

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

State-Level Complaint 2023:543
Charter School Institute

DECISION

INTRODUCTION

On May 3, 2023, a third-party individual (“Complainant”) filed a state-level complaint against the Charter School Institute (“District”). The Complaint was filed on behalf of parents (“Parents”) of all children with a disability (“Students”) under the Individuals with Disabilities Education Act (“IDEA”)¹ attending a single school (“School”) in District. On May 11, 2023, Complainant requested to amend the Complaint to add additional facts to support allegations that were not initially accepted for investigation. Because the additional allegation was closely related to the original allegation and submitted in close proximity to the original Complaint, the State Complaints Officer (“SCO”) allowed the amendment and gave District additional time to submit its Response.² The SCO determined that the Complaint, as amended, 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 May 3, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

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

² See United States Department of Education, Office of Special Education and Rehabilitative Services (“OSERS”), *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46,603 (Aug. 14, 2006) (providing guidance on amended complaints).

1. Failed to provide Parents with periodic reports on Students' progress between May of 2022 and present, in violation of 34 C.F.R. § 300.320(a)(3).
2. Failed to implement Students' IEPs from May of 2022 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to make Students' IEPs accessible to teachers or service providers responsible for their implementation;
 - b. Failing to provide Students with required special education and related service minutes; and
 - c. Failing to provide required accommodations including hardware and software.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the SCO makes the following FINDINGS:

A. Background

1. School is a charter school authorized by District. *Exhibit B*, p. 27; *see Response*, p. 1. District is responsible for providing FAPE to all IDEA-eligible children with disabilities attending a charter school it authorizes. ECEA Rule 2.02(2).
2. School serves students from kindergarten through eighth grade. *See Exhibit B*. Twenty-three Students who attended School from May 2022 until May 2023 were identified as children with a disability under the IDEA for at least some portion of that period. *Exhibit A*.
3. Complainant was employed as a speech and language pathologist ("SLP") at School from [month] 2022 through [month] 2022. *Response*, p. 3. From May 2022 through December 2022, School's sole special education teacher was also the special education coordinator at School ("Former Coordinator"). *Interview with School's Executive Director ("Executive")*.

B. District Enforcement and Monitoring

4. District is structured differently than a traditional district, and member schools have more autonomy. *Interview with District's Director of Special Education ("Director")*. District has adopted a special education manual ("Manual") that sets out minimum requirements for schools. *Id.*; *see Exhibit E*, pp. 1-284.

³ The appendix, attached and incorporated by reference, details the entire Record.

5. District employs four coordinators, each of whom is responsible for a portfolio of about nine schools. *Interview with District's Assistant Director of Special Education ("Assistant Director")*. Coordinators provide training and professional development for special education staff at their schools. *Id.*
6. District maintains a bank of training and resources available to all staff on its website. *Id.* At the beginning of each year District offers training to all new staff that covers procedural requirements under the IDEA. *Id.* Staff remains reluctant to meet in person, so the training is available on District's website. *Id.* Coordinators also provide additional site-specific professional development on an as needed basis. *Id.*
7. District has a coordinator handbook ("Handbook") with steps to help ensure compliance with IDEA. *Interview with Director*. Coordinators review IEPs as they are finalized. *Interview with Assistant Director*. The Handbook includes a checklist for coordinators to review to ensure schools are complying with the IDEA. *Id.*
8. For instance, coordinators are encouraged to ensure schools have the necessary licensed staff, including special education teachers and related service providers. *Id.* Coordinators review each school's service calendar and approach to ensure they are meeting the needs of their students with IEPs. *Id.*
9. Coordinators should also review evaluations for completeness and all IEPs for compliance. *Id.* The Handbook includes about 20 "look fors" that coordinators should be checking related to IEP development and implementation. *Id.*
10. District is not responsible for hiring and firing staff. *Interview with Director*. Instead, they respond to identified concerns with additional support and professional development. *Id.* They also provide schools with recommended staff/student ratios for various providers. *Id.*
11. District carefully checks the certification of all new special education providers to ensure they are appropriately licensed. *Id.* Coordinators work with schools to craft job postings to guarantee special education staff meet licensing requirements, since other charter employees are exempt from some licensing requirements. *Interview with Assistant Director*. Special education providers, including related service providers, submit monthly timecards so District can confirm ongoing compliance with licensing requirements. *Id.*
12. Aware of concerns at School starting the prior spring, in fall 2022 District provided a three- or four-hour training on IEP compliance processes and procedures to Former Coordinator, Executive, School's two special education paraprofessionals, and Complainant. *Id.*; *see Exhibit E*, pp. 323-349.
13. Former Coordinator also met almost weekly with Assistant Director and a private consultant for support. *Interviews with Assistant Director and Executive*.

C. School's Special Education Staff

14. In fall 2022, Former Coordinator provided direct special education services to Students with the support of two paraprofessionals. *Exhibit H*, p. 1. In addition to Complainant, School employed an occupational therapist. *Interview with Executive*.
15. School had a contract school psychologist who helped with evaluations but did not provide direct services. *Id.* During the 2021-2022 school year, School had a social worker who provided direct mental health services to Students who required them. *Id.* When she left at the end of the year, School was unable to hire a replacement. *Id.* They were advised that her services could be provided by a special education teacher. *Id.* School has a contract with a school psychologist to provide direct mental health services next year. *Id.*
16. As a result of ongoing challenges, even with increased support from District and the consultant, Former Coordinator's last day at School was January 23, 2023. *Id.* After she left, School's two paraprofessionals continued to provide services. *Id.* School has hired a new special education teacher for next year, and Executive is working with her in preparation. *Id.*
17. When she graduated, one of the paraprofessionals ("Paraprofessional 1") sought licensure as a special education teacher. *Id.* Paraprofessional 1 was licensed as a special education generalist with temporary educator eligibility effective May 24, 2023. *CDE Exhibit 1*. School did not have any other special education teachers after Former Coordinator left. *Interviews with Executive and Paraprofessional 1*. School ended May 26, 2023. *Exhibit K*.
18. Complainant's employment terminated in [month] 2022. *Response*, p. 3. School rehired a prior SLP to provide virtual services in the second semester. *Interview with Executive*.

D. District's Progress Monitoring Expectations

19. According to the Manual, District requires that progress reports be sent with the same frequency as report cards. *Exhibit E*, p. 120. Staff are encouraged to collect data multiple times throughout the reporting period, and in multiple settings if necessary for the goal. *Id.* at pp. 120-121.
20. District also offered specific training on progress monitoring at School. *Exhibit E*, pp. 350-364. According to the training, reporting should occur quarterly and decisions about whether a student is making progress must be driven by evidence. *Id.* at p. 351.
21. The training notes the importance of developing clear, measurable goals to support progress monitoring. *Id.* at p. 352. Progress reports were to be provided on October 14, 2022, December 16, 2022, March 3, 2023 and May 26, 2023. *Id.* at p. 353. The training then continues with several examples. *Id.* at pp. 354-364.

E. Progress Monitoring at School

22. Complainant's concern is that she appeared to be the only service provider updating progress reports for Students. *Amended Complaint*, p. 2.
23. District did not provide any progress reports from May 2022 to March 2023. *Response*, p. 11. District contends that a failure to monitor progress is not a substantive violation. *Id.* at p. 9.
24. Former Coordinator was working on things "related or tangentially related" to Students' goals. *Interview with Executive*. She used easyCBM to monitor progress in math and English Language Arts ("ELA"). *Id.* School also did some progress monitoring for all students, not just those with IEPs. *Id.* However, there was no formal progress monitoring for Students. *Id.*
25. Related service providers submitted progress updates to Former Coordinator quarterly, but no reports were issued to Parents. *Id.*
26. In the fourth quarter, around mid-April, School started progress monitoring. *Id.* School provided a spreadsheet it was using to monitor progress for all Students during the fourth quarter, however, it was blank. *Exhibit D*.
27. School sent home progress updates in Students' backpacks near the end of the year. *Interview with Paraprofessional 1*. However, most were never taken out of the backpacks before the year ended. *Id.* In addition, some Students withdrew or started vacation early, so nothing was sent home with them. *Id.*

F. May 2023 Progress Reports

28. In response to a subsequent request from the SCO, School provided progress reports, mostly dated May 19, 2023, for the 21 Students who remained eligible and enrolled at School. *Exhibit D*, pp. 1-44; *Interview with Executive*. Executive created these progress reports in School's data management system using the data gathered by paraprofessionals and related service providers. *Id.* They were mailed to Parents at the end of June with report cards. *Id.*
29. In 13 of the 21 progress reports, at least some updates provided were qualitative rather than quantitative or otherwise did not match the metrics in the goal. *Exhibit L*, pp. 1-3, 7-15, 21-22, 25-27, 28-29, 33-34, 36-38 and 44. For instance, one [middle school student] was supposed to be starting sentences with capital letters and ending sentences with punctuation with 90% accuracy in 4/5 trials. *Id.* at p. 7. She was "able to write 5 sentences including a conclusion but did not put it in paragraph format and struggled with punctuation." *Id.* The baseline for this goal was a "Current Writing Sample," so neither her Parents nor the SCO could determine if she had made progress, maintained, or regressed. *Exhibit B*, p. 68.

30. Six progress reports showed evidence of regression on at least one goal. *Exhibit L*, pp. 23-24, 30-31, 33, 35, 39-41 and 44. As an example, one [upper elementary school student] was said to have made progress on his goal of identifying the main character, the setting, and three key details in a reading passage when he could do so 25% of the time. *Id.* at pp. 40. However, the baseline for that goal, from March 2023 was 2/5 or 40% of the time. *Exhibit B*, p. 34.
31. Of all the IEPs that were developed in May 2022 or later, only one included information about the Student's progress on academic goals in the present levels section of the IEP. *Exhibit B*, pp. 78-79. Based on a holistic review of the Record provided, including consideration of repeated or minimally adjusted goals and grades, the SCO finds that at least 14 Students had made very little progress or even regressed on academic goals.
32. School is using a new data management system which allows for the entry of progress monitoring data which can be used to generate progress reports. *Response*, p. 5. Starting next year, staff at School will be trained to update progress monitoring information after every session and generate quarterly progress reports which will be provided to Parents. *Id.*

G. Accessibility of IEPs to General Education Teachers

33. Complainant's concern is that IEPs and other special education records were not readily accessible to general education teachers or special education providers, and they had to be specifically requested. *Amended Complaint*, p. 7. In addition, the records that existed appeared to be incomplete or to contain errors. *Reply*, p. 2.
34. District's Manual requires that a student's IEP be accessible to each regular education teacher, special education teacher and related service provider responsible for its implementation. *Exhibit E*, p. 102. This includes informing them of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications and supports that must be provided to the student as part of the IEP. *Id.* at pp. 102-103 and 121.
35. The Manual requires that case managers send copies or summaries of the accommodations and modifications to all teachers and providers after an IEP team meeting. *Id.* at p. 121. It does not offer any guidance on ensuring they understand their responsibilities. *Id.*
36. At the start of the 2022-2023 school year, Executive presented a training on special education to the entire staff, including general education teachers. *Interview with Executive*. The training covered procedures, parent rights and accommodations. *Id.*
37. It was Former Coordinator's job to ensure that all general education teachers received information about their responsibilities under any IEPs for Students with whom they would be working. *Id.* At the start of the year, teachers were provided with an IEP summary, including accommodations and modifications, and directed to reach out with questions. *Id.*

38. Due to contractual delays, District did not have a data management system for IEPs until November 2022. *Response*, p. 5. As a result, all special education documents were maintained in a Google Drive accessible to staff during the first semester of the 2022-2023 school year. *Id.* at p. 6. School moved all special education documents to a new data management system and finished uploading everything in December 2022. *Interview with Executive*.
39. The SCO spoke with one third-grade teacher at School (“Teacher”) who had three Students with IEPs in her class. *Interview with Teacher*. At the beginning of the year, before students arrived, she received a red envelope containing the IEPs for all three students. *Id.*
40. Complainant then came to talk to her a couple of days later about the needs of a Student with a speech and language impairment whose only services were from an SLP. *Id*; *Exhibit B*, pp. 240 and 247. Former Coordinator and the Student’s prior general education teacher came to talk with her about how to support a student with more significant needs. *Interview with Teacher*; *Exhibit B*, p. 503. The third Student had academic and communication goals and six accommodations, but no one talked to Teacher about her needs or IEP. *Exhibit B*, pp. 110-114. Teacher eventually approached a paraprofessional (“Paraprofessional 2”) for more information when she realized the Student received some services. *Interview with Teacher*.
41. In the spring, after all the IEPs were uploaded into School’s new data management system, the IEPs were put into folders and provided to the relevant teachers. *Interview with Executive*. Paraprofessionals 1 and 2 then met with teachers to review the IEPs and answer questions. *Interview with Paraprofessional 1*. Folders were provided to administrators and elective teachers in addition to classroom teachers. *Id.*

H. Implementation of Special Education Services

42. Complainant’s concern is that special education services were being provided by paraprofessionals and that they were rarely, if ever, being provided outside of the general education setting. *Amended Complaint*, p. 7.
43. School has not historically maintained service logs or other records of the provision of special education services. *Response*, p. 6. The intent is to start doing so in its new data management system during the 2023-2024 school year. *Id.*
44. Former Coordinator and Paraprofessionals 1 and 2 provided services to Students according to a set schedule (“Schedule”). *Exhibit H*, p. 1. This Schedule was followed until Former Coordinator left on January 23, 2023. *Interview with Executive*. After, Paraprofessionals 1 and 2 provided services according to an updated schedule. *Exhibit H*, p. 2.
45. Eighteen Students had IEPs that called for the provision of academic services from a special education teacher outside of the general education classroom. *Exhibit B*, pp. 23, 73, 102, 114,

149, 164, 186, 197, 211, 225, 229, 237, 287, 315, 349, 364, 445 and 574. Only three IEPs also included academic services to be provided inside the general education classroom. *Id.* at pp. 364, 445 and 473. The service delivery statements (“SDS”) for eight of those 18 IEPs were completely blank, offering no further detail on who would be providing what services in what settings. *Id.* at pp. 73, 102, 114, 211, 225, 315, 349 and 574.

46. According to the Schedule, Former Coordinator provided ELA services to kindergarteners, first graders and second graders (“lower elementary”) inside the general education classrooms for 45 minutes three times per week and in the special education classroom for 45 minutes once a week. *Id.* at p. 1. However, the Schedule also says she was providing math services to third, fourth and fifth graders (“upper elementary”) at the same time as one of those push-in ELA sessions. *Id.* Based on the Schedule, the SCO finds that Former Coordinator was providing 45 minutes per week (“MPW”) of direct ELA minutes to lower elementary school students outside the general education classroom.
47. Of the six lower elementary school Students, three required direct support from a special education teacher outside the general education setting to support ELA. *Exhibit B*, pp. 23, 149, and 237. One required 30 MPW⁴ while the other two required 60 MPW and 245 MPW respectively. *Id.* Thus, the SCO finds that District failed to implement the required reading services for two of six or 33% of the lower elementary school Students.
48. Two of Teacher’s upper elementary school Students should have been receiving academic services outside of the general education setting. *Exhibit B*, p. 114 and 287. Both should have been receiving direct support with academics from a special education teacher outside of the general education setting for 120 MPW. *Id.*
49. According to the Schedule, Former Coordinator was providing direct support to upper elementary school Students for 45 minutes each on Tuesdays and Wednesdays between 10:15 and 11:45. *Exhibit H*, p. 1. Neither Student in Teacher’s class was ever pulled for special education services during that time, or any other time. *Interview with Teacher.*
50. Instead, Former Coordinator would come in and work with the Students during their literacy block at that time three or more times per week. *Id.* Thus, the SCO finds that these two Students did not receive the direct special education services from a special education teacher that their IEPs required.
51. Paraprofessional 2 provided all the direct math services inside the general education setting and ELA services outside of the general education setting for the sixth and seventh graders at School. *Exhibit H*, p. 1. She also provided the ELA instruction outside of the general education setting for the eighth graders. *Id.* Former Coordinator was providing math support to the eighth graders, inside the general education classroom, for 45 minutes/day, four days a week,

⁴ Some IEPs required a certain number of MPW while others designated services as minutes per month. To make this analysis easier to follow, the SCO is assuming four weeks in a month and discussing all services as MPW.

for a total of 180 MPW. *Id.* No one was providing math services to the middle schoolers outside of the general education setting. *Id.*

52. Only one SDS, for an eighth grader, specified that academic services would be provided by a special education teacher or paraprofessional, as opposed to just a special education teacher. *Exhibit B*, p. 445. His IEP also required 90 MPW of math support inside the general education classroom and 120 MPW of math support outside of the general education classroom. *Id.* In total, this amounts to 210 MPW of math support. Thus, the SCO finds that District failed to provide the full amount of that Student's direct math services, even if the SCO gives credit for providing services inside the general education classroom instead of outside of it.
53. The SCO conducted a similar analysis comparing the services included in the Schedule with the special education services in the IEPs for all 18 Students requiring academic support. The SCO finds that the Schedule includes more time for push in support inside the general education classroom, than direct instruction outside the general education setting. The SCO specifically finds that 14 of the IEPs required more direct academic services outside the general education classroom than were included in the Schedule. These discrepancies ranged from 15 MPW to 400 MPW.

I. Implementation of Mental Health Services

54. Complainant's concern is that after the 2021-2022 school year, District no longer had a school social worker or other mental health provider to provide direct services to Students. *Amended Complaint*, p. 7.
55. The IEPs for nine Students required the provision of social emotional and/or mental health services. *Exhibit B*, pp. 23, 149, 186, 197, 237, 287, 315, 445 and 488. Four required that some or all those services, ranging from 15 to 200 minutes per month, be provided by a mental health provider or social worker, although one was finalized May 15, 2023. *Id.* at pp. 23, 149, 237 and 488. Six required the provision of social emotional learning services from a special education teacher. *Id.* at pp. 186, 197, 287, 315, 425, and 445.
56. The Schedule includes 60 MPW of direct social emotional services each for lower elementary and middle school Students. *Exhibit H*. These services are designated as being provided by Paraprofessional 1 while Former Coordinator had planning time. *Id.* No such services are included for upper elementary Students. *Id.* During her planning time, Former Coordinator was always in the room for these services. *Interview with Executive*. Former Coordinator would tell Paraprofessional 1 specifically what to work on. *Interview with Paraprofessional 1*.
57. One lower elementary school Student required more than an hour per week of social emotional services from a special education teacher. *Exhibit B*, p. 23 and 90. Specifically, he should have received 245 MPW. *Id.* This Student also required 50 MPW of mental health services from a social worker. *Exhibit B*, pp. 23 and 90. Thus, the SCO finds that School failed

to implement 235 MPW of social emotional services for this Student, even if the SCO gives credit for services provided by a paraprofessional.

58. For most of the year, one upper elementary school Student required social emotional services from a special education teacher for 40 MPW. *Exhibit B*, p. 287. Paraprofessional 1 worked with this Student on academic and social emotional goals two or three times per week in the special education classroom, especially when Teacher would ask for help. *Interview with Paraprofessional 1*. However, Teacher said he was never pulled for those services from her classroom, but he may have been pulled during electives. *Interview with Teacher*. The SCO finds that this Student did not receive 40 MPW of mental health services from a special education teacher or a mental health provider. *Id.*

J. Implementation of Accommodations - Software

59. Complainant is concerned that Students did not have access to hardware and/or software that was necessary to implement their accommodations. *Interview with Complainant*. Specifically, she asked repeatedly for the iPad required by one Student's IEP and believed other Students did not have a designated program for speech-to-text or text-to-speech. *Id.*

60. All students at School have their own Chromebook computer for schoolwork. *Interview with Executive*. At the beginning of the 2022-2023 school year, School installed a new program on all the computers to support speech-to-text and text-to-speech. *Id.* This was intended to support the accommodations in some IEPs as well as the needs of some English language learners. *Id.* School did not provide any training to teachers or other staff on how to use this new program. *Id.*

61. In Complainant's experience, the program did not work on many Chromebooks and Students would have required headsets to access it. *Interview with Complainant*. Headsets were not ordered until well into the year. *Id.* If Complainant did not understand the program, she would have been unable to train Students to use it. *Interview with Executive*. However, the program is intuitive, and most Students likely did not require assistance to use it. *Interview with CDE Content Specialist*. They also would not require headphones to access it. *Id.*

62. Only five IEPs included speech-to-text and text-to-speech as an accommodation. *Exhibit B*, pp. 209, 442, 458, 535 and 557. Three started the year with that accommodation but it was removed during October and December 2022 IEP team meetings. *Id.* at pp. 71, 100, 173, 442, 535 and 557. It was added to IEPs for two other Students in October 2022 and April 2023, and neither was receiving services from an SLP. *Id.* at pp. 209, 211, 458, and 461.

K. Implementation of Accommodations - Hardware

63. One lower elementary school Student's IEPs required access to an iPad or tablet, which his latter IEP specified needed "software for expression communication and behavioral feedback." *Id.* at pp. 20 and 86.
64. This Student did not have a tablet all year. *Interview with Executive*. Executive believes Complainant added this to that Student's IEP and is not sure that an iPad is necessary, or even helpful to this Student. *Id.* He intends to have the new SLP assess that next year. *Id.*
65. However, the SCO finds that access to an iPad or tablet (without the explanation about necessary software) was included in this Student's January 2022 IEP, from before Complainant's employment. *Exhibit B*, p. 20. The SCO finds that District failed to implement this accommodation for the Student from May 2022 to present.
66. From March 2022 until March 2023, another lower elementary school Student's IEP also required an "IPAD or Tablet with software for expression communication and behavioral feedback." *Exhibit B*, p. 146. District did not respond to questions about whether the other Student was provided with a tablet. *CDE Exhibit 2*. Thus, the SCO finds that he was not.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District systemically failed to monitor progress or provide Parents at School with quarterly progress reports, in violation of 34 C.F.R. § 300.320(a)(3). This violation resulted in a systemic denial of FAPE to Students.

Complainant's concern is that School was not monitoring or reporting on Students' progress on IEP goals. (FF # 22.)

A. Procedural Violation

IEPs must include a description of how a child's progress towards their annual goals will be measured and school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3).

District did not produce any progress reports for May 2022 to March 2023. (FF # 23.) Executive admits that no formal progress monitoring was occurring. (FF # 24.) Almost two thirds of the progress reports provided for the fourth quarter (13 of 21) lacked quantitative updates on the Student's progress on one or more goals. (FF # 29.) Thus, the SCO finds and concludes that District failed to provide Parents with periodic reports on Students' progress on their annual goals, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

B. Substantive Violation

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

District cites Tenth Circuit precedence to argue that failure to report progress is not a substantive violation. (FF # 23.) *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. Re-1*, 798 F.3d 1329, 1335 (10th Cir. 2015). However, the Tenth Circuit found that the failure to report that student's progress was not a substantive violation of the IDEA specifically because "the ALJ found the deficiencies in the [d]istrict's reporting did not have an adverse impact on the IEP team's ability to craft and implement [student's] IEPs." *Id.* The SCO finds that this is consistent with concluding a procedural violation of IDEA is only actionable to the extent that it (1) impedes the child's right to a FAPE, (2) significantly impedes the parents' opportunity to participate in the decision-making process, or (3) causes a deprivation of educational benefit. *Sytsema*, 538 F.3d 1306.

In this case, six progress reports showed evidence of regression, including some that reported the Student as having made progress. (FF # 30.) In total, at least 14 Students regressed or made minimal progress on academic goals. (FF # 31.) Where students are not making appropriate progress, if no progress is being reported, it significantly impedes the parents' ability to advocate for new or different services to generate more progress. When no progress is being measured, IEP teams do not have the necessary information to develop appropriate goals with accurate baselines, resulting in a deprivation of educational benefit. Additionally, if a student is not making the expected progress despite receiving the supports and services in their IEP, the IEP team must meet to review and, as necessary, revise the IEP to ensure they are receiving appropriate supports. 34 C.F.R. § 300.324(b)(1)(ii); U.S. Dept. of Ed., *Questions and Answers on Andrew F. v. Douglas Cnty. School Dist. Re-1*, 71 IDELR 68 (2017). Without progress monitoring, neither school staff nor parents can recognize when such revision might be necessary. *Id.*

For these reasons, the SCO finds and concludes that this procedural violation resulted in a denial of FAPE for many Students.

Conclusion to Allegation No. 2a: District systemically failed to ensure that general education teachers were aware of their specific responsibilities under Students' IEPs during the 2022-2023 school year, in violation of 34 C.F.R. § 300.323(d)(2).

Complainant's concern is that teachers were not aware of their responsibilities under Students' IEPs because District did not maintain IEPs in an accessible manner. (FF # 33.)

A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of "his or her *specific* responsibilities related to implementing the child's IEP," as well as the "*specific* accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d) (emphasis added.) This responsibility requires more than just providing them with a copy of the IEP. For instance, districts must ensure that general education teachers and other providers know how or when to implement all the accommodations or modifications. *San Luis Valley BOCES*, CDE Decision 2023: 535 (July 2023) (finding that BOCES failed to ensure teachers were aware of their responsibilities under the student's IEP where the special education teacher had not read it).

Here, teachers and other staff members were provided with copies of Students' IEPs at the start of the year and early in the second semester. (FF #s 37, 39, and 41.) However, Former Coordinator told Teacher about her specific responsibilities with respect to only one of her three Students. (FF # 40.) Complainant, the SLP, explained Teacher's responsibilities with respect to a second Student, but no one ensured Teacher was aware of her responsibilities for implementing accommodations for the third Student. (*Id.*) Although Paraprofessionals 1 and 2 met with staff in the second semester, an entire semester had already passed, and they were not special education teachers. (FF # 41.)

Thus, the SCO finds and concludes that District did not ensure that teachers and other providers at School were aware of their specific responsibilities under Students' IEPs, in violation of 34 C.F.R. § 300.323(d)(2).

Conclusion to Allegation No. 2b: District systemically failed to implement the special education and related services in Students' IEPs during the 2022-2023 school year, in violation of 34 C.F.R. § 300.323. District also failed to ensure Students' special education teacher was appropriately licensed from January 23, 2023 through May 24, 2023, in violation of 34 C.F.R. § 300.207 and ECEA Rules 3.03 and 3.04.

Complainant's concern is that Students were not getting the special education or mental health services outlined in their IEPs. (FF # 41 and 55.)

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).

An IEP must identify the special education and related services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum,

and to be educated and participate with other nondisabled children. *Id.* § 300.320(a)(4). The IEP must include an explanation of the extent to which the student will be removed from a classroom setting with nondisabled peers. 34 C.F.R. § 300.320(a)(5). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2).

The service delivery statement must clearly specify the amount and type of services that will be provided to a student. *Adams 12 Five Star Schs.*, 75 IDELR 86 (SEA CO 2019). This includes describing the setting in which a particular service will be provided. *See, e.g., S.H. v. Mount Diablo Unified Sch. Dist.*, 70 IDELR 98 (N.D. Cal. 2017) (finding that the district violated the IDEA when it failed to spell out whether the 40 minutes of speech and language services would be delivered to the student individually or in a group setting). This is meant to ensure that parents, and other members of the IEP team, have sufficient detail to understand what specific services and supports the school district is offering to provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017) (noting that “Parents can’t make an informed decision on whether to accept a proposed IEP if the document includes only a vague description of the student’s services”); *see also Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18).

A. Special Education Services Under Former Coordinator

i. Setting of Services

Here, School has not historically maintained service logs but intends to start. (FF # 43.) The IDEA does not require service logs, but districts must be able to show that services were provided. District points to the Schedule as evidence that services were provided. (FF # 44.) However, the SCO finds that services included in the Schedule did not match the services outlined in Students’ IEPs. (FF # 53.)

Eighteen Students required support from a special education teacher, outside of the general education setting, to support academic needs. (FF # 45.) Only three Students also required that some direct academic services be provided inside general education. (*Id.*) In contrast, the Schedule includes more support inside than outside of general education. (FF # 53.)

Specifically, 14 Students required more direct, academic services outside the general education classroom than were included in the Schedule. (*Id.*) For instance, two of six lower elementary school Students required more weekly reading instruction than was included in the Schedule. (FF # 47.) The SCO finds that the 14 Students were entitled to anywhere from 15 to 400 more MPW of direct special education services outside of the general education setting than were included in the Schedule. (*Id.*)

Additionally, District was not consistently implementing the pull-out services that were included in the Schedule. Students in Teacher’s classroom were never pulled at the times indicated on the Schedule. (FF # 49.) Instead, Former Coordinator worked with the Students in Teacher’s

classroom at that time. (FF # 50.) As a result, the SCO finds and concludes District failed to implement at least some of the direct special education services outside the general education setting for all 18 Students whose IEPs included such services.

While the provision of services inside the general education setting may have been beneficial to some or all Students, it was not consistent with their IEPs. Here, the IEP teams determined that Students required direct special education support outside the general education setting to make appropriate progress on their academic goals and in the general education curriculum.

Thus, the SCO finds and concludes that District failed to implement Students IEPs as written, and specifically to provide them with the required direct, special education services in the setting specified in their IEPs, in violation of 34 C.F.R. §§ 300.320(a)(5) and 300.323.

ii. Provider of Services

Here, while Former Coordinator was working, Paraprofessional 2 was providing all the direct services to sixth and seventh graders and all the ELA instruction to eighth graders. (FF # 51.) Former Coordinator was not working with the sixth- and seventh-grade Students at all and only supported eighth-grade Students with math. (*Id.*)

Only one Student's IEP indicated direct services would be provided by a special education teacher or a paraprofessional; all the other IEPs specified services would be provided by a special education teacher. (FF # 52.) The SCO finds the reliance on a paraprofessional to provide all the services especially concerning because Former Coordinator was not working with the Students at all. When permitted by an IEP, paraprofessionals can provide some direct services under the direct supervision and support of a special education teacher. However, without having worked with the Students herself, the SCO, in consultation with CDE Content Specialist, finds that Former Coordinator could not provide Paraprofessional 2 with meaningful direction to guide those Students' services.

Thus, the SCO finds that District failed to implement the direct, special education services of the middle school Students, in violation of 34 C.F.R. § 300.323.

B. Special Education Services After Former Coordinator

i. Licensing Requirements

Under the IDEA, the CDE must establish qualifications to ensure that special education teachers are "appropriately and adequately prepared and trained . . . to serve children with disabilities." 34 C.F.R. § 300.156(a). This includes ensuring that all special education teachers have obtained state certification as special education teachers. *Id.* at § 300.156(c). Administrative units must ensure that staff are "appropriately and adequately prepared, subject to the requirements of § 300.156." *Id.* § 300.207.

To that end, the CDE requires “[a]ll special education teachers [to] hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). Administrative units bear responsibility for ensuring their staff comply with state licensing requirements. ECEA Rule 3.03.

The IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *See also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

ii. Provision of Direct Special Education Services after January 23

In this case, District is not responsible for hiring staff, but it carefully checks the credentials of all special education providers and supports schools in the hiring process to ensure appropriate certification. (FF #s 10-11.) However, Paraprofessionals 1 and 2 were providing all the special education instruction at School after January 23, 2023. (FF # 44.) Paraprofessional 1 got her temporary teacher license as a special education generalist on May 24, 2023, two days before the year ended. (FF # 17.) School did not have any other special education teachers during the spring semester. (*Id.*)

Thus, the SCO finds and concludes that District failed to ensure that School’s staff complied with licensing requirements and that Students’ special education teacher possessed the required certifications and licenses from January 23 through May 24, 2023, in violation of 34 C.F.R. §§ 300.207 and ECEA Rules 3.03 and 3.04. Without a licensed special education teacher, the SCO also finds and concludes that from January 23 through May 24, 2023 District failed to implement all the special education instruction in the IEPs of 18 Students, in violation of 34 C.F.R. § 300.323.

C. Mental Health Services

In this case, District did not have a social worker, school psychologist, or other mental health professional providing direct services to Students during the 2022-2023 school year. (FF # 15.) Four Students had IEPs that required the provision of direct mental health or social emotional services from a social worker or other mental health provider. (FF # 55.) While it may be appropriate for special education teachers to provide some social emotional services, it is up to the IEP team to determine what type of provider will provide the services. In this case, the IEP teams of four Students determined they required direct services from a mental health provider. (FF # 55.) School had no such provider for the entire school year. (FF # 15.) Thus, the SCO finds and concludes that District failed to implement 15 to 200 minutes per month of social emotional and/or mental health services for these four Students for the entire 2022-2023 school year.

The IEPs of six Students included direct social emotional support from a special education teacher. (FF # 55.) The SCO cautions District that IEP teams must determine the type and nature of services a student requires based on their unique needs and not the availability of staff. While social emotional services can be provided by a special education teacher, IEPs cannot be written that way simply because there is no other mental health provider at the school. The Schedule indicates that Paraprofessional 1 was providing 60 MPW of direct social emotional lessons to lower elementary and middle school Students. (FF # 56.) While Paraprofessional 1 provided these direct services, Former Coordinator was in the room and directing her. (*Id.*) Thus, the SCO finds and concludes that District was implementing up to 60 MPW of social emotional services for four lower elementary and middle school Students until January 23, 2023. However, after January 23, 2023, School did not have a licensed special education teacher until May 24, 2023. Thus, the SCO finds and concludes that District failed to implement these direct services from a special education teacher from January 23 until May 24, in violation of 34 C.F.R. § 300.323.

One lower elementary school Student should have been receiving 245 MPW of social emotional learning from a special education teacher. (FF # 57.) Thus, the SCO finds that District failed to implement 185 MPW of social emotional services for that Student. One upper elementary school Student required 40 MPW of social emotional services from a special education teacher. (FF # 58.) He was never pulled from general education and the Schedule did not allot any time for his services. (FF #s 56 and 58.) Thus, the SCO finds and concludes that District failed to implement 40 MPW of mental health services for this Student for the entire 2022-2023 School year.

Conclusion to Allegation No. 2c: District failed to provide two Students with one accommodation required by their IEPs, in violation of 34 C.F.R. § 300.323. This violation was not systemic.

Complainant's concern is that District failed to implement the accommodations in some Students' IEPs by failing to ensure access to necessary hardware and/or software. (FF # 60.)

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).

An IEP must identify the special education and related services and supplementary aids and services, including accommodations, necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4). A school district must ensure that "as soon as possible following the development of the IEP, special education and

related services are made available to a child in accordance with the child's IEP." 34 C.F.R. § 300.323(c)(2).

A. Implementation of Software Accommodations

Here, the IEPs of five Students required access to software for speech-to-text and/or text-to-speech for part of the time from May 2022 to the end of the following school year. (FF # 62.) School installed a program to support that on all Chromebooks for all students at the start of the 2022-2023 school year. (FF # 60.) School did not train staff on how to use the program and Complainant had difficulty with it, hindering her ability to support Students in accessing it. (FF #s 60-61.) However, it is unlikely that many Students required help learning to use it, and they did not need access to headphones. (FF # 61.) Thus, the SCO finds and concludes that the required software was available to Students, consistent with the requirements of 34 C.F.R. § 300.323.

B. Implementation of Hardware Accommodations

Here, the IEPs of two Students required access to an iPad or tablet for "expression communication and behavioral feedback." (FF #s 63 and 66.) District admits one Student did not have access to a tablet all year. (FF # 64.) District did not respond to questions about whether the other did, so the SCO finds that he did not either. (FF # 66.) His IEP required it until March 2023. (*Id.*) Because these Students did not have access to these devices, the SCO finds and concludes that District failed to implement their IEPs from May 2022 until the end of the year and March 2023 respectively, in violation of 34 C.F.R. § 300.323.

Materiality of Implementation Failures in Allegation Nos. 2(a)-(c): The violations of 34 C.F.R. § 300.323 were material and resulted in denials of FAPE.

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. App'x 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. Dist. 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. App'x 202, 205 (2d Cir. 2010).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel.*

Van Duyn v. Baker Sch. Dist. 5J, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, District failed to ensure that Students’ teachers meaningfully understood their specific responsibilities in many IEPs. For the Students’ whose needs were not conveyed to their teachers by either Former Coordinator or Complainant, the exact impact of this violation depends on the needs of the Student and the nature of their accommodations. However, the SCO finds that this violation was material for at least some Students whose teachers required assistance from a special education provider to understand their responsibilities.

The SCO also finds District’s failure to implement the special education and mental health services in several IEPs was material in almost every case. Students were not provided with direct support from the provider required by their IEP in the setting required by their IEP. This resulted in deprivation of anywhere from 15 minutes a month to 400 MPW of direct services from either a special education teacher or mental health provider for one semester or an entire year. (FF #s 53 and 55.) Given the length of these violations and the fact that 14 Students had made minimal progress or regressed on academic goals, the SCO finds and concludes that this violation was material. (FF # 31.) However, determining the extent of the materiality and the appropriate compensatory services will require an in-depth analysis of the exact minutes each Student should have received as well as the progress achieved through services provided by other providers or in other settings. This process will be made more complicated due to the lack of progress reports. (FF # 23.) As such, the SCO will order District to work with the CDE to determine each Student’s need, if any, for compensatory services after collecting additional progress monitoring data.

Finally, the SCO finds District’s failure to implement the tablet accommodation impacted two Students who were also impacted by District’s failure to implement special education and mental health services. Thus, the failure to implement their IEPs was material. As such, the SCO will require District to consider the failure to implement accommodations along with the failure to implement services when assessing the Students’ need for compensatory services.

Systemic IDEA Violations: This investigation demonstrates violations that are systemic in nature and will likely impact the future provision of services for all children with disabilities in District 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. 46,601 (Aug. 14, 2006).

A. Progress Reporting

Here, District's Manual requires that progress monitoring be sent with the same frequency as report cards, which is consistent with the IDEA. (FF # 19.) District also offered a specific training to staff at School on progress monitoring. (FF #s 20-21.) Based on the Record, there is nothing to suggest that this problem is widespread throughout the District. However, all IDEA-eligible Students at School were impacted by this violation, with no progress reports being provided for four reporting periods from May 2022-March 2023. (FF # 23.) Further, although School started monitoring progress around April 2023, 13 of the 21 progress reports issued in June 2023 contained updates that were qualitative or otherwise did not match the goals in that Student's IEP. (FF #s 26-29.) For these reasons, the SCO finds and concludes that this violation was systemic in nature, with respect to School. Thus, in addition to individual remedies, the SCO will order remedies intended to prevent this violation from recurring.

B. Accessibility of IEPs

Here, District's Manual requires ensuring that all teachers and providers are aware of their responsibilities under a student's IEP, including the specific accommodations and supports they are responsible for implementing, consistent with the IDEA. (FF # 34.) The Manual requires providing them with copies of the accommodations but does not offer instruction on ensuring they understand those responsibilities, like when an accommodation is necessary. (FF # 35.) In this case, School provided all teachers with copies of Students' IEPs, but did not consistently follow through to ensure that teachers understood their responsibilities for implementing the IEP. (FF #s 39 and 40.) District does not offer relevant guidance on this issue. (FF # 35.) The concern for the SCO is that School, and other schools in District, will continue to provide teachers with copies of IEPs or lists of accommodations without ensuring they understand how to implement them. Thus, the SCO finds that this issue is systemic in nature and likely to impact the future provision of services to eligible students in District. Thus, the SCO will order remedies intended to prevent this violation from recurring.

C. Implementation of Special Education and Related Services

Here, District failed to implement direct special education services for 18 Students at School for a semester or a full year. It also failed to implement social emotional and/or mental health services for nine Students during the same period. Thus, the SCO finds and concludes that this issue was systemic, with respect to School. However, nothing in the Record suggests that these issues occurred elsewhere. District has practices in place to ensure that schools hire and employ staff that is appropriately licensed and certified. (FF # 11.) Instead, the issue appears to stem from problems with Former Coordinator and School's inability to hire a new special education teacher or a mental health provider. For next year, School has a new licensed special education teacher and a direct provider of mental health services. (FF #s 15 and 16.) The SCO finds and concludes that this violation is not systemic with respect to District.

D. Implementation of Accommodations

Here, District failed to provide two Students with one accommodation required by their IEPs. There is nothing in the Record that suggests other accommodations were not provided or that this issue was widespread throughout District. Thus, the SCO finds that this violation is not systemic in nature.

REMEDIES

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

- a. Failing to provide Parents with progress reports, in violation of 34 C.F.R. § 300.320(a)(3);
- b. Failing to implement Students' IEPs, in violation of 34 C.F.R. § 300.323;
- c. Failing to educate Students in the setting specified in their IEPs, in violation of 34 C.F.R. § 300.320(a)(5);
- d. Failing to ensure staff was appropriately licensed, in violation of 34 C.F.R. § 300.207 and ECEA Rules 3.03 and 3.04; and

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

1. Corrective Action Plan

- a. By **Friday, September 1, 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 CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Assistant Director, Executive, Paraprofessional 1 and School's new special education teacher and mental health provider must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.207, 300.320(a) and 300.323 and ECEA Rules 3.03 and 3.04. This review must occur no later than **Friday, September 29, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, October 6, 2023**.

3. Procedures

- a. By **Monday, October 16, 2023**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. § 300.323(d).
- b. At a minimum, the procedure must offer clear guidance on ensuring general education teachers and other providers are aware of their responsibilities for implementing IEPs at the start of the year and after any changes to student's schedules or IEPs.
- c. District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. District must ensure that all special education providers in District receive a copy of the procedure no later than **Monday, November 27, 2023**. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Monday, December 4, 2023**.

4. Training

- a. Director, Assistant Director, District coordinator over School, Executive, and all special education providers at School must attend and complete training provided by CDE on IEP implementation and progress monitoring and reporting. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.320 and 300.323 and the related concerns addressed in this Decision.
- b. 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.
- c. Such training shall be completed no later than **Friday, September 29, 2023**. 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 **October 6, 2023**.

5. Progress Monitoring

- a. For the 2023-2024 school year, District must provide CDE with quarterly progress reports for all IDEA-eligible students at School. These reports must be provided to CDE no later than October 20, 2023, January 17, 2024, April 5, 2024 and May 31, 2024.
- b. Along with the progress reports, on the same dates, District must provide CDE with a log or narrative explanation specifying how and when the reports were provided to Parents.
- c. Upon review, if CDE has concerns with the timeliness or contents of the progress reports District may be required to take additional steps, including but not limited to, revising and reissuing the progress reports or providing further training or guidance to staff on progress reporting.

6. Determination of Compensatory Education Services for Students

- a. By **Friday, September 15, 2023**, District shall submit to CDE for review, a draft letter to be sent to the Parents of all Students. This letter shall notify Parents that their Student was identified in a recent state complaint decision (with information on where to find the decision) as a student who might require compensatory services as a result of a failure to monitor progress and implement IEP services.
 - i. This can be a form letter, but it must include an individualized section indicating the services the Student should have received under any IEPs that were implemented during the 2022-2023 school year. For the two Student's whose accommodations were not implemented, the letter must include that information as well.
 - ii. The letter must invite parents to meet with the Student's IEP team to determine the Student's need for compensatory services, if any, and indicate that the IEP team will meet to assess the Student's need for compensatory services, whether or not Parents participate.
 - iii. The letter must include a section requiring Parents to sign, acknowledging their receipt of the letter and understanding of its contents. The letter can be signed in advance or at the IEP team meeting required in Remedy 6(c).
 - iv. The letter must be sent by District to parents and CDE, along with the updated progress reporting required in Remedy 5(a) no later than **October 20, 2023**.

1. If the Student no longer attends School but still attends a District school, the letter must be sent to Parents by October 20, 2023.
 2. If the Student no longer attends any District school, the letter must be sent to the Parents' last known address and District must make reasonable attempts to reach them, including contacting the Student's last known AU of residence.
 3. If District is unable to reach Parents whose Student no longer attends a school in District, District will be excused from determining or delivering compensatory services for that Student, provided that District diligently attempts to reach 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.
- v. District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- b. By **Friday, December 15, 2023**, at a mutually agreeable time and place, District must convene IEP teams for all Students to determine how they were impacted by these violations and what, if any, compensatory services they require to put them in the position they would have been in, but for District's violation. Upon request and agreement by both Parents and District, CDE offers impartial facilitators for IEP team meetings. CDE encourages the use of IEP facilitation here.
- i. A representative from District, like Assistant Director or the coordinator responsible for School, should be included in every IEP team meeting.
 - ii. If Parents are unwilling to meet with District, the IEP team may convene without Parents, provided District made diligent efforts to include the Parents and documented those efforts. A determination that District diligently attempted to include with Parents, and should thus be permitted to meet without them, rests solely with the CDE.
 - iii. In determining whether a Student requires compensatory services and, if so, how much, the IEP team must consider the factors laid out in the following state and federal guidance. While the above guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.

1. OSEP's Guidance: *Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act*, 79 IDELR 232 (OSERS 2021), Questions D4-6.
 2. CDE's Guidance: *Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory.
- c. After the IEP meetings, and no later than **Wednesday, January 17, 2024**, District must issue, to Parents and CDE, a detailed prior written notice ("PWN") for each Student. The PWN must detail the type and amount of services the Student did not receive. It must also include the IEP team's determination and rationale regarding the needed compensatory education services. The PWN must include information about Students progress on IEP team goals and in the general education curriculum.
- i. If, by February 7, 2024, CDE determines that a PWN is not consistent with the information in a Student's progress reports from June and October 2023 and January 2024, District may be required to provide additional information or reconvene the Student's IEP team to reconsider.

7. Provision of Compensatory Education Services for Students

- a. By **Friday, March 8, 2024**, District shall schedule all 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 include the dates, times, and durations of planned sessions, to the CDE no later than **Tuesday, March 12, 2024**. If District and Parents cannot agree to a schedule for any Student by March 8, 2023, the CDE will determine that Student's schedule for compensatory services by **Friday, April 5, 2024**.
- 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.

- ii. Parents may opt out of some or all of the compensatory services if they wish.
- b. Monthly consultation between the provider(s) delivering compensatory services and Director, Assistant Director or a District coordinator shall occur to evaluate Students' 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 for each Student **by the second Monday of each month**, once services begin, until compensatory services have been completed for that Student. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- c. To verify that Students receive the services required by this Decision, District must submit records of service logs for each Student to the CDE by the **second Monday of each month** until all compensatory education services for that Student 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.
- d. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. If for any reason, including illness, a 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 Parents and notify the CDE of the change in the appropriate service log.
- e. All compensatory services must be completed by **Monday, July 15, 2024.**

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

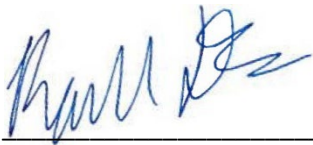
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 1st day of August, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Amended Complaint, pages 1-9

Response, pages 1-13

- Exhibit A: List of Students
- Exhibit B: IEPs
- Exhibit C: none
- Exhibit D: Progress Monitoring Chart
- Exhibit E: District Policies and Trainings
- Exhibit F: Staff Contact List
- Exhibit G: Verification of Delivery
- Exhibit H: Schedules
- Exhibit I: none
- Exhibit J: Internal Audit
- Exhibit K: School Calendars
- Exhibit L: Progress Reports

Reply, pages 1-4

Telephone Interviews

- Executive: June 7, 2023
- Complainant: June 7, 2023
- Director: June 28, 2023
- Assistant Director: June 28, 2023
- Teacher: July 5, 2023
- Paraprofessional 1: July 10, 2023

CDE Exhibits

- CDE Exhibit 1: Teacher Licensing
- CDE Exhibit 2: Email