

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 2022:550  
Adams-Arapahoe 28J**

**DECISION**

**INTRODUCTION**

On October 5, 2022, the Parents (“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 Adams Arapahoe-28J, Aurora Public Schools (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from October 5, 2021 through October 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 conduct a reevaluation of Student as requested by Parent on or around April 21, 2022, in violation of 34 C.F.R. § 300.303(a)(2).
2. Failed to develop, review and revise an IEP that was tailored to meet Student’s individualized needs, from October 4, 2021 to present, by failing to include behavioral

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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.

strategies and supports that adequately addressed Student's behavioral needs, in violation of 34 C.F.R. §§ 300.320-324.

### **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 nine years old and attends fourth grade at a District school ("School"). *Exhibit A*, p. 18. Student and his family reside within the boundaries of District. *Id.*
2. At the time this Complaint was filed, Student was identified as a child with a speech or language impairment ("SLI"). *Id.* Student is currently identified as a child with an autism spectrum disorder ("ASD") and a SLI. *Exhibit O*, p. 1.
3. Student is funny and creative and can work very hard when motivated. *Interviews with Parents and Social Worker at School ("Social Worker")*. Student is very good at math and has great contributions during classroom discussions. *Interviews with third grade general education teacher ("Third Grade Teacher") and fourth grade general education teacher ("Fourth Grade Teacher")*. He loves Legos and playing video games with friends and family out of state. *Exhibit N*, p. 1; *Interview with Parents*.
4. Student is very anxious about school and struggles with transitions. *Interview with Parents*. He has a hard time building and maintaining friendships and struggles with nonverbal communication and other social cues. *Interviews with Social Worker and Student's Speech and Language Pathologist and Case Manager ("SLP")*. Writing is hard for Student. *Interviews with Third Grade Teacher and Fourth Grade Teacher*. He has difficulty initiating tasks and respecting the physical boundaries of his peers. *Interview with Fourth Grade Teacher*.

#### **B. Supports for Student to Start 2021-2022 School Year**

5. Although Student had been doing well in School, Social Worker, who works with general education students at School, had previously provided support related to COVID-19 and changes in the home. *Interviews with Parents and Social Worker*. At the start of the 2021-2022 school year, Social Worker continued working with any students on her radar in anticipation of the difficult transition back to a fully in-person environment. *Interview with Social Worker*. Social Worker met weekly with Student and two other students to talk about anxiety and adjusting to being around classmates again. *Id.*
6. In September of 2021, Student had what Third Grade Teacher considered a minor incident on the playground when he twisted a classmate's arm. *Interview with Third Grade Teacher*. In

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

late November or early December, Social Worker stopped working with Student. *Interview with Social Worker*. He had not had major issues up to that point, so she did not want him to continue missing instruction. *Id.*

7. On December 3, 2021, SLP, Third Grade Teacher, Parent and Student's reading interventionist met because Student did not want to go to phonics and was sometimes resistant to meeting with SLP. *Interview with SLP*. They discussed Student's recent behavior issues, including defiance and sadness. *Id.* At the time, they decided Student's behavior was not out of the ordinary. *Id.*

### **C. Student's Elopement from School**

8. On December 8, 2022, Student kicked a classmate during specials and did not want to apologize. *Interview with Third Grade Teacher*. Third Grade Teacher tried to talk to him about the incident when he came back from recess and lunch. *Id.* Frustrated, Student grabbed his backpack and ran out of School. *Id.* Family lives about a five-minute walk from School. *Interview with Parents*. Student showed up at home and rang the doorbell. *Id.* Shortly thereafter, Assistant Principal at School ("Assistant Principal") arrived and notified School that Student had been located. *Id.* Student had never tried to elope from School before. *Interviews with Third Grade Teacher and Assistant Principal*.
9. Winter Break started about a week after Student ran from School. *Exhibit J*, p. 1. When class resumed in January, Social Worker talked with Student about some options that might help him. *Interview with Social Worker*. Social Worker implemented a "soft start" for Student and a classmate. *Exhibit L*, p. 4. Student picked a peer with whom he wanted to work on building a connection. *Interview with Social Worker*. They came for 20-25 minutes after attendance and worked on Legos and did related research. *Interview with Social Worker; Exhibit L*, p. 4.
10. Student's classmate stopped coming to the "soft start" with Student in late April. *Interview with Social Worker*. After his peer stopped coming, Student chose not to go to the voluntary "soft start" more frequently. *Interviews with Social Worker and Third Grade Teacher*.
11. Student and Social Worker also talked about coping strategies such as going to a safe space to call home when escalated. *Exhibit L*, p. 4. Student had a break pass to use when he needed to go to Social Worker's office or call home. *Id.* Although they talked about it, Student would not use the break pass without prompting. *Interview with Social Worker*. Teacher would also call for Social Worker's support if she saw that Student was escalating and disrupting others. *Interviews with Social Worker and Third Grade Teacher*. Taking time with Social Worker usually helped Student regulate. *Interview with Third Grade Teacher*.
12. Parents and Assistant Principal met shortly after Student eloped, in January. *Interviews with Parents and Assistant Principal*. Parents indicated that they thought something more was

going on and that perhaps Student had ASD. *Id.* They indicated their intent to seek outside testing and Assistant Principal encouraged them to do so. *Id.*

#### **D. Increasing Behavior Concerns**

13. When students at School begin to struggle with new behaviors, staff put interventions in place, including restorative conversations. *Interview with Assistant Principal.* If the behavior escalates, they increase the interventions. *Id.*
14. Social Worker works with students without IEPs, or those whose IEPs do not include mental health supports. *Interview with Social Worker.* When students are receiving general education interventions as part of School's Multi-tiered System of Support ("MTSS"), a team consults on the effectiveness of MTSS. *Id.* The team evaluates the data and assesses the effectiveness of interventions every six sessions, or approximately every six weeks. *Id.* If students are not improving or behaviors are starting to impact classroom success, they tweak the interventions. *Id.* If students still are not responding after six more weeks, they refer them for an initial special education evaluation. *Id.*
15. District requires building staff to hold monthly child find meetings to identify all students with a disability in the school. *Exhibit Q*, p. 8. During these meetings, teams must review data from various sources including general education teachers and MTSS meetings. *Id.* If, based on that data, any students are suspected of having an educational disability, the staffing chair must initiate the referral process for an initial evaluation. *Id.* There is no specified process for identifying new needs for IDEA-eligible students and the annual IEP meeting instructions do not include information about what should be considered during a meeting. *Id.* at pp. 1-78.
16. In general, Student was fairly successful in his third-grade classroom, but he struggled more with transitions and time spent outside his homeroom class. *Id.* For instance, on January 31, 2022, the paraeducator in Student's phonics group notified Third Grade Teacher that Student was struggling to focus and telling staff he did not want to work. *Id.* Other days he refused to work during phonics and the period when he was supposed to work on English with another teacher because Third Grade Teacher was teaching an English Language Development ("ELD") class. *Exhibit 1*, p. 6. During a consultation in January, Third Grade Teacher told SLP that Student continued to show some defiance when he did not get his way. *Interview with SLP.*
17. On January 26 and 27, 2022, Student got into trouble for chasing peers around the classroom. *Exhibit 1*, pp. 4-5. In addition, on January 26, 2022 he ripped a page out of a peer's notebook and logged into another student's learning application to try and answer questions incorrectly. *Interview with Third Grade Teacher.* He also wrote that he wished there would be no more school. *Id.*
18. On February 3, 2022 Student pushed a peer while lining up for recess. *Id.* Other classmates stood up for her and ended up calling Student names and cursing at him. *Id.*; *Exhibit 1*, p. 6.

Student was upset when he returned to the classroom, and he closed a classmate's computer and would not apologize. *Interview with Third Grade Teacher; Exhibit 1*, p. 6.

19. On February 8, 2022 Student stepped on a peer's hand while she was picking up papers off the ground. *Interview with Third Grade Teacher*. Another classmate reported that Student was encouraging others to cut that classmate in line. *Id.* Student punched a third classmate on the way back from recess and tried to elope from the gym during class. *Id.*
20. Parents and Assistant Principal met on February 11, 2022 regarding the ongoing concerns. *Exhibit L*, p. 7. Parents notified Assistant Principal they were seeking outside supports and doctor appointments to "help get answers to some of [Student's] struggles." *Id.* Assistant Principal asked staff to send Student to her to process any behavior problems and notify her if he was shutting down. *Id.* Noting that transitions and unstructured times were triggering for Student, Student was allowed to stay with Third Grade Teacher while she taught ELD. *Id.*
21. During another conference in February with SLP, Parents noted that they were looking for outside resources to support Student and continuing to wait for an evaluation appointment. *Interview with SLP*. SLP assumed that Social Worker had recommended the evaluation. *Id.*
22. On or around February 12, 2022, Student got into an altercation with several peers on the playground. *Interviews with Parents and Assistant Principal*. School did not notify Parents for two days, while they were investigating. *Id.* There is no written documentation of the incident. *Id.* Student struggled to tell Assistant Principal his side of what happened, and his story seemed to change several times. *Interview with Assistant Principal*. Parents were upset that Student was questioned without them present and felt they could have helped him explain himself more clearly. *Id.* School agreed to not question Student without notifying Parents going forward. *Id.*
23. On February 24, 2022, Parent asked for a copy of Student's safety plan to share with a potential evaluator. *Exhibit L*, p. 11. Assistant Principal explained there was no official safety plan, just a few interim agreements while they waited for more answers from outside doctor appointments. *Id.* at p. 10. In the meantime, School and Parents had agreed to 1) a soft start with Social Worker, although Student did not always choose to go, 2) the option to stay with Third Grade Teacher while she taught ELD, 3) contacting Parents if there are any behavior incidents, prior to interviewing Student and 4) giving Student the opportunity to call Parents to process when struggling. *Id.*
24. On February 25, 2022, Parent notified the School, in writing, that they were on a waiting list to be referred to a waiting list for evaluation. *Id.* She noted that Parents were implementing a new reward system at home and suggested sending incomplete work home for Student to complete. *Id.*

### **E. March 2022 IEP Team Meeting**

25. Parents, SLP and Third Grade Teacher met virtually on March 21, 2022 to complete Student's annual IEP ("March IEP"). *Exhibit A*, p. 27. Student was eligible under SLI. *Id.* at p. 18.
26. The March IEP notes Student's strengths, including math, sharing knowledge with peers, finding text evidence, and imagination. *Id.* at p. 20. The Present Levels of Educational Performance Summary notes that Student was currently able to "produce all targeted phonemes with 80-100% accuracy in all contexts" so the next step would be to monitor Student to ensure generalization of skills in the classroom. *Id.* It does not mention Student's defiance, aggressive behaviors or difficulties with peer relationships. *Id.*
27. The Student Needs and Impact of Disability notes that while Student demonstrates some articulation errors in conversation, it does not currently impact his involvement in general education. *Id.* at p. 21. The March IEP notes that ongoing SLP consultation is recommended as it may impact him when he must present in front of a classroom more often. *Id.*
28. Parent noted that transitions are getting easier for Student and he is self-regulating better. *Id.* Parent had concerns about discontinuing direct articulation services but agreed that indirect monitoring "was an appropriate next step." *Id.*
29. The March IEP concludes that Student "does not exhibit behavior that requires a Behavior Intervention Plan ("BIP")" and no other special factors apply. *Id.* Student also did not qualify for ESY. *Id.* at p. 22.
30. Student had one annual goal for communication. *Id.* at pp. 21-22. By March 21, 2023, from a baseline of 75 percent, "to improve his articulation skills, [Student] will correctly produce all targeted phonemes at the conversational level with 90% accuracy across 3 consecutive observations within the general education setting." *Id.* Progress reports would be provided to Parents quarterly, along with report cards. *Id.* at p. 21.
31. The March IEP contained the following four accommodations:
  - "Opportunities to repeat herself (sic) if misunderstood;"
  - "Increased wait time to formulate responses;"
  - "Access to peer models in the classroom;"
  - "Reinforce accurate production of speech sounds (consult with SLP" (sic)

*Id.* at p. 22.

32. Student's only special education and related services were 30 minutes per month ("MPM") of indirect support from SLP inside the general education classroom. *Id.* at p. 24.
33. Student's Least Restrictive Environment ("LRE") was general education 100 percent of the time because Student "shows a willingness to participate and learn when he is in his general education classroom" and a more restrictive setting would "result in a significant reduction in the amount of time he is exposed to grade-level curriculum and peer models of speech and language." *Id.* at p. 25.
34. The IEP team proposed moving to 30 MPM of indirect services with SLP because Student had mastered his goals. *Exhibit D*, p. 3. The IEP team also agreed to 10 MPM of indirect consultative SLP services, which are not included in the March IEP. *Id.* at p. 3; *Exhibit A*, p. 24. The standalone PWN notes that the IEP team reviewed Student's performance in the classroom and determined that Student could succeed in the general education setting without direct support. *Id.*
35. The IEP meeting was solely focused on Student's speech abilities and Parent's comment was the only reference to Student's increasing struggles with work completion and peer relationships. *Interviews with Parents and SLP.*

#### **F. Request for Reevaluation**

36. District policy requires school teams to conduct a reevaluation if parents request one "to consider the addition or removal of a disability or related service." *Exhibit K*, p. 2. Once consent for an evaluation is signed, case managers are instructed to schedule an eligibility meeting at a mutually agreeable time "that falls within a reasonable timeframe, typically within 60 calendar days of the date of consent." *Id.* at p. 3.
37. When parents request special education evaluations near the end of the year, School talks with the family about what that looks like. *Interview with Assistant Principal.* They explain that the School team cannot be required to work past the end of the year, so evaluations would have to be completed by a District assessment team that does not know the student. *Id.* They also explain that they cannot do classroom evaluations when there is no classroom, and that necessary staff may not be available to complete questionnaires. *Id.* While they tell parents they can start an evaluation immediately, they have never had a family choose to move forward with an evaluation they know will not produce good information. *Id.*
38. On April 11, 2022, Student would not go into the school building after he arrived. *Exhibit L*, p. 12. Student eventually returned to school, after 11 a.m., once he could get his [clothing] out of the dryer. *Id.* At least since December 8, 2022, Student wears the [clothing] to school every day and seems to think of it as his armor. *Interview with Parents.* Student told Social Worker his [clothing] had to be [colored], but he would be ok wearing different [clothing]. *Interview with Social Worker.* Student now has multiple sets of the same outfit and has clean clothes

daily. *Interviews with Parents and Social Worker*. That same day, Parents notified School that Student would be starting weekly therapy outside of school. *Interview with Third Grade Teacher*.

39. On April 13, 2022, Student refused to work during phonics for the second day in a row. *Exhibit 1*, p. 9. Student was directed to stay in during recess to work and tried to “run out of the room.” *Id.* Staff stopped him, and he willingly went with Social Worker. *Id.*
40. On April 18, 2022 Student wanted to sit at the top of the slide and became upset when classmates pressured him to go down. *Exhibit H*, p. 1. On the way in from recess he punched a peer in the face and kicked a different classmate in the shin, leaving a bruise. *Id.* While Student said the second peer had been stepping on his feet, she denied it and security video did not show that. *Id.* As a result of the April 18 incidents, Assistant Principal gave Student one day of in-school suspension (“ISS”).
41. As a result of the ISS and increasing behaviors, on April 21, 2022, Parents submitted a written request to have Student reevaluated. *Interview with Parents; Exhibit 1*, p. 11. A Special Education Coordinator for District (“Coordinator”), Social Worker, SLP, a special education teacher at School and Parents met on April 28, 2022 to consider Parents’ evaluation request. *Exhibit E*, p. 2. Although not listed, Principal at School (“Principal”) and Third Grade Teacher were also present. *Interviews with Parents, Social Worker, and Third Grade Teacher*.
42. Parents notified School that Student had started therapy and his outside ASD testing had been scheduled for June 8, 2022. *Id.* Parents felt like this meeting was the first time all the attendees were getting the full picture of Student’s struggles throughout the year. *Interview with Parent*. SLP, Student’s case manager, had been unaware of many of Student’s behaviors prior to the meeting. *Interview with SLP*.
43. After considering Student’s difficulties that semester, the IEP team considered three options: 1) developing a 504 plan for anxiety, 2) waiting for the outside evaluation or 3) opening the evaluation and then testing in the fall. *Id.* The IEP team, including Parents, selected option three. *Exhibit E*, p. 2. Parents felt they were deferring to the experts in agreeing to wait on the evaluation and did not understand how long School’s evaluation would take after they got an outside diagnosis. *Interview with Parents*. Parents were under the impression they were delaying the evaluation so that the outside evaluation could be used in the place of a District evaluation. *Reply*, p. 2.
44. In the meantime, the group agreed that Student could start coming to school on time on Mondays, even though School had a late start, to increase consistency. *Exhibit E*, p. 2. They also agreed to restart the morning check ins with Social Worker and Parents suggested giving Student goals like “I will refrain from physical aggression.” *Id.* at p. 3. Finally, they agreed to start a communication log, via email, to keep track of any future incidents. *Exhibit L*, p. 1. These accommodations were not added to Student’s IEP. *Interview with Social Worker*.



45. After the April meeting, District issued a PWN indicating that Student’s IEP team had agreed to reevaluate Student in the fall of 2022 and hold an evaluation meeting by October 1, 2022. *Exhibit D*, p. 4. The decision was made to avoid duplicating testing and wait for outside testing. *Id.* The IEP team felt that a comprehensive evaluation could not be completed in the four weeks remaining in the school year. *Id.*
46. The PWN notes that team had agreed on three interim supports for Student: 1) coming early during late start Mondays, 2) allowing Student to transition to recess with fewer students in the halls and 3) continuing to work with Social Worker on “communicating his needs and reducing acts of aggression.” *Id.* They rejected creating a 504 plan because Student had “no known medical conditions that would warrant a 504 plan.” *Id.* There were no other factors considered by the team. *Id.* District’s PWN template informs parents that they have rights under the procedural safeguards and can get a copy of those safeguards or help understanding the PWN by contacting the person who signed the PWN, in this case, SLP. *Id.*
47. In addition to a PWN, District also generated a Prior Notice and Consent for Reevaluation (“Consent”). *Exhibit A*, p. 12. Parents signed Consent on April 28, 2022. *Id.* District proposed to evaluate Student in the following areas:
- general intelligence to assess executive functioning;
  - communicative status “to take a deeper look at [Student’s] communication and pragmatic language;”
  - academic performance to assess the impact of Student’s behavior on his academic achievement;
  - social and emotional status “to get to the root cause of [Student’s] behavioral challenges;”
  - health review of Student’s developmental history, vision and hearing; and
  - motor abilities to assess if sensory issues are impacting Student.

*Id.*

48. Student continued to have low level incidents, including work refusal and aggression, throughout the end of the year. *Interviews with Parents, Assistant Principal and Third Grade Teacher*. By the end of third grade, Student was proficient in math, social studies, science and specials. *Exhibit I*, p. 5. He was partially proficient in reading and writing. *Id.* However, by fourth quarter his partially proficient in use of grammar and punctuation had dropped to significantly below grade level, he was no longer consistently meeting expectations for effort in math, and he was no longer consistently completing class assignments. *Id.*

## **G. Start of School Year**

49. Over the summer, family obtained a private psychological evaluation. *Exhibit 3*, pp. 1-13. Student was diagnosed with ASD requiring substantial support in social communication, and restricted, repetitive behaviors but without intellectual or language impairment. *Id.* at p. 3.
50. After receiving the results of the private evaluation, Parents shared them with School on Friday, August 5, 2022 and asked about next steps. *Exhibit L*, p. 46. SLP noted that she had initiated the special education evaluation and that District would use the private evaluation to assist School in its evaluation. *Id.*
51. School started Tuesday, August 9, 2022. *Exhibit J*, p. 3. SLP provided Fourth Grade Teacher with a copy of Student's IEP at the start of the school year. *Interviews with SLP and Fourth Grade Teacher*. The IEP provided to Fourth Grade Teacher only included speech accommodations and no reference to Student's behavior challenges or the supports agreed upon on April 28, 2022. *Interview with SLP*. Fourth Grade Teacher was notified in the afternoon on August 9, 2022 that there was an outstanding request to evaluate Student. *Interview with Fourth Grade Teacher*.
52. Student had a good morning on the first day, with no issues. *Id.* When the class returned from lunch and recess at 1 p.m. Student started trying to initiate contact with peers at his table group and distract them from lessons. *Id.* One peer asked to be moved and another tried to ignore him. *Id.* Student started flinging belongings off the desk of the peer who was ignoring his disruptions. *Id.* Fourth Grade Teacher warned Student he would have to move if he could not keep his hands to himself, and she ultimately had to move his desk away from his peers for the last 30-45 minutes before specials. *Id.*
53. At the end of the day, Fourth Grade Teacher sought out Parents after school to provide an update, knowing they were waiting for an evaluation. *Id.* That evening, Parent requested a meeting to discuss how Student could be supported. *Exhibit L*, p. 13. Parent felt Fourth Grade Teacher had "outcast" Student and wanted Student to go somewhere he could be "fully understood and supported and included." *Id.* Parents kept Student home the following day and for the rest of the week. *Id.*; *Exhibit G*.
54. On Thursday, August 11, 2022, a group met at Parent's request to discuss what happened on the first day. *Interview with Parents*. Fourth Grade Teacher explained what happened and the group agreed to reconvene the following Monday. *Id.* At the meeting, Social Worker took responsibility for not having communicated with Fourth Grade Teacher before the start of the year. *Interview with Social Worker*. The meeting was very contentious. *Interview with Assistant Principal*. After the meeting, Parents opted to continue keeping Student home and wait for the IEP meeting Monday morning. *Exhibit L*, p. 24.
55. Coordinator, a special education teacher at School, a psychologist at School ("School Psychologist"), Fourth Grade Teacher, Third Grade Teacher, an occupational therapist and Parents met August 15, 2022. *Exhibit A*, p. 31. SLP was unable to attend due to COVID-19.

*Interview with SLP.* The IEP team agreed to add 12 accommodations based on the recommendations in the outside evaluation. *Id.* at p. 30. The new accommodations included allowing Student to draw or color in a separate space after transitions, access to a fidget and calming tools like a water timer, a trusted adult for check ins, preferential seating in a small cluster or the back of the room, and additional support when dysregulated. *Id.* Parents wanted a specific, private behavior analyst to conduct a functional behavioral assessment of Student. *Exhibit L*, p. 24. Parents were told their request for an independent educational evaluation would be granted if they disagreed with District's evaluation once it was completed. *Id.*

56. Student tested positive for COVID-19 on August 22, 2022 and missed a week of school. *Exhibit L*, p. 33; *Exhibit G.* With Student having missed eight days before August 25, 2022, District no longer felt it could complete an evaluation by October 1, 2022 and rescheduled the eligibility meeting for November 10, 2022. *Exhibit L*, p. 42. SLP and School Psychologist met with Parents and their advocate and explained why certain tests and questionnaires could not be completed by October 1. *Interview with SLP.* Parents were not given a choice about this extension of the evaluation. *Reply*, p. 4.

#### **H. Work Refusal**

57. Student's fourth-grade year "has been characterized by significant school refusal, difficulty completing many academic tasks, classroom disruptions, and difficulties with peer relationships." *Exhibit N*, p.3. Throughout this school year, Student has struggled with work initiation. *Interview with Fourth Grade Teacher.* Student often tells Fourth Grade Teacher he does not want to do the work and he does not have to. *Id.* Student particularly struggles to start writing assignments, which he perceives as harder than math. *Id.*
58. As of September, Fourth Grade Teacher was working with Student daily to complete assignments as he "had not completed or turned in any work for the quarter." *Exhibit 2*, p. 34. If Student did not complete the missing assignments, he would need to come in for homework lab to complete them. *Id.* Homework lab is an option Fourth Grade Teacher offers students during her lunch, which is their recess, as a time to complete missing work with her support. *Interview with Fourth Grade Teacher.*
59. To encourage work completion, Student earns a coin anytime he completes assignments he was resistant to. *Id.* Once he earns five coins, he gets a "skip it slip" he can use to skip an assignment. *Id.* He sometimes chooses to save the slips and complete assignments even when he has a slip. *Id.* Student can also work at the teacher's desk on harder assignments, where he gets help with chunking assignments or organizing oral ideas into a written answer. *Id.*
60. More recently, when given the chance to take a short break before starting or reminded he can do the work now or make time to do the work later, Student almost always does the

work. *Id.* Student's math grade is proficient, and he is partially proficient in all other subjects. *Exhibit N*, p. 3.

61. Student also experiences significant anxiety about going to school. *Interview with Parents*. Getting him in the building can be challenging. *Id*; *Exhibit L*, pp. 38, 49, 53. Parent asked for a plan to help address the refusal. *Exhibit L*, p. 38. Many mornings Student's anxiety is so high, Parents can hear him breathing. *Interview with Parents*. Most days he is rigid but breathes through the anxiety and goes in. *Id.*
62. Student missed school on Monday, October 31, 2022 because Student ran around and refused to go inside the building. *Id.* School psychologist tried to help but after sitting outside for 45 minutes and trying to run home, Parents ultimately just brought him home. *Id.* That would have been Fourth Grade Teacher's first day back after fall break and a bereavement leave. *Interview with Fourth Grade Teacher*.

### **I. Peer Relationships**

63. Student struggles with respecting the personal space of others, particularly when transitioning or on the classroom rug. *Id.* He kicks, pushes and bumps other students and flips materials off their desks if they will not pay attention to him. *Id.*
64. Student appears unaware of how this is impacting his peers and most often seems to target those he considers friends. *Exhibit N*, p. 31. As a result, friends are pulling away from him and others appear afraid to upset him and may keep their distance. *Id.*
65. On October 5, 2022, Student pushed or kicked a peer in line and later punched another classmate in the nose when the classmate either told Student to stop cutting or to stop touching another student. *Exhibit H*, p. 2. Student received lunch detention and had to engage in a restorative conversation. *Id.*
66. After the lunch detention, Parents requested that Student "not receive consequences at school." *Exhibit N*, p. 59. Despite a lack of official referrals, Student "continues to have weekly low level physical altercations with peers." *Id.*
67. Because Student did not use his break card during third grade, Social Worker created a clip chart with emotions on one side and personalized coping strategies on the other. *Interview with Social Worker*. Student has used the clip chart to access supports. *Interviews with Social Worker and Fourth Grade Teacher*. Student also had a soft start with Social Worker and after recess. *Interview with Fourth Grade Teacher*. He stopped using morning soft starts about halfway through the semester and is starting to resist coming in early from recess. *Id.*

### **J. October 2022 IEP Team Meeting**

68. On September 21, 2022, Student became frustrated when he could not turn in an incomplete assignment. *Exhibit 2*, p. 34. Fourth Grade Teacher eventually had to call Social Worker for support after Student tore the paper, threw pencils and materials from his desk and began kicking the wall. *Id.* She explained that Student had not yet missed recess to complete work but that was the only time she had to offer homework lab to all students. *Id.*
69. On September 22, 2022, Parent requested an amendment to Student’s IEP while they waited for the November reevaluation. *Id.* Parent asked that School not consequence him for not doing work “[h]e cannot do.” *Id.* While Parent agreed that ripping up the assignment was not an appropriate way to communicate, she wanted an IEP amendment to ensure Student had ways to communicate needs including “unable to complete assignment.” *Id.*
70. Student took home four incomplete assignments on September 26, 2022 to finish at home. *Id.* at p. 30. Fourth Grade Teacher offered to help him during homework lab if he could not finish at home. *Id.* Parent noted that Student needed significant support to complete the work, especially writing. *Id.* It was Parents’ perspective that Student was unable to keep up with the pace of work and was conveying his limits and not merely refusing work. *Id.*
71. On September 30, 2022, Parent again requested an IEP team meeting to provide Student with additional supports to “relieve the stress he is experiencing.” *Exhibit L*, p. 54.
72. After an IEP team meeting on October 6, 2022, three additional accommodations were added to the IEP. *Exhibit D*, p. 6. The accommodations included reducing the quantity of work to emphasize quality over quantity, opportunity to verbally demonstrate understanding and encouragement to use a break pass. *Id.* The team determined the first two accommodations were appropriate given Student’s work refusal. *Id.* Social Worker also agreed to start meeting with Student as part of a small group focused on peer interactions. *Id.* Adding mental health services to Student’s IEP would be considered after the eligibility meeting. *Id.* District also generated a second amendment form which did not consider mental health supports or other parental requests. *Id.* at p. 5. Social Worker meets with a small group, including Student for 30 minutes weekly. *Interview with Social Worker.*

### **K. Issues with Fourth Grade Teacher**

73. Parents feel Fourth Grade Teacher is not a good fit for Student and that her approach to discipline and grading have negatively impacted his self-esteem and caused him to fall weeks behind on schoolwork. *Interview with Parents; Exhibit L*, p. 54. Parents have repeatedly asked to have Student moved to another classroom. *Interview with Parents; Exhibit D*, p. 6; *Exhibit 6.*
74. As a result of tension between Parent and Fourth Grade Teacher, she has only participated in a few of the meetings for Student. *Interview with Fourth Grade Teacher.* She is concerned Parents will become angry if she trials new interventions to support Student. *Id.*

75. School has repeatedly refused to move Student to another classroom. *Interview with Parents; Exhibit D*, p. 6; *Exhibit 6*. District feels it is in Student’s best interest to remain in Fourth Grade Teacher’s class as they have developed a positive relationship. *Exhibit 6*. Student and Fourth Grade Teacher have been able to work together on solutions for work completion and Student is generally on task and responding well to her during observations. *Id.*

#### **L. November Eligibility Determination**

76. District completed a 55-page evaluation and 22-page functional behavioral assessment ahead of a November 10, 2022 eligibility meeting. *Exhibit N; Interview with Parents*. The team had to reconvene to complete the eligibility determination on November 14, 2022. *Exhibit P*. Ultimately, the multidisciplinary team found Student eligible as a child with a SLI and ASD. *Exhibit O*, p. 1.

77. The IEP team agreed that he required the following special education and related services:

- 60 minutes per week (“MPW”) of direct, specialized instruction in writing, outside the general education setting and 30 MPW of indirect consultation services for collaboration.
- 240 MPM of direct mental health services outside the general education setting as well as 20 MPM of indirect consultation services to address several new goals.
- 180 MPM of direct services with an SLP outside the general education setting and 20 MPM of indirect SLP support for “social/pragmatic language skills.”

*Id.*

78. The IEP team also added 23 accommodations to support emotional regulation and work completion. *Id.*

#### **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 conduct a reevaluation within a reasonable period of time in response to Parent’s request to evaluate Student, in violation of 34 C.F.R. § 300.303(a)(2). This violation resulted in a denial of FAPE.**

Parent’s concern is that District did not complete the evaluation she requested on April 21, 2022 until November of 2022.

Districts must ensure that a reevaluation of a child with a disability is conducted if “the child’s parent or teacher requests a reevaluation.” 34 C.F.R. § 300.303(a)(2). Reevaluations cannot occur more than once a year, unless the parent and district agree otherwise, and reevaluations must occur at least once every three years, unless the parent and district agree that a reevaluation is unnecessary. 34 C.F.R. § 300.303(b). However, districts must honor a parental request to reevaluate a student where the most recent reevaluation is more than one year old. *G.W. v. Boulder Valley Sch. Dist.*, 2019 WL 4464130, at \*12 (D. Colo. Sept. 18, 2019) (holding that the district was obligated to reevaluate the student upon parental request because the most recent reevaluation was then one year old).

Districts must obtain parental consent prior to conducting a reevaluation. 34 C.F.R. § 300.300(c)(1). Once a district obtains parental consent, an initial evaluation must be conducted within 60 days. 34 C.F.R. § 300.301(c)(1). There is no comparable limit set on the conduct of a reevaluation. *See Id.* at § 300.303. However, districts must ensure that eligible students receive a FAPE “that emphasizes special education and related services designed to meet their unique needs.” *Id.* at § 300.1. To meet this obligation, districts must ensure special education and related services are made available to an IDEA-eligible student “as soon as possible following the development of the IEP.” *Id.* at § 300.323(c). Further, following a reevaluation, “a meeting will be held within a reasonable period” to identify the child’s unique needs. ECEA Rule 4.02(6)(a)(ii).

Therefore, the SCO finds that reevaluations must be completed within a reasonable period of time after a parent signs consent. To find otherwise, or to indicate that districts have unlimited time to complete a reevaluation, would be counter to the purpose of the IDEA and the requirement to ensure that all eligible students are provided with a FAPE that meets their unique needs.

#### **A. Reevaluation of Student**

Here, Parents requested a reevaluation on April 21, 2022. (FF # 41.) In response, District convened a meeting to consider Parents’ request on April 28, 2022. (*Id.*) Upon consideration, District obtained consent for a reevaluation, but decided not to conduct an evaluation at that time and simultaneously issued a PWN. (FF #s 45 and 47.) The PWN indicated that District was waiting to conduct a reevaluation of Student in the fall of 2021 to wait for the results of the outside evaluation and have sufficient time for a comprehensive evaluation. (FF # 45.) District committed to completing the reevaluation by October 1, 2022, five months after obtaining parental consent. (*Id.*) In response to Student missing eight school days, District pushed back the eligibility meeting to November 10, 2022. (FF # 56.) Student’s eligibility determination was made November 14, 2022, more than six months and 80 school days after District received consent for reevaluation. (FF # 76.)

The SCO reminds District that it must conduct, or pay for, any evaluations required to determine a student’s educational need and cannot require parents to obtain their own evaluation. *See, e.g., N.B. and C.B. v. Hellgate Elem. Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008) (holding that district

denied FAPE to a preschooler with autism by referring the parents to a child development center instead of arranging an evaluation). Here the SCO finds, in consultation with CDE Content Specialist, that any concerns about duplicating testing could have been avoided by obtaining a release of information to confer with the outside evaluator.

The SCO finds further, in consultation with CDE Content Specialist, that given Student's suspected areas of need, District reasonably should have anticipated the necessary evaluations, including behavior rating scales, requiring the rater to have known a student for a specified period and being delayed while a new team got to know Student.

While District claims that Parents consented to this delay, based on the paperwork generated by District, it does not appear Parents in this case were given an option of starting an evaluation during the 2021-2022 school year, even if it would not have been finished until the summer. (FF #s 43 and 45.) The SCO also finds that choosing among the options presented by District is not the same as agreeing an evaluation did not need to be conducted immediately.

For all these reasons, the SCO finds and concludes that District's decision not to start Student's evaluation until the 2022-2023 school year resulted in an unreasonable delay of the evaluation requested by Parents, in violation of 34 C.F.R. 300.303(a).

## **B. Procedural Violation**

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10<sup>th</sup> Cir. 2008).

In this case, in the absence of a reevaluation, Student's IEP was not adjusted before the end of the year. (FF # 44.) Without appropriate supports and services to address Student's behavior, it continued to interfere with his education throughout the rest of third grade, impacting his writing abilities as well as his effort and work completions. (FF # 48.) Although District added some new accommodations based on the outside evaluation in August and October of 2022, without a reevaluation, Student's goals and services were not adjusted until November of 2022. (FF #s 55 and 72.) By the time Student's IEP was revised in November of 2022, after the reevaluation, his behaviors had disrupted his learning to the extent that he required specialized instruction in writing. (FF # 77.) Without appropriate supports, Student has struggled throughout the first semester of fourth grade with school and work refusal and classroom disruptions. (FF #s 57, 61, 63, and 66.) Student's peer relationships have also suffered, and those friends he does have are pulling away from him. (FF # 64.)

Further, as a student with a suspected ASD and demonstrated difficulties with transitions, the SCO, in consultation with CDE Content Specialist, finds that School should have anticipated



Student having a hard time transitioning to a new classroom at the start of the new year. Completing an evaluation, and an IEP, before the start of the year would have better equipped Student and those serving him with the tools necessary to support him through the transition.

District's failure to reevaluate Student within a reasonable amount of time after Parents' request impeded Student's right to a FAPE and resulted in a deprivation of educational benefit. For these reasons, the SCO finds and concludes that District's procedural violation of 34 C.F.R. § 300.303(a) resulted in a denial of a FAPE. To remedy this violation, District must provide compensatory services. Because the impact of this violation is closely connected to the obligation to review and revise Student's IEP, described in Allegation No. 2 below, the SCO will lay out one award of compensatory services, described after Allegation No. 2.

**Conclusion to Allegation No. 2: District failed to review and revise Student's IEP between March of 2022 and November of 2022 to address Student's behavior, in violation of 34 C.F.R. § 300.324(b). This violation resulted in a denial of FAPE.**

Parents' concern is that District failed to review and revise Student's IEP to address his increasing behavior needs.

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

A significant change in behavior may trigger an obligation to reevaluate. *West-Linn Wilsonville School District v. Student*, 63 IDELR 251 (D. Ore. 2014) (holding that a district was obligated to reevaluate a student who started punching and shoving peers and was removed from specials and started receiving one-to-one instruction.) Knowledge that a student may qualify under additional categories also triggers an obligation to reevaluate. *See, e.g., Phyllene W. v. Huntsville City Bd. of Educ.*, 66 IDELR 179 (11th Cir. 2015, *unpublished*) (finding that a district should have reevaluated a student with a specific learning disability where it was aware of student's ear surgeries and need for a hearing aid). Also, if the behavior of a child with a disability is impeding his learning or the learning of others, schools must convene the IEP team to ensure the IEP addresses that behavior, even if the child's IEP does not currently include supports or strategies to address behavior. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22). If districts need additional data to determine how to address behaviors, districts can seek consent for an evaluation. *Id.*

In reviewing and revising an IEP, the IEP team must consider the special factors described at 34 C.F.R. § 300.324(a)(2). 34 C.F.R. § 300.324(b)(2). Indeed, for a student whose behavior impedes their learning, including by causing the student to avoid school or classwork, the IEP must, among other things, “consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.” 34 C.F.R. § 300.324(a)(2). This includes where the consequences of a child’s behavior, including “violations of a school’s code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures,” impede the child’s learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22). While reviewing and revising an IEP, the IEP team is also required to consider information provided by the parents, the child’s anticipated needs and other matters. 34 C.F.R. § 300.324(b)(1)(ii).

The obligation to review and revise a student’s IEP to address changing behavior needs exists whether the district is considering disciplinary action to address the behavior. *See e.g., Morgan v. Chris L.*, 25 IDELR 227 (6th Cir. 1997, unpublished), cert. denied, 112 LRP 24142, 520 U.S. 1271 (1997) (holding that the district was obligated to convene an IEP team meeting to address behaviors even if school officials were not considering any disciplinary actions that would trigger the procedural safeguards in the IDEA). Also, the provision of general education interventions, like MTSS, does not negate a district’s obligation to timely evaluate and identify a student with a disability. *Monticello Montessori Charter Sch., Dist. No. 474*, 79 IDELR 82 (SEA ID 2021) (holding that providing tiered interventions did not nullify a district’s duty to evaluate a student with a recent diagnosis and increase in behaviors). Similarly, decisions about when to refer a student for evaluation after MTSS must be individualized and based on the student’s needs and response to the interventions and not rigidly determined by a one-size-fits-all schedule. *Id.*

#### **A. IEP Review and Revision**

In this case, the SCO finds that, although Student’s behavior started increasing in December of 2021, District did not address behavior in his IEP until August of 2022 and did not complete a reevaluation until November of 2022.

Shortly after Social Worker stopped meeting with Student in the fall of 2021, Student began struggling with defiance and difficulty with peer relationships. (FF #s 5, 7, 8 and 16.) Although Social Worker resumed providing general education intervention services in January, Student’s behavior continued to escalate. (FF #s 9, 11 and 16-24.) School’s practice is to refer a child for evaluation if the child does not respond to 12 weeks of MTSS services. (FF # 14.) However, in this case, District never referred Student for an evaluation and instead waited months for Parent to get and pay for an outside evaluation. (FF #s 12, 20, 21, 23, 24, 43, 45, and 48.)

Of particular concern to the SCO is the fact that Student’s IEP team met during this time for Student’s annual review, in March of 2022. (FF # 25.) By March 21, Student’s behavior had been escalating since at least December 8, 2021. (FF #s 8-24.) He had also been wearing the exact same

outfit for months. (FF # 37.) Student was missing 20-25 minutes of class every day to participate in a “soft start” with Social Worker. (FFs #s 9-10.) Student was struggling with work refusal, especially during periods outside his third-grade classroom and with aggression towards peers during unstructured times like transitions and recess. (FF #s 16-19.) On February 11 he started staying in the classroom while Third Grade Teacher taught ELD. (FF # 20.) Parent had noted, in multiple meetings and in writing, that she believed Student had another disability. (FF # 12, 20, 21, 23 and 24.) The SCO finds that, by March 21, 2022, District had sufficient notice that Student’s behavior was interfering with his learning and needed to be addressed in his IEP. At a minimum, the IEP team should have identified the need for additional information and referred Student for a reevaluation, which could have been completed by the end of the year.

The March IEP does not include a description of Student’s escalating behavior concerns or Parents’ repeated mention of efforts to get an outside evaluation to identify what they believed might be signs of ASD. (FF #s 26-35.) Although Student had been working with Social Worker for 11 weeks by the time the IEP team met in March, she did not participate in the meeting and there was no mention of his need for her support. (*Id.*) The March IEP does not include any goals to address work completion, task initiation or peer relationships. (FF # 30.) It also does not include any accommodations to address behavior. (FF # 31.) The SCO finds and concludes that, in revising Student’s IEP in March of 2022, the IEP team did not consider special factors, including Student’s need for behavioral interventions and supports, information provided by the Parents about Student’s suspected disability or other factors like the MTSS supports Student was receiving, in violation of 34 C.F.R. §§ 300.324(b)(1)(ii) and (b)(2).

Meanwhile, Student’s behavior continued to increase until Parent requested a reevaluation on April 21, 2022, 15 weeks into the semester. (FF #s 38-41.) District then decided to wait four more school weeks before starting an evaluation in the fall of 2022 and did not revise Student’s IEP. (FF #s 43 and 44.) In fact, District did not revise Student’s IEP until Parents insisted on August 15, 2022 and October 6, 2022, at which point the IEP team only added accommodations and not goals or services. (FF #s 55 and 72.) Without adequate supports and services, Student’s behavior continued to deteriorate and disrupt his learning and peer relationships. (FF #s 57, 58, 61, 63, 64, and 66.) After completing an evaluation in November of 2022, District revised Student’s IEP to add new social/emotional goals, direct services with a special education teacher, mental health provider and SLP and new accommodations. (FF # 77 and 78.)

For these reasons, the SCO finds and concludes that District failed to review and revise Student’s IEP to address Student’s behavior needs from March 21, 2022 until November of 2022, in violation of 34 C.F.R. § 300.324(b).

### **C. Procedural Violation**

The United States Supreme Court has stressed the importance of complying with the IDEA’s procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, procedural violations of IDEA are only actionable to the extent that they impede the child’s right

to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE, or cause a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Systema v. Academy Sch. Dist. No. 20*, 538 F.3d 1306 (10<sup>th</sup> Cir. 2008).

As described in Allegation No. 1, above, the failure to review and revise Student's IEP, because of the failure to timely reevaluate Student, allowed Student's behavior to continue to deteriorate and interfere with his education and social development. It would be impossible to untangle the impact of the failure to timely reevaluate Student from the failure to review and revise his IEP. The impact of this violation on Student's education are the same as the impacts described in the conclusion to Allegation No. 1. Student's writing abilities, task initiation and work completion have deteriorated, along with his social relationships, resulting in a denial of FAPE and a loss of educational benefit. In addition, because Student's challenges and need for support were not accurately reflected in his March IEP, Fourth Grade Teacher did not have adequate notice of his needs or the interventions School had been unofficially trialing. (FF # 51.) That, and Student's challenges this year, have all contributed to a breakdown in the relationship between Parents and School. (FF #s 53, 54, 73, and 74.) The increasingly contentious relationship between Parents and School jeopardizes the collaborative process necessary for the development of IEP services to provide FAPE. See *Andrew F.* 137 S. Ct., 997 (holding that the IDEA's procedural requirements for developing a student's IEP are designed to provide a collaborative process between parents and educators, a process that places special emphasis on parental input and involvement.)

District's failure to review and revise Student's IEP to address his increasing needs impeded Student's right to a FAPE and resulted in a deprivation of educational benefit. For these reasons, the SCO finds and concludes that District's procedural violation of 34 C.F.R. § 300.324(b) resulted in a denial of a FAPE. To remedy this violation, District must provide the compensatory services described below.

#### **D. Compensatory Services**

Compensatory education is an equitable remedy intended to place a student in the same position she would have been in 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).

In this case, the failure to reevaluate Student within a reasonable amount of time and to revise Student's IEP to address his escalating behaviors caused a regression in his behavior and is not easily remedied. By the time District completed an evaluation and updated Student's eligibility and services on November 14, 2022, nearly a year had passed since Student's behavior began escalating on or around December 8, 2021. (FF #s 8 and 76.)

Based on the evaluation, District determined that Student required 60 MPW of direct special education instruction in writing, 240 MPM of direct mental health services and 180 MPM of direct SLP services targeting pragmatic language to make progress on his goals and in the general education curriculum. (FF # 77.) Had District initiated an evaluation after 12 weeks of MTSS or Student's IEP team meeting, or promptly upon obtaining Parental consent, it likely would have been completed before the start of this year. In which case, Student would have started the year with mental health services and direct services with an SLP, as well as additional accommodations to address his needs. (FF #s 77-78.) However, District did try several interventions in the spring and added some accommodations to Student's IEP on August 15 and October 6. (FF #s 9, 11, 20, 23, 44, 46, 55, and 72.) Fourth Grade Teacher and Social Worker also implemented other supports that have helped. (FF #s 58-60, and 67.) Social Worker also started working with Student in a small group for 30 MPW after October 6. (FF # 72.) Together, these efforts have partially mitigated the denial of FAPE.

Upon consultation with CDE Content Specialist and in consideration of the interim services Student received and Student's age and individualized needs, the SCO finds and concludes that an award of the following compensatory educational services is appropriate: 390 minutes of direct mental health services and 195 minutes of direct services with an SLP. Given Student's need to work on building and maintaining social relationships, the services can be provided in a small group setting, where possible.

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

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

This investigation demonstrated violations at School that are systemic and likely to impact the future provision of services for children with disabilities.

### Timely Reevaluations

The SCO's concern is that School will continue to impermissibly delay evaluations. District's procedures direct School's to schedule eligibility meetings within a "reasonable timeframe, typically within 60 calendar days" of receiving consent. (FF # 36.) Nevertheless, it is School's practice to tell parents they cannot conduct a good evaluation near the end of the school year and encourage them to agree to conduct evaluations the following year. (FF # 36.) In this case, School conducted the eligibility meeting six months after receiving consent. (FF # 76.) While,

based on individual circumstances, it may sometimes be appropriate to delay evaluations until the following school year, not every evaluation can be delayed at the end of a school year. For instance, school breaks, regardless of their length and impact on staff availability, do not extend the time frame for conducting initial evaluations. *Letter to Reyes*, 59 IDELR 49 (OSEP 2012); *See, e.g., Douglas County Sch. Dist. RE-1*, 78 IDELR 209 (SEA CO 2020) (stating that the IDEA does not make exceptions to evaluation timelines based on school breaks). In other cases, as was the case here, delaying an evaluation may result in a denial of FAPE. Although District procedures are consistent with federal regulations, School is either unaware of District procedures or unwilling to follow them. The SCO finds and concludes that the violation of 34 C.F.R. § 300.303(a) is systemic in nature with respect to School. The SCO will set forth remedies consistent with the IDEA to ensure the timely evaluation of Student's at School.

### Review and Revision of IEPs

The SCO is also concerned that School is unaware of its obligation to review and revise the IEPs of students with new or changing needs. Several staff at School were aware that Parents believed Student had another disability and were seeking an outside evaluation and did not refer him for evaluation. (FF #s 12, 20, 21, 23 and 24.) Further, although District requires schools to consider students receiving MTSS services at monthly child find meetings and the practice at School is to review MTSS interventions every six weeks and make a referral if a student does not respond in 12, Student struggled for a semester, while receiving MTSS services, and was never referred for an evaluation. (FF #s 14-24, and 38-48.) Student's annual IEP team meeting was even held during that period and Student's case manager was not aware of the extent of Student's difficulties. (FF # 42.) In addition, at Student's annual IEP team meeting they did not consider the whole child, including Parent's concerns and Student's need for behavioral interventions and supports, focusing only on Student's articulation. (FF #s 25-35.) Considered all together, the SCO finds and concludes that School is not aware of the responsibility to review and revise IEPs for IDEA-eligible students with new and changing needs and the violation of 34 C.F.R. § 300.324(b) is systemic in nature with respect to School. The SCO will set forth remedies consistent with the IDEA to ensure the provision of a FAPE to IDEA-eligible students with changing needs at School.

### REMEDIES

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

- a. Failing to conduct a reevaluation within a reasonable period of time after Parents' request, in violation of 34 C.F.R. § 300.303(a);
- b. Failing to Review and Revise Student's IEP, in violation of 34 C.F.R. § 300.324(b);

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

#### **1. Corrective Action Plan**

- a. By **Friday, January 20, 2023**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CAP must, at a minimum, provide for the following:
- i. Director, Coordinator, Assistant Principal, Social Worker and SLP must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.303 and 300.324. This review must occur no later than **Friday, February 17, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, February 24, 2023**.
  - ii. Attendance and completion of training provided by CDE on conducting timely reevaluations. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.303 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director, Coordinator, Assistant Principal and SLP. Such training shall be completed no later than **Monday, March 13, 2023**.
    - a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, March 24, 2023**.
  - iii. Attendance and completion of training provided by CDE on reviewing and revising IEPs. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.324 and the related concerns noted in this Decision. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director, Coordinator, Assistant Principal, Social Worker and SLP. Such training shall be completed no later than **Monday, March 13, 2023**.
    - a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form

of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, March 24, 2023**.

- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

## **2. Compensatory Education Services for Denial of a FAPE**

- a. Student shall receive **390 minutes of direct school psychologist/social work services**. This instruction must be provided by an appropriately licensed counselor, social worker or school psychologist. All 390 minutes must be completed by **Monday, July 31, 2023**.
- b. Student shall receive **195 minutes of specialized speech/language services**. These services must be provided by an appropriately licensed speech/language pathologist or speech/language pathologist assistant. All 195 minutes must be completed by **Monday, July 31, 2023**.
- c. **By Friday, January 13, 2023**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services to the CDE no later than **Friday, January 20, 2023**. If District and Parents cannot agree to a schedule by January 13, 2023, the CDE will determine the schedule for compensatory services by **Tuesday, February 7, 2023**.
  - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
- d. Monthly consultation between the provider(s) delivering compensatory services and Director shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until



compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- e. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.
- g. These compensatory services must be provided to Student outside of the regular school day to ensure Student is not deprived of the instruction Student is entitled to receive during the school day (including time in general education).
  - i. If Parties agree that some or all of the services would more effectively target Student's goals if provided in a small group setting *and* a small group setting can only be provided during school hours, District can request approval to provide services during school hours. To get such approval, District must submit Student's current IEP, the proposed schedule of services along with Student's daily schedule, a written explanation of why such a schedule is more appropriate for Student's individualized needs and an assurance that the proposed schedule does not interfere with services Student is already entitled to receive or change his LRE placement. A final decision that services provided during the school day would best serve Student rests solely with the CDE.

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

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

**NOTE:** Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will work with 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. *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 4<sup>th</sup> day of December 2022.



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Rachel Dore  
State Complaints Officer



## APPENDIX

### Complaint, pages 1-10

- Exhibit 1: Communication
- Exhibit 2: Work Completion
- Exhibit 3: Private Evaluation

### Response, pages 1-3

- Exhibit A: IEPs
- Exhibit B: None
- Exhibit C: Evaluation
- Exhibit D: PWNs
- Exhibit E: Notice of Meetings
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: Behavior Records
- Exhibit I: Progress Data
- Exhibit J: District Calendars
- Exhibit K: District Policies
- Exhibit L: Emails
- Exhibit M: Relevant Staff
- Exhibit N: Evaluation
- Exhibit O: PWN
- Exhibit P: Email
- Exhibit Q: District Special Education Handbook

### Reply, pages 1-4

- Exhibit 4: Procedural Safeguards Notice
- Exhibit 5: CDE ASD Guide
- Exhibit 6: Email

### Telephone Interviews

- Parents: November 7, 2022
- Social Worker: November 9, 2022
- Assistant Principal: November 9, 2022
- SLP: November 9, 2022
- Director: November 10, 2022
- Fourth Grade Teacher: November 10, 2022
- Third Grade Teacher: November 10, 2022