

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 2022:530**  
**Denver Public Schools**

**DECISION**

**INTRODUCTION**

On July 5, 2022, the parent (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one (1) allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (“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 July 5, 2021 through July 5, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323, specifically by failing to:
  - a. Educate Student consistent with the Least Restrictive Environment (“LRE”) required by Student’s IEP during the 2021-2022 academic year, in violation of 34 C.F.R. §§ 300.114 and 300.320(a)(5);

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

- b. Provide accommodations and modifications during the 2021-2022 academic year, in violation of 34 C.F.R. §§ 300.107 and 300.117;
- c. Follow the Safety Plan embedded in Student’s IEP, in or about October 2021, in violation of 34 C.F.R. § 300.117.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student is a social, kind, and caring 8-year-old, with a love of dancing and music. *Interviews with Case Manager, Parent, and General Education Teacher; see Exhibit A3, pp. 1, 4.* Student qualifies for special education and related services under the Other Health Impairment disability category, with a secondary disability in Speech and Language Impairment. *Exhibit A3, p. 5.*
2. This investigation concerns the 2021-2022 academic year, during which Student attended 2nd grade at a District elementary-middle school (“School”). *Id.* When classes started in the fall of 2021, Student’s February 24, 2021 IEP (“2021 IEP”) was in effect. *See Exhibit A1, pp. 1-19.*

#### **B. The 2021 IEP**

3. The 2021 IEP documented Student’s strengths, preferences, and interests, including that she understands multi-step routine directions when they are broken down into smaller chunks, that she is learning sign language, and that she loves songs and music. *Id.* at p. 3.
4. The 2021 IEP reviewed Student’s present levels of performance, documenting a summary of her special education and related services, her progress toward annual goals, and observations from teachers and service providers about her academic progress. *Id.* at pp. 3-6.
5. The Student Needs and Impact of Disability section documented that Student’s delays with motor skills (including visual motor and handwriting skills) impact her ability to fully access and participate in her specialized instruction. *Id.* at p. 7. Student exhibits slower emerging skills in receptive and expressive language, as well as speech sound production, which affects her ability to comprehend more complex verbal information and express the knowledge she has gained in a way that is clearly understood. *Id.* Student’s developmental delays impact her ability to decode and encode grade level words and texts, and her delays in numeric concepts

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<sup>2</sup> The appendix, attached and incorporated by reference, details the entire Record.

impact her ability to independently complete grade level math work. *Id.* Student requires 1:1 support to organize, motor plan, and initiate tasks that are not repetitive, and in novel situations like field trips, she requires adult supervision to navigate unfamiliar settings. *Id.*

6. The Parent/Student Input section contained input from Parents, including that Student is social, compassionate, and determined, but requires consistency, routine, repetition, and extra time to complete projects. *Id.*
7. The 2021 IEP contained annual goals in reading, math, and communication. *Id.* at pp. 8-12.
8. The 2021 IEP contained accommodations to help Student access the general education curriculum, including use of a slant board (a device that helps students with pencil grasp), visual supports as needed for novel directions, repetition and practice with new skills, and frequent movement opportunities (to maintain “optimal arousal” for completing activities). *Id.* at p. 13.
9. The 2021 IEP indicated Student would receive modified 2nd grade assignments based on her ability level and extended evidence outcomes. *Id.*
10. The Service Delivery section provided for:
  - a. 120 minutes of monthly direct occupational therapy services;
  - b. 120 minutes of yearly indirect occupational therapy services;
  - c. 120 minutes of weekly direct specialized instruction in literacy;
  - d. 120 minutes of weekly direct specialized instruction in math;
  - e. 60 minutes of monthly indirect specialized instruction;
  - f. 180 minutes of monthly direct specialized speech/language instruction; and
  - g. 60 minutes of monthly indirect speech/language instruction.

*Id.* at p. 17.

11. The IEP Team determined it was appropriate for Student to be placed in the general education class at least 80 percent of the time. *Id.* at p. 18.
12. Parent’s concern is that District failed to implement the 2021 IEP during the 2021-2022 academic year. *Interview with Parent; Complaint*, pp. 1-11; *Reply*, pp. 1-3. Specifically, Parent is concerned that District failed to implement the 2021 IEP with respect to Student’s LRE, Student’s Safety Plan, and accommodations and modifications during Forest School and overnight “Adventures” at School. *Interview with Parent; Complaint*, pp. 1-11; *Reply*, pp. 1-3.

### C. 2021 IEP Implementation (LRE - August through November 2021)

13. Parent's first concern is that District failed to educate Student in her LRE as required by the 2021 IEP, from August through November of 2021. *Interview with Parent; Complaint*, pp. 5-6; *Reply*, p. 2.

#### IEP Accessibility to Student's Teachers

14. Case Manager oversaw the 2021 IEP during the 2021-2022 academic year. *Interview with Case Manager*. In August, during the first week that students returned to School from summer break, Case Manager met with Student's teachers and service providers to discuss Student's needs, how to best manage the 2021 IEP, and Student's classroom schedule. *Interviews with Case Manager and General Education Teacher*.
15. All teachers and service providers working with Student were provided access to the 2021 IEP. *Interviews with Case Manager and General Education Teacher*. Throughout the year, Case Manager engaged in regular check ins with all of Student's service providers and teachers, and Case Manager and General Education Teacher collaborated closely on a regular basis about Student's needs. *Interviews with Case Manager and General Education Teacher*.

#### Student's LRE

16. Parent indicates that she met with Student's support paraprofessional in December of 2021, and the paraprofessional (who is no longer with District) said Student was being removed from the general education environment at various times throughout the day inconsistent with her academic schedule. *Interview with Parent; Complaint*, pp. 5-6. According to Parent, from August through November of 2021, Student was removed from the general education environment during the following times each week:
- a. 8:40-9:50 a.m. for literacy instruction;
  - b. 9:50-10:15 a.m. for occupational therapy ("OT") services (only on Wednesdays);
  - c. 1:05-1:30 p.m. to practice math and literacy skills (Monday through Thursday);
  - d. 1:30-2:05 p.m. for math instruction (Monday through Thursday); and
  - e. 10:00-10:25 a.m. for speech services (only on Fridays).

*Complaint*, p. 5; *Interview with Parent*.

17. Parent's concern is that if Student is pulled from the general education environment during the times listed above, she was only in the general education environment approximately 60 to 70 percent of the time, which is less than her LRE under the 2021 IEP. *Complaint*, p. 5; *Interview with Parent*.

18. District's position is that Student was educated in the general education environment at least 80 percent of the time in accordance with the 2021 IEP. *Response*, p. 3.
19. Case Manager and General Education Teacher both indicate Student's academic schedule was consistently followed, and Student was not pulled from the general education environment more often than is reflected in the academic schedule (except on occasions in the beginning of the year when Student sometimes left the classroom for short periods with her paraprofessional for a "mask break"). *Interviews with Case Manager and General Education Teacher*.
20. Student's academic schedule does not match the schedule provided by Parent. *See Exhibit I*, pp. 1-9. According to Student's academic schedule for the fall of 2021, Student was pulled from the general education environment during the following times:
- a. 2:00-2:30 p.m. for literacy instruction (Monday through Thursday);
  - b. 9:50-10:15 a.m. for OT services (only Wednesdays);
  - c. 9:25-9:55 a.m. for speech services (only on Fridays).
- Id.* at p. 1.
21. Case Manager explains that she collaborated with General Education Teacher about Student's schedule at the beginning of the year, to ensure that Student would not be pulled from the general education environment during whole group instruction. *Interview with Case Manager*. Student benefits from small group instruction during literacy, and her attention/energy levels sometimes "flag" at the end of the day, which is why literacy instruction was provided in a small group setting in the special education room at the end of the day. *Id.*
22. In the beginning of the year, in August and September of 2021, math instruction was also provided on a "pull out" basis, but that was changed to "push in" on September 29, 2021, by way of an IEP amendment at Parent's request. *Interview with Case Manager; see Exhibit A1*, p. 17; *see Exhibit A4*, pp. 1, 17. Irrespective of the change, specialized math instruction was always provided during the class's math block, from 12:00 to 12:30 p.m., Monday through Thursday, as reflected by the academic schedule. *Interviews with Case Manager and General Education Teacher*.
23. In addition to her academic schedule, Student had a visual schedule, which contained pictures of activities Student would be working on and photos of the staff person that she would be working with during each lesson block. *See Exhibit I*, pp. 3-9. Unlike Student's academic schedule, the visual schedule does not indicate whether services were provided in the general education environment; however, the timing of specialized instruction (e.g., literacy and math) matches that of Student's academic schedule (and not the schedule provided by Parent). *Id.* at pp. 1, 3-5.

24. Similarly, the timing of lesson blocks in the visual schedule matches Student’s academic schedule, but not the schedule provided by Parent (e.g., the schedule provided by Parent suggests Student was pulled from the general education classroom for math instruction from 1:30-2:05 p.m., but the visual schedule indicates Student was in “Expedition” from 1:05-2:00 p.m. and “Writing” from 2:00-2:30 p.m.). See *id.* at p. 4; see *Complaint*, p. 5.
25. The SCO finds—based on the similarities between accounts provided by Case Manager and General Education Teacher, the corroboration between their accounts and Student’s academic/visual schedule, the support for Case Manager’s in the 2021 IEP (reflecting the changes to the provision of specialized math instruction on September 29, 2021), and the differences between the schedule provided by Parent and Student’s academic and visual schedule—that Student was educated in the general education classroom as was described in Student’s academic schedule (which means Student was in the general education classroom approximately 85 percent of the time when math was provided on a “pull out” basis, and approximately 91 percent of the time after the September 29, 2022 IEP amendment).<sup>3</sup> The SCO accordingly finds that Student was educated in the general education environment at least 80 percent of the time as required by the 2021 IEP.

#### **D. 2021 IEP Implementation (Safety Plan – October 2021)**

26. Parent’s second concern is that District failed to follow Student’s Safety Plan in October of 2021, as required by the 2021 IEP. *Interview with Parent; Complaint*, pp. 3-5. Student began the 2021-2022 academic year with a Safety Plan, developed in her kindergarten year, to address bullying concerns between Student and another older student at School. *Interviews with Parent, Executive Director, and Case Manager; Exhibit 6*, pp. 1-2.

#### **The Safety Plan**

27. In the beginning of the 2021-2022 academic year, Case Manager, General Education Teacher, and Executive Director met to review the Safety Plan. *Interview with General Education Teacher*. All staff working directly with Student were given access to the Safety Plan along with the 2021 IEP. *Interviews with Executive Director, Case Manager, and General Education Teacher*.
28. The Safety Plan contained safety and supervision strategies designed to prevent Student from being bullied at various times throughout her day at School. *Exhibit 6*, pp. 1-2. Relevant to this investigation, the Safety Plan provided the following regarding recess and lunch:
- a. “[Student] will eat lunch at her designated spot. All students are to remain in their designated spots. The teacher on recess duty will monitor [Student] to ensure that conversations and behavior at her table are inclusive. If a conversation or behavior

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<sup>3</sup> A full week at School is calculated as approximately 2,030 minutes based on Student’s academic schedule.

arises that is not inclusive, the teacher on duty will address the issue and document the issue with the special education teacher.”

- b. “At recess, [Student] will play in her designated areas. Teachers on recess duty will know to keep an eye on [Student] and conversations that are taking place. If an issue arises, the teacher on duty will address the issue and document the issue with the special education teacher”

*Id.* at p. 1.

29. Although the Safety Plan was initially developed to address interactions between Student and an older student at School, at the beginning of the 2021-2022 academic year, Parent became concerned there were new instances of bullying involving other students. *Interviews with Parent, Executive Director, and Case Manager.*

30. Through an educational advocate, Parent requested that District review and update the Safety Plan, and further, that District incorporate the Safety Plan into the 2021 IEP. *Interview with Parent.* District agreed to hold an IEP meeting at Parent’s request. *Interviews with Case Manager, General Education Teacher, and Parent.*

31. On September 29, 2021, Student’s IEP Team met to review and discuss the Safety Plan, as well as possible amendments to the 2021 IEP. *Exhibit G*, p. 16. The 2021 IEP was amended to include two new accommodations related to the Safety Plan:

- a. “IEP case manager will make sure that everyone who has contact with [Student] has access to the safety plan and has been trained on how to implement the safety plan.”
- b. “IEP case manager [will] be responsible for following up with the plan every reporting period which will include determining what is working in the safety plan, what needs to be adjusted and/or clarified in the plan.”

*Exhibit A4*, p. 13.

32. Although amendments to the 2021 IEP were made on September 29, 2022, Parent and District continued to discuss updates to the Safety Plan after the meeting. *See Exhibit L*, pp. 6-8. Parent and Case Manager exchanged notes on drafts of the plan via email until October 11, 2021, when Parent emailed Case Manager to approve the changes. *Id.* at pp. 7-8. Case Manger responded on October 12, 2021 to indicate that she had been waiting for Parent’s approval to share the updates with staff, but she would arrange a full staff training and let Parent know how it went. *Id.* at p. 8.

### The October 12th Incident

33. On October 12, 2021, before staff were trained on the updated Safety Plan, a bullying incident involving Student occurred at School. *Interviews with Case Manager, General Education Teacher, Executive Director, and Parent; Exhibit 7, p. 12; Exhibit H.* During the transition from lunch to recess, a group of Student’s classmates encouraged Student to kick, hit, and push another classmate. *Exhibit 7, p. 12; Exhibit H; Interviews with Case Manager, General Education Teacher, and Executive Director.*
34. After the physical altercation began, a District staff member approached the group of students, and learned that other students were trying to get Student to be physical toward other students, as well as to get her to say inappropriate things and answer questions that they thought were “funny.” *Exhibit 7, p. 12.* Staff also learned that in the days leading up to October 12, there had been other instances of other kids telling Student to do or say inappropriate things, although those other instances did not involve physical violence. *Id.; Interview with Case Manager.*
35. The bullying was relayed to Case Manager and General Education Teacher in the classroom, and the students involved in the bullying were taken to Executive Director’s office to be interviewed and disciplined. *Interviews with Case Manager, Executive Director, and General Education Teacher.* Executive Director called Parent to inform her of the bullying (as well as the parents of the other students), and Case Manager spoke to Parent about the incident a few days later. *Interview with Parent.* Student’s paraprofessional talked with Student about what happened, and the school psychologist was brought in to “provide support.” *Interview with Executive Director.*
36. A video of the October 12 incident was captured on one of the outside video cameras at School. *Exhibit H.* The video shows that a staff member was in the vicinity of the group of students around the time of the incident, but the staff member did not get involved or approach Student until after the physical altercation. *Id.* At several times during the video, the staff member left the vicinity of the group of students, and there were no adults monitoring Student when the kicking, hitting, and pushing began. *Id.*
37. Case Manager indicates that, although some staff had been trained on the Safety Plan, the staff member on lunch/recess duty on October 12 (an office administrator) had not been trained on the plan. *Interview with Case Manager.* The SCO accordingly finds District failed to implement the Safety Plan on October 12, 2021.

### District’s Remedial Actions

38. Following the October 12 incident, changes to the Safety Plan were discussed, including the addition of a requirement that a paraprofessional or another staff member keep Student in “her line of sight at all times” during lunch and recess. *Interviews with Parent, Case Manager,*



*General Education Teacher, and Executive Director; Exhibit B, p. 1. Changes to the Safety Plan were finalized on October 25, 2021, and all staff at School were informed of this at a meeting on November 5, 2021. Exhibit B, p. 1; Interviews with Executive Director and Case Manager.*

39. All staff working with Student were provided access to the Safety Plan, and thereafter Case Manager engaged in weekly check ins about the plan with General Education Teacher, and with other special education staff at standing meetings. *Interviews with Case Manager and General Education Teacher.* At the end of each grading period, Case Manager also did a full staff check-in regarding the Safety Plan to ensure there were no questions or concerns. *Interview with Case Manager.*
40. Following the October 12 incident, General Education Teacher introduced a “positive action curriculum” in Student’s class. *Response, p. 5; Interviews with General Education Teacher, Case Manager, and Executive Director.* General Education Teacher guided a discussion about the incident with Student’s class, wherein the class talked about positive action and people’s differences, and the class spent around 10 minutes each day working through a “social emotional learning curriculum.” *Interview with General Education Teacher.*
41. At Parent’s request, Executive Director brought in outside agencies to observe Student and do trainings on inclusivity. *Interview with Executive Director.* Executive Director explains that she did not feel the special education team at School was unprepared but wanted to make a good faith effort with the family to support Student. *Id.* Senior Manager was also brought in to support the special education team thereafter and help facilitate at team meetings with Parent. *Interview with Senior Manager.*

#### *Impact on Student*

42. Parent indicates that following the October 12 incident, Student developed “extreme anxiety” associated with coming to School. *Interview with Parent.* Parent indicates this continued through the end of the year (however Parent concedes that some of the anxiety may have been caused by Student’s support paraprofessional leaving District in December of 2021). *Id.*
43. District staff did not observe any academic changes or new social emotional concerns (such as anxiety) in Student after the October 12 incident at School, although Student did express that she was sorry for being physical with the other student. *Interviews with Case Manager and General Education Teacher; see Exhibit E, pp. 12-14.* Student’s support paraprofessional helped Student write an apology letter to the other student, and the school psychologist created a story book with pictures for Student about “how it was okay to say no” to other students. *Interview with Case Manager.*

44. Following the October 12 incident, neither staff nor Parent are aware of any other incidents of bullying involving Student at School. *Interviews with Parent, Executive Director, Case Manager, and General Education Teacher.*

**E. 2021 IEP Implementation (Accommodations and Modifications – Forest School)**

45. Parent's third concern is that Student was not provided with the accommodations and modifications required by the 2021 IEP during Forest School. *Interview with Parent; Complaint, p. 7.*

46. Forest School was a class offered to all students at School during the 2021-2022 academic year. *Interviews with Parent, Case Manager, General Education Teacher, and Executive Director.* Student's class went to Forest School twice a month, every other week, from August 2021 through March 2022. *Response, p. 4; Interviews with Case Manager, Parent, and General Education Teacher.*

47. Parent attended Forest School with Student on one occasion in September of 2021. *Interview with Parent.* Parent indicates that when she observed Forest School, Student was either in a paraprofessional's lap looking at the paraprofessional's phone or picking bark off trees while the remainder of the class was engaged in small group activities. *Interview with Parent; Complaint, p. 7.* Parent attributes Student's lack of participation to a failure to provide accommodations and modifications from the 2021 IEP. *Interview with Parent.*

**Accessibility of the 2021 IEP at Forest School**

48. Although she did not personally attend Forest School, Case Manager met with the director of Forest School (who is no longer with District) at the beginning of the year to go over the 2021 IEP and see if he had any questions. *Interview with Case Manager.* Forest School staff were given snapshots of the 2021 IEP, both physically and by email, and the 2021 IEP was likewise available to staff on the shared School drive. *Id.*

49. To ensure that Student received support during Forest School, General Education Teacher and Student's support paraprofessional attended Forest School, and either General Education Teacher or the paraprofessional was always with Student. *Interviews with Case Manager and General Education Teacher.* General Education Teacher also met with Case Manager every week to discuss, among other things, ways to help Student participate during Forest School. *Interviews with Case Manager and Special Education Teacher.*

**Implementation During Forest School**

50. During Forest School, students in both 2<sup>nd</sup> grade classes at School went to a nearby park for half a day. *Interviews with Case Manager and General Education Teacher.* The goal of Forest School was to give students the opportunity to explore the outside world without rules, and

most days, students were given a choice as to what to do. *Interview with General Education Teacher.*

51. General Education Teacher indicates Student was provided with accommodations and modifications during Forest School. *Interview with General Education Teacher.* Examples of accommodations provided to Student include ensuring the paraprofessional brought a communication sheet for Student (a sheet designed to help Student slow down communication to be more intelligible), intentional grouping (i.e., letting Student choose what group to be in), and providing Student with the use of a slant board (during activities involving writing, such as scavenger hunts). *Interviews with General Education Teacher and Case Manager.*
52. Case Manager asked the director of Forest School to include visuals on Forest School materials (e.g., for an activity involving the identification of native plants), and General Education Teacher worked to learn some sign language (since Student responds to sign language) to help her communicate with Student in a different way. *Interviews with Case Manager and General Education Teacher.* District staff indicate that Student was able to participate in most activities during Forest School, although many of the activities were unstructured. *Interviews with Case Manager and General Education Teacher.*
53. Indeed, Student’s participation in activities is likely to look different in a new and unfamiliar setting (such as the park during Forest School), and even if it is an activity that she knows, such as a familiar game, she may not participate to the same degree that she would at School. *Consultation with CDE Content Specialist.* Nevertheless, the SCO finds—based on the level of detail in General Education Teacher’s account, the similarities between accounts provided by Case Manager and General Education Teacher, and a consultation with CDE Content Specialist—that District properly implemented the 2021 IEP during Forest School.

**F. 2022 IEP Implementation (Accommodations and Modifications – Overnight “Adventure”)**

54. In March 2022, a properly constituted IEP Team met to review and revise the 2021 IEP (“2022 IEP”). *Exhibit G*, p. 6. Parent’s final concern is that District failed to implement the 2022 IEP, because District did not provide accommodations and modifications from the 2022 IEP during an overnight “Adventure” on April 21-22, 2022. *Complaint*, p. 7; *Interview with Parent.*
55. Relevant to this investigation, many of the accommodations and modifications in the 2022 IEP are the same as those in the 2021 IEP, although some, such as giving Student shortened assignments with reduced answer choices, were removed. *Exhibit A4*, p. 13; *Exhibit A2*, p. 17. The 2022 IEP contains new accommodations, such as simplified instructions, positive behavior supports such a high fives and choice activities for work completion (no food), and monitoring within line of sight at all times (in lieu of reference to the Safety Plan). *Exhibit A4*, p. 13; *Exhibit A2*, p. 17.

56. The 2022 IEP included new modifications for Student to access the general education curriculum, such as assignments that are shortened, reduced in complexity, include visuals, and include simplified vocabulary. *Exhibit A2, p. 17.*

#### *The Overnight "Adventure"*

57. The overnight "Adventure" was an overnight camping trip held April 21-22, 2022. *Interviews with Director of Adventure, Parent, General Education Teacher, and Case Manager.* "Adventures" are part of the School curriculum for all students, and they are designed to help students experience and gain an appreciation for nature, as well as foster interpersonal development and team building. *Interview with Director of Adventure.*

58. During the April trip, students participated in a variety of activities, including games and team building activities. *Interviews with Director of Adventure, Parent, General Education Teacher, and Case Manager.* Parent attended the April camping trip with Student as a chaperone, along with other parents. *Interviews with Director of Adventure, Parent, General Education Teacher, and Case Manager.*

59. Parent's concern is that District failed to provide accommodations and modifications to Student during the April camping trip, because Student was not able to participate in team-building games and activities. *Interview with Parent; Complaint, p. 7*

#### *IEP Accessibility to Overnight Adventure Staff*

60. Executive Director, Case Manager, and General Education Teacher met before the April camping trip to discuss any accommodations or modifications from the 2022 IEP that might be necessary to allow Student to participate in activities during the trip. *Interviews with Case Manager, Executive Director, and General Education Teacher.*

61. Director of Adventure oversees all components of "Adventure" activities, including coordination, equipment, and safety during overnight trips. *Interview with Director of Adventure.* Prior to the April camping trip, Director of Adventure spoke with General Education Teacher and Case Manager about Student's accommodations and modifications. *Interviews with Director of Adventure, Case Manager, Executive Director, and General Education Teacher.* Director of Adventure was also provided with a snapshot of the 2022 IEP. *Interviews with Case Manager and Director of Adventure.*

62. Both General Education Teacher and Student's support paraprofessional attended the camping trip with Student. *Interviews with Director of Adventure, Case Manager, Executive Director, and General Education Teacher.*

## IEP Implementation

63. Parent indicates that during the camping trip, Student did not understand the rules for games and team building activities, and as a result, was unable to participate with other students. *Interview with Parent*. Parent indicates no accommodations or modifications were provided during the overnight “Adventure” and Student was not able to “participate at all.” *Id.*
64. Director of Adventure recalls at least one activity Student was not participating in, but when he checked in with her support paraprofessional, he was told she did not want to play, and he “did not push it.” *Interview with Director of Adventure*. Nevertheless, Director of Adventure and General Education Teacher both indicate Student was provided with accommodations and modifications during the “Adventure” and was able to participate in most activities. *Interviews with Director of Adventure and General Education Teacher*.
65. Examples of these accommodations and modifications described by General Education Teacher and Director of Adventure include demonstrating activities using visuals (e.g., pantomime), breaking down and simplifying instructions, and ensuring an adult (General Education Teacher or the paraprofessional) was always supporting Student (although there were occasions when Parents stepped in to support Student instead). *Interviews with Director of Adventure and General Education Teacher*.
66. Indeed, similar to Forest School, Student’s participation may look different in a new setting, such as an overnight camping trip. *Consultation with CDE Content Specialist*. The SCO finds—based on the level of detail and similarities between accounts provided by General Education Teacher and Director of Adventure, and consultation with CDE Content Specialist—that District properly implemented the 2022 IEP on the overnight “Adventure” in April 2022.

## CONCLUSIONS OF LAW

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

**Conclusion to Allegation No. 1: District failed to properly implement Student’s IEP on October 12, 2021, in violation of 34 C.F.R. § 300.323. This violation did not result in a denial of FAPE.**

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

A 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). Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

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

#### **A. 2021 IEP Implementation (August 2021 through March 2022)**

##### **Parent’s Concerns**

The 2021 IEP was in effect from August 2021 through March 2022. (FF #s 2, 54). Parent alleges that Student was not educated in her LRE consistent with the 2021 IEP, that Student’s Safety Plan was not followed in October of 2021, and that Student was not provided with accommodations and modifications during Forest School. (FF # 12).

##### **Accessibility to Student’s Teachers**

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Case Manager oversaw the 2021 IEP. (FF # 14). She was responsible for ensuring staff were aware of their responsibilities under the 2021 IEP, and thus, held a meeting with staff during the first week of classes at School to discuss Student’s needs and the 2021 IEP. (FF # 14). All staff working with Student were provided access to the 2021 IEP, and there was frequent collaboration between Special Education Teacher and General Education Teacher, as well as with Student’s service providers, about her needs. (FF #s 14-15, 21, 27, 39, 48). For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student were informed of their responsibilities under the 2021 IEP, consistent with 34 C.F.R. § 300.323(d).

### The 2021 IEP's LRE

The 2021 IEP provided that Student's LRE from August through November of 2021 was the general education environment at least 80 percent of the time. (FF # 11). According to Student's academic schedule, Student was educated in the general education environment consistent with the 2021 IEP. See (FF # 25). Although Parent alleges Student was removed from the general education environment at times not reflected in Student's academic schedule, the times Parent indicates Student was not in the general education environment do not match Student's academic or visual schedule. (FF #s 16, 20, 23-24). Both Case Manager and General Education Teacher indicate Student's academic schedule was consistently followed, and Case Manager provided reasonable explanations for the timing and location of specialized instruction, which is supported by the visual schedule and the 2021 IEP. (FF # 19-24). The SCO accordingly finds and concludes that District properly implemented the 2021 IEP with respect to Student's LRE, consistent with 34 C.F.R. § 300.323(c).

### Safety Plan

Student had a Safety Plan, which required staff to monitor her during lunch and recess to ensure that conversations and behavior around her were inclusive. (FF #s 26, 28). As of September 29, 2021, the Safety Plan was incorporated into the 2021 IEP. (FF # 31).

On October 12, 2021, staff on duty at lunch/recess failed to monitor Student as required by the Safety Plan, and as a result, Student was bullied by classmates during the transition between lunch and recess. (FF #s 33-34, 36-37). Case Manager, the individual who was responsible for ensuring staff are trained on the Safety Plan, concedes the staff member on lunch/recess duty was not trained on the plan as was required by the 2021 IEP. (FF #s 31, 37).

The SCO accordingly finds and concludes that District failed to implement the Safety Plan, and by extension, the 2021 IEP, on October 12, 2021, in violation of 34 C.F.R. § 300.323(c).

### Accommodations and Modifications – Forest School

Student attended Forest School twice a month from August 2021 through March 2022. (FF # 46). General Education Teacher and Student's support paraprofessional attended every Forest School with Student, and Case Manager met with the director of Forest School at the beginning of the year to discuss the 2021 IEP and provided Forest School staff access to the 2021 IEP. (FF #s 48-49). General Education Teacher provided the SCO with detailed examples of accommodations and modifications that were provided to Student during Forest School, and both General Education Teacher and Case Manager described regular weekly check ins throughout the year about Student's participation in Forest School activities. (FF #s 49, 51-52).

Although Parent indicates that when she attended Forest School, Student was either sitting in a paraprofessional's lap and looking at a phone or picking bark off trees, Forest School is largely

unstructured, and its purpose is to provide students with an opportunity to explore nature free from rules. (FF #s 47, 50). Student’s participation is likely to look different in a new environment like a park, even if it is a familiar activity that she has done before at School. (FF # 53).

The SCO accordingly finds and concludes that District properly implemented the 2021 IEP with respect to Forest School, consistent with 34 C.F.R. § 300.323(c).

## **B. 2022 IEP Implementation (Overnight “Adventure”)**

### **Parent’s Concerns**

The 2022 IEP was in effect in April of 2022. (FF # 54). Parent alleges Student was not provided with accommodations and modifications from the 2022 IEP during the overnight “Adventure” on April 21-22, 2022. *Id.*

### **Accessibility to Student’s Teachers**

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Case Manager oversaw the 2022 IEP. *See* (FF #s 14, 54). Like the 2021 IEP, she was responsible for ensuring staff were aware of their responsibilities under the 2022 IEP. *See* (FF # 14).

Prior to the overnight “Adventure” Case Manager met with Executive Director and General Education Teacher to review the 2022 IEP and determine which accommodations and modifications would be necessary for Student to participate in the overnight camping trip. (FF # 60). Following this collaboration, Case Manager met with Director of Adventure to discuss the accommodations and modifications, as well as provide him with a snapshot of the 2022 IEP. (FF # 61). General Education Teacher and Student’s support paraprofessional, who both had access to the 2022 IEP and were familiar with Student’s needs, also attended the trip. (FF # 62).

For these reasons, the SCO finds and concludes that District ensured teachers and service providers at the overnight “Adventure” were informed of their responsibilities under the 2022 IEP, consistent with 34 C.F.R. § 300.323(d).

### **Accommodations and Modifications – Overnight “Adventure”**

Both General Education Teacher and Director of Adventure described numerous accommodations and modifications that were afforded to Student during the overnight “Adventure.” (FF # 64). These accommodations and modifications included adding visuals such as pantomime demonstrations to explanations of activities, simplifying instructions, and ensuring Student was always supported by an adult. *Id.* While Director of Adventure recalls at least one activity Student did not participate in, Student’s participation in a novel setting is likely to look different than at School, even if it is a game or activity Student has previously learned, and both



General Education Teacher and Director of Adventure recall Student being able to participate in most of the activities. (FF #s 64-65).

The SCO accordingly finds and concludes that District properly implemented the 2022 IEP with respect to the overnight “Adventure,” consistent with 34 C.F.R. § 300.323(c).

### **C. Materiality of Failure to Implement**

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

Here, District failed to implement the Safety Plan on October 12, 2022, and as a result, Student was bullied by some of her classmates. (FF #s 36-37). Although Parent indicates Student began exhibiting anxiety after the incident, School staff did not notice an academic or social/emotional impact in the School setting beyond Student expressing empathy for the classmate she hurt. (FF #s 42-43). District also took significant steps to remediate the situation and address the impact to Student, to include seeking input from outside organizations at Parent’s request. (FF # 38-41, 43). Furthermore, following District’s remedial steps, both District staff and Parent agree that no other incidents of bullying occurred at School for the remainder of the year. (FF # 44).

For these reasons, and in consultation with CDE Content Specialist, the SCO finds and concludes that the failure to implement the Safety Plan, and by extension the 2021 IEP, was not material.

**Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities in District if not corrected. 34 C.F.R. § 300.151(b)(2).**

Pursuant to its general supervisory authority, CDE must also 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).

In this case, the SCO finds and concludes, in consultation with CDE Content Specialist, that District's procedural violation regarding IEP implementation was not systemic in nature. Following the October 12, 2022 incident, District quickly and voluntarily took significant steps to address the incident, to include reviewing and revising Student's Safety Plan, informing all staff at School of the plan, seeking review from outside organizations at Parent's request, bringing in Senior Manager to support the special education team and facilitate team meetings, and introducing curriculum to address the situation in the classroom. (FF #s 38-41). Following these remedial actions, no other bullying incidents were reported for the remainder of the 2021-2022 academic year. (FF # 44).

Moreover, the SCO finds there are no concerns with District's practices regarding implementation, as District adequately informed all staff working directly with Student of their responsibilities under the 2021 and 2022 IEPs, with the exception of the office administrator involved in the October 12 incident (and all staff at school were thereafter informed of the Safety Plan at the November 5, 2021 meeting).

For these reasons, and in consultation with CDE Content Specialist, the SCO accordingly finds and concludes that the violation noted in this Decision was not systemic.

#### **REMEDIES**

The procedural violation of 34 C.F.R. § 300.323 consisted of one documented instance of non-compliance. Given the remedial action already taken by District, no further remedy is ordered.

#### **CONCLUSION**

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

Dated this 3<sup>rd</sup> day of September, 2022.



Ross Meyers  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-11

- Exhibit 1: 2/24/21 IEP
- Exhibit 2: 10/8/21 Safety Plan
- Exhibit 3: 2/22/22 IEP

### Response, pages 1-6

- Exhibit A1: 2/24/21 IEP
- Exhibit A2: 2/22/22 IEP
- Exhibit A3: 2/22/22 IEP (amended 5/24/22)
- Exhibit A4: 2/24/21 IEP (amended 9/29/21)
- Exhibit A5: 5/24/22 Amendment
- Exhibit B: 10/11/21 Safety Plan
- Exhibit C1: Winter Progress Report
- Exhibit C2: Spring Progress Report
- Exhibit C3: Additional Progress Reports (combined)
- Exhibit D: Service Logs (combined)
- Exhibit E: Evaluation Report (combined)
- Exhibit F: PNW and Progress Report (combined)
- Exhibit G: NOM (combined)
- Exhibit H: Video of October 12, 2021 Incident
- Exhibit I: Student Schedule (combined)
- Exhibit J: School Calendar
- Exhibit K1: OHI Body of Evidence Guidelines
- Exhibit K2: SLI Services in District
- Exhibit L: Correspondence (combined)
- Exhibit M: List of Staff
- Exhibit N: School Video Retention Policy

### Reply, pages 1-3

- Exhibit 4: IDEA Series – Disability Segregation
- Exhibit 5: August 2021 Safety Plan
- Exhibit 6: Correspondence

### Telephone Interviews

- Case Manager: August 12, 2022
- Director of Adventure: August 18, 2022

- Executive Director: August 5, 2022
- General Education Teacher: August 5, 2022
- Parent: August 10, 2022
- Senior Manager: August 9, 2022