

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

State-Level Complaint 2021:515
Moffat County School District RE-1

DECISION

INTRODUCTION

On June 14, 2021, the parent (“Parent”) of a student (“Student”) currently identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Moffat County School District RE-1 (“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 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

The SCO tolled the 60-day investigation timeline to allow the parties to participate in mediation. However, the mediation resulted in impasse, and, on July 19, 2021, the SCO resumed the investigation.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), 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 June 14, 2020 through June 14, 2021 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 the District violated the IDEA and denied Student a free appropriate public education (“FAPE”) because the District:

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.

1. Convened an IEP team meeting on or around April 1, 2021, without properly notifying Parent of the meeting, in violation of 34 C.F.R. § 300.322(a).
2. Failed to provide Parent with adequate prior written notice (“PWN”) of the action taken by the District at Student’s IEP team meeting held on or around April 1, 2021, in violation of 34 C.F.R. § 300.503.
3. Failed to convene an IEP team meeting at Parent’s request in or around May 2021 to discuss Parent’s concerns with Student’s recent behaviors, in violation of 34 C.F.R. §§ 300.324(a)(1)(ii) and (b)(1).
4. Failed to properly implement Student’s IEP between April 1, 2021 and the end of the 2020-2021 school year, specifically by:
 - a. Failing to provide the accommodations and modifications required by Student’s IEP, in violation of 34 C.F.R. §§ 300.34, 300.320(a)(4), and 300.323.
5. Failed to develop an IEP in April 2021 that was tailored to meet Student’s individualized needs, specifically by:
 - a. Including inconsistent statements regarding Student’s need for push-in services in the accommodations section of the IEP while requiring pull-out specialized instruction, in violation of 34 C.F.R. § 300.324.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Student attends fourth grade at a District elementary school (“School”). *Interview with Parent.*
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and Autism Spectrum Disorder (“ASD”). *Exhibit A-2, pp. 1-18.*
3. Student is described as a kind, respectful young man. *Interviews with Parent, Third Grade Teacher, Counselor, and Case Manager.* He excels academically and has no behavioral

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

issues at School. *Id.* Student sometimes struggles to advocate for himself in the classroom. *Interview with Case Manager.*

B. Beginning of Third Grade

4. Student completed third grade during the 2020-2021 academic year. He began the academic year attending an elementary school in another school district in Colorado ("Prior District"). *Interview with Parent.* At that time, Student's IEP dated October 9, 2020 was in effect ("2020 IEP"). *Exhibit G*, pp. 1-16.

5. The section of the 2020 IEP regarding present levels of performance indicated that Student performed above grade level in reading. *Id.* at p. 3. Though Student was making progress in math and writing, he still had room for improvement. *Id.* at pp. 3-4. Student also demonstrated growth in social emotional functioning and was engaging more with his peers. *Id.*

6. The 2020 IEP indicated that Student's disabilities impacted his ability to access general education in the areas of math and writing. *Id.* at p. 7. Additionally, his disabilities interfered with his ability to read social cues and interact socially with his peers. *Id.*

7. The 2020 IEP contained six annual goals in the areas of social-emotional wellness, writing, and communication. *Id.* at pp. 7-9.

8. The 2020 IEP identified numerous accommodations and modifications, which included, in part:

- Two scheduled breaks per day that allowed Student to have heavy work movement and a bathroom break,
- Flexible seating options, and
- Communicating with Student's parents in advance of timed testing or changes to classroom schedule.

Id. at p. 10.

9. Under the 2020 IEP, Student received the following special education and related services:

- Special Education: 600 minutes per month of direct special education instruction inside the general education classroom.
- Occupational Therapy: 90 minutes per year of indirect occupational therapy.

- Mental Health Services:
 - 120 minutes per month of direct mental health services inside the general education classroom;
 - 30 minutes per month of direct mental health services outside the general education classroom; and
 - 40 minutes per month of indirect mental health services outside the general education classroom.

- Speech Therapy:
 - 90 minutes per month of direct speech therapy outside the general education classroom; and
 - 30 minutes per month of direct speech therapy inside the general education classroom.

Id. at p. 13-14.

10. Per the 2020 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at p. 15.

11. Prior District previously developed a BIP for Student—dated December 17, 2018—to help staff identify when Student’s anxiety was building (“2018 BIP”). *See Exhibit H*, pp. 1-5; *Interview with Parent*. The target behaviors identified in the 2018 BIP included: tensing, refusal, selective mutism, and crying. *Exhibit H*, p. 2. Once Prior District staff became familiar with Student, the 2018 BIP was put on the “backburner” and was no longer updated. *Interview with Parent*. At the time Student transferred to the District, the 2018 BIP had not been updated for more than two years and was neither incorporated nor referenced in the 2020 IEP. *Id.*; *Exhibit H*, pp. 1-5.

C. Transfer to the District

12. In early March 2021, Student’s family moved to the District. *Interview with Parent*. On March 9, 2021, Parent registered Student for School. *Id.* The following day, Parent delivered Student’s IEP and other documents to the School office. *Id.*; *Interview with Case Manager*.

13. The record is full of conflicting evidence over what happened next, specifically whether the District held a transfer planning meeting to discuss Student’s 2020 IEP and the comparable services that would be offered by the District. In its response, the District indicated that Case

Manager called Parent on March 9 to inquire about scheduling the meeting. *Exhibit N*, p. 1. The District argued that Parent requested the meeting be held the following day. *Id.* Yet, during her interview, Case Manager said the transfer planning meeting was held impromptu on March 10 after Case Manager bumped into Parent in the office. *Interview with Case Manager.*

14. Parent asserted that she neither attended nor was ever invited to attend a transfer planning meeting. *Interview with Parent.* Parent provided a voicemail from Case Manager on March 10 at 12:50 p.m. informing Parent that Case Manager located the 2020 IEP and would work on Student’s transfer. *Exhibit 4.* The voicemail makes no mention of an upcoming meeting with Parent (or even the need to schedule a meeting). *Id.*

15. The District produced documentation of Student’s transfer plan, including meeting notes from the purported transfer planning meeting. *Exhibit A-1*, p. 4. The meeting notes appeared to be primarily a template, with little information related to Student. *Id.* The notes indicated the changes proposed to Student’s offer of FAPE but contained no other substantive information. *Id.* For example, the notes contain placeholders for “Members Present” and “Parent input” without any detail next to those placeholders. *Id.* Below, the notes read “Strengths-The Team discussed ...’s strengths which include ... Parents reported ... Needs – Parent concerns relevant to ...’s education performance and progress include ...” *Id.* (ellipses in original). *Id.* Clearly, the ellipses should have been completed with details from Student’s transfer meeting.

16. Given the inconsistencies in the record, the SCO finds and concludes that the record fails to evidence the occurrence of a transfer planning meeting on March 10. The inconsistencies in the District’s response and Case Manager’s statements, combined with the incomplete meeting notes and Case Manager’s voicemail, cast doubt on whether the meeting was held on March 10 (if at all).

17. Regardless, Student began attending School on Thursday, March 11. *Interview with Parent.* The District was on spring break from Monday, March 15 through Friday, March 19. *Exhibit E*, p. 1.

18. On or around March 22, the District began providing Student with comparable services to the 2020 IEP. *Interview with Case Manager.* Only Student’s speech services were altered. *Id.*; *Exhibit A-1*, pp. 9-10. The 2020 IEP required the services to be provided inside the general education classroom. *Exhibit G*, pp. 13-14. But, due to COVID-19 cohort restrictions, District policy did not permit itinerant service providers—such as the Speech Language Pathologist (“SLP”)—to push into classrooms for services. *Interview with Special Education Coordinator.* Instead, SLP provided services to students in small groups outside the general education classroom. *Interview with SLP.* Student’s goals also remained unchanged. *Exhibit A-1*, pp. 10-13.

D. April 2021 IEP Team Meeting

19. On March 17, Case Manager emailed Parent an invitation for an IEP Team meeting scheduled for April 1, 2021. *See Exhibit O*, pp. 1-2; *Interview with Case Manager*. The invitation indicated only that the meeting was for “[Student]-ANN,” i.e., Student’s annual IEP Team meeting, but “IEP” did not appear anywhere in the invitation. *Exhibit O*, pp. 1-2. The invitation displayed the names of the other invitees to the meeting. *Id.* Parent accepted the calendar invitation. *Id.*

20. Case Manager asserted that she discussed dates for this meeting with Parent during the March 10 transfer planning meeting. *Interview with Case Manager*. However, as discussed above, the record does not support the occurrence of the transfer planning meeting. Nothing else in the record evidences Case Manager—or anyone else from the District—consulting with Parent to schedule the IEP Team meeting.

21. In the interim, Case Manager mailed Parent a Notice of Meeting that Parent received around March 29. *Interviews with Case Manager and Parent; Exhibit B*, p. 1. The Notice of Meeting is dated March 22; however, it is unclear when exactly Case Manager mailed the Notice of Meeting. *Exhibit B*, p. 1.

22. After receiving the Notice of Meeting in the mail, Parent contacted Case Manager to discuss changing the time of the meeting. *Interview with Parent*. Case Manager changed the meeting time to accommodate Parent’s schedule and sent an updated calendar invitation on March 30. *Exhibit O*, pp. 1-2; *Interviews with Case Manager and Parent*.

23. On April 1, the District convened a properly constituted IEP Team to review the 2020 IEP and develop an appropriate IEP for the District. *Interviews with Case Manager and Parent*. The meeting was held in person, and Parent and Student’s father attended the meeting. *Id.* Following the meeting, the District finalized Student’s IEP (“2021 IEP”).

E. 2021 IEP

24. The section of the 2021 IEP regarding present levels of performance indicated that Student had transitioned well during his first weeks at School. *Exhibit A-2*, p. 3. School staff were still getting to know Student and understand his academic abilities. *Id.*

25. The 2021 IEP indicated that, in the past, Student’s disabilities impacted his ability to read social cues, respond appropriately in social settings, and use mental flexibility and problem-solving skills. *Id.* at p. 5.

26. The 2021 IEP contained six annual goals in the areas of social-emotional wellness, writing, and communication. *Id.* at pp. 6-9. The substance of the goals remained the same as

under the 2020 IEP, though some of the language was altered slightly. *Id.*; see also *Exhibit A-1*, pp. 7-9.

27. The 2021 IEP continued the accommodations and modifications from the 2020 IEP, which included, in part:

- Two scheduled breaks per day that allowed Student to have heavy work movement and a bathroom break,
- Flexible seating options, and
- Communicating with Student’s parents in advance of timed testing or changes to classroom schedule.

Id. at p. 9. The IEP Team removed a couple accommodations that were not applicable at School (such as breaks from masks worn due to COVID-19, as the District did not require students to wear masks). *Interview with Case Manager.*

28. The 2021 IEP retained all the special education and related services required by the 2020 IEP. *Exhibit A-1*, pp. 13-14; *Exhibit A-2*, pp. 12-13. However, due to the District’s COVID-19 cohort policies, the IEP Team eliminated the speech therapy Student previously received inside the general education classroom. *Interviews with Case Manager and SLP.* The IEP Team continued Student’s speech therapy outside the general education classroom but reduced Student’s service minutes from 90 minutes per month to 80 minutes per month. *Id.* SLP recommended 80 minutes per month because it allowed her to meet with Student each week for 20 minutes. *Interview with SLP.* SLP preferred this consistency over 90 minutes per month, which would have her meeting with Student for 30 minutes three weeks a month. *Id.* The decision to change Student’s speech minutes was not based on Student’s individual needs but, instead, on COVID restrictions and preferable scheduling. *Interviews with Case Manager and SLP.*

29. As a result, under the 2021 IEP, Student received the following special education and related services:

- Special Education: 600 minutes per month of direct special education instruction inside the general education classroom.
- Occupational Therapy: 90 minutes per year of indirect occupational therapy.
- Mental Health Services:

- 120 minutes per month of direct mental health services inside the general education classroom;
 - 30 minutes per month of direct mental health services outside the general education classroom; and
 - 40 minutes per month of indirect mental health services outside the general education classroom.
- Speech Therapy: 80 minutes per month of direct speech therapy outside the general education classroom.

Exhibit A-2, pp. 12-13.

30. The 2021 IEP’s service delivery statement indicated that Student would receive “special education services from the special education teacher and/or a paraeducator inside the general education classroom. The special education teacher will support [Student] in writing.” *Id.* at p. 12. Even though the chart in the 2021 IEP specified that Student would receive the special education services *outside* the general education classroom, the IEP Team intended Student to receive the services *inside* the general education classroom. *Interviews with Principal, Case Manager, and Third Grade Teacher; see also Exhibit A-2, p. 12.* Case Manager inadvertently selected outside in the dropdown menu when completing Student’s IEP. *Interview with Case Manager.*

31. Per the 2021 IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at p. 14.

32. The 2021 IEP contained a PWN indicating that the IEP Team considered completing Student’s triennial evaluation during Spring 2021 but decided to wait until Fall 2021 so School staff had more time to get to know Student. *Id.* at p. 15.

33. All of Student’s teachers and service providers—except Paraprofessional—attended the April 1 IEP Team meeting and, thus, were aware of the services and accommodations required under the 2021 IEP. *Interview with Case Manager; Exhibit A-2, pp. 1-2.* Additionally, an electronic copy of the 2021 IEP was available to Student’s teachers and service providers. *Id.*

F. Implementation of 2021 IEP

Specialized Instruction

34. Student received one-on-one specialized instruction in the general education classroom from Third Grade Teacher or Paraprofessional. *Interviews with Case Manager and Third Grade*

Teacher. Paraprofessional rotated between two third grade classrooms throughout the day. *Interview with Third Grade Teacher; Exhibit P*, p. 1. Third Grade Teacher worked directly with Student on his writing goal in the 2021 IEP. *Interview with Third Grade Teacher*. The remainder of Student’s specialized instruction was provided “as needed” in the classroom. *Id.* It is unclear whether Student’s instruction was provided in consultation with Case Manager or any other special education teacher. *Id.*

35. As noted above, the 2021 IEP required Student to receive 600 minutes per month of direct specialized instruction inside the general education classroom. *Exhibit A-2*, pp. 12-13. Such instruction was to be provided by a special education teacher or paraprofessional. *Id.* at p. 12. However, the services were provided primarily by Third Grade Teacher, who is neither a special education teacher nor a paraprofessional. *Interview with Third Grade Teacher*.

36. Between April 2, 2021—when the 2021 IEP was implemented—and May 20, 2021—when the 2020-2021 school year ended—Student should have received 1,000 minutes of specialized instruction. *See Exhibit A-2*, pp. 12-13. However, neither Third Grade Teacher nor Paraprofessional documented the services provided to Student. *Interviews with Case Manager and Third Grade Teacher*. The SCO does not doubt that Student received at least some of the specialized instruction required by the 2021 IEP and understands the difficulty in documenting services provided “as needed” inside a classroom. However, without some reliable support in the record, the SCO cannot determine whether the District provided Student with all the minutes required by his IEP (especially where the services appear to have been provided by someone other than the persons specified in the IEP).

37. As a result, the SCO finds and concludes that the District failed to provide Student with 1,000 minutes of specialized instruction between April 2 and May 20.

Occupational Therapy

38. When Student transferred to School, Third Grade Teacher worked with Occupational Therapist to ensure the classroom had appropriate seating options for Student. *Interview with Third Grade Teacher*.

39. The 2021 IEP required only 90 minutes of indirect occupational therapy per year or approximately 10 minutes per month. *Exhibit A-2*, pp. 12-13. The 2021 IEP specified that these services may be front-loaded at the beginning of a school year when selecting equipment and establishing routines for Student. *Id.* at p. 12.

40. Before the 2021 IEP was developed, Occupational Therapist worked with School staff to provide Student comparable services to the 2020 IEP, which contained the same accommodations as the 2021 IEP. *Interview with Third Grade Teacher*. Therefore, Student’s

equipment and routines were already established when the 2021 IEP was implemented around April 2.

41. Nothing in the record documents any consultative services provided by Occupational Therapist between April 2 and May 20. However, because Occupational Therapist had recently helped establish Student's equipment and routines upon his arrival at School and because the IEP envisions those services being provided unevenly throughout the course of a school year, the SCO finds and concludes that the District satisfied its occupational therapy obligations under the 2021 IEP.

Speech Therapy

42. Once a week, Student received speech therapy in a small group outside the general education classroom. *Interview with SLP; Exhibit R*, pp. 1-2. The group met for 20 minutes each session. *Interview with SLP; Exhibit R*, pp. 1-2.

43. The 2021 IEP required Student to receive 80 minutes per month of direct speech therapy outside the general education classroom. *Exhibit A-2*, pp. 12-13. Between April 2 and May 20, Student should have received 140 minutes of direct speech therapy. *See id.*

44. SLP produced notes detailing the services she provided to Student during this period. *Exhibit R*, pp. 1-2. Between April 2 and May 20, SLP met with Student in a small group for 20 minutes each week, except the week of May 17, which was the last week of School. *Id.* In total, SLP provided Student with 120 minutes of services. *Id.* As a result, the SCO finds and concludes that the District failed to provide Student with 20 minutes of speech therapy between April 2 and May 20.

Mental Health Services

45. Counselor delivered services to Student in his third-grade classroom, as well as specials classes like P.E. and music. *Interview with Counselor*. During these services, Counselor used real-life scenarios to target Student's social-emotional goals, such as cuing Student to use a specific social skill. *Id.*

46. As discussed in more depth below, Counselor also provided Student with a twenty-minute break each day after lunch, around 12:10 p.m. *Id.* Often, Counselor and Student used this break to work on Student's social skills by interacting with adults or students who were in the School building or on the playground. *Id.*

47. The 2021 IEP required Student receive (a) 120 minutes per month of direct mental health services inside the general education classroom; (b) 30 minutes per month of direct mental health services outside the general education classroom; and (c) 40 minutes per month

of indirect mental health services outside the general education classroom. *Exhibit A-2*, p. 12-13. Between April 2 and May 20, Student should have received (a) 200 minutes of direct services inside the general education classroom; (b) 50 minutes of direct services outside the general education classroom; and (c) 53 minutes of indirect services outside the general education classroom. *See id.*

48. Counselor produced notes detailing the services she provided to Student both inside and outside the general education classroom. *See Exhibit Q*, pp. 1-19. In total, between April 2 and May 20, Counselor provided Student with 305 minutes of mental health services inside the general education classroom and 120 minutes of services outside the general education classroom. *See id.* As a result, the SCO finds and concludes that the District satisfied its obligation as to Student's direct mental health services.

49. However, nothing in the record evidences the provision of any indirect mental health services. *See id.* In discussing her services, Counselor made no mention of any consultations she had with any other staff members and her notes do not reflect any. *Id.*; *Interview with Counselor*. The SCO, therefore, finds and concludes that the District failed to provide Student with 53 minutes of indirect services between April 2 and May 20.

Accommodations

50. In her Complaint, Parent expressed concern about the implementation of certain accommodations in the 2021 IEP, namely flexible seating options, visuals in the classroom, advance notice of testing, and Student's breaks. *Complaint*, p. 5.

51. Student had a variety of flexible seating options available in the classroom, including therapy bands on his chair, a wiggle chair, and a ball (amongst others). *Interview with Third Grade Teacher*. These seating options were available in the classroom when Student started at School. *Id.* The classroom used tables instead of desks, and Student was free to sit where he wanted. *Id.* Third Grade Teacher recalled Student changing his seat at least once, if not twice, a day. *Exhibit N*, p. 5.

52. Third Grade Teacher used visuals in the classroom, including a daily visual schedule, a weekly visual schedule, a monthly visual schedule, and a flexible agenda. *Interview with Third Grade Teacher; Exhibit N*, p. 5.

53. Both the School and Third Grade Teacher notified Parent that state assessments were upcoming. *See Exhibit L*, pp. 1-2.

54. Based on these facts, the SCO finds and concludes that the District satisfied its obligation under the 2021 IEP with respect to flexible seating options, visuals, and advance notice of testing.

55. Case Manager and Counselor provided Student with two opportunities for breaks each day. *Interviews with Case Manager, Counselor, and Third Grade Teacher.* Around 10:30 a.m., Case Manager peeked into Student’s classroom to see if he wanted a break. *Interview with Case Manager.* If Student wanted a break, Case Manager took Student to walk the hallways and then for a bathroom break before returning to the classroom. *Id.* Student was free to decline the break if he did not want to go. *Id.*

56. Student took a twenty-minute break with Counselor around 12:10 p.m. each day. *Interview with Counselor.* This break occurred immediately following lunch and was not optional for Student. *Id.* Sometimes Student and Counselor walked outside and practiced social skills by interacting with another student or adult. *Id.* Other times, Student and Counselor walked the hallways inside and “worked on vestibular activities to help with balance and movement.” *Id.* On occasion, Student helped Counselor sweep the cafeteria and wipe the tables. *Id.* Student had a bathroom break before returning to class. *Id.*

57. The 2021 IEP required Student to receive two breaks each day which contained heavy work movement and a bathroom break. *Exhibit A-2, p. 9.* Heavy work movement involves pushing or pulling activities that engage the whole body. *Interview with CDE Consultant.* Ordinary walking, alone, does not constitute heavy work movement. *Id.* Heavy work helps students better organize themselves for classroom learning. *Id.*

58. As written, the 2021 IEP does not indicate that Student’s breaks are optional. *See Exhibit A-2, p. 9.* Yet Case Manager gave Student the option to take a break—an option that he frequently declined. *Interviews with Case Manager and Third Grade Teacher.* Additionally, Case Manager never integrated any heavy work movement into her breaks with Student. Walking the hallways does not constitute heavy work movement.

59. Student’s break with Counselor was not discretionary but, nonetheless, Counselor failed to consistently incorporate heavy work movement into Student’s breaks. Instead of focusing on heavy work movement, Counselor used Student’s breaks to multi-task and provide him direct mental health services. *Interview with Counselor.*

60. As a result, the SCO finds and concludes that the District routinely failed to provide Student with breaks involving heavy work movement.

Relevant District Procedures

61. The District did not provide any of its own procedures related to IEP implementation but, instead, indicated it followed CDE's IEP Procedural Guidance Manual. *Interview with Special Education Coordinator*. The District encourages staff to track the services provided under an IEP but does not have procedures to guide such documentation. *Id.* Similarly, School did not have any procedures to guide documentation of the services and, indeed, Principal felt that documentation was unnecessary because service providers' schedules "showed who they met with and when." *Interview with Principal*.

G. Remainder of Third Grade

62. In late-April or early-May 2021, Parent became concerned about Student's anxiety when Student started eating and drinking less at school and visiting the health office more frequently. *Interview with Parent*. To Parent, these were signs that something at School was bothering Student. *Id.*

63. Parent had several conversations with Case Manager at pickup about these concerns and recalled requesting an IEP Team meeting. *Interview with Parent*. However, Case Manager does not remember any of these conversations. *Interview with Case Manager*. Parent recalled having similar conversations with Counselor, in which Parent also requested an IEP Team meeting. *Interview with Parent*. Though Counselor remembered Parent sharing concerns about Student's anxiety, Counselor said Parent did not request an IEP Team meeting in these conversations. *Interview with Counselor*.

64. Parent subsequently reached out to Principal to share her concerns. *Interview with Parent*. Principal received a message from the secretary, indicating that Parent called to talk to Principal about Student's teacher assignment for the 2021-2022 school year. *Interview with Principal*. Principal bumped into Parent in the hallway a few days later and told Parent she would call her after Memorial Day. *Id.* During this conversation, Parent recalled explicitly requesting an IEP Team meeting. *Interview with Parent*. Principal denied Parent made any such request. *Interview with Principal*.

65. Regardless, Principal and Parent agreed that Principal made no effort to schedule a meeting with Parent until this Complaint was filed in June 2021. *Interviews with Parent and Principal; Exhibit 6*. And Parent did not follow-up with Principal, Case Manager, or Counselor regarding her request for an IEP Team meeting. *Interview with Parent*.

66. Without any further proof that Parent requested a meeting—or any internal written correspondence by District staff about scheduling a meeting—the SCO finds and concludes that Parent did not explicitly request an IEP Team meeting.

67. In her Complaint and Reply, Parent indicated she was forced to communicate with Student’s teachers and service providers through in-person conversations at pickup or drop off in front of other students or parents. *Complaint*, p. 5; *Reply*, pp. 1-2. Parent said she was never provided the email addresses or phone numbers for School staff. *Interview with Parent*.

68. Before Student began at School, Parent had the phone number for the main office. *Interview with Parent*. Case Manager’s phone number appeared on the Notice of Meeting and 2021 IEP. *Exhibit B*, p. 2; *Exhibit A-2*, p. 15. Email addresses for all School staff members were available on the School website. *Interview with Special Education Coordinator*.

69. Additionally, School uses an application (“App”) to communicate with parents. *Interview with Principal*. The School sends all-school newsletters through this App, and teachers can send classroom-specific newsletters to the parents of their students. *Id.* Teachers can also communicate with individual parents directly through the App. *Id.*; *Interview with Third Grade Teacher*. Parent used the App during Spring 2021 but indicated she only recently learned how to communicate directly with teachers through the App. *Interview with Parent*.

70. The SCO finds and concludes that Parent had numerous avenues to communicate with School staff: in-person, telephone, email, and the App. Parent chose to have conversations with staff members in person but was not forced to do so.

71. At the end of the school year, Student met his social-emotional wellness goals but did not meet his annual goals in writing or communication. *See Exhibit C*, pp. 1-2. Even though Student had only been in the District for two months, he had been working on these annual goals for most of the 2020-2021 school year. *See Exhibit G*, pp. 7-9.

CONCLUSIONS OF LAW

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

Conclusion to Allegation 1: The District failed to take steps to ensure Parent had the opportunity to participate in the IEP Team meeting held on April 1, 2021, in violation of 34 C.F.R. § 300.322(a). However, this procedural violation did not result in a denial of FAPE.

In her Complaint, Parent asserted that the District failed to provide Parent with proper notice of the IEP Team meeting held on April 1, 2021.

The IDEA requires school districts to “take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.” 34 C.F.R. § 300.322(a). Such steps must include: (1) “[n]otifying parents of the meeting early enough to ensure they have an opportunity to attend; and (2) “[s]cheduling the meeting at a mutually agreed on time and place.” *Id.* at § 300.322(a)(1)-(2).

Here, the SCO finds and concludes that the District failed to take both steps required to ensure Parent had the opportunity to participate in the IEP Team meeting. As for the first step, the District did not provide Parent notice of the meeting early enough to ensure Parent had an opportunity to attend. On March 17, Case Manager sent Parent an electronic calendar invitation for the April 1 IEP Team meeting. (FF # 19.) But this invitation specified only that the meeting was for “[Student]-ANN.” (*Id.*) The invitation, therefore, did not contain the content required by § 300.322(b). At best, the calendar invitation provided only partial notice of the meeting. The District mailed Parent a formal Notice of Meeting, which contained the required content; however, Parent received this notice only two days before the meeting. (FF #s 19-20.) The SCO finds and concludes that the District failed to notify Parent of the meeting early enough to ensure Parent had an opportunity to attend and fully participate, in violation of 34 C.F.R. § 300.322(a)(1). Had Parent wanted to invite additional attendees (such as an advocate) it may have been too late at that point.

The District also failed to schedule the meeting in consultation with Parent. The District asserted that Case Manager and Parent selected April 1 as a mutually agreeable date during the transfer planning meeting. (FF # 19.) Parent insisted she never attended a transfer planning meeting and that the April 1 date was selected without any parental input. (*Id.*) As noted above, the SCO concluded that the record failed to evidence that a transfer planning meeting was held on March 10, if at all. (FF # 16.) The notes from the alleged transfer planning meeting do not indicate that an IEP Team meeting had been scheduled during that meeting. (FF # 15.) Indeed, no evidence indicates that Case Manager communicated with Parent before sending the calendar invitation to inquire about Parent’s availability or to provide Parent with options for meeting dates. (FF # 19.) The only communication in the record is the March 17 calendar invitation. (*Id.*) As a result, the SCO finds and concludes that the District failed to schedule the IEP Team meeting at a mutually agreed on time and place, in violation of 34 C.F.R. § 300.322(a)(2).

The District’s failure to ensure parental participation in the IEP Team meeting process resulted in a procedural violation of the IDEA. The SCO must determine whether this violation resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if the violation: “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

The SCO finds and concludes that the procedural violation did not result in a denial of FAPE. The District’s failure to provide adequate advance notice or schedule the IEP Team meeting at a mutually agreed on time and place had no impact on Student’s right to FAPE or his education. The failure also did not impede Parent’s opportunity to participate in the decision-making process. Indeed, both Parent and Student’s father were able to attend the IEP Team meeting held on April 1. (FF # 22.)

Conclusion to Allegation 2: The District provided Parent with adequate PWN of the action taken at the IEP Team meeting held on April 1, 2021, consistent with 34 C.F.R. § 300.503.

In her Complaint, Parent claimed the District failed to provide her with PWN of the action the District intended to take at the April 1 IEP Team meeting.

Under the IDEA, PWN must be provided to the parents of a child with a disability within a reasonable time before the public agency:

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. § 300.503(a). Failure to provide prior written notice within a reasonable time before refusing to initiate or change a student's identification constitutes a procedural violation that may result in a denial of FAPE. *See El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13). The notice must be provided so that parents have enough time to fully consider and respond to the action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). But, for changes made at an IEP Team meeting, the PWN must be sent after the meeting, not before. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46691 (2006). Providing PWN before the meeting would suggest that the decisions were made before the meeting and without parental input. *Id.*

PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those options were rejected; and a description of any other factors relevant to the district's proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(3) and (6)-(7). It must also include a statement that the parents of a child with a disability have protections under the procedural safeguards and the means of obtaining a copy if the notice is not for an initial evaluation, and sources for parents to contact to obtain assistance in understanding the procedural safeguards. *Id.* § 300.503(b)(4)-(5).

Here, Parent's allegation relied on a common misunderstanding of how PWN works. The IDEA did not require the District to provide Parent advance notice of the action it intended to take at the April 1 IEP Team meeting. Instead, the District was only required to provide PWN after the meeting, which the District provided. (FF # 31.) As such, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.503.

Conclusion to Allegation 3: The record does not evidence that Parent requested an IEP Team meeting on or around May 2021. As a result, the District was not obligated to convene an IEP Team meeting, consistent with 34 C.F.R. §§ 300.324(a)(1)(ii) and (b)(1).

In her Complaint, Parent alleged she requested an IEP Team meeting in April or May 2021 after Student began showing signs of heightened anxiety. According to Parent, the District failed to respond to her request.

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); *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (U.S. 2017). “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 Endrew 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.

As noted in the Findings of Fact, the District and Parent disagree on whether Parent requested an IEP Team meeting in April or May 2021. (FF #s 62-63.) Case Manager and Counselor recalled speaking with Parent in person about her concerns over Student’s anxiety. (FF # 62.) And Principal remembered talking to Parent about Student’s placement for the following year. (FF # 63.) However, no District staff member recalled Parent requesting that an IEP Team meeting be held. (FF #s 62-63.) Meanwhile, Parent indicated she requested this meeting during her conversations with Case Manager, Counselor, and Principal. (FF #s 62-63.)

Even though the District did not respond to her alleged request, Parent never followed up with a request in writing. (FF # 64.) Of course, the IDEA did not require Parent to submit a written request. But when a disagreement arises, written proof quiets the dispute quickly. Without any further proof that Parent requested a meeting—or any internal written correspondence by District staff about scheduling a meeting—the SCO concluded that no IEP Team meeting was requested. (FF # 65.) As a result, the SCO finds and concludes that District had no obligation to schedule an IEP Team meeting under 34 C.F.R. §§ 300.324(a)(1)(ii) and (b)(1).

Conclusion to Allegation 4: The District failed to properly implement the 2021 IEP between April 2, 2021 and May 20, 2021, by failing to provide Student with all the services required by his IEP. This failure resulted in a denial of FAPE.

In her Complaint, Parent alleged the District failed to fully implement Student’s 2021 IEP between April 2 and May 20, 2021. Specifically, Parent claimed the District failed to provide

Student with the services and accommodations required under his IEP and failed to implement Student's BIP from Prior District.

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 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." *Id.* § 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).

A. Implementation of Student's 2021 IEP

As detailed in the Findings of Fact, the District failed to fully implement Student's 2021 IEP. (FF #s 33-58.) This failure, however, was not due to Student's teachers and service providers being unaware of their responsibilities under the 2021 IEP. Indeed, Student's teachers and service providers attended the IEP Team meeting held on April 1, where the 2021 IEP was finalized. (FF # 32.) Student's teachers and service providers also had electronic access to the 2021 IEP. (*Id.*) Therefore, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

The 2021 IEP required Student to receive 600 minutes per month of direct specialized instruction inside the general education classroom. (FF # 28.) Between April 2 and May 20, Student should have received 1,000 minutes of specialized instruction. (FF # 35.) Because the District did not provide credible evidence that these services were provided (or provided by an appropriate staff members), the SCO found that the District failed to provide Student with 1,000 minutes of specialized instruction during this period. (FF #s 35-36.) The IDEA does not explicitly require documentation of services provided under an IEP. However, the importance of documentation cannot be emphasized enough. Adequate documentation provides the best support for consistent IEP implementation with fidelity. Additionally, documentation aids IEP teams in monitoring progress on annual goals and conducting annual reviews. Here, the District's lack of credible evidence resulted in a finding of noncompliance and an award of compensatory services.

Under the 2021 IEP, the District needed to provide Student with 80 minutes per month of direct speech therapy outside the general education classroom. (FF # 29.) Student should have

received 140 minutes of speech therapy between April 2 and May 20. (FF # 43.) SLP's records indicate that she provided Student with 120 minutes of speech therapy during this time period. (FF # 44.) As a result, the SCO concluded that the District failed to provide Student with 20 minutes of direct speech therapy. (FF # 44.)

Finally, the 2021 IEP required 40 minutes per month of indirect mental health services. (FF # 28.) Between April 2 and May 20, Student should have received 53 minutes of indirect mental health services. (FF # 46.) However, nothing in the record indicates that Counselor provided Student any indirect mental health services. (FF # 48.) Therefore, the SCO concluded that the District failed to provide Student with 53 minutes of indirect mental health services. (FF # 49.)

The District also failed to properly implement the breaks set forth in the 2021 IEP. The 2021 IEP required Student to receive two breaks each day which contained heavy work movement and a bathroom break. (FF # 56.) Even though the breaks were not discretionary, Case Manager allowed Student to decline breaks. (FF # 57.) And when Student did take a break, Case Manager did not incorporate any heavy work movement but, instead, had Student walk the halls. (FF # 53.) Even though Counselor required Student to take a break, Counselor similarly failed to consistently integrate heavy work movement into the breaks. (FF #s 55, 58.) For these reasons, the SCO found that the District failed to provide Student with breaks involving heavy work movement. (FF # 59.) This misstep by the District resulted in an additional failure to implement the 2021 IEP.

Parent also alleged the District failed to implement the 2018 BIP. Where a student's behavior impedes his learning or the learning of others, an IEP Team must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 34 C.F.R. § 300.324(a)(2)(i). Prior District developed the 2018 BIP to understand subtle signs that Student's anxiety was building. (FF # 11.) At the time Student transferred to the District, the 2018 BIP was no longer being updated, it had been set aside by Prior District, and it was neither incorporated nor referenced in the 2020 IEP. (*Id.*). Therefore, the BIP did not transfer to the District with Student, and the District was under no obligation to implement the BIP. Even if the District believed Student's behavior impeded his learning or the learning of others, it would have been necessary for the District to develop a new BIP given the age of the 2018 BIP.

B. Materiality of Failure to Implement

The failure to implement a "material", "essential", or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure

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

Here, the District failed to implement multiple components of the 2021 IEP. This failure by the District affected Student's opportunity to make progress on his annual goals, namely his writing goal. (FF # 69.) Additionally, the District's lax implementation of Student's breaks impacted Student's social-emotional well-being and his ability to stay focused in the classroom. For these reasons, the SCO finds the District's failure to implement the 2021 IEP to be material. This failure resulted in a denial of FAPE to Student. Given the degree to which a FAPE was denied, "Student is entitled to compensatory services." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

C. Compensatory Education

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

Here, over a seven-week period, the District failed to provide Student: (a) 1,000 minutes of direct specialized instruction; (b) 20 minutes of direct speech therapy; and (c) 53 minutes of indirect mental health services; and (d) two daily breaks with heavy work movement. By any measure, this mistake is significant. This error likely impacted Student's ability to make academic progress and heightened Student's anxiety at School.

In crafting an award of compensatory education, the SCO must be cognizant that the 2021 IEP indicates that services should be provided inside the general education classroom to the extent possible. This has impacted the award of services for Student. Thus, the SCO finds an award of (a) 400 minutes of direct specialized instruction; (b) 20 minutes of direct speech therapy; and (c) 40 minutes of indirect mental health services to be appropriate. Additionally, the SCO awards 45 minutes of indirect occupational therapy services to be used to ensure Student's service providers understand the nature of heavy work movement.

D. Systemic IDEA Violations

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

Here, the SCO finds and concludes that the District’s violation of 34 C.F.R. § 300.323(c)(2) for failure to implement Student’s 2021 IEP is not systemic in nature. The District does not have a procedure requiring staff to document services provided pursuant to an IEP; however, the IDEA does not require such documentation. (See FF # 61.) Nonetheless, the District expects service providers to maintain records. (*Id.*) And, indeed, some of Student’s service providers maintained detailed records. (FF #s 44, 48.) The District’s failure to implement Student’s 2021 IEP appears to stem from a lack of communication and documentation by Student’s teachers and service providers. Nothing in the record indicates that this implementation issue (or, more specifically, the provision of services by the wrong personnel) exists District-wide. For these reasons, the SCO finds and concludes that the violation is not systemic.

Conclusion to Allegation 5: The District failed to tailor the 2021 IEP to meet Student’s individualized needs, in violation of 34 C.F.R. § 300.324.

In her Complaint, Parent contended the 2021 IEP required Student to receive his specialized instruction outside the general education classroom, even though his IEP identified his need for push-in services. Additionally, Parent expressed concern about the changes the IEP Team made to Student’s speech therapy, namely eliminating his therapy inside the general education classroom and reducing his therapy outside the general education classroom.

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.

A. Specialized Instruction

In-depth analysis of Parent’s allegation regarding Student’s specialized instruction is not required, as the allegation arises from a typographical error and not the substance of the IEP itself. During this investigation, the District conceded that the 2021 IEP contains inconsistent

statements. (FF # 30.) The IEP’s service delivery statement indicated that Student should receive his specialized instruction inside the general education classroom. (*Id.*) Meanwhile, the chart on the following page stated that this instruction would be provided outside the general education classroom. (FF #s 29, 30.) Case Manager—who prepared the IEP—admitted she inadvertently selected “outside” from a dropdown menu when completing the chart. (FF # 30.) The IEP Team intended that Student receive his specialized instruction inside the general education classroom. (FF # 30.) This error did not impact Student, as Third Grade Teacher and Paraprofessional provided Student his specialized instruction inside the third-grade classroom. (FF # 34.) Student was not pulled for any specialized instruction. (*Id.*) The SCO finds and concludes that the chart in the 2021 IEP contained an inadvertent error and that such error had no impact on the services Student received. As a result, no analysis of the substance of the IEP is warranted, and the SCO finds no violation of 34 C.F.R. § 300.324 with regard to Student’s specialized instruction.

B. Speech Therapy

Parent’s allegation regarding the changes made to Student’s speech therapy service requires more consideration. In developing an IEP, the IEP Team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1). An IEP Team should determine a child’s need for related services on an individual basis, given the child’s unique needs. *Id.* § 300.320; *see also Letter to Ackerhalt*, 112 LRP 51286 (OSEP 9/6/12) (decisions regarding related services “must be made by the IEP team and must be based on the student's unique needs”).

Here, the IEP Team failed to determine Student’s speech services based on his unique needs. Instead, the IEP Team altered Student’s services—both in minutes and in location—to conform to COVID-19 restrictions and SLP’s schedule. (FF #s 28, 29.) The COVID-19 pandemic—and its accompanying restrictions—undoubtedly impacted the District’s ability to provide services. However, guidance from CDE cautioned school districts that “an IEP should not be developed to accommodate health-related restrictions on in-person instruction.” Colo. Dep’t of Ed., *Special Education & COVID-19 FAQs*, Progress Monitoring Q1, *available at* www.cde.state.co.us/cdesped/special_education_faqs (“CDE FAQs”). Instead, CDE instructed districts to develop contingency learning plans for students detailing how special education and related services would be provided during the pandemic. *Id.* No contingency learning plan was developed for Student and, instead, the District merely tailored his IEP to reflect the pandemic’s restrictions, not his needs. For this reason, the SCO finds and concludes that the District failed to tailor the 2021 IEP to meet Student’s individualized speech needs, in violation of 34 C.F.R. 300.324.

REMEDIES

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

- a. Failing to provide parent with adequate notice of an IEP Team meeting, in violation of 34 C.F.R. § 300.322(a);
- b. Failing to fully implement an IEP, in violation of 34 C.F.R. § 300.323(c)(2); and
- c. Failing to tailor an IEP to a student's individualized needs, in violation of 34 C.F.R. § 300.324.

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

1. By **Friday, October 1, 2021**, District shall submit to 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 the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. Implementation of service logs documenting all special education and related services provided to Student between October 1, 2021 and March 30, 2022. To verify that the District is fully implementing Student's current IEP, the District must submit records of service logs to CDE by the **second Monday of each month**. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
 - b. Attendance and completion of training provided by CDE on notices of meeting. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.322(a) and the related concerns noted in this decision. Special Education Coordinator and CDE Special Education Monitoring and Technical Assistant Consultant Rebecca O'Malley will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Case Manager and any other School staff who routinely send notices of meeting. Such training shall be completed no later than **Friday, October 29, 2021**.
 - i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, November 5, 2021**.

- c. Attendance and completion of training provided by CDE on proper implementation of IEPs. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.323(c)(2), provision of services by the personnel identified in the IEP, and related concerns noted in this decision. Special Education Coordinator and CDE Special Education Monitoring and Technical Assistant Consultant Rebecca O'Malley will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Case Manager and all of School's special education teachers and paraprofessionals. Such training shall be completed no later than **Friday, October 29, 2021**.
 - i. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, November 5, 2021**.
 - d. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.
2. Conduct a comprehensive evaluation of Student in the area of speech language as part of Student's Fall 2021 reevaluation. This evaluation shall be completed by **Friday, October 15, 2021**. Although the District may determine the appropriate evaluations and evaluators, the evaluation must be conducted by a licensed speech language pathologist. Evidence that this evaluation has occurred—including consent to evaluate, PWN, and the evaluation report—shall be provided to CDE by **Monday, October 25, 2021**.
- a. If Parent does not provide consent to this evaluation within 10 days of receiving the request to evaluate, the District will be excused from conducting the evaluation ordered in this decision.
 - b. Student's IEP Team shall consider the results of the evaluation and tailor Student's IEP to meet Student's individualized speech language needs, consistent with 34 C.F.R. 300.324. To evidence that the IEP Team considered this evaluation and appropriately tailored Student's IEP, the District shall provide a copy of Student's final IEP to CDE by **Friday, November 19, 2021**.

3. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **400 minutes of direct specialized instruction inside the general education classroom**. This instruction must be provided by a special education teacher or a paraprofessional working under direct supervision of a special education teacher. All 400 minutes must be completed by **Friday, December 17, 2021**. The specialized instruction can be one-on-one or in a small group setting but must target one of Student's annual goals.
 - i. In developing this instruction, the District will ensure that the special education teacher or the paraprofessional working under direct supervision of a special education teacher confers with Student's general education teacher(s) for appropriate content on a monthly basis to monitor Student's progress and adjust instruction accordingly. The District must submit documentation that these conferences have occurred by the **second Monday of each month** until all 400 minutes of this direct specialized instruction have been provided.
- b. Student shall receive **20 minutes of direct speech therapy outside the general education classroom**. This instruction must be provided by an appropriately licensed speech language pathologist. All 20 minutes must be completed by **Friday, December 17, 2021**. The therapy can be one-on-one or in a small group setting.
- c. Student shall receive **40 minutes of indirect mental health services**. These services must be provided by an appropriately licensed mental health provider. All 40 minutes must be completed by **Friday, December 17, 2021**.
- d. Student shall receive **45 minutes of indirect occupational therapy services**. These services must be provided by an appropriately licensed occupational therapist. All 45 minutes must be completed by **Friday, October 22, 2021**. These services shall focus on ensuring Student's teachers and service providers understand what constitutes heavy work movement.
- e. To verify that Student has received the services required by this Decision, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. For indirect services, the service log must include a description and title of the individuals with whom the provider consulted. The District shall communicate with the licensed provider to obtain this information.

- f. By **Friday, October 8, 2021**, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with CDE.

- g. The District shall submit the schedule of compensatory services to CDE no later than **Friday, October 15, 2021**. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify CDE of the change in the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Rebecca O'Malley
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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 CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 3rd day of September 2021.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-6

- Exhibit 1: Prior District IEP
- Exhibit 2: Prior District IEP continued & Prior District BIP
- Exhibit 3: April 2021 IEP

Response, pages 1-4

- Exhibit A-1: Transfer IEP
- Exhibit A-2: 2021 IEP
- Exhibit B: Notice of Meeting
- Exhibit C: Progress Monitoring
- Exhibit D: Progress Reports
- Exhibit E: School Calendar
- Exhibit F: Policies and Procedures
- Exhibit G: Prior District IEP
- Exhibit H: Prior District BIP
- Exhibit I: Prior District Evaluation Records
- Exhibit J: Health Contact Log
- Exhibit K: Health Office Visit Log
- Exhibit L: Correspondence Regarding Testing
- Exhibit M: Daily Schedule Examples
- Exhibit N: District's Position Statement
- Exhibit O: Electronic Calendar Invitations
- Exhibit P: Paraprofessional Schedule
- Exhibit Q: Counselor Service Log
- Exhibit R: Speech Language Pathologist Log

Reply, pages 1-3

- Exhibit 4: March 10 Voicemail from Case Manager
- Exhibit 5: Undated Voicemail from Health Office
- Exhibit 6: June 24 Voicemail from Principal

Telephonic Interviews:

- Special Education Coordinator: August 16, 2021
- Principal: August 16, 2021
- Case Manager: August 16, 2021
- Third Grade Teacher: August 16, 2021
- Counselor: August 18, 2021
- Parent: August 18, 2021
- CDE Consultant: August 20, 2021

- Speech Language Pathologist: August 26, 2021