

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

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**State-Level Complaint 2019:553**  
**Logan RE-1 Valley School District**

**DECISION**

**I. INTRODUCTION**

The father (“Parent”) of a student (“Student”) identified as child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> initiated this action against Logan RE-1 Valley School District (“District”) through a state-level complaint (“Complaint”) properly filed on Wednesday, August 14, 2019.

The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

**II. RELEVANT TIME PERIOD**

The Colorado Department of Education (“CDE”) has the authority to investigate alleged violations of the IDEA that occurred not more than one year from the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will be limited to events that transpired no earlier than August 14, 2018 to determine whether or not a violation of IDEA occurred. *Id.* Additional information prior to this date may be considered to fully investigate the allegation accepted in this matter. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

**III. COMPLAINT ALLEGATION**

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

1. Failed to properly implement Student’s IEP, specifically as follows:

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, et seq. and its corresponding regulations are found at 34 C.F.R. § 300.1, et seq. IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”), found at 1 CCR 301-8, 2220-R-1.00, et seq.

- a. Failed to provide specialized reading instruction/services consistent with Student’s IEP, from December 18, 2018 through January 23, 2019, in violation of 34 C.F.R. § 300.323.

#### **IV. FINDINGS OF FACT**

After a thorough analysis of the Record as detailed in the appendix attached and incorporated by reference, the SCO makes the following FINDINGS OF FACT:

##### **A. Background**

1. This dispute involves educational programming that was the subject of a state-level complaint action commenced by legal counsel on behalf of Parent and Student against District on May 16, 2019. *Decision 2019:537*. In that case, the Decision formally issued by CDE on July 15, 2019 resolved one claim unrelated to the sole allegation accepted for investigation here. *Id.*
2. The present matter similarly concerns Student, a twelve-year-old child currently eligible for special education and related services under the primary disability category of Specific Learning Disability (“SLD”). *Exhibit 3*, p. 14; *Exhibit A*, p. 14. Student first enrolled at an elementary school (“School”) located within District on August 15, 2018 for her fifth grade academic year. *Exhibit J*, p. 2. She had previously attended an elementary school situated within another Colorado school district starting in August 2013. *Id.* at p. 1. Following an initial evaluation completed on April 25, 2016, an IEP team at that school district qualified Student for special education and related services. *Exhibit 3*, p. 1; *Exhibit A*, p. 1. Since that determination, Student has continued to be IDEA-eligible as a child with SLD. *Exhibit 3*, p. 18.
3. Student is described as a caring and athletic child who loves helping younger peers and participating in volleyball. *Interview with Parent*. She is further characterized as a diligent learner, particularly when receiving direct instruction. *Interview with Special Education Teacher*. Student’s identified disability specifically “hinders her from learning at the same rate or in the same way as [same] age peers.” *Exhibit 3*, p. 21. *Exhibit A*, p. 21. She functioned behind—two to three years academically and one to two years socially—as compared to fifth grade peers during the 2018-2019 school year. *Interview with Special Education Teacher*. Relevant here, Student’s recognized reading needs center on comprehension and vocabulary skillsets. *Interviews with Parent, Director of Special Education and Special Education Teacher*.
4. Parent asserts that School staff removed Student from her “normal reading group” and provided “her reading portion of her IEP” in a “secluded empty classroom in the High School portion of the building” from December 18, 2018 until January 23, 2019. *Complaint*, p. 2. District responds that School staff implemented Student’s IEP “in its entirety” and with “fidelity” during this timeframe. *Response*, p. 6. District specifically counters that Student “received direct, one-on-one instruction” from Special Education Teacher in School’s “resource room” prior to January 8, 2019, and thereafter “received direct reading instruction”

from Special Education Teacher “for a small percentage of her day in the high school resource room.” *Id.* at pp. 5-6. The SCO first considers the type and anticipated location of the specialized reading instruction and services that were to be provided to Student in this case.

#### **B. Development and Knowledge of Student’s IEP dated October 12, 2018**

5. An IEP team convened shortly after Student’s transfer to School—on August 24, 2018—to review her IEP dated April 16, 2018. *Exhibit A*, pp. 11-13; *Exhibit D*, p. 1. The IEP team adopted this IEP but increased supports in both math and reading from thirty to forty-five daily, direct minutes outside of the general education classroom. *Exhibit 3*, p. 12. Meeting notes from this transfer meeting reflect the IEP team’s determination by indicating “[Student] will be in a small group for reading and math 45 for each class.” *Id.* at p. 13. The IEP team also agreed that District would complete Student’s triennial reevaluation—due on or before April 24, 2019—during the fall of 2018 given her recent transfer. *Id.* at pp. 11-13; *Exhibit A*, pp. 11-13.
6. Student’s mother signed a *Prior Written Notice & Consent for Evaluation* on September 20, 2018. *Exhibit C*, p. 1. District’s triennial reevaluation focused on cognitive, academic, speech language, and social skills. *Id.*; *Exhibit J*, pp. 4-15. Consistent with the most recent evaluation in April 2016, Student’s general intellectual functioning scored in the “Low Average Range” when compared to peers her age. *Exhibit J*, pp. 13, 41. Student’s academic performance demonstrated weaknesses in the areas of basic reading skills, reading fluency skills, reading comprehension, written expression, mathematical calculation, mathematical problem solving, and listening comprehension. *Id.* at p. 3. The IEP team concluded that Student continued to qualify for special education and related services as a child with SLD. *Id.* at p. 3.
7. A properly convened IEP team developed an IEP for Student at the eligibility meeting on October 12, 2018. *Exhibit 3*, pp. 14-30; *Exhibit A*, pp. 14-30; *Exhibit D*, p. 2. Based on identified needs, the IEP team developed an annual measurable goal for Student “to show growth in reading by increasing her skills in vocabulary and comprehension” by October 2019. *Exhibit 3*, p. 24; *Exhibit A*, p. 24. The baseline data point for this annual reading goal is a standardized benchmark assessment score of 166 on the Northwest Evaluation Association (“NWEA”) Measures of Academic Progress test. *Id.* Attainment of four related objectives—locating information on charts, graphs, and diagrams; determining the cause of a situation or event in literary text; describing character traits or attributes and inferring character feelings or thoughts; and applying knowledge of affixes to determine the meaning of a word—individually require “80% accuracy as demonstrated by a standardized benchmark assessment.” *Id.* The IEP Team set an NWEA benchmark assessment score goal of 178. *Id.*
8. In developing this annual reading goal and its four short-term objectives, the IEP Team took into consideration Student’s previous standardized test scores and in-class performance. *Interview with Special Education Teacher*. To that end, the IEP Team crafted the annual goal and objectives around ascertained needs in the areas of vocabulary and comprehension. *Id.*

9. To facilitate growth and progress with respect to this annual reading goal, the October 12, 2018 IEP's service delivery statement provides, in part, that "[Student] receives 90 minutes daily of reading intervention including phonics, LLI, Reading Street and My Sidewalks." *Exhibit 3*, p. 28. Reading Street is a core, grade-level reading program provided within a whole group classroom setting, and My Sidewalks is a companion tier one intervention curriculum designed for students who may need additional support to comprehend grade-level Reading Street instruction. *Interview with Special Education Teacher*. My Sidewalks is devised to provide small group or individualized instruction. *Id.* The leveled literacy intervention ("LLI") program is an intensive, tier two intervention that targets a child's individual developmental needs. *Id.* Each of the three aforementioned strategies included phonics intervention lessons, and involved a variation of whole group, small group, and one-on-one learning. *Id.*
10. Special Education Teacher explained that the service delivery statement does not specify whether Student's ninety daily minutes of reading intervention is to be conducted in an individual, small group, or large group environment because the reading groups at School are "pretty fluid" in that they often change throughout the multi-tiered system of support or IEP processes according to a child's needs. *Interview with Special Education Teacher*. She added that School's enrollment for each grade level is at or near twenty-five students. *Id.* The only special education service distilled to such a level of detail in Student's October 12, 2018 IEP is "30 minutes daily of small group writing instruction including ECAW skills." *Exhibit 3*, p. 28.
11. The service delivery statement continues: "[d]irect services may be provided by Title, Resource, ELL, and/or regular education staff, assistants, associates and paraprofessionals through an RTI model; consultation with special education teachers, occupational therapists, and speech/language pathologists, may/will be provided for supervision, monitoring and goal progress." *Exhibit 3*, p. 28. School serves elementary and secondary students in one building—with a gymnasium separating the two education levels—and Special Education Teacher maintains classrooms on both the elementary and secondary sides of School. *Interviews with Director of Special Education and Special Education Teacher*. During the 2018-2019 academic year, Student received direct, specialized reading instruction from Special Education Teacher, and General Education Teacher or paraprofessionals working under Special Education Teacher's supervision, in both the elementary and high school resource rooms. *Interviews with Parent, Director of Special Education, and Special Education Teacher*.
12. The October 12, 2018 IEP's least restrictive environment grid details 840 total minutes per week of direct specialized "Special Education" instruction to be provided by a special education teacher, which the SCO finds to consist of ninety daily minutes of reading, ninety daily minutes of math, and thirty daily minutes of small group writing. *Exhibit 3*, p. 28; *Exhibit A*, p. 28. This accounting aligns with School's four-day week during the 2018-2019 academic year. *Exhibit H*. The written narrative of Student's placement inside general education "40% to 79% of the time" expresses the "staffing team, along with [Student's] parents agree that

this placement best meets [Student’s] needs at this time. *Exhibit 3*, p. 29; *Exhibit A*, p. 29. The start date for Student’s services is denoted as October 13, 2018. *Id.* at p. 28; *Id.* at p. 28.

13. School educators and related service providers may access IEPs for all IDEA-eligible students through District’s Infinite Campus Portal via an individual username and password. *Interviews with Director of Special Education and Special Education Teacher.* District also maintains hard copies of all IEPs in its central office. *Interview with Director of Special Education.* Parent stated that Special Education Teacher was aware of her responsibilities related to implementing the October 12, 2018 IEP because “she is the one who helped to develop it.” *Interview with Parent.* Parent and Student’s mother (collectively “Parents”), Director of Special Education, Special Education Teacher, General Education Teacher, Former Principal, and Speech-Language Pathologist comprised the IEP Team. *Exhibit 3*, p. 15; *Exhibit A*, p. 15.
14. Special Education Teacher reliably described her process of obtaining the signatures of School’s non-IEP team member educators—at the beginning of each academic year—as attestation to their full review and understanding of all active IEP contents. *Interview with Special Education Teacher.* Special Education Teacher also provides them with a one-page “IEP snapshot” containing accommodations and goals for placement in their lesson plans. *Id.* The SCO finds that she undertook these actions for Student’s October 12, 2018 IEP. At least once per month, Special Education Teacher also attends School’s multi-tiered system of support meetings to address any new questions or concerns raised by other educators. *Id.*
15. At a more global level, all special education staff at each school within District attend a monthly meeting with Director of Special Education—dubbed “orange Mondays”—for collaborative professional development. *Interviews with Director of Special Education and Special Education Teacher.* The special education topics covered at these meetings vary, but have included IEP drafting. *Id.* For instance, Director of Special Education emphasizes the use of CDE’s IEP Procedural Guidance document to ensure compliance in IEP development. *Id.* In light of the October 12, 2018 IEP, the SCO turns to the relevant implementation period.

### **C. Specialized Reading Instruction from October 13, 2018 – December 21, 2018**

16. The SCO finds a single-day schedule—dated October 18, 2018 and created at or near the time the IEP Team developed the October 12, 2018 IEP—to be representative of the specialized reading instruction Student received from October 13, 2018 through December 21, 2018. *Exhibit B*, p. 2; *Interview with Special Education Teacher.* Specifically, Student participated in: “Reading/Spelling” after lunch from 12:20 p.m. – 12:35 p.m.; “My Sidewalks” from 12:35 p.m. – 1:15 p.m.; “Reading Groups” from 1:15 p.m. – 1:30 p.m.; and “LLI” from 1:30 p.m. – 1:55 p.m. *Exhibit B*, p. 2. The SCO also finds that Special Education Teacher, or General Education Teacher or a paraprofessional teaching under the supervision of Special Education Teacher, consistently carried out this small or whole group reading instruction in either the elementary

resource room or the fifth grade “Classroom” during this time period. *Id.*; *Interviews with Parent, Director of Special Education, and Special Education Teacher.*

17. Parent stated to the SCO that he understood Student to have received a “combination of one-on-one and small group” instruction starting on October 13, 2018. *Interview with Parent.* Consistent with this recollection, for instance, Student’s fifteen minutes of “Reading Groups” entailed “whole group . . . reading instruction within the classroom” during which time the entire classroom read a “big story for the week.” *Interview with Special Education Teacher.* Special Education Teacher added that “My Sidewalks” could be delivered in either an individualized or small group setting in order to tailor the “same themes and big ideas” from the whole group reading instruction to the unique learning needs of a particular student. *Id.*
18. Also in accord with Parent’s understanding of the variation in reading intervention format, Special Education Teacher categorized the fifteen minutes of “Reading/Spelling” instruction as small group “West Virginia phonics.” *Interview with Special Education Teacher.* This brand of instruction included “consonant blends” and “dictation” practice with Special Education Teacher “stressing [use of] those skills beyond reading and moving them over to writing.” *Id.* This approach aligns with, for instance, a spelling exam completed on January 9, 2019. *Exhibit B*, p. 31. She further recorded Student’s sight word reading comprehension through a “Fry Words” worksheet with scores dated September 21, 2018, October 16, 2018, and December 18, 2018. *Id.* at pp. 17-21. Student also read a story that was “decodable” using these skills as part of the “West Virginia phonics” model. *Interview with Special Education Teacher.* For this “Reading/Spelling” learning, Special Education Teacher simultaneously oversaw two small groups of three to five students in School’s elementary resource room, rotating to deliver direct instruction to one group while the other engaged in individualized lessons. *Id.*
19. With four student contact days remaining in School’s second quarter—on December 18, 2018—Parents met with Former Principal, Special Education Teacher, and General Education Teacher regarding ongoing “conflict” between Student and a peer. *Complaint*, p. 2; *Response*, p. 5; *Exhibit B*, p. 3; *Exhibit H*; *Exhibit J*, pp. 23-27. Parent told the SCO he requested this meeting because Student was being “bullied” by the peer. *Interview with Parent.* The investigation into the state-level complaint filed on behalf of Parent and Student against District on May 16, 2019 addressed the merits of Parent’s position pertaining to bullying. *Decision 2019:537.* Consistent with the findings in that case—and as corroborated by the Record here—Student and the peer collectively engaged in continual conflict with each other at School from late October 2018 through January 2019. *Id.*; *Exhibit J*, pp. 16-21, 23-27, 39.
20. Based on observations of “constant squabbling” and an “underlying, fifth grade girl unrest” between Student and the peer, this December 2018 meeting resulted in a decision to assign additional paraprofessional support to Student through the conclusion of School’s second quarter. *Interviews with Parent and Special Education Teacher.* This decision is substantiated by two sets of typed notes indicating that a “[p]araprofessional or additional teacher was put into place within all environments.” *Exhibit B*, pp. 2-3. This determination, as further

explained in the notes, was driven in part to curb the behaviors leading to conflict as there was “so much unstructured time” leading up to School’s winter break, such as “activities, assemblies, [and] class parties.” *Id.* at p. 3; *Interview with Special Education Teacher.*

21. The SCO does not find support for the assertion that Student was “taken to an empty classroom in the high school” for reading instruction starting on December 18, 2018. *Interview with Parent.* For example, there is no notation to that effect in the typed December 2018 meeting recap. *Exhibit B*, pp. 2-3. Rather, the typed notes provide that “[Student] attended all activities with her peers.” *Id.* at p. 3. Moreover, Parent told the SCO that allocation of additional adult support was designed so “they could get through the next four days . . . and use the next two weeks to develop a plan to go forward.” *Interview with Parent.*
22. The second quarter concluded on Friday, December 21, 2018 with Student’s report card reflecting identical “Reading, Writing, & Communication” grades as from the first quarter. *Exhibit E*, p. 3; *Exhibit H.* To demonstrate, Student earned a “2” across the board in oral expression and listening, reading for all purposes, and writing and composition coursework, denoting this performance “Approaches” standards. *Exhibit E*, p. 3. Student’s reading effort is reported as “Supports Learning” for both the first and second quarters, though it reverted to “Impedes Learning” by the end of the third quarter. *Id.* School adjourned for the winter holiday break from Monday, December 24, 2018 through Friday, January 4, 2019. *Exhibit H.*

#### **D. Specialized Reading Instruction from January 8, 2019 – January 23, 2019**

23. School’s third semester started on Tuesday, January 8, 2019, at which time Parents met with Former Principal, Director of Special Education, Special Education Teacher, General Education Teacher, and Psychologist due to Parents’ “expressed concerns about issues that [Student was] having with another student [that were] preventing her from learning.” *Exhibit H; Exhibit A*, p. 31. Typed meeting notes identify a series of “interventions” established to minimize contact between Student and the peer, such as separating lockers, restroom trips, and “recess zones.” *Exhibit A*, p. 31. Parents and School staff also decided that “[Special Education Teacher] will be the only person to deal with any concerns that [Student] has with social-emotional functioning.” *Id.* Finally, Parents and School staff decided on a “[c]hange in groupings starting today so that [the] two girls will not be in the same small groups . . .” *Id.*
24. As detailed in a single-day schedule dated January 8, 2019, Parents and School staff revised Student’s daily schedule by increasing “Reading” minutes right after lunch to 12:20 p.m. – 1:07 p.m. *Exhibit B*, p. 4. The “Reading” instruction also moved from the elementary resource room to the high school resource room, during which time Student received direct, one-on-one instruction from Special Education Teacher. *Id.; Interviews with Parent and Special Education Teacher.* No peers or other instructors were present in the high school resource room for this “Reading” instruction. *Interviews with Parent and Special Education Teacher.* Student continued to participate in “Reading Groups” from 1:15 p.m. – 1:30 p.m. in the fifth

grade “Classroom” and “LLI” from 1:30 p.m. to 1:55 p.m. in the School library. *Exhibit B*, p. 4. Parent does not dispute that Student received specialized reading instruction from Special Education Teacher in the high school resource room, but instead maintains that this form of delivery contravened the services outlined in the October 12, 2018 IEP. *Interview with Parent*.

25. Special Education Teacher credibly explained that the change in delivery of specialized reading instruction from a small group to a one-on-one format in the high school resource room did not compromise educational programming Student was entitled to under the October 12, 2018 IEP. *Interview with Special Education Teacher*. For instance, in addition to allowing for fifteen minutes of “West Virginia phonics,” this elongated timeslot included “My Sidewalks” curriculum. *Id.*; *Exhibit B*, p. 4. Special Education Teacher described a “basic level curriculum” that involved reading a story that matched “Reading Street” strategies but at a “lower reading level.” *Interview with Special Education Teacher*. She discussed vocabulary with Student, at times asking her to draw photos to demonstrate understanding, and guided Student through reading comprehension questions at “different reading level depths.” *Id.* Student also worked on “inferring and moving from a literal understanding to a deeper understanding of the stories,” to include sharing her opinions about a story. *Id.* A “Recording Form” worksheet completed by Student on January 10, 2019 validates Special Education Teacher’s account of this timeframe’s instruction as it assessed Student’s oral reading fluency and reading comprehension skills related to a nonfiction fishing book. *Id.*; *Exhibit B*, pp. 5-9.
26. Special Education Teacher added that the direct one-on-one reading instruction Student encountered in the high school resource room, not unlike the small group reading instruction she received in the elementary resource room prior to January 8, 2019, consisted of “pull-out services” and thus did not alter Student’s least restrictive environment. *Interview with Special Education Teacher*. The SCO finds this conclusion consistent with the daily schedules dated October 18, 2018 and January 8, 2019 which—including reading, writing, and math minutes—placed Student in the general education class fifty-six and fifty-eight percent of the time each day, respectively. *Exhibit B*, pp. 2, 4. Special Education Teacher further reported that the high school resource room was “optimal” for Student because not only did she demonstrate “good attention” and engagement, but she also developed her skills without any small group social distractions. *Interview with Special Education Teacher*. The SCO finds Special Education Teacher’s overall assessment that Student “thrives” in a one-on-one situation to be reliable based partly on a January 9, 2019 e-mail exchange. *Id.*; *Exhibit F*, p. 2.
27. Student’s mother wrote that evening to Special Education Teacher to report that “tonight wasn’t a struggle like most night [sic] to get her to do thinks [sic] like sits [sic] down and read and she jumped right on the computer to do her definitions!” *Exhibit F*, p. 2. She then asked “[w]hat do you feel the difference is?” *Id.* Special Education Teacher responded by writing “I think [Student] is enjoying being in a reading group by herself. She has been very motivated to get the most out of her reading time. I am excited to see the growth she makes from this change.” *Id.* The initial e-mail from Student’s mother emanated from her receipt of a daily



social-emotional report obtained by Special Education Teacher from Student as a part of the “interventions” developed during the January 8, 2019 meeting. *Id.* at pp. 1-2; *Exhibit A*, p. 31.

28. The additional time built into the “Reading” instruction immediately after lunch included these social-emotional check-ins between Special Education Teacher and Student in the high school resource room. *Interview with Special Education Teacher; Exhibit F*. These check-ins preceded the “Reading” instruction, lasted up to seven minutes, and featured Special Education Teacher asking Student questions, recording the answers, and e-mailing the report to Parents when necessary. *Id.* Special Education Teacher documented any concerns identified by Student and inquired as to how Student’s day was progressing, specifically asking for her to pinpoint “one good thing that has happened so far today.” *Id.* The SCO found no evidence that these check-ins occurred in front of other students, as alleged by Parent, and while check-ins did happen after 3:00 p.m. on select dates, these were in addition to any having occurred at 12:15 p.m. that same school day. *Interview with Parent; Exhibit F*.
29. The consensus among the parties is that the conflict between Student and the peer was impeding Student’s ability to learn and to focus, and given Student’s identified reading needs, the evidence shows that the shift from small group to one-on-one reading instruction for a portion of the school day was a “multi-faceted decision” made to support rather than to punish Student. *Interviews with Parent, Director of Special Education, and Special Education Teacher*. To illustrate, Special Education Teacher reasonably explained that there were “other needs” arising with the small reading groups at the time, to include moving a third student from one group to another, and thus it was a “perfect time” to discuss how Student would feel about a one-on-one focus while also affording the discretion to complete the daily social-emotional check-ins. *Interview with Special Education Teacher*. She added that this individual “front load . . . boosted” Student’s ability to glean more information from both small and whole group learning when she transitioned to “Reading Groups” at 1:15 p.m. *Id.*
30. Student’s progress reports dated January 15, 2019 and May 22, 2019 signal that she made “Adequate Progress” on the October 12, 2018 IEP’s annual reading goal. *Exhibit E*, pp. 27-30. Student’s NWEA scores were 178 and 190 in the fall and winter of 2018, and 189 in the spring of 2019. *Id.* at pp. 27, 29. Special Education Teacher, as catalogued in the January 15, 2019 progress report, also considered Student’s performance on the Phonological Awareness Literacy Screening, phonics screening, and LLI testing to monitor and measure her growth on each of the four short-term objectives. *Id.* at p. 27; *Interview with Special Education Teacher*.
31. On January 24, 2019, Parents revoked consent for Student’s special education and related services. *Exhibit J*, p. 22. Parents’ signed, handwritten document provides: “Temporary as of Jan. 24th please remove [Student] from IEP classes!” *Id.* Student did not receive special education and related services thereafter. *Interview with Director of Special Education*. District discontinued Student’s special education programming through a Prior Written Notice of Special Education Action issued to Parents on February 13, 2019. *Exhibit C*, p. 2. Student’s exit from special education services on January 24, 2019 marks a full progression

through the pertinent period of time accepted for investigation, and it is with the totality of these findings that the SCO advances to analyze implementation of the October 12, 2018 IEP.

## V. CONCLUSIONS OF LAW

Based on the FINDINGS OF FACT set forth above, the SCO enters the following CONCLUSIONS OF LAW:

**Conclusion to Allegation No. 1: District provided Student with specialized reading instruction consistent with the October 12, 2018 IEP from December 18, 2018 through January 23, 2019.**

### A. IEP Implementation under the IDEA

The issue to be analyzed here implicates the federal mandate that school districts provide eligible students with disabilities a FAPE by offering special education and related services individually tailored to meet each student's unique needs, and delivered in conformity with an IEP developed according to the IDEA's requirements. 34 C.F.R. § 300.17; ECEA Rule 2.19. A child's 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); *Board of Education v. Rowley*, 458 U.S. 176, 181 (1982)). To that end, the U.S. Supreme Court concluded an IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Id.* at p. 999.

The "purpose of an IEP is to embody the services and educational placement or placements that are planned for the child." *N.E. ex rel. C.E. v. Seattle Sch. Dist.*, 842 F.3d 1093, 1096-97 (9th Cir. 2016). A school district must implement a child's IEP with all required components. 34 C.F.R. § 300.323(c). 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 that IEP, as well as the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. 34 C.F.R. § 300.323(d). This duty includes confirming that "as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2).

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

element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE).

Nevertheless, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from IEP’s requirements which did not impact student’s ability to benefit from special education program did not amount to a “clear failure” of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services); *Van Duyn*, 502 F.3d at 822 (holding a “minor discrepancy” between services provided and services required does not give rise to denial of a FAPE). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

The SCO now considers Parent’s contention that District failed to implement specialized reading instruction described in the October 12, 2018 IEP from December 18, 2018 until January 23, 2019.

### **B. Implementation of Student’s Specialized Reading Instruction**

As a vehicle for driving the provision of a FAPE, an IEP “embodies a binding commitment and provides notice to both parties as to what services will be provided to the student during the period covered by the IEP.” *M.C. v. Antelope Valley Union High School District*, 858 F.3d 1189, 1197 (9th Cir. 2017). If a “parent is unaware of the services offered to the student—and, therefore, can’t monitor how these services are provided—a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP.” *Id.* at p. 1198.

“A failure to include the required specificity as to the programming offer would render ‘the IEP useless as a blueprint for enforcement’ and infringe on parental participatory rights which include the development and the enforcement of an IEP.” *Pittsburg Unified School District*, 118 LRP 35364 (SEA CA 8/13/18) (quoting *M.C.*, 858 F.3d at 1199). Some required IEP components are a “projected date for the beginning of the services and modifications . . . and the anticipated frequency, location, and duration of those services and modifications.” 34 C.F.R. § 300.320(a)(7). Although the IDEA does not expressly require the IEP to specify the amount of services in terms of hours and minutes, precision is the best practice to the extent the nature of a student’s disability and needed services permits quantification in terms of hours and minutes on a daily basis. *Letter to Copenhagen*, 21 IDELR 1183 (OSEP 1994); *See also Okaloosa County Sch. Dist.*, 114 LRP 53775 (SEA FL 06/24/14) (determining a school district violated IDEA’s procedural requirements when it failed to specify the duration of a student’s occupational therapy sessions).

Essentially, an IEP must include sufficient information about the amount of services that will be provided so a school district's level of commitment to the student will be clear to parents and providers. *71 Fed. Reg. 156, 46667* (August 14, 2006). Otherwise, an IEP team's failure to set forth the start date, amount, and duration of services can create questions as to whether a school district implemented certain IEP provisions. *Rosemount-Apple Valley-Eagan Indep. Sch. Dist. No. 196*, 51 IDELR 143 (SEA MN 2008); *Okaloosa County Sch. Dist.*, 114 LRP 53775 (SEA FL 06/24/14). The ensuing evidence in this case leads the SCO to find and conclude that District implemented Student's specialized reading services with fidelity and in harmony with the October 12, 2018 IEP.

First, the October 12, 2018 IEP not only contains the required components, but it also details with specificity the amount of services to be provided such that District's degree of commitment to Student is unequivocal. The evidence at FF #9-12 reveals that Student was entitled, in part, to "90 minutes daily of reading intervention including phonics, LLI, Reading Street and My Sidewalks" beginning on October 13, 2018. Special Education Teacher's explanation at FF #10 regarding the configuration of this "reading intervention" supports a calculated decision by the IEP team to build in flexibility based on Student's evolving needs and School's small class sizes, such that the reading instruction could be provided in an individual, small group, or whole group environment. The fact that the October 12, 2018 IEP details "small group writing instruction" for Student further supports a conclusion the IEP team contemplated such refined detail for services.

Based on School's four-day week and a combined ninety daily minutes of reading, ninety daily minutes of math, and thirty daily minutes of writing, the October 12, 2018 IEP aptly accounts for 840 total minutes per week of direct special education and related services. The October 12, 2018 IEP also provides that Student was to be educated with children without disabilities from "40% to 79% of the time." As outlined at FF #7-8, the October 12, 2018 IEP contains a statement of Student's measurable annual reading goal and short-term objectives. Finally, it indicates that Student's direct services could have been delivered by a special education teacher, or a general education teacher or paraprofessional under the direction of a special education teacher. The IEP team thus specified Student's educational programming consistent with 34 C.F.R. § 300.320.

Second, FF #13-15 show that District ensured each teacher and related services provider was informed of their exact responsibilities related to implementing the October 12, 2018 IEP. Not only is the October 12, 2018 IEP sufficiently specific, but it was uploaded to District's Infinite Campus Portal for electronic access by all essential educators and related services providers. Important to the issue before this SCO, it is undisputed that Special Education Teacher understood all required components because—as noted by Parent—"she is the one who helped to develop [the October 12, 2018 IEP]." Moreover, Special Education Teacher credibly described her course of action to secure signatures of non-IEP team member educators to substantiate their review and knowledge of specific accommodations, modifications, and supports related to implementing an IDEA-eligible child's IEP. She and Director of Special Education also highlighted School's ongoing multi-tiered system of support meetings and District's professional development efforts to encourage IDEA compliance in IEP development and IEP implementation. District accordingly satisfied its IEP accessibility obligations consistent with 34 C.F.R. § 300.323(d).

Third, FF #16-17 show that special education and related services were made available to Student just one day after development of the October 12, 2018 IEP. Parent challenges District's adherence to required "reading intervention" between December 18, 2018 and January 23, 2019. The sum of FF #16-29 demonstrate that District delivered the at-issue instruction to Student in accordance with the October 12, 2018 IEP at all times from October 13, 2018 to January 23, 2019.

Single-day schedules for Student from October 18, 2018 and January 8, 2019, listed at FF #16 and #24, reflect instruction in alignment with the daily "reading intervention" identified in the October 12, 2018 IEP's service delivery statement. Considering Special Education Teacher's detailed descriptions of this coursework at FF #17-18 and #25-26, it is apparent the October schedule embodies instruction provided between October 13, 2018 and December 21, 2018 while the January schedule represents services rendered between January 8, 2019 and January 23, 2019. Special Education Teacher illustrated to the SCO specifics for each strategy implemented with Student, such as the small group "West Virginia phonics" at FF #18 and the individualized "My Sidewalks" curriculum at FF #17 and #25. For instance, Student concentrated on reading comprehension based on the "Fry Words" worksheet the SCO received from District.

In conformity with the October 12, 2018 IEP's delivery directives, Special Education Teacher—or General Education Teacher or a paraprofessional operating under Special Education Teacher's expertise—provided Student with these specialized reading services described by Special Education Teacher. It is undisputed that the format and physical setting for a segment of Student's reading services were adjusted beginning on January 8, 2019. As recounted at FF #23, Parents and School staff introduced a series of "interventions" to curtail continual conflict between Student and a peer. These collaboratively-designed methods included daily one-on-one social-emotional check-ins for Student with Special Education Teacher and a "[c]hange in groupings . . . so that [the] two girls will not be in the same small groups . . . ." As a result, Student met individually with Special Education Teacher in the high school resource room starting January 9, 2018 to not only accommodate the confidentiality of these check-ins, but to also address an adverse educational impact of the conflict on Student and "other needs" of the small peer group.

The revised schedule expanded the reading instruction time allotment immediately following the lunch hour—from fifteen minutes to fifty-seven minutes—to account for the check-ins and a combination of "Reading" and "My Sidewalks" instruction. Special Education Teacher's recall of the one-on-one instruction she provided to Student in the high school resource room at FF #25-26 follows the requirements of the October 12, 2018 IEP as written. For example, it included a "basic level curriculum" that mirrored "Reading Street" strategies but at a "lower reading level." The Record corroborates Special Education Teacher's verbal narrative, such as the focus on vocabulary and reading comprehension as reflected in the hard copy exercise featured at FF #25. Parent's primary concern was not the instruction, but rather the location of the reading services.

Neither this shift from the elementary resource room to the high school resource room nor the increase in time violated any component of the October 12, 2018 IEP. The service delivery

statement does not limit Student's special education services to any certain room within School, and it does not indicate that specialized reading instruction must be furnished in a small group setting. Prior to and after January 8, 2019, Student participated in the general education class within the October 12, 2018 IEP's designated least restrictive environment range. Furthermore, the direct reading instruction Student received from Special Education Teacher in the high school resource room and the elementary resource room both constitute "pull-out services." Consequently, District made special education reading services available to Student pursuant to the October 12, 2018 IEP shortly after its development, consistent with 34 C.F.R. § 300.323(c)(2).

Fourth, the progress reports detailed at FF #30 denote Student's "Adequate Progress" toward the October 12, 2018 IEP's annual reading goal. Specifically, Student met the NWEA benchmark assessment score goal of 178 in the fall of 2018, and then surpassed it in the winter of 2018 and the spring of 2019 with scores of 190 and 189. Additionally, though not explicitly tethered to the annual reading goal, there is evidence to show that Student had "been very motivated to get the most out of her reading time" while working in the high school resource room. As recalled at FF #27, Student's mother had even noticed Student to be more self-driven in terms of completing homework after the first day of one-on-one reading instruction with Special Education Teacher.

Fifth and finally, Student's report cards at FF #22 do not show a decline in "Reading, Writing, & Communication" performance from the first to the second quarter. Interestingly, although Student's reading effort is categorized as "Supports Learning" while she was IDEA-eligible during School's first and second quarters, her effort regressed to "Impedes Learning" by the end of the third quarter. District discontinued Student's special education services on January 24, 2019 based on Parents' written revocation, just sixteen days after the start of School's third quarter.

## **VI. REMEDIES**

The SCO finds and concludes that District did not violate any requirements of the IDEA. Accordingly, there are no remedies ordered pursuant to the IDEA and my authority as an SCO.

## **VII. 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. *Id.*; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 11th day of October, 2019.

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Brandon Edelman, Esq.  
State Complaints Officer

## APPENDIX

### **Complaint, pages 1-5**

- Exhibit 1: Letter dated January 23, 2019
- Exhibit 2: Letter dated January 24, 2019
- Exhibit 3: IEP Documentation

### **Response, pages 1-7**

- Exhibit A: IEP Documentation
- Exhibit B: Service Logs and Student Schedules
- Exhibit C: Prior Written Notices
- Exhibit D: Notices of Meetings
- Exhibit E: Grade and Progress Reports
- Exhibit F: E-mail Correspondence
- Exhibit G: Staff Contact Information
- Exhibit H: Academic Calendars
- Exhibit I: Verification of Response delivery to Parent
- Exhibit J: Assorted Student Records, Temporary Restraining Order, Revocation of Consent for Special Education Services, Independent Education Evaluation, and District's Position Statement for State-Level Complaint 2019:537

### **Reply, pages 1-3**

### **Telephonic Interviews**

- Parent: September 17, 2019
- Director of Special Education: September 26, 2019
- Special Education Teacher: September 26, 2019