

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

**State-Level Complaint 2023:584
Summit School District**

DECISION

INTRODUCTION

On September 26, 2023, a third-party individual (“Complainant”) filed a state-level complaint (“Complaint”) against Summit School District (“District”) on behalf of all students in the District who graduated from eighth grade at a specific District middle school (“Middle School”) at the end of the 2022-2023 school year, attend ninth grade at a specific District high school (“High School”) in the 2023-2024 school year, and whose IEPs provided a special education service named “Academic Instruction” at Middle School during the 2022-2023 school year (collectively, “Students”).

The State Complaints Officer (“SCO”) determined that the Complaint identified a systemic allegation subject to the jurisdiction of the state-level complaint process under the Individuals with Disabilities Education Act (“IDEA”)¹ and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

The systemic allegation involved close review of 31 Students’ IEPs. There was an initial delay in receiving documents from the District, and additional requests for supplemental documents were necessary to perform a thorough investigation.² Accordingly, the SCO extended the 60-day investigation due to exceptional circumstances, consistent with 34 C.F.R. § 300.152(b)(1).

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 September 26, 2022 through the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully

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 Educational Act (“ECEA”) governs IDEA implementation in Colorado.

² *Letter to Reilly*, 64 IDELR 219 (OSEP 2014) (noting that it is the state’s responsibility to gather evidence and make a determination in the State Complaint process).

investigate all allegations. Findings of noncompliance, if any, shall be limited to violations occurring after September 26, 2022.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Reduced or removed Students’ “Academic Instruction” minutes as a matter of policy or practice without regard for Students’ individualized needs, at the time of each Student’s annual IEP review in or following the 2022-2023 school year, in violation of 34 C.F.R. §§ 300.320(a)(4) and 300.324(a).

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Complainant, a parent of a student in the District, regularly consults with and assists other parents in the District navigating the District’s special education services. *Interview with Complainant*. Complainant reviewed Individualized Education Programs (“IEPs”) for several eighth-grade Students at Middle School whose IEPs had been revised in anticipation of their enrolling in ninth grade at High School. *Id.*; *Complaint*, p. 7.
2. From reviewing those IEPs, Complainant came to believe that the District, as a regular practice, removes all Students’ service minutes for specialized instruction inside the general education classroom via co-taught classes (“push-in⁴ instruction”) upon Students’ graduation from eighth grade without first making an individualized determination that Students no longer needed such services and without providing, on an individualized basis, commensurate services to make up for the loss. *Id.* Complainant believes that the District engages in this practice because Middle School offers English language arts and math classes that are co-taught by a general education teacher and a special education teacher, and High School does not have an equivalent offering. *Id.*
3. The District denies these allegations and points to pull-out services provided at High School that, it says, are individualized and sufficient to provide a FAPE. *Response*, p. 1.

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

⁴ “Push-in” instruction means that a student receives specialized instruction inside the general education classroom, and “pull-out” instruction means that the student is “pulled out” from the general education environment to receive specialized instruction. An example of “push-in” instruction is a class co-taught by a general education teacher and a special education teacher in the general education environment. An example of “pull-out” instruction is a class taught by a special education teacher only to students requiring specialized instruction.

B. The Services at Issue: Middle School “Academic Instruction,” Middle School “Academic Support,” and High School “Academic Instruction”

4. Three categories of services are relevant to this investigation: (1) A category of co-taught, push-in instruction called “Academic Instruction” at Middle School; (2) A category of pull-out support called “Academic Support” at Middle School; and (3) A category of pull-out instruction at High School that is also called “Academic Instruction.” *See Complaint*, p. 7; *Response*, p. 5. These services are written into Students’ IEPs as follows:
5. The first category is Middle School push-in instruction through co-taught mathematics and English language arts classes; it is categorized in the IEPs’ service delivery statement and grid as “Academic Instruction.” *See, e.g., Ex. B-1*. This is the service that Complainant says the District removes without justification at the end of eighth grade. *Complaint*, p. 7. The IEPs’ service delivery statements consistently describe this service as follows, with minor variation in wording and formatting:

[Student] is enrolled in a co-taught math (2 teachers – 1 content expert and 1 specialist) class to allow for specialized instruction in math calculation and problem solving in the general education classroom with necessary instructional and testing accommodations.

[Student] is also enrolled in a co-taught ELA [English language arts] class (2 teachers – 1 content expert and 1 specialist) to allow for specialized instruction in reading and writing in the general education classroom along with necessary instructional and testing accommodations. These supports amount to [a number of] minutes per week of direct Academic Instruction in the general education classroom.

See, e.g., Exs. B-1, B-3, B-4 B-6, B-9, B-12, B-13, B-15, B-16, B-20, B-22, B-26, B-30.

6. If a Student was enrolled in only co-taught math or only co-taught language arts, then, predictably, the service delivery statement describes only the pertinent class. *See, e.g., Exs. B-7, B-21, B-24.*
7. Three Students were also enrolled in a “collaborative” class for humanities and science. *Exs. B-1, B-13, BB-15*. The “collaborative” label means that a special education paraprofessional supports a general education teacher. *See id.; Interview with Special Education Director (“Director”).*

8. The second category, which most Students received at Middle School, is designated “Academic Support” on the service delivery grid. *See, e.g., Ex. B-1.* The IEP service delivery statements describe it, with occasional minor variation in wording, as follows:

[Student] has one class outside of the regular education classroom. This class, Academic Intervention (Academic Support, every other day for a total of [a number of] minutes of direct service per week), targets skills to build his organization, time management, and self advocacy skills, as well as support him as he completes classwork and homework. This support will change to 220 minutes of direct services per week when [Student] has completed 8th grade [on a certain date, with certain dates as make-up days] and be known as “Academic Instruction” while in high school.

See, e.g., Exs. B-1, B-3, B-4, B-6, B-7, B-9, B-12, B-13, B-15, B-19, B-20, B-21, B-22, B-24, B-26, B-28, B-30 (emphasis added). Notably, this description does not require the District to provide academic instruction, even though it states that the class will continue into ninth grade and be called “Academic Instruction” at High School. *See id.*

9. The third category is “Academic Instruction” at High School. As just noted, most Students’ IEPs state that the Middle School service of “Academic Support”—which does not provide academic instruction—will continue into ninth grade at High School, where it will be known as “Academic Instruction.” (FF # 7.)
10. There are many classes at High School called “Academic Instruction.” *Response*, p. 6; *Interviews with High School Assistant Principal (“Assistant Principal”) and Director*. The classes are taught by four special education teachers who teach six out of eight periods each day. *Interviews with Assistant Principal and Director*. They are taught outside the general education classroom. *Id.* The content for the different instructors’ classes is “extremely variable.” *Id.* An “Academic Instruction” class might be focused on reading, writing, math, behavioral issues, several of these at once, or something else entirely. *Id.* A student will be enrolled in one or more Academic Instruction classes based on the student’s IEP goals. *Id.* Some classes provide general support for students as they complete their homework. *Id.*; *see, e.g., Ex. I*, pp. 1-2. Instruction and general support may be lumped together within the “Academic Instruction” category, and the time devoted to things other than academic instruction may be greater than the time for instruction. *See Ex. BB-5*, p. 49.
11. The District initially conceded that High School does not offer co-taught classes, explaining that previous use of that model did not result in acceptable progress for students. *Response*, p. 6; *Interview with Assistant Principal*. One Student’s IEP from Middle School says, “Co-taught classes will not be an option at the high school.” *Ex. B-26*, p. 18. Accordingly, the District initially agreed that any IEP that appears to show the Middle School co-taught classes continuing into High School must be in error. *Interview with Assistant Principal*.

12. Partway through the SCO’s investigation, however, the District clarified that High School offers co-taught classes through the integration of an English Language Development specialist (“ELD”) in general education mathematics and science classes (albeit not English language arts or reading) to support English language learners. *Interview with Director; see Ex. R.* The District also says that a class with a general education teacher and a special education paraprofessional should be considered a “co-taught” class. *Response*, p. 6; *Interview with Director*. The District urges that any of Students’ IEPs that show the co-taught classes continuing into ninth grade may not be in error but rather reflect a different kind of “co-teaching”—with an ELD or a paraprofessional—than at Middle School. *Interviews with Special Education Teacher and Director*. Accordingly, the SCO’s review of Students’ IEPs has accounted for this possibility.

C. Review of Students’ 2022-2023 IEPs

13. The SCO requested IEPs for all Students—i.e., all students whose IEPs provided co-taught, push-in instruction for eighth grade at Middle School in the 2022-2023 school year and who graduated to ninth grade at High School for the 2023-2024 school year—and the District provided two to three IEPs for 31 students. *See Exs. B-1 to BB-31, BBB-10, BBB-11, BBB-27.*

14. The accepted allegation concerns the Students’ transition from eighth to ninth grade; accordingly, these findings regard each Student’s IEP that was revised during the 2022-2023 school year when the IEP Teams were developing an offer of FAPE for both eighth and ninth grades.

15. To determine whether the District has a regular practice of removing co-taught, push-in instruction upon Students’ graduation from eighth grade without individual consideration of Students’ needs, the analysis requires answering the following questions for each Student: (1) Did the Student in fact receive co-taught, push-in instruction in eighth grade? If so, then (2) Was the instruction removed? If so, then (3) Does the IEP removing the service provide written notice and a justification for the removal? If not, then (4) Does the IEP substitute the removed push-in instruction with a comparable service from which the SCO could infer that the removal was intentional and individualized for that student? The answers to these questions are as follows:

16. On the first question, the SCO finds that eight Students did not receive co-taught, push-in instruction in eighth grade and consequently fall outside of the class addressed by Complainant’s allegation: The IEPs for Students 2, 17, 18, 25, 27, 28, 29, and 31 reflect that they did not have the co-taught, push-in instruction in their eighth-grade year. The Complaint class is thus reduced from 31 students to 23 students.

17. On the second question, the SCO finds that the District removed the co-taught, push-in instruction from all the remaining 23 Students at the end of their eighth-grade year or earlier. The IEPs are not always clear on this point and fall into four categories:

- a. The IEPs for four Students—Students 8, 10, 11, and 23—state a clear and uncontradicted termination of the service prior to the end of the eighth-grade year.
 - b. The IEPs for ten Students—Students 5, 7, 9, 14, 15, 16, 19, 24, 26, and 30—state a clear and uncontradicted termination of the service at the end of eighth grade. The service delivery statements for the co-taught classes say, “This service will end at the end of [Student’s] 8th grade year,” “[c]o-taught classes will not be an option at the high school,” other words to that effect, or else are silent on the end date. *See, e.g., Exs. B-7, B-16, B-26.* The service delivery grids all reflect a cut-off date for the service at the end of the Students’ eighth-grade year.
 - c. The IEPs for five Students—Students 1, 4, 6, 21, and 22—are internally contradictory. The service delivery statements say that “[t]his service will end at the end of [Student’s] 8th grade year” or “[t]his support will end on the last day of [Student’s] 8th grade year,” but the service delivery grids each provide an “end date” within the Student’s *ninth*-grade year. The SCO finds that these IEPs reflect an attempt by the District to terminate its offer of the co-taught, push-in instruction at the end of the Students’ eighth grade year.
 - d. The IEPs for the remaining four Students—Students 3, 12, 13, and 20—appear to show the co-taught, push-in instruction continuing into ninth grade. The service delivery statements do not say that the service will end. The service delivery grids provide an “end date” in ninth grade, exactly one year after the date of each IEP’s eighth-grade review. Yet, High School does not have co-taught classes with a special education co-teacher, making it likely that the services ended when Students graduated from Middle School to High School. *See Ex. R.* This category requires closer analysis.
18. Regarding this fourth category, the District has suggested that the apparent continuation of an eighth-grade service—co-taught, push-in instruction—that does not exist at High School is not an error but likely indicates a continuation of “co-teaching” without a special education teacher. *Interview with Director; see Ex. R.* The District suggests that these Students may be receiving co-teaching with an ELD (for English language learners) or else “co-teaching” where a special education paraprofessional works in the classroom along with a general education teacher. *Id.*
19. The SCO first finds that a class taught by a teacher with support from a paraprofessional is not the same as a class co-taught by two teachers. Paraprofessionals, by definition, are not

teachers,⁵ and, further, the District uses the term “collaborative,” not “co-taught,” to describe general education classes with paraprofessional support. (*See above* FF # 7.)

20. The IEPs also cannot support the suggestion that these four Students’ IEP Teams deliberately transitioned their co-taught classes to an ELD rather than special education teacher, for the following reasons:

- a. Student 3’s IEP, in the embedded Prior Written Notice (“PWN”) section, explains that the IEP Team “discussed more time outside of the General Education classroom for reading and writing instruction” and “[t]his option was rejected because the team determined that [Student] can be supported within his General Education classroom with accommodations and *co-teaching where he works in a small group with the Special Education teacher.*” *Ex. B-3*, p. 25. Because the IEP Team identified the value of the co-taught classes specifically in the participation of a special education teacher, yet no class at High School offers co-teaching with a special education teacher, the SCO finds that Student 3’s co-taught, push-in instruction terminated with eighth grade. *See Ex. R*. Additionally, Student 3’s IEP provides a co-taught English language arts course, but High School does not have a co-taught English language arts course—not with an ELD, a special education teacher, or otherwise. *See id.* While Student 3 may currently have a co-taught class with an ELD at High School, Student 3’s IEP does not provide or reflect that service as part of the District’s offer of FAPE.
- b. Student 12’s IEP specifically says that “[t]he *special education teacher* will provide 180 minutes per week of academic support in the general education classroom . . . in a co-taught Language Arts and Mathematics class.” *Ex. B-12*, p. 12. As with Student 3, the IEP Team specifically identified the “special education teacher” as the co-educator rather than an ELD. Further, Student 12’s IEP shows that he is not an English language learner and does not have limited English proficiency. *Id.* at pp. 1, 7. Finally, like Student 3, his IEP provides a co-taught English language arts course, which is not offered at High School. *See Ex. R*. Accordingly, the SCO finds that Student 12’s co-taught, push-in instruction terminated with eighth grade.
- c. Student 13, similarly, is not an English language learner and does not have limited English proficiency; the primary language in his home is English, and his primary language is English. *Ex. B-13*, pp. 1, 10. Nothing in Student 13’s IEP suggests he would benefit from working with an ELD. The IEP does not reflect any discussion or consideration of changing or ending his co-taught, push-in instruction, or of placing him in a class with an ELD. As with Students 3 and 12, Student 13’s IEP provides a co-taught English language arts course, which is not offered at High

⁵ Colorado law mandates that “all special education teachers shall hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). By contrast, each school district may “determine the qualifications and competencies required for paraprofessionals” within that district. ECEA Rule 3.04(1)(e).

School. *See Ex. R.* Accordingly, the SCO finds that Student 13’s co-taught, push-in instruction terminated with eighth grade.

- d. Student 20’s IEP, like Student 3’s, explains that the IEP Team “considered taking [Student] out of a math co-taught class, due to how well he is performing, but ultimately decided to reject this idea due to the support *the special education teacher* provides on a daily basis.” B-20, p. 23. Again, because the IEP Team identified the value of the co-taught class specifically in the participation of a special education teacher, the SCO concludes that Student 20’s co-taught, push-in instruction terminated with the eighth grade. Further, as with the other Students, Student 20’s IEP provided a co-taught English language arts course, which is not offered in any form at High School. *See Ex. R.* While Student 20 may currently have a co-taught class with an ELD at High School, Student 20’s IEP does not provide or reflect that service as part of the District’s offer of FAPE.

21. The third question of the analysis is whether the IEP Teams for any of these 23 Students provided a justification or rationale for removing the co-taught, push-in instruction.

22. The SCO finds that the IEPs for three Students—Students 8, 10, and 11—do reflect a considered removal of the service based on those Students’ academic performance:

- a. Student 8’s IEP Team memorialized, in the embedded PWN section, that they “considered keeping [Student] in co-taught math and ELA classes, however [the Team] rejected this idea due to her academic progress this semester.” *Ex. B-8*, p. 28.
- b. Student 10’s IEP Team removed the service early in the 2022-2023 school year. *Ex. BBB-10*, p. 28. Additionally, Student 10’s 2022-2023 IEP was the second successive IEP where the IEP Team specifically noted, in the PWN section, that she was becoming more independent, improving academically, and not in need of increased support. *See Ex. BB-10*, pp. 21, 23; *Ex. BBB-10*, p. 28. These facts together support a finding that the removal had an individualized justification, despite the IEP Team’s failure to directly address the removal.
- c. Student 11’s IEP Team wrote, in the PWN section, that they “considered keeping [Student] in co-taught classes, but ultimately decided to reject this idea due to her academic improvement over the course of middle school.” *Ex. BBB-11*, p. 24. The meeting minutes also report that they “discussed co-taughts and decided that [Student] should be more independent in class and will opt out of co-taughts for next semester.” *Id.* at p. 25.

23. The fourth and final question of the analysis is: For the remaining 20 Students whose co-taught, push-in instruction was removed at the end of eighth grade without individualized

justification, did the District amend the IEP to add some other, commensurate service from which the SCO can infer that the removal was individualized?

24. The answer is no: None of the 20 Students' 2022-2023 IEPs bridging from Middle School to High School adds comparable services to make up for the removal of the co-taught, push-in instruction. *See Exs. B-1, B-3, B-4, B-5, B-6, B-7, B-9, B-12, B-13, B-14, B-15, B-16, B-19, B-20, B-21, B-22, B-23, B-24, B-26, B-30.*
25. All but three of these IEPs provide that the Student's "Academic Support" service would continue on and be called "Academic Instruction" at High School; however, this particular service is consistently described in the IEPs as "target[ing] skills to build organization, time management, and self advocacy skills, as well as support [the student] as [the student] completes classwork and homework," without any requirement that the student receive academic instruction. (*See above* FF # 8.) The three IEPs that do not expressly state that Academic Support would become Academic Instruction instead simply show the Academic Support service continuing into high school. *See Exs. B-12, B-13, B-23.*
26. The SCO finds, after consultation with CDE Content Specialists 1 and 2, that neither of these—neither the continuation of "Academic Support" under the name "Academic Instruction" (without required instruction) nor the apparent continuation of "Academic Support" without a new name—can substitute for the removal of the Students' co-taught, push-in instruction.
27. Accordingly, the SCO finds that the District removed the co-taught, push-in instruction for 20 Students—Students 1, 3, 4, 5, 6, 7, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 26, and 30 ("the Impacted Students")—without an individualized rationale or addition of commensurate instruction to make up for the removal.
28. The SCO's finding is bolstered by comments in some Students' IEPs that indicate the removal of the co-taught, push-in instruction was not a thoughtful decision made to serve the Students' individualized educational and academic needs:
 - a. Student 3's IEP Team recorded that they "discussed more time outside of the General Education classroom for reading and writing instruction" but ["t]his option was rejected because the team determined that [Student] can be supported within his General Education classroom with accommodations and co-teaching where he works in a small group with the Special Education teacher." *Ex. B-3, p. 25.*
 - b. Student 5's IEP Team wrote that "[Student] is able to access the general education curriculum . . . with appropriate accommodations and supports," and she "benefits from being in general education classes as much as possible, because of the benefit she brings academically to herself and her peers" to the extent that

“[n]ot having [Student] in general education classes would be a disadvantage to both herself and her classes, because of the value she adds to the class and her ability to learn from peers and teachers.” *Ex. B-5*, p. 32.

- c. Student 9’s IEP Team wrote that it sought to “ensure that [Student] would be spending the majority of his day in an inclusive general education classroom setting.” *Ex. B-9*, p. 28.
- d. Student 15’s IEP Team wrote that it considered “[m]ore service time outside of the classroom, but [Student] benefits from instruction inside of the classroom.” *Ex. B-15*, p. 18.
- e. Student 16’s IEP Team neglected to replace the placeholders “him/her*” and “s/he*” in the service delivery statement. *Ex. B-16*, p. 27.
- f. Student 19’s IEP Team wrote that they “considered taking [Student] out of co-taughts to practice becoming more independent for high school” but “rejected this idea due to the value of having her in co-taught classes.” *Ex. B-19*, p. 15.
- g. Student 26’s IEP Team wrote, simply, “Co-taught classes will not be an option at the high school.” *Ex. B-26*, p. 18.
- h. Student 30’s IEP Team recorded that it decided not to remove him from his co-taught classes “due to [Student’s] request” to remain in those classes. *Ex. B-30*, p. 20.

D. Inconsistency Between IEPs and Actual Special Education Services

29. In reviewing Students’ IEPs, the SCO has determined that the IEPs developed during the eighth-grade year, which should accurately describe a FAPE for both eighth and ninth grades, often do not reflect the actual special education services being provided to the Students when they begin ninth grade. Specifically, the SCO received information for six Students showing both their eighth- and ninth-grade services, and five of the six had inaccurate IEPs.
30. Student 1’s service logs show that he is currently—in ninth grade, in the fall 2023 semester—receiving two pull-out, special education “Academic Instruction” classes at High School. *See Exs. S-1, S-2*. These classes involve direct instruction. *Interviews with Special Education Teacher and Director*. The District considers these classes to be part of its offer of FAPE for students with IEPs. *Id.* Yet Student 1’s June 2, 2023 IEP—the IEP in effect when he began this school year—does not reflect this instruction. *See Ex. B-1*, pp. 24-25. It indicates that he received co-taught, push-in instruction in eighth grade; that the co-taught instruction would end with eighth grade; and that his only pull-out academic

service would be the “Academic Support” service that “targets skills to build his organization, time management, and self advocacy skills, as well as supports him as he completes classwork and homework and practices related academic skills.” *Id.* at p. 24.

31. Student 3 is currently in a pre-Algebra class co-taught by a general education teacher and an ELD, which the District considers to be part of his FAPE. *Interview with Director.* However, Student 3’s IEP Team recorded, in his eighth-grade IEP, that he benefits from his co-taught math class because of the support a *special education instructor* provides. *Ex. B-3*, p. 25. There is no co-taught math class at High School with a special education instructor. *Response*, p. 6; *Interview with Assistant Principal*; *Ex. R.* His IEP does not specify that he will receive co-taught, push-in mathematics instruction with an ELD. *See id.* at pp. 22-23. Similarly, he is in a science class co-taught by a general education teacher and an ELD. *Interview with Director.* Yet his IEP does not reflect this either. *See Ex. B*, pp. 22-23. When asked whether the service grid on Student 3’s 2022-2023 IEP—which spanned eighth and ninth grades—accurately reflected his current education at High School, Special Education Teacher said that the grid was “appropriate for Middle School.” *Interview with Special Education Teacher.*
32. Student 5’s October 12, 2022 IEP, which remained in effect until it was revised on October 5, 2023, shows that she received co-taught, push-in classes that would end at the end of her eight-grade year, as well as 218 minutes of the “Academic Support” service—“target[ing] skills to build her organization, time management, and self advocacy skills, as well as supports her as she completes classwork and homework”—that would continue into ninth grade where it would increase to 220 minutes. *Ex. B-5*, p. 30. Yet Student 5’s October 5, 2023 IEP shows that, from the beginning of the 2023-2024 school year, she has been receiving a different educational program: She has been enrolled in two pull-out, special education classes, Transmath and Pathways to Profile Academic Intervention. *Ex. BB-5*, pp. 5, 49; *Interviews with Special Education Teacher and Director.*
33. Similarly, Student 14’s September 22, 2022 IEP—the IEP in effect from the beginning of ninth grade until its revision on September 21, 2023—states that he was receiving only co-taught, push-in classes that would end at the end of his eight-grade year as well as 218 minutes of the “Academic Support” service, without instruction, that would increase to 220 minutes in ninth grade. *Ex. B-14*, p. 29. Yet Student 14’s September 21, 2023 IEP shows that, from the beginning of the 2023-2024 school year, he has also been receiving Transmath and Pathways to Profile. *Ex. BB-14*, pp. 36, 59.
34. Student 20’s February 2, 2023 IEP, which was in effect when he began ninth grade this year, shows that he is still receiving co-taught, push-in instruction not offered at High School. *Ex. B-20*, p. 22. When asked, Special Education Teacher said that his IEP reflects his eighth-grade services. *Interview with Special Education Teacher.* She noted that the District offers informal meetings at the end of the eighth-grade year and again just prior to the beginning of ninth grade, and parents can attend those meetings to learn what

their children will actually do in high school. *Id.* Notably, of the 31 Students' IEPs reviewed, 16 of the Students' families have Spanish as their primary language spoken in the home. See Exs. B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-14, B-15, B-16, B-19, B-20, B-23, B-31.

35. The District has cautioned the SCO that some IEPs should not necessarily be taken at face value—in particular, the IEPs for Students 1, 5, 9, and 21—because they are “in progress.” *Amended Response to Additional Requested Information*, p. 1; *Interviews with Special Education Teacher and Director*.

36. Finally, and somewhat related, of the 31 Student' IEPs reviewed, 28 state that “Paraprofessional support may be provided under the supervision of the special education teacher,” or words to that effect, leaving it unknown whether paraprofessional support actually is provided and, if so, for how many minutes or class periods. See Exs. B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, B-9, B-10, B-11, B-12, B-13, B-14, B-15, B-16, B-17, B-18, B-19, B-20, B-21, B-22, B-23, B-24, B-26, B-27, B-28.

37. The District does not have its own policies or procedures for developing IEPs; instead, it follows CDE's procedural guidance.⁶ *Interview with Director*.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District removed 20 Students' co-taught, push-in instruction minutes at the end of those Students' eighth-grade year as a regular practice without regard for those Students' individualized needs, in violation of 34 C.F.R. §§ 300.320(a)(4) and 300.324(a). Further, the District failed to provide IEPs that accurately reflected Students' services, in violation of 34 C.F.R. § 300.320. These violations resulted in a denial of FAPE.

A. IEPs Must Be Tailored to Students' Individualized Needs

“The IEP is the centerpiece of the statute's education delivery system for disabled children.” *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017). The District must individualize each student's IEP because it is “the means by which special education and related services are tailored to the unique needs of a particular child.” *Endrew F.*, 580 U.S. at 391. Each student's IEP must offer “an educational program reasonably calculated to enable [the student] to make progress in light of [the student's] circumstances.” *Id.* at 403.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first, procedural prong determines whether the IEP development process complied with the IDEA's

⁶ Available at https://www.cde.state.co.us/cdesped/iep_proceduralguidance.

procedures. 458 U.S. at 207. The second, substantive prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound.

To the extent that an inadequate IEP was initially developed prior to the one-year period for which the SCO may find a violation, see 34 C.F.R. § 300.153(c), a deficient IEP continues to violate the IDEA each day that it is implemented, allowing the one-year time limitation to begin as late as the final day the IEP is in effect, *Weld County Sch. Dist. 6*, 81 IDELR 239 (Colo. SEA April 24, 2022).

i. IEP Development Process

Among other procedural requirements, the IDEA requires the IEP Team to consider each student's strengths and academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1). When determining a student's "placement"—a term used to denote the provision of special education services—an IEP Team must make that decision "on an individual, case-by-case basis, depending on each child's unique needs and circumstances" and cannot base its decision solely on "availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience." *Letter to Trigg*, 50 IDELR 48 (OSEP Nov. 30, 2007). The members of the IEP Team—including the student's parents—must identify appropriate services based on their knowledge about the student as an individual, and the services must be provided, to the maximum extent appropriate, in the general education environment with nondisabled peers. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a).

Here, the Impacted Students' IEP Teams' decisions to remove push-in, co-taught instruction do not reflect individualized consideration. (FF #s 21-28.) The IEP Teams ended the co-taught, push-in service upon the Impacted Students' graduation from Middle School without explanation. (*Id.*) No equivalent service is offered at High School. (FF # 11.) No commensurate service was added to the IEPs in lieu of the co-taught, push-in service. (FF #s 23-28.) The IEP Teams for several Impacted Students discussed the *benefit* of the co-taught instruction for the Students. (See FF #s 20, 28.) That the IEP Teams nonetheless removed the service shows either a lack of meaningful consideration or else an administrative bar to meaningful consideration resulting from a lack of a comparable service at the High School. See 34 C.F.R. § 300.115 (the school district must provide a continuum of placements). Accordingly, the SCO finds and concludes that the District's development process for the Impacted Students' IEPs did not comply with IDEA's procedures. *Rowley*, 458 U.S. at 206. As a result, the SCO finds and concludes that the District failed to tailor Impacted Students' IEPs to their individualized needs, in violation of 34 C.F.R. §§ 300.320(a)(4) and 300.324(a).

ii. Denial of FAPE

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if it (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, the District removed co-taught, push-in services from all 20 Impacted Students without rationale or replacement, and without any comparable service available at High School. (FF # 27.) This impeded those Students' right to a FAPE because their IEPs had required that instruction as part of the District's offer of FAPE; once the instruction was removed without replacement, the District's offer of FAPE was significantly reduced and Students' right to a FAPE necessarily impaired. The removal also impeded the Students' parents' right to participate in the decision-making process because the parents had no choice: No push-in instruction with a special education teacher is available at High School, and so the parents had no option but to accept the removal. (FF # 11.) Finally, the removal deprived the Impacted Students of an educational benefit by removing their co-taught, push-in instruction without commensurate replacement. (FF # 27.)

iii. Compensatory Services

Compensatory services are an equitable remedy designed to restore a student to the position they would be in if the violation had not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an "hour-for-hour calculation." *Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018). 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 each child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the Impacted Students entered ninth grade with IEPs that did not reflect individualized consideration by each Student's IEP Team of that Student's particular needs. Their parents had no choice but to accept the termination of the push-in instruction. Upon consultation with CDE Content Specialists 1 and 2, the SCO finds and concludes that compensatory education is necessary to restore the Impacted Students to the position they would be in had the violation not occurred. Accordingly, the SCO has ordered remedies to provide the compensatory education specified for each of the Impacted Students in *CDE Exhibit 1*.

B. IEPs Must Accurately Reflect Students' Services

"What is written in the IEP does matter." *S.S. v. Bd. of Educ. of Harford Cnty.*, 498 F. Supp. 3d 761, 785 (D. Md. 2020). "An IEP, like a contract, may not be changed unilaterally. It embodies a binding commitment and provides notice to both parties [the school district and the parent] as to what

services will be provided to the student during the period covered by the IEP.” *M.C. by and through M.N. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1197 (9th Cir. 2017).

School districts must ensure that each student’s IEP always accurately describes the student’s education. 34 C.F.R. § 300.320; *see* 34 C.F.R. § 300.323(c)(2). It “must include information about the services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

A parent’s right to participate in the development of their child’s educational program requires that they be informed, in writing, of their child’s IEP and any changes made to that IEP. 34 C.F.R. § 300.503. Parents will have difficulty enforcing or challenging any aspect of their child’s education under the IDEA if the IEP is inaccurate. “[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.” *Antelope Valley*, 858 F.3d at 1198. When one of the provisions in an IEP is vague or indefinite—for example, omitting the setting for a service or an enforceable implementation metric such as a specific number of minutes for a service—then that provision violates the IDEA because it impedes parental participation. *See* 34 C.F.R. § 300.320(a); *Tamalpais Union Sch. Dist.*, 271 F.Supp.3d 1152, 1163 (N.D. Cal. 2017).

Here, for five out of six Students whose eighth- and ninth-grade information was received by the SCO, the eighth-grade IEP showing both eighth- and ninth-grade services did not accurately reflect the services those Students received when they began ninth grade. (FF #s 29-35.) And of 31 Students’ IEPs reviewed, 28 stated that the Student “may” receive paraprofessional support but failed to identify the setting in which that support would be given and the extent of that support, such as a number of minutes or specific class periods. (FF # 36.)

Accordingly, the SCO finds and concludes that the District failed to provide IEPs that include an accurate, clear, and enforceable statement of special education services to be provided to these Students, in violation of 34 C.F.R. § 300.320.

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if it (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. *Knable*, 238 F.3d at 765-66.

Here, the failure to provide IEPs that are accurate, clear, and enforceable resulted in a substantive violation of the IDEA because Students’ parents could not reasonably understand and, if necessary, challenge or reject the services being offered by the District. The District’s offering of informal, unofficial meetings to allow parents to ask questions does not cure this violation. (FF # 34.) In the best case, the parents would receive accurate promises or information that nonetheless contradicted the IEPs in the parents’ hands, resulting in confusion. In the worst case,

the parents would receive inaccurate promises or information that they could not later enforce or challenge because the written IEP would be different. Neither is acceptable under the IDEA.

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

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

Here, the SCO has found that the District, as a matter of regular practice, terminated co-taught, push-in specialized instruction services from the IEPs of 20 out of 23 students without individualized justification or the addition, to those students’ IEPs, of a commensurate service. (FF # 27.) The SCO has found that, out of six students whose ninth-grade services are in the Record, five have services that were not accurately described in their 2022-2023 IEPs. (FF #s 29-35.) Both violations are likely to occur systemically.

First, the District’s removal of services from the eighth graders’ IEPs without individualized consideration occurred with every student who needed that service through the end of eighth grade. (FF #s 22-27.) The District has not acknowledged any errors in its process. (FF # 3.) Instead, the District has provided conflicting answers, suggested that students might be receiving other services that are close enough, cautioned the SCO from relying on IEPs that are “in progress,” and asserted that parents—the majority of whom do not speak English as their primary language—could resolve any confusion they might have through informal meetings. (FF #s 11-12, 34-35.) Accordingly, the SCO finds and concludes that this violation is likely to occur systemically for all eighth graders in the District who graduate from a middle school and transition to a high school.

Second, the District’s development of inaccurate IEPs for the eighth-to-ninth grade transition occurred with five out of six students reviewed. (FF #s 29-35.) The District, again, does not recognize that every IEP should reflect a student’s services at all times—there is no exception for IEPs that are “in progress”—and the District attempts to shift this burden onto parents, who are expected to attend informal meetings and sort out the discrepancies in person, with inaccurate documentation. (FF # 34.) Accordingly, the SCO finds and concludes that this violation is likely to occur systemically for all eighth graders in the District who graduate from a middle school and transition to a high school.

Third, the District does not have its own policies or procedures for developing IEPs; instead, it follows CDE's guidance. (FF # 37.) CDE's guidance advises districts and IEP Teams that the district must provide services "to meet the student's individualized education needs," and it does not provide an exception for administrative convenience. CDE, *IEP Procedural Guidance*, p. 36 (July 2017). The guidance also advises districts and IEP Teams that an IEP's service delivery statement should be accurate and concrete, so that "an IEP Team receiving the IEP would be able to implement the services exactly as they were intended to be implemented by the sending team" and to allow "families [to] understand what a typical day, week, or month might look like for the student." *Id.* at p. 141. This guidance complies with the IDEA, but the District did not follow it.

For these reasons, the SCO has ordered the District to receive training regarding IEP development and implementation, to find and correct any existing discrepancies between students' IEPs and their actual services, and to develop procedures specific to students' transition from middle school to high school to prevent similar violations in the future.

REMEDIES

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

- a. Failing to develop an IEP that was appropriately tailored to the Impacted Students' needs, in violation of 34 C.F.R. §§ 300.320(a)(2), 300.324(a)(4); and
- b. Failing to provide IEPs that accurately reflected five students' services, in violation of 34 C.F.R. § 300.320.

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

1. Corrective Action Plan

- a. By **Friday, January 26, 2024**, the 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 the District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Following approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Special Education Director, Assistant Principal, and all special education teachers at Middle School and High School who have eighth graders or ninth graders on their caseload must review this decision, as well as the requirements of 34 C.F.R.

§§ 300.320(a), 300.323(c), and 300.324(a). If these individuals are no longer employed by District, District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This review must occur no later than **Friday, January 19, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, January 26, 2024**.

3. Training

- a. Special Education Director, Assistant Principal, and all special education teachers in the District must attend and complete training provided by CDE on IEP development and implementation. 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, 300.323, 300.324(a), and the related concerns addressed in this Decision.
- b. Special Education 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, February 23, 2024**. 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 1, 2024**.

4. Procedures

- a. By **Wednesday, March 6, 2024**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. §§ 300.320(a)(4), and 300.324(a).
- b. At a minimum, the procedure must offer clear guidance on the following:
 - i. How to determine, upon consideration of the student's individualized needs and not of administrative convenience, which services are appropriate to enable the student to advance appropriately toward attaining annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children in these activities.

- ii. How to ensure that these services will be provided in the general education environment with nondisabled peers to the maximum extent appropriate for the student.
 - iii. How to write service delivery statements and service delivery grids to be clear, concrete, and accurate, so that anyone reading the IEP will know exactly what services must be implemented, the time period during which the services will be provided, the setting for those services, and the defined, verifiable amount of those services.
- 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 **Friday, April 5, 2024**. 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 **Friday, April 19, 2024**.

5. Audit to Ensure IEP Accuracy

- a. By **Friday, January 26, 2024**, District shall have reviewed the IEPs for all ninth-grade students with IEPs at High School to determine whether each student's IEP accurately describes both the services being provided to the student and the student's Least Restrictive Environment ("LRE").
 - i. To make this determination, the District must do the following:
 - 1. Compare each student's IEP with the student's class schedule and service logs; and
 - 2. Consult with the student's service providers to determine if the student's IEP is accurate.
 - ii. District must provide to CDE a list of the students whose IEPs do not accurately describe those students' services or LRE—the "Listed Students"—by **Friday, February 9, 2024**.
 - iii. For each student whose IEP does accurately describe the student's services and LRE, District must provide an assurance signed by the staff who made this determination that the staff compared each student's IEP with the student's class schedule and service logs, consulted with the student's providers, and found that the student's IEP accurately describes the

student's services and LRE. These assurances must be provided by **Friday, February 9, 2024**.

- b. By **Friday, February 9, 2024**, District shall submit to CDE, for review, a draft letter to be sent to the parents of the Listed 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 whose IEP does not accurately reflect the student's services or LRE.
 - i. This can be a form letter, but it must include an individualized section indicating the specific discrepancies between the student's IEP and actual services or LRE.
 - ii. The letter must invite parents to meet with the student's IEP Team to correct the student's IEP and indicate that the IEP Team will meet to correct the student's IEP, 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 5(c).
 - iv. The letter must be sent by District to parents and CDE no later than **Friday, February 23, 2024**.
 - v. District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- c. By **Friday, March 8, 2024**, at a mutually agreeable time and place, District must convene IEP Teams for the Listed Students to correct those students' IEPs and ensure those students' parents understand their students' actual services and LRE.
 - i. 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.
 - ii. If a Listed Student is also one of the 19 Impacted Students whose IEP Team must convene for Remedy 6(b), the IEP Team may, when it convenes by March 8, 2024 for this remedy, also perform the work required by Remedy 6. (The IEP Team may not, however, postpone or delay the work for Remedy 5, even if the IEP Team will need to meet a second time for Remedy 6.)

- d. After the IEP meetings, and no later than **Friday, March 29, 2024**, District must issue, to parents and CDE, a PWN for the Listed Students. It must explain that the IEP Team changed the student's IEP to accurately reflect the student's services and LRE, and it must describe the specific changes made.
- e. By **Friday, April 5, 2024**, CDE will request documentation, from District, for specific students selected by CDE. This documentation will include the student's IEP, service logs, class schedule, and an assurance from the student's caseworker that the student's IEP accurately reflects the student's services and LRE. By **Friday, April 26, 2024**, CDE will determine, in its sole discretion, whether additional corrective actions are necessary to ensure that all ninth-grade High School students' IEPs accurately reflect their services and LRE.

6. Award of Compensatory Education Services for the Impacted Students

- a. By **Friday, February 9, 2024**, District shall submit to CDE, for review, a draft letter to be sent to the parents of the Impacted Students identified at Finding of Fact # 27 of this Decision. 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 will receive compensatory services because of a failure to offer services based on the student's individualized needs.
 - i. ***CDE Exhibit 1***, sent separately to the District with this Decision, states the number of hours of compensatory education, and the subject matter of the compensatory education, that is awarded to each student.
 - ii. The letter must indicate the specific co-taught, push-in instruction class subject(s) and minutes for each subject that the student was receiving prior to the service being removed at the end of eighth grade.
 - iii. The letter must state that the student will receive compensatory education based on the removal of the co-taught, push-in instruction. It must explain that the compensatory education will be inside the general education environment, inform the parents of the subject matter (i.e., English language arts, math, or both), and inform the parents of the hours awarded for each subject.
 - iv. The letter must invite the parents to meet with the student's IEP Team to schedule the compensatory services, review the student's current services and LRE for adequacy, and discuss whether additional compensatory education is necessary to provide a FAPE. The letter must state that the IEP Team will meet for these purposes, whether or not the parents participate.

- v. The letter must include a section requiring the 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(b).
- vi. The letter must be sent by District to parents and CDE no later than **Friday, February 23, 2024**.
 - 1. If the student no longer attends School but still attends a District school, the letter must be sent to parents by March 13, 2024.
 - 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.
- vii. District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- b. By **Friday, March 15, 2024**, at a mutually agreeable time and place, District must convene each IEP Team for each of the Impacted Students to determine three things: (1) how the student's compensatory services will be provided to align with the student's class schedule as much as possible; (2) whether the student's current LRE represents the maximum extent that it is appropriate for the student to learn in the general education environment alongside nondisabled peers; and (3) whether the student's current services are adequate to enable the student to be involved in and make progress in the general education curriculum. 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 the District 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. The IEP Teams are invited to exercise their discretion under the IDEA to add more compensatory education if they believe it is necessary to provide a FAPE. In considering this question, the IEP Team should look to the factors provided by the following state and federal guidance. Although this 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.
 - iv. If convenient for the IEP Teams, this work for Remedy 6(b) may be completed during the meeting for Remedy 5(c).
- c. After the IEP meetings, and no later than **Friday, March 22, 2024**, District must issue, to parents and CDE, a detailed PWN for each Impacted Student. The PWN must include the following:
- i. The IEP Team's determination and rationale regarding the scheduling of the compensatory education services.
 - ii. Information about the Impacted Student's progress on annual IEP goals and in the general education curriculum.
 - iii. The IEP Team's determination and rationale regarding the adequacy and appropriateness of the Impacted Student's current services and LRE.
 - iv. The IEP Team's discussion regarding whether additional compensatory education, beyond what is required by this Decision, is necessary to provide a FAPE, and why or why not.

- v. If, by **Friday, April 12, 2024**, CDE determines that a PWN is not consistent with the requirements of this Decision, District may be required to provide additional information or reconvene the Impacted Student’s IEP Team to reconsider.

7. Provision of Compensatory Education Services for the Impacted Students

- a. In accordance with Remedy 6(b), above, the District will schedule each student’s compensatory services in collaboration with the parents, in alignment with each student’s class schedule as much as possible, by **Friday, March 15, 2024**. District shall submit the schedule of compensatory services—including the dates, times, and durations of planned sessions—to the CDE no later than **Friday, March 22, 2024**. If all the compensatory education cannot be provided by the end of the 2023-2024 school year, then the District must submit a schedule for each student’s compensatory services that will be provided in the 2024-2025 school year—including the dates, times, and durations of planned sessions—to the CDE by **Thursday, August 15, 2024**.
- b. To verify that Students receive the services required by this Decision, District must submit records of service logs for all Students 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.
- c. 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.
- d. All compensatory services must be completed by **Friday, October 18, 2024**.

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

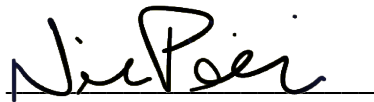
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

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. 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 27th day of December, 2023.

A handwritten signature in black ink, appearing to read "Nicholaus Podsiadlik", written over a horizontal line.

Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-7

- Exhibit 1: Excerpt from Evaluation
- Exhibit 2: Excerpt from Evaluation
- Exhibit 3: Email
- Exhibit 4: Schedule
- Exhibit 5: Schedule
- Exhibit 6: Excerpt from IEP
- Exhibit 7: Excerpt from IEP
- Exhibit 8: Excerpt from IEP
- Exhibit 9: Excerpt from Evaluation

Response, pages 1-9

- Exhibit A: List of students
- Exhibits B-1 to BB-31: IEPs
- Exhibits BBB-10, BBB-11, and BBB-27: IEPs
- Exhibit C: Student 1 evaluations
- Exhibit D: Student 2 evaluations
- Exhibit E: Student 1 PWNs
- Exhibit G: Student 1 IEP documentation
- Exhibit H: Student 2 IEP documentation
- Exhibit I: Student 1 service logs
- Exhibit J: Student 2 service logs
- Exhibit K: Student 1 progress reports
- Exhibit L: Student 2 progress reports
- Exhibit M: Calendars
- Exhibit O: Correspondence
- Exhibit P: Contact list
- Exhibit Q: Email to Complainant
- Exhibit R: 9th grade continuum of services
- Exhibits S-1 to S-2: Student 1's updated service logs

Telephone Interviews

- Complainant: September 29, 2023 and October 16, 2023
- Special Education Teacher: November 14, 2023
- Assistant Principal: November 14, 2023
- Reading Specialist: November 15, 2023
- Special Education Director: November 16, 2023
- Middle School Special Education Teacher: November 16, 2023

- Parent of Student 1: November 17, 2023