations is included. *Id.* at pp. 3-4. There is also no standardized testing data. *Id.*
18. The student needs statement lists the impacts of Student's emotional and behavioral regulation and social awareness needs and his difficulty following directions. *Id.* at p. 4. These challenges include difficulties with change and transition, attempting challenging tasks, reading social boundaries and sustaining appropriate relationships, and participating in and completing classroom tasks. *Id.*

19. Father, who attended the meeting, agreed with the data, and was pleased with Student's progress. *Id.* Student required a BIP, and no other special factors applied. *Id.* at p. 5.
20. The 2023 IEP includes two goals, on which progress would be reported three times per year, with report cards. *Id.*
21. The first is a reading goal with two objectives. *Id.* From a baseline of 1.5, Student would "be able to read a 2.5 level text and answer basic comprehension questions (who, what (sic), when, why how) with minimal prompts in 50% of trials." *Id.* The first objective was to read a second grade-level passage at 50 WPM. *Id.* According to the present levels, his baseline was 18 WPM. *Id.* at p. 5. The second objective was to write 1-2 paragraph summaries about a prompt or book with five or fewer grammatical errors in 50% of trials. *Id.* at p. 5. There is no baseline for this goal. *Id.* at pp. 3, 5.
22. The second goal targets social and emotional wellness. *Id.* at p. 5. From a baseline of 4/5 "Student would use his self-regulatory skills as measured by two objectives. *Id.* at p. 6. First, with no more than one verbal prompt, Student would "demonstrate the ability to attend to a task for an average of 90% of intervals in a 20 minute class period." *Id.* Second, with no baseline, he would "independently begin a task (including non-preferred tasks) within 2 minutes of direction for an average of 90% of opportunities." *Id.*
23. The 2023 IEP includes a long list of accommodations addressing, in part, how information is presented, how Student completes assignments, Student's setting, Student's schedule, and Student's behavior. *Id.* Relevant here, the 2023 IEP requires (a) a quiet location for Student to work; (b) "a space for self-calming during stressful times;" (c) extra time for assignments; (d) use of a reward system for remaining on task; (e) modifying tasks and increasing reinforcement as needed to prevent frustration; (f) non-contingent breaks for regulation with a suggestion for 10 minutes each morning and afternoon; and (g) "use of a reward system in (sic) increase likelihood of positive behavior." *Id.* It is suggested that Student earn points or stickers each time he tries work and receives a preferred reward whenever he earns three. *Id.* The 2023 IEP also requires "[p]ositive reinforcement through access to preferred breaks or activities upon completion of work or compliance with adult directives." *Id.*
24. According to the service delivery statement ("SDS") and grid, Student was to receive 200 minutes per week ("MPW") of direct literacy instruction in a small group setting outside of general education. *Id.* at p. 9. This instruction would target "phonics, decoding, encoding, accuracy and fluency needs." *Id.* He would also receive 90 minutes per month ("MPM") of direct instruction from a school psychologist, outside of general education. *Id.*
25. The SDS also indicates that Student would receive additional MPW of direct special education instruction inside of general education to address "his self-determination needs, specifically related to work completion and transitions." *Id.* The number of minutes to be provided is blank and no such minutes are included in the grid. *Id.*

26. Student's prior IEP included 120 MPW of direct literacy instruction outside of general education and 180 MPW of direct instruction inside general education to support self-determination skills related to work completion and transitions. *Id.* at p. 35. District contends that leaving this description, with the blank, in the 2023 IEP was a clerical error and no minutes inside general education were intended. *Response*, p. 9.
27. Because he was doing so well, School Psychologist proposed adjustments to his mental health minutes and social emotional goals. *Id.* However, the IEP team agreed it was too early to consider exiting Student from special education after such a short period. *Id.* Instead, they decided to maintain social emotional and academic supports. *Id.* School Psychologist does not remember discussing minutes inside general education during the 2023 IEP meeting. *Id.*
28. Student's least restrictive environment was general education at least 80% of the time. *Exhibit A*, p. 10. According to the embedded prior written notice ("PWN") the IEP team considered increasing his time in general education but determined Student still benefitted from pull out services. *Id.* There is no description of a conversation about push-in services. *Id.* No other factors were considered. *Id.*

E. 2023 BIP

29. The 2023 BIP was developed in consideration of a functional behavior assessment ("FBA"), teacher input and observations. *Exhibit B*, p. 1. Instead of describing a problem behavior and a hypothesis statement, the 2023 BIP repeats Student's strengths. *Id.* Although dated April 28, 2023, the 2023 BIP was not substantively updated from prior versions because School was not seeing behaviors at the level described by the prior BIP. *Interview with School Psychologist*.
30. Setting event strategies describes the target behavior (noncompliance) and the hypothesized function (gaining teacher attention or a sense of control). *Exhibit B*, pp. 2-3. It is noted that the behaviors are more likely to occur when Student is tired or there are changes to his routine like being late or sick. *Id.* Behaviors are also more common in the afternoon. *Id.*
31. The antecedent strategies are similar to the IEP accommodations, including previewing changes, and use of a visual schedule. *Id.* at 2; *Exhibit A*, p. 6. This also includes increasing reinforcement to prevent frustration and non-contingent breaks. *Exhibit B*, p. 3.
32. Behavior teaching strategies include other accommodations from the 2023 IEP, including space for self-calming, praise for desired behaviors, and offering Student time and space if he will not leave the classroom. *Id.* at pp. 2-3.
33. Reinforcement strategies in the 2023 BIP also mimic the 2023 IEP and include a reward system for positive behavior like stickers for trying work and positive reinforcement through access to preferred breaks or activities. *Id.* at p. 2.

34. The 2023 IEP and 2023 BIP were sent to Father on May 5, 2023. *Exhibit J*, pp. 53-70. Mother requested a copy on May 17 and received a copy of only the 2023 IEP on May 19, 2023. *Id.* at pp. 71-84. The 2023 BIP was not included. *Id.* The 2023 IEP was sent again, at Mother's request, October 17, 2023. *Id.* at pp. 96-106. The 2023 BIP still was not included. *Id.* Mother received a copy of the 2023 BIP on January 22, 2024. *Id.* at p. 169.

F. IEP Implementation – Accessibility to Staff

35. Case managers are responsible for ensuring teachers understand their responsibilities under a student's IEP, while school psychologists offer support with understanding of a BIP. *Interview with School Psychologist*. Senior special education staff and building administrators are responsible for ensuring this happens with fidelity at the school. *Interview with Senior Manager*. District administrators provide additional support as needed, as well as professional development. *Id.*

36. Teacher usually gets copies of any IEPs and BIPs electronically and in paper form. *Interview with Teacher*. Afterwards, she meets with Case Manager to review them and ask any questions. *Id.* They also have regular, face-to-face conversations about supporting students throughout the year. *Id.* If there is a BIP, she will also connect with School Psychologist or a counselor, especially if she has questions. *Id.*

37. In this case, she received a copy of both the 2023 IEP and BIP electronically on the first day that teachers returned in August. *Id.* She then met with Case Manager to review them. *Id.* She has since had multiple conversations with Case Manager and School Psychologist about how to support Student. *Id.* Teacher and School Psychologist connect about Student at least weekly. *Interviews with Teacher and School Psychologist*.

38. Teacher was absent for the first few weeks of class, but, during that time, School Psychologist checked in daily with the long-term substitute to see how Student was doing. *Interview with School Psychologist*.

G. IEP Implementation - Accommodations

39. Mother is specifically concerned about the implementation of seven accommodations. *Complaint*, p. 3. Five of those, (1) a reward system; (2) non-contingent breaks; (3) space for self-calming; (4) extra time; and (5) a quiet space to work, are required in the 2023 IEP. *Id.*; *Exhibit A*, p. 6. The other two, (6) access to something to chew on and (7) accommodations for gym, are not required by the 2023 IEP. *Id.*

40. In terms of reward systems, Teacher has several built into her classroom. *Interview with Teacher*. Student can choose a reward from her "treasure box" for things like turning in

homework. *Id.* Student also gets lots of verbal and visual (like a thumbs up) praise for being on task throughout the day. *Id.*

41. In terms of breaks, Teacher regularly leads them in her class in the form of chants, several of which are tied to movement. *Id.* In addition to these scheduled breaks, if she notices Student becoming dysregulated, Teacher cues him with the sign for walking and allows him to take a short walking break. *Id.* Initially this seemed to work very well, but he stopped responding to the sign at the end of last semester. *Id.*
42. In terms of a space for self-calming, the classroom also has a calming corner Student can access. *Id.* The space is equipped with various yoga cards to promote self-calming. *Id.*
43. In terms of extra time, Student has had a lot of anxiety about all the timed activities and assessments this year. *Interview with Mother.* He gets extra time whenever he needs it, and Teacher will reduce his workload if she notices him struggling, having him complete fewer problems or write fewer sentences. *Interview with Teacher.*
44. In terms of creating a quiet place to work, Teacher's classroom has two "office spaces" set up where the classroom noise is usually minimized. *Id.* If Student goes there and uses the headphones that are always available to him, it is quiet. *Id.*
45. Teacher posts a visual schedule that breaks the day into chunks. *Id.* She also provides verbal reminders of the schedule three times a day. *Id.* Student responds well to this structure and is quick to note if they get off schedule. *Id.*
46. She makes sure Student is seated on the end of a row, so that he can get up and move around during lessons, which he does quite frequently. *Id.* This also includes teaching activities to help students calm and regulate, including making dots on their palms or squeezing their own arms. *Id.* Student seems to respond very well to these activities and can be seen using them throughout his day. *Id.*
47. Student goes for literacy instruction for 40 minutes every day at 9:20 a.m. *Id.* Although Case Manager is currently on leave, another special education teacher at School is covering his classes, including Student's literacy instruction. *Id.* He then returns to Teacher's class for the remainder of her literacy instruction. *Id.* He sometimes struggles with this transition, so she has started giving him copies of notes for anything he has missed. *Id.*

H. Additional Supports Since January 2024

48. Student has struggled more since returning from winter break and is now becoming dysregulated about three times per week. *Interviews with Teacher and School Psychologist.* This usually looks like yelling or being very loud in class. *Interview with Teacher.* These

behaviors have increased in both frequency and duration this semester. *Id.* Once he has an incident, he usually has more difficulties that day. *Id.*

49. As a result, on the three days a week he is there, School Psychologist swings by Student's classroom about once every hour or two to check on him. *Interview with School Psychologist.* If Student is struggling, he can take a break with School Psychologist. *Id.* It usually takes 15-30 minutes for him to regulate and return to class. *Interview with Teacher.*
50. In addition, at the end of February 2024, Student started taking a five-to-ten-minute break with a counselor every afternoon. *Interview with Teacher and School Psychologist.* He did not have any individual, scheduled breaks before this. *Id.* These increased challenges were not shared with Mother until she inquired about the new breaks at the end of February 2024. *Exhibit 2, p. 1.*

I. Progress Reports

51. In District, progress reports should be sent at least as often grades. *Interview with SEIS.* For schools on a trimester system, this would mean progress reports go out around October/November, late February, and end of year. *Id.* All service providers are responsible for monitoring their own goals, while case managers are responsible for compiling the information and issuing progress reports. *Id.*
52. District does not require any tracking or certification for mailed reports. *Id.* Progress reports should be sent to both parents if they are not in the same household. *Id.*
53. District generated a progress report in June 2023. *Exhibit H, pp. 18-21.* Although the goals were relatively new, Student had made some progress on the reading goal. *Id.* at pp. 18-19. He was still reading a 1.5 level text, but he was reading 23 WPM, up from 18, and writing one paragraph with five or fewer errors 10% of the time, up from zero. *Id.* Although it says Student is "answering questions" there is no information regarding the accuracy of his answers, or the prompting required. *Id.* There is no quantitative or qualitative information reported regarding his social emotional goal. *Id.* at pp. 20-21.
54. District generated another progress report in October 2023. *Exhibit H, pp. 1-4.* Student had continued to make progress on his reading goals. *Id.* at pp. 1-2. He was reading end of first grade level texts (1.8) and reading 30 WPM. *Id.* However, he had not made progress on the writing objective. *Id.* There is also no information about his ability to answer basic comprehension questions, as required by the goal. *Id.*
55. No explanation or qualitative information is included about his social-emotional progress. *Id.* at pp. 3-4. However, charting indicated that he had made progress on all objectives. *Id.* He attended to tasks in 50% of intervals, up from 30, and began tasks within two minutes in 40%

of opportunities, up from 30. *Id.* However, the 2023 IEP indicates that in April of 2023, he was doing both of those things 80% of the time. *Exhibit A*, p. 5.

56. Mother has not received any progress reports since Student enrolled at School. *Interviews with Mother and Student's stepfather ("Stepparent")*.
57. District indicated that these progress reports were mailed to Mother "in the ordinary course of District business." *Response*, p. 11. However, progress reports can be mailed or emailed to parents, depending on school practice and parent preference. *Interviews with SEIS and Senior Manager*.
58. Case Manager has been on extended leave since December 6, 2023. *Exhibit J*, p. 156; *Response*, p. 3. There is no evidence that the reports were emailed to Mother. *Exhibit J*. The SCO asked for evidence of how these progress reports were sent to Mother, or an opportunity to speak with staff who could detail how or when they were sent, consistent with District's described practice. The SCO did not receive either. Thus, the SCO finds that District did not send the June or October 2023 progress reports to Mother.
59. According to his report card, at the end of the 2022-2023 school year, Student was meeting grade level standards across the board, including reading. *Exhibit H*, pp. 12-14 The only exception was one visual arts expectation where he was sometimes meeting them. *Id.* In December 2023, Student was meeting grade level expectations in most areas and sometimes meeting them in the remaining skills. *Exhibit H*, pp. 5-6.
60. Student has been performing at, or above, grade level in math, with a particular strength in mental math. *Interview with Teacher*. His December 2023 report card shows he was meeting grade level expectations in math, except in effort, where he was approaching grade level. *Exhibit H*, p. 5-6. In homeroom, he was approaching grade level expectations for classroom skills like participation and showing "respect for self and others' ideas and property". *Id.*
61. He was also meeting grade-level expectations in some areas of reading while only approaching them in others. *Id.* In class, he is reading third-grade material and can comprehend it, especially if he can discuss it orally (as opposed to in writing). *Interview with Teacher*. Writing is a relative weakness. *Id.* He tends to get in his own way but can remember and organize details well when communicating orally. *Id.* If someone helps him start, he can usually express himself in writing as well. *Id.*

J. Mother's Request for IEP Team Meetings

62. If District receives a request for an IEP meeting, teams are advised to convene a meeting within 10 business days. *Id.* Even if teams do not understand why the parent wants to meet, they will generally hold a meeting. *Id.* If a school has a strong body of evidence showing that a meeting is not necessary and is declining to meet, it should issue a PWN explaining why

they are declining the meeting, including the supporting data. *Interview with Senior Manager*. This practice is not included in any written procedures, but it is regularly communicated via training to special education staff and building supervisors. *Id.*

63. Student has a long history of chewing on non-food items, including water bottle straws and his wooden bedframe. *Id.* On or around September 28, 2023, Mother was helping Student tie his shoes and noticed that there were no plastic endcaps on the shoelaces. *Id.* Student became very emotional and told her he had chewed them off and swallowed them and indicated that he was chewing on lots of materials at his desk. *Id.*; *Exhibit 3*, p. 1.
64. Student came to school with some chew necklaces on lanyards that he uses frequently. *Interview with Teacher*. Teacher has never seen Student chewing on his shoelaces. *Id.* However, she gave him mechanical pencils because he was chewing on his wooden ones. *Id.* She has also seen him chew on an eraser. *Id.* Anytime she notices him chewing on something other than his necklaces, she brings her hand to her mouth to visually prompt him to get out his necklaces. *Id.* He is usually very responsive. *Id.*
65. Classes at School participate in the same elective, such as music or gym, for six weeks before moving to their next rotation. *Interview with Teacher*. Student's class had gym in the fall and may have one more gym rotation before the end of the year. *Id.* Student complained of leg pain while participating in gym class. *Interviews with Teacher and Mother*.
66. In addition to complaining of leg pain whenever they had to run in gym, Student appeared to be tripping more often and started coming home with holes in his pants. *Interviews with Mother and Stepparent*. Mother was recently diagnosed with a genetic condition that can lead to joint problems, including pain. *Id.* The syndrome is hard to diagnose in children, and they do not yet know if Student is impacted. *Id.* However, Mother is concerned that he may have it and get injured pushing himself too hard in gym. *Id.*
67. Mother first requested an IEP meeting on October 26, 2023, through a District engagement contact ("Liaison"). *Exhibit J*, p. 135. This request was sent to SEIS. *Id.* However, SEIS was out on an extended leave from October 25, 2023, through December 4, 2023, so she did not see it. *Interview with SEIS*. The request was forwarded to another senior manager in District, who also did not respond. *Exhibit J*, p. 135.
68. Liaison then followed up with school's principal ("Principal") on October 31, reiterating Mother's request for an IEP meeting and her desire for a response. *Id.* at p. 139. Liaison and Principal communicated about the fact that Mother was banned from campus because of her contentious interactions with staff but did not discuss scheduling an IEP meeting. *Id.* at pp. 137-139.

69. At the time, School had limited who Mother could contact to members of the administrative team. *Exhibit J*, p. 120. No one ever contacted Mother about scheduling an IEP meeting. *Interview with Mother*.
70. On November 6, 2023, Mother requested, via email, to modify Student's 2023 IEP and included a doctor's note. *Exhibit J*, pp. 156-157. She specifically requested to modify Student's 2023 IEP to address her concerns about his participation in gym and to formalize the use of sensory necklaces. *Id.* District communicated internally about this request but did not respond to Mother. *Id.* at pp. 145, 156.
71. Mother again requested an IEP meeting on December 13, 2023, via email, and received no response. *Id.* at 160.
72. On January 17, 2024 District indicated they were coordinating schedules to arrange a meeting. *Id.* at p. 163. Mother was then invited to meet with Teacher on January 18, 2024, at which point Mother reiterated that she was requesting an IEP meeting, not a parent meeting. *Id.* at p. 162. Assistant Principal insisted an IEP meeting would not be held until April, per District instruction. *Id.*
73. Although declining to schedule an IEP meeting, District offered to schedule a meeting with Dean, who supervises the special education team at School, Student's case manager, Assistant Principal and Teacher. *Id.* District then scheduled a "parent conference" on January 23, 2024 with School Psychologist, Teacher, Dean, and Assistant Principal. *Id.* at p. 213. No special education teacher or case manager was invited. *Id.* Mother chose not to attend. *Id.* at p. 172. To date, no IEP meeting has been held. *Interview with Mother*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District considered Student's evaluation and academic needs, consistent with 34 C.F.R. § 300.324(a). District failed to include a clear statement of the special education services to be provided to Student, in violation of 34 C.F.R. § 300.320(a)(4). These violations resulted in a denial of FAPE.

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

law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

A. IEP Development Process

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)). A properly constituted IEP team must, at a minimum, include a parent, at least one general education teacher of the child, at least one special education teacher or provider of the child, a representative of District and an “individual who can interpret the instructional implications of evaluation results.” 34 C.F.R. §300.321(a). 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).

Here, District developed the 2023 IEP at a meeting with Father, Case Manager, Student’s second grade teacher and School Psychologist. (FF # 14.) The 2023 IEP considers Father’s concerns and Student’s academic and functional needs. (FF #s 15-19.) It also contains measurable annual goals to address those needs and a statement of the services to be provided. (FF #s 20-24.)

Thus, the SCO finds and concludes that the development process for the 2023 IEP complied with IDEA’s procedural requirements. *Rowley*, 458 U.S. at 206. Next, the SCO turns next to the question of whether the 2023 IEP was substantively adequate. *Rowley*, 458 U.S. at 207.

B. Substantive Adequacy of the IEP

i. Consideration of Student’s Academic Needs

Mother’s concern is that the 2023 IEP does not include any data from prior evaluations or sufficient present-level data to develop reading goals.

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 Andrew F. v. Douglas County School District. Re-1*, 71 IDELR 68 (EDU 2017).

In this case, the 2023 IEP does not include any information from Student’s 2022 Evaluation or any standardized tests. (FF #s 15-17.) However, not including it in the present levels statement does not mean the IEP team did not consider the prior evaluation and testing. The IEP team made the decision to maintain Student’s social emotional and academic supports because they recognized that he had exhibited more significant concerns in his prior setting. (FF # 27.) While best practice might require including more information from prior evaluations or a student’s classroom performance, IDEA requires a statement of Student’s current performance and an explanation of how the student’s disability impacts his involvement and progress in the general education curriculum. 34 C.F.R. § 300.320(a)(1). Here, the 2023 IEP includes a statement of his current performance in the description of his progress on prior goals. (FF #s 15, 16.) It also includes a detailed statement of how Student’s disability impacted his ability to participate in and make progress in the general education curriculum, noting struggles with change and transitions as well as maintaining appropriate social relationships and completing classwork. (FF # 18.)

Because the 2023 IEP includes quantitative data on Student’s current performance, the SCO finds and concludes that it contained sufficient information to develop appropriately ambitious goals, consistent with 34 C.F.R. § 300.324(a). No violation occurred in this respect.

ii. Special Education and Related Services

Mother’s other concern is that the 2023 IEP does not specify how many minutes Student will receive inside the general education classroom.

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, the SDS in the 2023 IEP indicates that Student would receive unspecified minutes of direct special education instruction inside of general education to support work completion and transitions. (FF # 25.) His prior IEP included 180 MPW of direct instruction inside general education to support self-determination skills including work completion and transitions. (FF # 26.) The 2023 IEP indicates that Student struggles with transitions and participating in and completing classroom tasks. (FF # 18.) The embedded PWN does not indicate that the IEP team considered removing or maintaining those direct services inside general education. (FF # 28.) School Psychologist did not recall having any such conversation. (FF # 27.) There is no evidence that the IEP team decided to remove those services. Instead, based on the blank in the SDS, coupled with the lack of documentation of a discussion on Student's need for those services, the SCO finds that the IEP team never decided what services Student needed inside general education. As a result, the SCO finds that the inclusion of the description of the services without specific minutes was not merely a clerical error.

As it was not a clerical error, the failure to specify the amount of services that would be provided inside of general education means there was no way for Mother or providers implementing the 2023 IEP to know what services Student should have been receiving inside of general education. Thus, the SCO finds and concludes that the 2023 IEP lacks a clear statement of the amount and type of services to be provided to Student. Because District failed to specify the special education services Student would receive in the general education setting, the SCO finds and concludes that the 2023 IEP was not reasonably calculated to enable Student to receive an educational benefit, violating the IDEA's substantive requirements related to the development of an IEP at 34 C.F.R. § 300.320(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). As a result, the SCO will order District to convene another IEP team, with all the required members, to review and, as necessary, to revise the IEP to address these concerns and other concerns noted in this decision.

Conclusion to Allegation No. 2: District implemented Student's 2023 IEP and BIP consistent with 34 C.F.R. § 300.323. No violation occurred.

Mother's concern is that District has not consistently implemented Student's accommodations in his general education classes.

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 Student's 2023 IEP and BIP

The SCO first determines 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 2023 IEP.

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).

In this case, Teacher received a copy of Student's 2023 IEP and BIP before the first day of school. (FF # 37.) She also met with Case Manager to review them and has had frequent contact with School Psychologist about how to support Student. (*Id.*) Although she had a long-term substitute for the first few weeks of school, School Psychologist also met daily with that person to see how Student was doing. (FF # 38.) Thus, the SCO finds and concludes that District ensured Student's teachers were aware of their responsibilities under the 2023 IEP and BIP, consistent with 34 C.F.R. § 300.323(d).

B. Implementation of Accommodations

Mother is concerned that District was not implementing seven accommodations, only five of which are required by the 2023 IEP: (1) a reward system; (2) non-contingent breaks; (3) space for self-calming; (4) extra time; and (5) a quiet space to work. (FF # 42.) Neither the 2023 IEP nor BIP required accommodations for chewing on non-food items or gym. (*Id.*) The SCO finds that District provided Student with each of these five required accommodations consistent with the 2023 IEP.

In terms of rewards, Teacher has several systems built into her classroom. (FF # 40.) Student gets verbal and visual praise for being on task, and he can choose rewards for completing tasks. (*Id.*) In terms of breaks, neither the 2023 IEP nor the 2023 BIP specify that the breaks must occur outside the classroom. (FF #s 23, 31.) The 2023 IEP suggests 10-minute breaks in the morning and afternoon. (FF # 23.) Teacher regularly leads her students in chants and movement breaks throughout the day. (FF # 41.) The SCO finds that these constitute non-contingent breaks. (*Id.*) In addition, because Student started having more difficulties after winter break, in late February 2024 District started implementing scheduled breaks each afternoon and Student can take breaks with School Psychologist as needed. (FF #s 48-50.)

In terms of a space for self-calming and a quiet space to work, Teacher's classroom is equipped with a cozy corner, along with visual cards prompting self-calming activities. (FF # 42.) The classroom also has "office spaces" that are set up in quieter areas. (FF # 44.) When coupled with the headphones available in the classroom, these office spaces provide Student with a quiet place to work. (*Id.*) Teacher also provides Student with extra time on assignments and/or reduces his workload when he is struggling to complete things. (FF # 43.)

For all these reasons, the SCO finds and concludes that District implemented Student's 2023 IEP and BIP accommodations and no violation of 34 C.F.R. § 300.323 occurred.

Conclusion to Allegation No. 3: District failed to provide Mother with a copy of Student's 2023 BIP, in violation of 34 C.F.R. § 300.322(f). This violation resulted in a denial of FAPE.

Mother's concern is that she did not receive a copy of Student's 2023 IEP until January 2024.

The IDEA requires school districts to provide parents a copy of their child's IEP at no cost. 34 C.F.R. § 300.322(f). Providing a copy of the IEP is essential to a parent's ability to participate in the development and enforcement of their child's IEP. *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017). The IDEA does not, however, specify that the IEP be provided within a certain timeframe. *See id.*

A. Obligation to Provide a Copy of the BIP

Although not specifically defined in the IDEA, a BIP is "generally understood to mean a component of a child's educational program." *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22). If an IEP team determines that a BIP is appropriate for a student whose behavior is impeding their learning or that of others, a BIP must be included in their IEP and reviewed and modified as necessary. *Id.* IDEA and its implementing regulations are generally understood to apply to both IEPs and BIPs that are part of the IEP. *See, e.g. Letter to McWilliams*, 66 IDELR 111 (OSEP 2015) (concluding that state education agencies are obliged to investigate state complaints alleging that a district has failed to implement a BIP).

In this case, in developing the 2023 IEP, the IEP team indicated in the 2023 IEP that Student required a BIP. (FF # 19.) Because Student required a BIP, the SCO finds that the 2023 BIP was part the 2023 IEP. Thus, the SCO finds that to comply with the requirements of 34 C.F.R. § 300.322(f), District was required to provide Mother and Father with a copy of both the 2023 IEP and 2023 BIP.

B. Provision of the IEP to Mother

Here, an IEP meeting was held on April 27, 2023. (FF # 14.) Copies of the 2023 IEP and BIP were provided to Father on May 5, 2023. (FF # 34.) A copy of the 2023 IEP was provided to Mother on

May 19, 2023, after she requested it, but a copy of the 2023 BIP was not provided to her. (*Id.*) At Mother's request, the 2023 IEP was also provided on October 17, 2023. (*Id.*) Once again, no BIP was included. (*Id.*) Mother did not receive a copy of the 2023 BIP until January 22, 2024. (*Id.*) Although the 2023 BIP was unchanged from prior versions, there was no way for Mother to know that without receiving a copy. (FF # 29.)

Thus, the SCO finds that District did not provide Mother with a copy of Student's complete IEP until January 2024, nearly nine months after the 2023 IEP team meeting in April 2023. While the IDEA does not require an IEP to be provided within a specific timeframe, the SCO finds the delay of nine months, in the context of a nine-month school year, to be unacceptable. Prior CDE state-level complaint decisions support this conclusion. *See, e.g., St. Vrain Valley Sch. Dist. RE-1J*, 122 LRP 12570 (SEA CO 2/15/22) (finding a two-month delay a violation of the IDEA); *Durango Sch. Dist. 9-R*, 122 LRP 13564 (SEA CO 2/4/22) (finding a ten-month delay a violation of the IDEA). The SCO finds and concludes that the District failed to timely provide Mother with a copy of Student's IEP, resulting in a procedural violation of 34 C.F.R. § 300.322(f).

C. Procedural Violation

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 provide Mother with a copy of the full IEP. Having neither participated in the meeting nor received a copy of the 2023 BIP, there was no way for Mother to know what was included in the BIP or whether she believed it was appropriate for Student's needs. (FF #s 14, 34.) Given the concerns Mother expressed regarding Student's educational programming, it was of utmost importance that she receive a copy of her child's IEP. Indeed, "in enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017) (emphasis in original). For this reason, the SCO finds and concludes that District's failure significantly impeded Mother's opportunity to participate in the decision-making process for Student, resulting in a denial of FAPE.

Conclusion to Allegation No. 4: District failed to provide Mother with periodic reports on Student's progress from April 2023 to present, in violation of 34 C.F.R. § 300.320(a)(3)(iii). This violation resulted in a denial of FAPE.

Mother's concern is that District failed to provide her with periodic reports on Student's progress on his IEP goals.

A parent's right to participate in the development of their child's educational program requires that they be regularly informed of progress toward IEP goals. *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (Ninth Cir. 2017), *cert. denied*, 138 S. Ct. 556 (2017) (concluding that "[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.") For that reason, school districts must periodically report a student's progress toward meeting annual goals to his parents, in accordance with the schedule described in the IEP. 34 C.F.R. § 300.320(a)(3). In light of *Endrew F.*, OSEP provided additional guidance concerning the importance of sharing progress monitoring data with Parents:

Public agencies may find it useful to examine current practices for engaging and communicating with parents throughout the school year as IEP goals are evaluated and the IEP Team determines whether the child is making progress toward IEP goals. IEP Teams should use the periodic progress reporting required at 34 CFR §300.320(a)(3)(ii) to inform parents of their child's progress. Parents and other IEP Team members should collaborate and partner to track progress appropriate to the child's circumstances.

Questions and Answers (Q&A) on *U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017).

Here, Student's 2023 IEP indicated that progress reports would be sent three times per year, with report cards. (FF # 20.) This means progress reports should be sent in approximately October/November, late February, and at the end of the year. (FF # 51.) Although District generated progress reports in June and October 2023, the SCO found no evidence consistent with District practice, written or otherwise, to demonstrate how or if the reports were provided to Mother. The SCO found that neither progress report was sent to Mother. (FF #s 56-58.)

For this reason, the SCO finds and concludes that District failed to provide periodic reports on Student's progress between April 2023 and present, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3)(iii).

Procedural violations of IDEA are only actionable to the extent that they impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of 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's failure to provide Mother with progress reports further impeded her ability to participate in the decision-making process, at a time when she had concerns about the development, revision and implementation of Student's IEP. At the same time, after some contentious interactions, District had banned Mother from School, restricted who she could contact and was failing to respond to many of her emails, meaning that Mother did not have other means of staying informed of Student's progress. (FF #s 67-71.) Although Student's

behavior began to deteriorate in January 2024, Mother was unaware of this change until she contacted School about the new breaks at the end of February. (FF #s 48-50.)

For these reasons, the SCO finds and concludes that District's procedural violation significantly impeded Mother's ability to participate in the decision-making process for Student, resulting in a denial of FAPE.

Conclusion to Allegation No. 5: District failed to carefully consider Mother's IEP team meeting requests, in violation of 34 C.F.R. § 300.324(b). This violation resulted in a denial of FAPE.

Mother's concern is that District failed to convene an IEP team meeting after repeated requests.

A. IEP Meeting Requirements

The IDEA contemplates that a student's IEP may need to be reviewed and revised more frequently than once a year to address changing needs or an unexpected lack of progress. *See* 34 C.F.R. § 300.324(a)(4)-(6), (b); *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (U.S. 2017). IEP reviews and revisions are appropriate to address, among other issues: any lack of expected progress toward meeting the annual goals; the results of any reevaluation; *information about the child provided to, or by, the parent*; the child's anticipated needs; or other matters. 34 C.F.R. § 300.324(b)(1)(ii) (emphasis added). "Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time." *Questions and Answers on U. S. Supreme Court Case Decision Andrew F. v. Douglas County School District Re-1*, 71 IDELR 68 (OSEP 2017). Consequently, a school district must carefully consider and appropriately respond to a parent's request to convene the IEP team. *Westminster Public Schools*, 118 LRP 50551 (SEA CO 11/14/2018).

Here, Mother requested an IEP team meeting, through Liaison, on October 26 and 31, 2023. (FF #s 67, 68.) She then reiterated her request, in writing, on November 6, 2023, specifying that she wanted to discuss his use of sensory necklaces and a doctor's note concerning his participation in gym. (FF # 70.) Finally, she asked again, in writing, on December 13, 2023. (FF # 71.) District did not respond to Mother after any of these requests. (FF #s 67-71.) More than a month later, on January 17, 2024, District indicated that it was setting up a time for Mother to meet with Teacher and said that an IEP meeting would not be held until April 2024. (FF # 72.) To date, no IEP meeting has been held this school year. (FF # 73.)

District was obligated to carefully consider and appropriately respond to Parent's request for an IEP team meeting. *Westminster Public Schools*, 118 LRP 50551 (SEA CO 11/14/2018). A request for an IEP team meeting is, essentially, a request to change a student's IEP and, therefore, the provision of a FAPE. Thus, if a district is not granting such a request, appropriately responding requires issuing PWN of the refusal to change the provision of a FAPE. 34 C.F.R. § 300.503(a).

B. PWN Requirements

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).

In this case, District never issued a PWN in response to Mother’s repeated requests or offered any further explanation beyond saying a meeting would not be held until April 2024. (FF #s 67-73.) Because District did not issue a PWN or ever communicate with Mother about her request, the SCO finds and concludes that District did not carefully consider and appropriately respond to her requests for an IEP team meeting, in violation of 34 C.F.R. § 300.324(b).

C. Procedural Violation

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, this procedural violation significantly impacted Mother’s opportunity to participate in the decision-making process regarding the provision of FAPE to Student. Mother had concerns about the appropriateness of the 2023 IEP, including whether it adequately addressed Student’s sensory needs. (FF #s 63, 64.) She was also concerned that he may have had additional disability-related needs that were impacting his ability to participate in gym. (FF # 66.) She provided a doctor’s note regarding his participation in gym class. (FF # 70.) Thus, the SCO finds that the District’s procedural violation resulted in a denial of FAPE.

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

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

Nothing in the Record suggests that these violations are systemic. District practice is to provide both parents with copies of all IEP documents and to include both in the development of the IEP. (FF #s 11, 52.) District also requires that IEP team meetings generally be held upon request and that a PWN be issued if the school has a strong body of evidence to support not meeting. (FF # 62.) Instead, the issues here seem to be directly related to the contentious relationship between Mother and School, compounded by the impact of SEIS’s medical leave. (FF #s 50, 67-69.)

REMEDIES

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

- a. Failing to develop an IEP that was appropriately tailored to Student’s needs, in violation of 34 C.F.R. § 300.320(a)(4);
- b. Failing to provide Mother with a copy of Student’s IEP, in violation of 34 C.F.R. § 300.322(f);
- c. Failing to provide Mother with progress reports, in violation of 34 C.F.R. § 300.320(a)(3); and
- d. Failing to carefully consider Mother’s IEP Team Meeting request, in violation of 34 C.F.R. § 300.324(b).

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

1. Corrective Action Plan

- a. By **Monday, April 29, 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. Case Manager, School Psychologist, Dean, Principal, SEIS, Senior Manager and School's Director of Special Education must review this decision, as well as the requirements of 34 C.F.R. §§ 300.320(a), 300.322, and 300.324(b). 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 **Wednesday, May 29, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, June 3, 2024**.

3. IEP Meeting

- a. District must convene Student's IEP team, at a mutually agreeable date and time, by **Friday, April 26, 2024**. In consideration of all progress data, any recent evaluations of Student, and any information provided by Parents, including the doctor's note obtained by Mother and Mother's concerns about Student's sensory and medical needs, Student's IEP team must review and, as necessary, revise Student's IEP, consistent with the requirements of the IDEA, to address Student's unique needs and the concerns identified in this Decision including reviewing the SDS to clearly document the special education and related services to be provided to Student.
 - i. This IEP review can be completed as part of Student's upcoming annual review meeting or in a separate IEP meeting prior to Student's annual meeting.
 - ii. If Mother refuses to participate in the IEP meeting, District may convene a meeting without her, provided District diligently attempts to secure her participation at a mutually agreeable time and place and documents such efforts. A determination that District diligently attempted to secure her participation rests solely with CDE. Regardless, District must still convene Student's IEP team to review and revise the SDS.
- b. By Monday, May 6, 2024, District must provide notice of the IEP meeting as well as proof it was scheduled at a mutually agreeable date and time, proof of IEP team members such as a signature page, a finalized IEP and BIP and a PWN documenting consideration of Mother's concerns and the concerns addressed in this decision,

including the provision of services inside general education, to the CDE Special Education Monitoring and Technical Assistance Consultant.

4. Progress Monitoring

- a. Through March 2025, District must provide CDE with evidence that all progress reports have been provided to Mother.
- b. Upon receipt of the IEP required in Remedy No. 3, based upon the frequency required by the new IEP, CDE Special Education Monitoring and Technical Assistance Consultant will establish a schedule for when these reports must be provided to CDE.
- c. Upon review, if CDE has concerns with the provision of the progress reports, District may be required to take additional steps, including but not limited to, reissuing the progress reports.

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

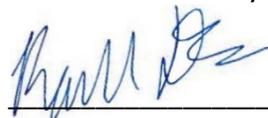
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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 28th day of March, 2024.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-10

- Exhibit 1: Correspondence

Response, pages 1-13

- Exhibit A: IEPs
- Exhibit B: BIP
- Exhibit C: Evaluations
- Exhibit D: None
- Exhibit E: Meeting Documentation
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: Progress Documentation
- Exhibit I: District Policies
- Exhibit J: Correspondence
- Exhibit K: Verification of Delivery

Reply, none

- Exhibit 2: Correspondence
- Exhibit 3: Text Messages
- Exhibit 4: Correspondence

Telephone Interviews

- Parent: March 4, 2024
- School Psychologist: March 5, 2024
- Teacher: March 6, 2024
- Assistant Principal: March 7, 2024
- SEIS: March 7, 2024
- Senior Manager: March 7, 2024
- Stepparent: March 11, 2024