

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

**State-Level Complaint 2023:613
Academy School District 20**

DECISION

INTRODUCTION

On December 1, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Academy School District 20 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

The SCO extended the 60-day investigation due to exceptional circumstances on January 30, 2024, February 29, 2024, and March 15, 2024 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. This investigation will be limited to the period of time from December 1, 2022 through 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 violations occurring after December 1, 2022.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP from December 1, 2022 to October 24, 2023 in violation of 34 C.F.R. § 300.323, specifically by:

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.

- a. Failing to make Student's IEP accessible to teachers or service providers responsible for its implementation;
 - b. Failing to provide Student with the specialized education and related services required by her IEP;
 - c. Failing to implement the curriculum modifications required by her IEP;
 - d. Failing to implement Student's healthcare plan as required by her IEP; and
 - e. Failing to monitor Student's progress on annual IEP goals and to provide Parents with periodic reports on Student's progress as required by her IEP from December 1, 2022 to October 24, 2023.
2. Failed to develop, review, and revise an IEP that was tailored to Student's individualized needs from December 1, 2022 to October 24, 2023, specifically by:
 - a. Failing to include behavioral strategies and supports that adequately addressed Student's behavioral needs from December 1, 2022 to October 24, 2023, in violation of 34 C.F.R. § 300.324(a)(2)(i); and
 - b. Failing to determine that Student qualified for extended school year ("ESY") services when such services were necessary to the provision of FAPE, prior to the summer of 2023, in violation of 34 C.F.R. §§ 300.106, 300.320(a)(4), and 300.324.
 3. Failed to educate Student in the Least Restrictive Environment ("LRE") from December 1, 2022 to October 24, 2023, in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323(c).
 4. Deprived Parents of meaningful participation in the development, review, and revision of Student's IEP at meetings on October 10, 17, and 24, 2023, in violation of 34 C.F.R. §§ 300.322 and 300.324(a)(1)(ii).
 5. Failed to ensure that Student's special education teachers possessed required certifications and licenses from December 1, 2022 to October 24, 2023, in violation of 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.

Whether the District systemically denied similarly situated students at School ("Students") a FAPE because the District:

6. Failed to properly implement Students' IEPs between December 1, 2022 and October 24, 2023 by failing to provide the special education required by Students' IEPs due to the absence of a properly licensed and credentialed

special education teacher, in violation of 34 C.F.R. §§ 300.156, 300.207, and 300.323, and ECEA Rule 3.04.

For purposes of this investigation, “Students” refers to students with IEPs who attended School’s Significant Support Needs Program from December 1, 2022 to October 24, 2023.

FINDINGS OF FACT

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

A. Background

1. Student attended kindergarten in a Significant Support Needs (“SSN”) program at a District elementary school (“School”) in the 2022-2023 school year. *Exhibit A*, p. 2. Student then attended first grade in the SSN program from the beginning of the 2023-2024 school year until October 24, 2023, when her parents withdrew her from School, citing health and safety concerns with the program. *Exhibit M*, pp. 243-44; *Interview with Parents*. During both school years, Student split her time between School and a private, autism-focused program outside of School (“ABA program”). *Exhibit A*, p. 24; *Interview with Parents*.
2. The SSN program is intended to serve students with significant support needs, and the students in the SSN program were eligible for special education under the categories of Intellectual Disability, Autism Spectrum Disorder, Multiple Disabilities, and Other Health Impairment. *See Exhibit Q*. Some students in the program were nonverbal, and some students required assistance or supervision using the bathroom, with diaper changes, physically moving, and receiving nutrition. *See id*.
3. Student is eligible for special education and related services under the categories of Autism Spectrum Disorder and Other Health Impairment. *Exhibit A*, p. 2. Student is six years old, a “sweet, charismatic little girl” whose favorite color is purple and who enjoys books and Peppa Pig cartoons. *Interviews with Parents and Gen Ed Teacher*; *Exhibit A*, p. 28. She has difficulties with social communication. *Exhibit A*, pp. 32-33. She has, relative to other children her age, delays in her motor, sensory, social, and learning skills. *Id*.
4. Parents have alleged that the SSN program’s lack of a permanent teacher in both the 2022-2023 and 2023-2024 school years resulted in a failure to properly develop and implement Student’s IEP. *Complaint*, p. 2. In response, the District denies all allegations and asserts that every student’s IEP has been implemented in full.

² The appendix, attached and incorporated by reference, details the entire Record. The District provided its exhibits with continuous numbering across all exhibits. Accordingly, this Decision cites the continuous numbers so that, for example, the first page of Exhibit R is “1176.”

Response, pp. 22-23; *Interviews with Executive Director for Special Education (“Director”) and New Principal*. In the relevant periods, the SSN program was staffed by 24 short-term substitutes, a handful of teacher and non-teacher staff, and an oft-changing roster of paraprofessionals. *Exhibit R*, pp. 7-10; *Exhibit District Supplement (“D. Supp.”) F-2; Interviews with School Nurse, Para 3, Para 4, and Gen Ed Teacher*.

B. November 1, 2022 IEP

5. Parents have alleged that the District failed to implement Student’s IEP by failing to provide the specialized instruction, curriculum modifications, services, least restrictive environment (“LRE”), and progress reports required by the IEP. *Complaint*, pp. 2-9.
6. Student’s IEP was developed by a properly composed IEP Team on November 1, 2022. *Exhibit A*, p. 2.
7. The IEP describes Student’s performance at the time it was written. *Id.* at pp. 4-7. Student was still in kindergarten, where she enjoyed reading books from the classroom library, interacting with peers and adults, and was able to physically access and use the classroom, recess, and stairs without assistance. *Id.* at p. 6. She was usually able to label common items in a picture and make 3-4 word statements to make a request or comment, although she struggled to state the function of items and to answer “WH” questions. *Id.*
8. The IEP Team noted that Student had numerous health issues that posed challenges to her socializing and learning. *Id.* at p. 5. She was diagnosed with partial monosomy, autism, ADHD, pica, absence seizures, atopy, eczema, strabismus, delayed physiological development, mixed receptive-expressive language disorder, general emotional disorder, and hypotonia. *Id.* As a result, she needed close supervision for her own safety; support in literacy, mathematics, and expressive/receptive language; and instruction targeting Extended Evidence Outcomes. *Id.* at pp. 5-7.
9. Student’s five annual IEP goals targeted:
 - a. Goal 1: Fine and visual motor abilities, with an objective of tracing ten of the twenty-six upper case letters in two out of three trials; to be monitored through trials administered by an Occupational Therapist;
 - b. Goal 2: Communication, with objectives of (1) using three to five-word utterances and (2) answering basic “WH” questions about a question where there were 2-3 possible answers; to be monitored by Student’s performance across five opportunities;
 - c. Goal 3: Literacy, with objectives of (1) identifying, in a visually-structured task, the category of five items where there were up to four potential categories, and of (2) identifying, with a verbal or visual prompt, three things

within four separate categories; to be monitored by the percentage of her correct answers across trials;

- d. Goal 4: Mathematics, with objectives of (1) rote counting to twenty with one or fewer verbal or visual prompts in three out of five trials; (2) rote counting to fifty with five or fewer verbal or visual prompts in four out of five trials; and (3) counting with one-to-one correspondence for up to ten objects in four out of five trials; to be monitored by the percentage of her correct answers across trials;
- e. Goal 5: Adaptive Behavior, with objectives of (1) compliantly transitioning, with visual and verbal prompting, to another activity within the classroom, appropriate (keeping a safe body), within three out of four transitions for three school days; and (2) compliantly transitioning, with visual and verbal prompting, to another location within the school building when asked within three of four transitions for three school days; to be monitored by the percentage of times she was compliant across trials.

Id. at pp. 15-19.

- 10. The IEP required Parents to receive quarterly reports of Student's progress on these goals. *Id.* at p. 19.
- 11. The IEP required nineteen accommodations, including supervision on stairs and the playground and outdoor play time with "opportunities for maximum safety and supervision." *Id.* at p. 20.
- 12. The IEP stated that Student would receive modifications to her curriculum under alternate academic achievement standards. *Id.*
- 13. The IEP required that Student receive (1) direct occupational therapy, 60 minutes per month; (2) consultative/indirect physical therapy, 15 minutes per semester; (3) direct SSN services, 2,100 minutes per week; and (4) direct speech-language therapy ("SLT") services, 120 minutes per month. *Id.* at 22-23. All services were to be outside the general education environment, although the occupational therapy would be provided either inside or outside the classroom at the discretion of the therapist. *Id.*
- 14. The IEP Team determined that Student's LRE was less than 40% of time in the general education classroom. *Id.* at p. 23. The IEP Team did not intend for this to be 0%; the LRE section stated that Student would be able to access her accommodations "within the general education classroom" and "access the general classroom environment and instruction to the best of her ability." *Id.*; see also *Interviews with Parents, Gen Ed Teacher, and Principal*. In accordance with this understanding, Student's class schedule included lunch, recess, elevations/electives, and general education math. *Exhibit R*, p. 1358.

C. November 1, 2022 BIP

15. Parents have alleged that Student's Behavioral Intervention Plan ("BIP"), which was adopted by the IEP team and integrated with the November 1, 2022 IEP, failed to address her behavioral needs. *Complaint*, pp. 15-17.
16. Student's IEP stated that Student exhibited behaviors requiring a BIP. *Exhibit A*, p. 8.
17. The IEP Team recorded that Student had difficulty transitioning to non-preferred activities; could respond to an uncertain, undesired, or changed environment with screaming, undressing, self-harm, and occasional elopement; needed to move constantly; and would sometimes eat or attempt to eat non-food objects. *Id.*; *Interviews with Paraprofessionals ("Paras") 1 and 2*. When an academic demand was placed on her, she would engage in protest or attempt to escape. *Response*, p. 9.
18. A BIP was integrated into the IEP dated November 1, 2022. *Id.* at pp. 10-14. The BIP was not, however, developed by the IEP Team. *Interviews with Parents and BCBA*; see also *Exhibit M*, p. 85. It was copied from the behavioral plan developed by the private Board Certified Behavior Analyst who worked with Student at the private ABA program Student attended ("BCBA"). *Interviews with Parents and BCBA*; see also *Exhibit M*, p. 85.
19. The BIP, developed for the ABA program, was not tailored to the school setting, a fact recognized by the District-level special education teacher who provided part-time coverage in the 2023-2024 school year ("District Floater"). *Exhibit M*, p. 85. It was not based on any behavioral data gathered by the District or School. *Interviews with BCBA and District Floater*; *Exhibit M*, p. 85. In fact, no behavioral assessment was ever conducted by the District or School. *Exhibit M*, p. 85.
20. Although the BCBA's BIP may be a starting point for a school BIP, it cannot be implemented in a school classroom without changes. *Consultation with CDE Content Specialist 1*.

D. IEP Accessibility

21. Parents have alleged that Student's IEP was not accessible to her providers. *Complaint*, p. 2.
22. Across both the 2022-2023 and 2023-2024 school year, all the SSN program Students' IEPs were made accessible to substitute teachers, paraprofessionals, and service providers via "IEP at a Glance Snapshots" kept in hardcopy in the SSN room. *Interviews with New Principal, Former Principal, SSN Facilitator, New SSN Teacher*. When each new substitute or paraprofessional began employment, they received an introduction from School administration to the SSN program that included showing them that Students' bins and binders contained their snapshots. *Id.* The

paraprofessionals also provided this basic information to new substitutes and paraprofessionals. *Interview with SSN Facilitator, Para 1, and Para 2.*

23. School Nurse met the SSN program staff at the beginning of each school year and went over each student's health care plans with the staff present at that time. *Interview with School Nurse.* She visited the room each morning and, when there was a new paraprofessional or substitute teacher, explained each student's health care needs for the new person. *Id.* School Nurse met with and explained the students' needs with twelve paraprofessionals in the 2023-2024 school year. *Id.*
24. Students' IEPs, BIPs, and health plans were also available in the District's administrative software, Infinite Campus. *Interviews with Para 1, Former Principal, OT, Physical Therapist, and School Nurse.*

E. Implementation from November 1, 2022 to February 20, 2023

Staffing and State of the SSN Program During Former SSN Teacher's Leave

25. In the 2022-2023 school year when Student was in kindergarten, Former SSN Teacher went on an anticipated long-term leave from November 1, 2022 through February 20, 2023, and School arranged for a long-term substitute SSN teacher to take her place. *Interviews with Former Principal and Former SSN Teacher.*
26. The long-term substitute's licensure consisted of a K-12 substitute authorization with no endorsements. *Exhibit R*, p. 1183; *accord Colorado Online License Lookup ("COLL").*³
27. The long-term substitute resigned after three days. *Exhibit R*, p. 1188; *Interviews with New Principal, Former SSN Teacher, Para 3, and Para 4.*
28. From November 4, 2022, the day of the long-term substitute's resignation, until February 21, 2023, the day that Former SSN Teacher returned, School employed fourteen substitute teachers. *Exhibit R*, pp. 1188-90. Of these fourteen substitutes, one had a special education endorsement in the 2022-2023 school year, although two others later gained a special education endorsement for the 2023-2024 school year. *Id.* at pp. 1182-83; *COLL.* When necessary, other staff at School would also help supervise the SSN program. *Id.* at pp. 1184-85.
29. During this time, according to both Former SSN Teacher and one of the paraprofessionals who went on to teach third grade at School, the SSN program was primarily run by the paraprofessionals. *Interviews with New Principal, Former Principal, Former SSN Teacher, Para 5, Occupational Therapist ("OT"), Para 3, and Para 4.*

³ Available at <https://cool.randasolutions.com/Public/Search>.

30. Three of the paraprofessionals had teachers' licenses. *Interviews with Former SSN Teacher, Para 3, and Para 5.* These individuals were crucial to keeping the SSN program organized, on schedule, and safe. *Id.*
31. There were ten students in the 2022-2023 year. *Compare Exhibit Q with Exhibit D. Supp. F-1; accord Para 5.*
32. Although the number of paraprofessionals in the room fluctuated between roughly three and ten on any given day, there were typically six or seven. *Interviews with Former SSN Teacher, Para 3, and Para 4.*

Implementation of Students' Specialized Instruction

33. All the Students in the SSN program, whose primary placements were in the program with limited time in the general education curriculum, were required to receive specialized instruction to satisfy their academic and learning needs. *See Exhibit Q.*
34. Before she left, Former SSN Teacher prepared individualized schedules, lesson plans, and homework for each Student, which she placed in binders in the Students' bins. *Interviews with Former SSN Teacher, New Principal, Para 3, and Para 4.* Her intent was to leave a sufficient quantity of individualized work materials, targeting each Student's IEP goals, to carry her substitute through the leave period. *Id.*
35. In the absence of a long-term teacher and without sustained oversight by any one of the fourteen substitutes, who rotated in and out each day, the paraprofessionals used these materials to provide instruction to the best of their ability during Former SSN Teacher's leave. *Interviews with New Principal, Former Principal, Former SSN Teacher, OT, Para 3, Para 4, and Para 5.*

Implementation of Students' Curriculum Modifications

36. Students' IEPs required that their curriculums be modified to allow them to make appropriate progress on their IEP goals and to be involved in and make progress in the general education curriculum. *See Exhibit Q.*
37. The paraprofessionals alternated the students they worked with, to familiarize the students with every paraprofessional and to avoid behavioral challenges that could arise if a student grew overly attached to a particular paraprofessional. *Interviews with Former SSN Teacher and Para 5.*
38. Given these regular changes in student-paraprofessional pairing, the absence of a long-term teacher to oversee all the students, and the lack of a special education teacher to apply expertise to Students' curricula, the SCO finds that the paraprofessionals were unable, under the circumstances, to properly adjust Students' work in response to their performance over time. *Interviews with Former SSN Teacher, Para 3, Para 4, and Para 5.*

Implementation of Student's Related Services

39. The District's service logs reflect that Student received the 15 minutes per semester of indirect, consultative physical therapy support required by her IEP in the 2022-2023 school year. *Exhibit F*, p. 132; *Exhibit D. Supp. B-1*, pp. 37-38.
40. Student did not receive any of the occupational therapy required by her IEP in the 2022-2023 school year because Student's parents chose to remove her from School to attend an ABA program on the day that the District's occupational therapist provided direct services. *Exhibits A*, pp. 6, 15-16, 24; *Exhibit D. Supp. B-2*, pp. 1-6; *Interviews with OT and Parents*.
41. Student did not receive any of the 120 minutes per month of direct SLT outside the general education environment as required by her IEP in the 2022-2023 school year:
 - a. The District's Response states, "As evidenced by Student's service logs, Student was provided service minutes in accordance with her IEP on a regular basis." *Response*, p. 7. The Response observes that Student did not receive occupational therapy services because her parents chose to remove her from School on the days that occupational therapy was provided. *Id.* at p. 9. The Response does not make any similar statement for speech-language therapy; rather, immediately after the discussion of occupational therapy, it states that "SLT services are provided to Student as part of the Significant Support Needs (SSN) program," citing page 48 of Exhibit A. *Id.*
 - b. Contrary to the District's assertion, none of the service logs evidence that Student received SLT in the 2022-2023 school year, although the logs do reflect provision of physical therapy in that year and notes memorializing the lack of occupational therapy due to Student's schedule. *See Exhibit F*, pp. 130-31; *Exhibit D. Supp. B-1*, pp. 37-38; *Exhibit D. Supp. B-2*, pp. 1-6. The logs also show that Student received SLT in the 2023-2024 school year. *Exhibit F*, pp. 130-31.
 - c. Page 48 of Exhibit A, cited by the District's Response as evidence that Student received SLT, does not show that Student received SLT services. *See Exhibit A*, p. 48. It is the service delivery statement of a draft IEP; to the extent it is relevant, it states "[Student] will receive xx (proposed 120) minutes per month of direct speech-language therapy outside of the general education environment . . . by a Speech-Language Pathologist or a Speech-Language Pathology Assistant under the guidance of a Speech-Language Pathologist." *Exhibit A*, p. 48.
42. Accordingly, the SCO finds that Student did not receive the 120 minutes per month of SLT required by her IEP from December 1, 2022 (the earliest date for which the SCO

may find a violation) through May 25, 2023, the last day of the 2022-2023 school year. See *Exhibit J*, p. 3. Because Student missed six months—December 2022 through May 2023—the SCO finds that the District failed to provide 720 minutes, or 12 hours, of SLT.

Regression

43. Upon her return, Former SSN Teacher found that her students showed some regression, although less than she had feared given the number of students, the complexity and severity of their needs, and the lack of a teacher in her absence. *Interview with Former SSN Teacher*. Former SSN Teacher said it was the most challenging group of students she had taught in nine years of working in SSN or similarly difficult contexts. *Id.* Based on her informal observations, the regression was primarily behavioral; given the lack of overall oversight, the level of staffing, and the constant change of adults in the room, tending to the basic needs and LRE requirements of all Students in the SSN program took priority over the broader, incremental program of teaching behavioral improvements. *Id.* Once the classroom routine was restored under Former SSN Teacher’s oversight, she indicated that the students recovered and that, over the remainder of the semester, the students returned to how they had been prior to her absence. *Id.*
44. Parents did not see this recovery at home. *Interview with Parents*. They saw Student’s behavior regress during the period without a teacher, but they did not see improvements after Former SSN Teacher’s return. *Interview with Parents*. They placed her full-time in a summer ABA program, which improved her behavior before she re-entered the SSN program in the 2023-2024 school year. *Id.*

F. February 24, 2023: ESY Determination

45. Parents have alleged that the District improperly determined that Student did not qualify for extended school year (“ESY”) services following the 2022-2023 school year. *Complaint*, p. 11.
46. The District has identified two worksheets as the data used to determine that Student did not qualify for ESY services because she did not show regression after vacation breaks. *Response*, p. 17. The District has also provided a form with checkboxes regarding ESY factors, but the spaces for describing the evidence are blank except for one space observing that Student attends an ABA program. *Exhibit I*, pp. 206-08. Each of the worksheets has space for two IEP goals, and, for each goal, areas to record the student’s baseline (pre-vacation) score, the date range of the vacation, the date of a reteaching session, and the student’s score following the reteaching session. *Exhibit I*, pp. 209-210.
47. Student’s worksheets reflect that she was assessed for her performance on the following tasks: (1) identify categories; (2) rote count to 20; (3) label common objects; and (4) follow one-to-two step directions. *Id.* She was assessed on December 16,

2022, prior to winter break, assessed again apparently during the first week following winter break (a date range is provided rather than a single date of assessment), followed by a reteaching session on February 6, 2023, and then assessed once again, apparently during the week of February 6 through February 10, 2023 (again, a date range rather than a single date is provided). *Id.*

48. Notably, the worksheets do not reflect any assessment of Student’s Goal 1, related to her fine motor skills; Goal 2, related to her abilities to communicate; Goal 4’s other two objectives in addition to rote counting to twenty; or Goal 5, related to her compliantly transitioning from one activity or location to another. *Compare Exhibit A*, pp. 15-19 *with Exhibit I*, pp. 209-210.
49. It is unclear who conducted the assessments, since there was no teacher for any of these dates, and the worksheets only have Student’s name and Former SSN Teacher’s name, although Former SSN Teacher was on leave for the assessment and reteaching dates. *See Exhibit I*, pp. 209-210. The worksheets are dated February 24, 2023. *Id.* It is unclear what sort of assessment was used, because only a single percentage—presumably the percentage correct of however many trials were done—is given for each assessment. *See id.* It is unclear why the “reteaching sessions” occurred on February 6. *See id.* It is unclear why no assessments were taken before and after spring break. *See id.*
50. Former SSN Teacher, interviewed a year after her February 2023 return to the SSN program, who did not return to teach for the 2023-2024 school year, explained that the District trained teachers to assess students on their IEP goals before and after breaks, and then determine whether the students recouped any lost progress after a reteaching period. *Interview with Former SSN Teacher*. She could not think of any other factors to consider. *Id.* She could not remember any details about Student’s ESY determination except that she believed it was conducted in accordance with District policy. *Id.*

G. Implementation from August 14, 2023 to October 10, 2023

Staffing and State of the SSN Program Without a Teacher

51. Former SSN Teacher decided not to return to the SSN program for the 2023-2024 school year, and the District knew this “in April or May” 2023. *Interview with Director*.
52. The year began without a teacher, with five paraprofessionals, and with thirteen students with significant medical, behavioral, and academic needs. *Exhibit M*, p. 16; *Exhibit D. Supp. F-1 to F-2*; *Interviews with Former SSN Teacher, Para 1, Para 2, Para 3, Para 4, Physical Therapist (“PT”), Speech Language Pathologist (“SLP”), and OT*. More than half of these thirteen students were eligible for special education services under IDEA disability categories that are considered “severe needs” in

Colorado's special education licensing scheme. *Exhibit Q*.⁴ Although three of the five paraprofessionals had been in the SSN program the prior year, the group as a whole lacked the education and experience as the paraprofessionals in 2022-2023. *Exhibit D. Supp. F-2; Interviews with Para 3, Para 4, and OT*.

53. From the beginning of the year until October 10, when a permanent teacher was hired, eleven substitute teachers worked in the SSN program. *Exhibit R*, pp. 11-12. Of those, one had a special education endorsement. *Id.* at pp. 1182-84; *COLL*. Because the teachers rarely taught more than two or three consecutive days before a different substitute took a turn, the paraprofessionals found that it was generally more effort to bring the substitutes up to speed than it was immediately worth, although the substitutes became more helpful later in September and in October, when some became familiar with the room and students. *Interviews with Paras 1, 2, 3, and 4*.
54. Under District policy and practice, School was responsible for hiring a new teacher for the SSN program. *Interview with Director*. School failed to hire one, however, and the District knew that no teacher had been found at least two or three weeks before school started. *Id.* Both the District and School then made efforts to find and hire a teacher. *See, e.g., Exhibit P. Supp. C-2*, pp. 1, 101, 156.
55. From this point before the year began until October 10, 2023, the Record as a whole reflects two simultaneous, credible lines of events that are nonetheless difficult to square: District specialists provided substantial organizational support, pedagogical support, and expert recommendations for the SSN program, as well as some in-person support, even as the SSN program continued to be disorganized, saw frequent turnover in staffing, and faced challenges in the behavior of many of the Students in the SSN program. *See Exhibit D. Supp. C-1 to C-3; Exhibit P. Supp. C-1 to C-2; Interviews with Director, SSN Facilitator, District Floater, Para 1, Para 2, Para 3, Para 4, PT, SLP, and OT*.
56. As the school year was about to begin, still without a teacher, the District sent three District-level staff—SSN Facilitator, Sped Facilitator, and Sped Tutor—to meet with Former Principal and the 2023-2024 roster of SSN paraprofessionals on August 7 and 10, 2023. *See Exhibit D. Supp. C-1 to C-3*.
57. Despite this, Former Principal emailed Director on August 11 to express concern that the District's support was insufficient as the District continued to add students to the SSN program:

We need immediate assistance in SSN. Our paras are not in a good spot and may quit if attention is not given. The tutor that was sent had no idea how to support SSN and no one else has been here. I thought [SSN Facilitator] was going to

⁴ See CDE, 2023-2024 Special Education Endorsement Requirements Per Student Disability (May 4, 2023), available at <https://www.cde.state.co.us/datapipeline/specialeducationendorsementqualificationsbyassignmentdisabilityandageofstudent>.

stop by yesterday? We don't have any support in setting up our schedules and more students are being added to our caseload. This is a major concern! How soon are you coming over?

P. Supp. C-1, pp. 104-05. SSN Facilitator responded that he must have missed her and “[the paraprofessionals] are very excited and eager to work together.” *Id.* at p. 103.

58. At the end of August, Former Principal emailed Director to express his concerns regarding the conditions in the SSN program and that the District's support failed to address the core problem of staffing:

So while we were having our training this morning I was also processing the fact that our 13 SSN Students were with 3 paras. All the others called in sick and we have an MIA long term sub . . . that hasn't communicated anything on her whereabouts Our goal right now is to keep kids alive and diaper changed.

Needless to say. We are struggling.

I need support.

. . . Would love actionable next steps to be communicated with me so that I may keep us out of court.

Exhibit P. Supp. C-1, p. 116.

59. Through August and the beginning of September, the District repeatedly advised Former Principal that he should reassign one of his moderate-needs special education teachers to the SSN program and use substitutes there rather than in the SSN program. *D. Supp. C-1*. It is unclear why this was not done.
60. On September 18, Former Principal emailed Director again, reiterating the program's difficulties:

[W]e are still in a pretty desperate space with SSN. We are significantly short staffed and . . . I have two SSN Paras resigning by the end of this week. I've done what I can to try and keep them but with the level of need and inconsistency with support they are not able to stay. . . . The sub jobs for SSN Teacher and Paras are not getting picked up consistently. Even if we had all posted jobs filled we would still be struggling to meet needs. I am worried for the safety of students.

Exhibit P. Supp. C-1, p. 101. Two paraprofessionals resigned that week. *Exhibit D. Supp. F-2*.

61. On September 26, Former Principal met with District special education, advised them that he had only a substitute teacher and two paraprofessionals for thirteen students, and repeated his concerns about student safety. *Exhibit D. Supp. C-1*, p. 4.
62. That same day, one of the Students, whose IEP required “adult supervision and support throughout the school day to ensure safety,” was found inside a closed laundry dryer in the SSN room’s locked bathroom. *Exhibit Q*, p. 685; *CDE Exhibit 2*, p. 14.
63. On the same day or soon after the dryer incident, Former Principal left his position and School’s assistant principal became the acting principal (“New Principal”). *Interviews with New Principal, Para 2*.
64. Immediately following the dryer incident, the District’s direct involvement in the SSN program increased. *Id.* The District assigned three District-level staff members to support the SSN program and arranged additional in-person coverage from September 26 through October 6. *Exhibit D. Supp. C-1*, p. 5, *C-3*, pp. 1-2. District Floater did the most work. *Interviews with Paras 1 and 2*. The SSN program was not her only assignment, though; she split her time between supporting programs as assigned by the District and acting as a lead resource teacher at a different school where she trained staff, wrote IEPs and behavioral plans, and assisted with multi-tier system support and child-find processes. *Interview with District Floater, Exhibit M*, p. 253.
65. The District-provided coverage staff had varying credentials, from no license to being a BCBA or a properly endorsed special education teacher. *Compare Exhibit D. Supp. C-3 with COLL*. Of all District staff, District Floater spent the most time in the SSN program. *See Exhibit D. Supp. C-3; Interviews with Para 1, Para 2, Para 3, Para 4, and District Floater*.
66. The District’s response, at the beginning of the year but especially after September 26, was unusual for the great amount of expert attention, advice, and staff time devoted to the SSN program. *Consultation with CDE Content Specialist 1*.
67. Classroom management continued to be an issue: Student continued to exhibit challenging behaviors and would hit people and attempt to elope. *Interview with Para 2*. During this period, a student with a g-tube had it pulled out more than once, disrupting the SSN room further and requiring either his parent or School Nurse to come provide treatment. *Interviews with Para 1, Para 2, Para 3, Para 4, School Nurse, PT, OT, and SLP; D. Supp. F-5*, pp. 8-9. This occurred at least twice and probably a third time without notification to School Nurse. *Id.* That student’s parents were upset that School initially reported that another student had caused one of the incidents

when it was later shown to have been a paraprofessional's accident. *P. Supp. C-1*, p. 121.

68. In sum, despite a high level of support provided by the District, this time period from the beginning of the 2023-2024 school year to October 10 posed, by all credible accounts, a great challenge to adequately addressing the SSN program Students' needs. *Interviews with Para 1, Para 2, Para 3, Para 4, PT, OT, SLP*; see generally *Exhibit M*, p. 16; *Exhibit P. Supp. C-1 to C-2*. Even the service providers—the physical therapist, occupational therapist, and speech-language pathologist—pitched in during their visits to supervise the children and give the paraprofessionals a break. *Id.* There were, at times, no teacher in the room, as few as one or two paraprofessionals, and “daily schedule and routine changes due to a revolving door of substitute and district staff supporting in the classroom.” *Id.*

Specialized Instruction

69. District staff, and particularly District Floater, provided organizational and pedagogical support to the SSN program, including drafting schedules for the students and paraprofessionals, arranging the room, and administering training. *Exhibit D. Supp. C-1 to C-3*. Nonetheless, the basic staffing problems caused a lack of leadership, lack of in-room expertise, and a void of stability, structure, and continuity for the children. *Interviews with Para 1, Para 2, Para 3, Para 4, OT, PT, and SLP*.
70. Based on extensive interviews of individuals who were in the SSN program during this time and the documentary evidence discussed above, the SCO finds that the classroom environment from the beginning of the 2023-2024 school year to October 10 impeded the ability of all the Students in the SSN program to access and benefit from the limited instruction provided.

Curriculum Modifications

71. Similarly, for the same reasons and based on the same evidence, the SCO finds that none of the Students received modifications to the curriculum during this time. See *above*.

H. Implementation from October 11, 2023 through February 16, 2024

Staffing and State of the SSN Program with New SSN Teacher

72. School hired New SSN Teacher, who began October 11, 2023. *Interview with New SSN Teacher*. New SSN Teacher had a teaching license and an endorsement, no longer offered by CDE, for “special education – moderate needs.” *Exhibit R*, p. 1185; *COLL*.

73. New SSN Teacher did not use the student schedules or pedagogical approaches that the District staff had been attempting to implement. *Interviews with New SSN Teacher, Para 1, Para 2, Para 3, and Para 4.*
74. New SSN Teacher struggled with the same issues that had existed: Students' behavior had universally regressed; the program did not have sufficient staff to give thirteen extremely high-needs students the close supervision they required to progress academically, behaviorally, and in their LRE; and both SSN Teacher and the paraprofessionals were unable to implement the new schedules and pedagogical approaches consistently as their time was largely spent responding to unsafe behaviors, maintenance of hygiene, and providing nutrition and water to the children, some nonverbal, and some who needed assistance with eating, drinking, and using the bathroom. *Interview with Paras 1 and 2; see Interviews with Paras 3 and 4.* In this period, the number of paraprofessionals could drop as low as two for the day, depending on who was out sick or on leave. *Interview with Para 1, 2, 3, and 4.*
75. On top of these challenges, New SSN Teacher added another: She did not respond appropriately with her hands and voice to Students' behavioral challenges. *Interviews with Para 1, Para 2, Para 3, Para 4.*
76. While the paraprofessionals differ in their accounts of New SSN Teacher's physical treatment of Students, they all state that New SSN Teacher used her hands inappropriately: at a minimum she "put hands on kids to expedite a situation like hoist a kid where she wanted," "when she started, used her hands more than she should," and, at a maximum, she slapped one particularly aggressive child's hands away when he tried to hit people, moved students' hands where she wanted them, grabbed students by their clothes and wrists to move them, and put a knee into a student's bottom to prompt them to wash their hands. *Id.* A video from the beginning of December 2023 shows New SSN Teacher physically removing a child out of the bathroom. *See CDE Exhibit 1.* Her conduct in this video did not reflect any sort of CPI-compliant intervention, and it was likely to encourage negative behaviors. *Consultation with CDE Content Specialists 1 and 2.*
77. The two paraprofessionals who had worked in the SSN program the longest reported that New SSN Teacher also inappropriately used an elevated voice and unkind language toward the students when she became frustrated. *Interviews with Paras 3 and 4.* They also reported that Students' basic hygiene needs—diapering and toileting—were not being met. *Id.* Their version of events finds credibility in the timeline, Students' parents' reports, and the video showing New SSN Teacher physically removing child out of the bathroom. *See CDE Exhibit 1.*
78. Students' parents, as well as Student's BCBA, describe harm as well as extreme regression in the children's behavior. *Interviews with Parents, Parents 2, Parent 3, Parent 4, and BCBA.* The parents' accounts are all similar:

- a. Complainant-Parents saw Student regress so that they became “concerned for her daily safety as well as the safety of others,” preventing them from taking her shopping, going to the zoo, walking in the neighborhood, and visiting extended family members. *Exhibit M*, pp. 480-81. Her screaming and self-harming behavior escalated to a point that her medical and behavioral treatment providers advised Parents to remove her from School. *Id.* Parents and BCBA saw light bruises on Student after school one day. *Interviews with Parents and BCBA*. BCBA saw Student’s academic and functional performance regress to the extent that, at the end of the summer Student had been able to write her name but, by the end of October, could not even trace it. *Interview with BCBA*.
- b. Parents 2, whose child had been found in the closed laundry dryer and was also the child being physically removed from the bathroom by New SSN Teacher in the video, worked to transfer their student in November. *CDE Exhibit 2*, p. 2. Their choice was motivated in part by their daughter’s behavioral regression, including reports from School describing behaviors that she did not exhibit at home but they interpreted as her way of communicating unhappiness or fear. *Id.*
- c. Parent 3 learned from their ABA provider, who picked up her children at the end of the school day, that her children had completely soiled clothing and had not been changed. *Interview with Parents 3*. She said she was told by New SSN Teacher that her children were disallowed from going to physical education or recess. *Id.* When standing in School’s parking lot, she saw one of their children standing in a window, on a windowsill. *Id.* A photograph of that area of the SSN room, a partially separated “sensory area” where students were regularly placed, shows that the window, roughly three feet off the ground, had a grab bar directly underneath the windowsill and a windowsill broad enough for a child to stand in. *CDE Exhibit 1*. Finally, Parent 3 also saw her children regress; they were “different” and frequently acted “overwhelmed, crying” after school. *Interview with Parent 3*.
- d. Parent 4 also saw her daughter’s behavior regress. *Interview with Parents 4*. She exhibited “a lot more anger” and negative behaviors, which Parent 4 understood to indicate something wrong with her routine. *Id.* In the evening after school on a day when Paraprofessionals 3 and 4 reported to the police that New SSN Teacher had grabbed their daughter roughly—prompting a police visit to the school and Human Resources investigation that ultimately found no cause for discipline—Parent 4 communicated with her daughter, who is non-verbal, using her practice of asking A-or-B questions and gestures. *Id.* Parent 4 understood her daughter as communicating that New SSN Teacher had hurt her, and it was a physical rather than emotional hurt. *Id.*

79. Students' parents began disenrolling, transferring, or otherwise pulling their children from the SSN program, so that the cohort of thirteen students on the date that New SSN Teacher began was reduced to eight by the end of the fall semester and seven by February 12. See *Exhibit D. Supp. F-1*.
80. In light of these facts, the SCO finds that the conditions of the SSN program continued to make meaningful learning highly improbable even after a permanent teacher was hired.
81. New SSN Teacher resigned on February 16, 2024. *Communication with District Counsel*. The District hired a new teacher from an agency; she has an appropriate license and special education endorsement, and she started on March 11, 2024. *Id.*; *COLL*.

Students' Specialized Instruction

82. After New SSN Teacher began, the District's support largely ended aside from about five hours of observation by one of the District's special education tutors between October 11 and October 31. See *Exhibit D. Supp. C-1 to C-3*.
83. Paraprofessionals continued to use worksheets and tasks from the bins and binders of the Students in the SSN program but it was not always clear to them who provided the worksheets. *Interview with Para 1*. New SSN Teacher's hands were full attempting to organize the room and students. *Interview with Para 2*.
84. Maintaining hygiene, keeping students safe from themselves and each other, and attempting to prevent the students from expressing physical aggression toward adults—not always successfully—remained the primary struggle. *Interviews with Para 2, Para 3, Para 4, PT, OT, and SLP*.
85. The SCO finds that, although paraprofessionals did work with Students to complete worksheets from Students' bins and binders, the opportunity for instruction was minimal, no expert was able to provide individualized adjustments to match the children's performance, and the environment diminished Students' ability to learn.

Students' Curriculum Modifications

86. Similarly, the state of the SSN program during this period meant that it was not possible to give sustained attention over time to each of the Students' individualized academic performance and learning needs over time. *Interviews with Para 2, Para 3, Para 4, PT, OT, and SLP*. PT, during her visits, did not see New SSN Teacher providing specialized instruction or working with Students one-on-one as Former SSN Teacher had done. *Interview with PT*.
87. Because the program lacked a teacher with both the time and expertise to tailor the children's classwork to their performance, their goals, and the various topics being

taught in the general education curriculum, the SCO finds that Students' work was not individually modified to their performance over time, and the work was not modified and aligned with the general education curriculum. This finding is consistent with observations by Gen Ed Teacher, who taught first grade in the general education environment and regularly observed first-grade SSN students who worked in her classroom. *Interview with Gen Ed Teacher.*

I. Student's Related Services in 2023-2024

88. The Record shows that, of the 60 minutes per month of direct occupational therapy required by Student's IEP, she received no minutes in August, 100 minutes in September, and none in October. *Exhibit F*, p. 132. During the 2023-2024 school year, Parents did not remove Student from the occupational therapy time slot to attend the ABA program; unlike in the 2022-2023 school year, Student's scheduled allowed for both. *See id.*
89. Of the 120 minutes per month of direct SLT required by Student's IEP, she received no SLT in August, 120 minutes in September, and 30 minutes in October. *Id.* at pp. 130-31.
90. Of the 15 minutes per semester of consultative/indirect physical therapy required by Student's IEP, she received 185 minutes, all in October, and all but 5 minutes in the context of IEP meetings attended by PT. *Id.* at p. 132.
91. The District's position is that Student is not owed any services after October 24, 2023, when Parents stopped sending her to School. *Response*, p. 6. The SCO, however, finds that the conditions of the SSN program were not conducive for any of the Students in the SSN program to receive a FAPE, and will not discount any of the services owed to Student because of any absences through February 16, 2024, the date that New SSN Teacher resigned and the outer limit of this investigation. Accordingly, the SCO finds that, from the beginning of the 2023-2024 school year on August 14, 2023 through February 16, 2024, Student should have received six months of services, counting half a month each for August and February. *See Exhibit J.*
92. Accordingly, the SCO finds that Student should have received a total of 360 minutes of direct occupational therapy (60 multiplied by 6) but received only 100 minutes, for a deficit of 260 minutes. She should have received 720 minutes of SLT (120 multiplied by 6) but received only 150 minutes, for a deficit of 570 minutes. She should have received a total of 90 minutes of indirect/consultative physical therapy and received 185 minutes.

J. Student's LRE in 2022-2023 and 2023-2024

93. While Former SSN Teacher was on leave from November 1, 2022 through February 20, 2023, the paraprofessionals used the schedules she left to organize Students' time

in the general education environment. *Interviews with Former SSN Teacher, Para 3, Para 4, and Para 5.*

94. By all accounts, the paraprofessionals during this period were sufficiently organized and staffed to implement Former SSN Teacher's schedules, and to accompany Students as needed for their time in the general education classroom, recess, lunch, and elevations. *Id.*
95. Student's participation in the general education classroom in the 2023-2024 school year was minimal according to both Student's general education teacher and District Floater. *Interview with Gen Ed Teacher, Exhibit M, p. 16.*
96. Gen Ed Teacher, who taught first grade, saw little of the other first-grade students from the SSN program, although one student not on her roster came to her room twice for less than 10 minutes each time. *Interview with Gen Ed Teacher.* Similarly, Parents 2 were told by the fourth-grade general education teacher that he saw their daughter "a few minutes in the morning or afternoon." *Interview with Parents 2.*
97. By all credible accounts, Students as a group received minimal time in general education in the 2023-2024 school year because there were not enough staff to accompany them. *See Interviews with Para 1, Para 2, Para 3, Para 4, and Gen Ed Teacher.*
98. In sum, the District fulfilled Student's LRE requirements in 2022-2023 but not in 2023-2024.

K. Parental Participation at October IEP Meetings

99. Parents allege they were not permitted to participate in the course of three IEP meetings they attended on October 10, 17, and 24. *Complaint, pp. 9-10.*
100. As for the meetings on October 10 and 17, nothing in the Record suggests that Parents were unable to participate. *Exhibit R, pp. 1178-79; see also Complaint, pp. 9-11; Interviews with Parents, SLP, and District Floater.* The draft IEP begun on October 10 and continued on October 17 and 24 reflects Parents' input regarding their daughter's needs, District's offer of and Parents' rejection of a draft behavioral plan, and the attendance of Parents' advocates (one on October 17 and a different advocate on October 24). *See Exhibit A, pp. 28-29, 34-35, 49-51.*
101. As for the October 24 meeting, Parents first provided input on October 23 that was included in the IEP draft for the October 24 meeting. *Exhibit R, p. 1179.* Parents state that, during the meeting itself, School and District staff refused to follow their and their advocate's preferences as to the manner of conducting the meeting, such as by not writing the advocate's and Parents' suggestions into the draft or onto the shared computer screen in real time. *Complaint, pp. Id.; Interview with Parents.* They state

that one of the senior-level District staff left the room and then returned. *Id.* They state that District Floater left without giving them a copy of the draft IEP. *Id.* OT did print and provide a draft to them at that time. *Interview with OT.*

102. By all credible accounts, the participants at the October 24 meeting grew very frustrated, and although Parents did have difficulty making themselves heard, this was due to their advocate speaking over them rather than any action by School or District staff. See *Interviews with Parents, BCBA, District Floater, SLP, OT, and School Nurse.* Their advocate's incivility against District and School staff directly provoked staff to cope by taking short breaks and ending the meeting once it became clear that the meeting would no longer be productive. *Id.*
103. Meeting notes for October 24 taken by District staff record the concerns of Parents, BCBA, and Parents' advocate including the degree of supervision for Student; data collection for a behavioral plan as well as for IEP goals; the District's refusal to provide an IEE at public expense prior to the District performing its own evaluation; problems with the District's proposed behavioral plan; the District's failure to provide a FAPE; the degree of detail in service logs; a verbatim, detailed narrative by Parents of Student's regression; staff training; and various questions by Parents' advocate. See *Ex. E*, p. 128.
104. Despite holding three meetings, the District and Parents could not come to an agreement. *Interviews with Parents; Complaint*, p. 17. Parents would not consent to a new evaluation, and District issued a Prior Written Notice with its offer of FAPE after Parents stopped allowing Student to attend School and made clear that they would not return Student until their safety concerns were addressed. *Exhibit D*, pp. 114-15.
105. Parents will not return Student to school until District has conducted an evaluation and behavioral assessment, and crafted a new IEP and BIP that address and support Student's behavioral issues. *Interview with Parents.* District will not provide an IEE requested by Parents until it has conducted its own evaluation and behavioral assessment. *Exhibit D*, pp. 14-15; *Exhibit M*, p. 526. The District states that a behavioral assessment is necessary, and the District requires that the behavioral assessment be conducted at School. *Id.* Parents will not return Student to the School and the classroom where Parents believe she was traumatized. *Interview with Parents; Exhibit D*, pp. 14-15; *Exhibit M*, p. 526. The District has proposed a new behavioral plan, an "Escalation Cycle Management Plan," despite never having collected behavioral information for Student in all her time at School. *Response*, p. 15; *Exhibit D*, p. 14; *Exhibit R*, p. 138. The District's proposed behavioral plan provides, in its crisis plan, that staff may use CPI physical restraints. *Exhibit R*, p. 138. In response, Parents have revoked their consent for evaluation on October 23, 2023, and they have declined to agree to a behavioral plan that is not based on observational data and that includes the use of CPI physical restraints. *Interview with Parents; Response*, p. 15; *Exhibit M*, p. 438.

L. Student's Health Care Plan

106. Parents have alleged that the District failed to implement Student's health care plan. *Complaint*, pp. 13-15.
107. The IEP stated that Student required a health care plan and the plan was located in the nurse's office as well as the SSN room. *Id.* at p. 8.
108. The health care plan listed three problems and actions staff would take to correct them: (1) the health concern of choking by eating overly large bites of food or non-food objects, with the prescribed response of supervising her while eating and monitoring her in the classroom; (2) the health concern of consuming non-food objects and becoming poisoned or injured, with the prescribed response of monitoring Student for signs of poisoning or injury, clearing the environment of potential small non-food items, and notifying Parents of any ingestion of inappropriate substances; and (3) the combined health concerns of impulsivity, elopement, and self-injury, with the prescribed responses of staff remaining within arm's-length of Student whenever she was not in an enclosed space, and the requirement to "closely supervise" her at all times. *Exhibit R*, pp. 1370-71.
109. Parents state that School communicated that Student, on several occasions, eloped. *Complaint*, p. 14. They state that this proves that the health care plan—particularly its requirement for supervision—was not implemented. *Id.*; *Interview with Parents*.
110. The Record does not reflect any specific instances of a failure to implement the health care plan in either the 2022-2023 or 2023-2024 school years. The paraprofessionals did not find that Student presented any notable health or hygiene issues. *Interviews with Paras 1, 2, 3, 4, and 5*. They understood the risk that she could eat non-food objects, but she did not frequently attempt to eat non-food objects other than chewing on her hair, which the paraprofessionals worked to persuade her not to do. *Interviews with Paras 1 and 2*. She did occasionally elope, requiring paraprofessionals to retrieve her. *Id.* School Nurse does not know of any instances where Student's health plan was not implemented. *Interview with School Nurse*. School medical records show that she required attention from the nursing staff for a stomachache, insect sting/bite, and a nosebleed, but there is no evidence that these resulted from a failure to implement the health plan. *Id.*; see *Exhibit D. Supp. F-5*, p. 7; *Exhibit D. Supp. F-6*, p. 7.

M. Progress Monitoring and Reporting in 2022-2023 and 2023-2024

111. Parents have alleged that the District failed to monitor Student's progress on her IEP goals and to provide reports on Student's progress in accordance with her IEP. *Complaint*, p. 5.

Monitoring

112. While Former SSN Teacher was on leave in 2022-2023, the paraprofessionals conducted progress monitoring using the worksheets left by Former SSN Teacher. *Interview with Former SSN Teacher, Para 3, and Para 4; see Exhibit D. Supp. E.; Exhibit I, pp. 161-208.*
113. From the beginning of the 2023-2024 school year until October 10, 2023, the paraprofessionals were unable to conduct progress monitoring for Students due to the various challenges to supervising the SSN program at that time, including the lack of a teacher who could gain an individualized understanding of Students. *Interview with Para 1; see above, FF #s 47-67.*
114. The New SSN Teacher may have begun monitoring progress at some point after Student's parents stopped sending her to School on October 24, but she was not monitoring progress before that point. *Interviews with Para 2, Para 3, and Para 4.*
115. In sum, Student's progress was monitored in the 2022-2023 school year but not the 2023-2024 school year.

Reporting

116. Student's IEP required that Parents receive quarterly reports of Student's progress on these goals. *Id.* at p. 19.
117. The District has provided Student's progress reports, as follows: a progress report dated October 14, 2022; a progress report dated March 17, 2023; a progress report dated May 25, 2023; a report card for all four quarters of the 2022-2023 school year; and a report card for the first quarter of 2023-2024 school year. *Id.* at pp. 157-60, 211-16.
118. There are no progress reports for the second quarter of the 2022-2023 school year or the first quarter for the 2023-2024 school year. *See id.* at pp. 211-16.
119. The progress reports appropriately describe Student's progress on her goals using the goal metrics. *Id.* at pp. 211-16. One exception is her occupational therapy goal, which reflects no progress, and the comments reflect that her parents chose to send her to the ABA program on the days that OT provided services. *Id.*
120. The report card for the 2022-2023 school year has several comments marked "Term 2 Comments" that report on Student's progress for one of two objectives of her literacy goal, one of three objectives of her mathematics goal, and one of her two objectives of her adaptive behavior goal. *Id.* at p. 157
121. The report card for the 2023-2024 school year has scores for some of the categories, but no narrative comments and nothing that matches her goals or goal metrics. *Id.* at

p. 159. It is also unclear who entered the scores, or what data that person drew from to determine the scores. *See id.*

122. In sum, the District did not provide reliable, data-based progress reporting for the second quarter of the 2022-2023 school year or the first quarter of the 2023-2024 school year.

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 made Students' IEPs accessible to their providers in compliance with 34 C.F.R. § 300.323(d). The evidence does not show a failure to implement Student's healthcare plan, but the District did not implement the specialized instruction and curriculum modifications required by Students' IEPs, and the District did not monitor and report Student's progress, in violation of 34 C.F.R. § 300.323. This resulted in a denial of FAPE.

Parents have alleged that the District did not implement Student's IEP because it did not provide the specialized instruction, curriculum modifications, services, least restrictive environment ("LRE"), and progress reports required by the IEP.

A. Legal Requirements for IEP Implementation

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." *Endrew F.*, 580 U.S. at 391 (2017). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d).

B. A District's Duties When a Parent or School Impede IEP Implementation

A district is not responsible for a failure to provide services required by a student's IEP when the parents' actions prevent the district from providing all the services required by the IEP. *Montgomery County Public Sch.*, 111 LRP 54915 (Md. SEA 2011). When a

parent refuses only some of the district's offered services, however, the district cannot use that refusal to deny any other services that have not been refused. 34 C.F.R. § 300.300(d)(3); *Boulder Valley School District*, 2023:521 (Colo. SEA May 6, 2023). A school district must implement only those portions of the IEP that are not constrained by the parent's actions. *Id.*; *accord D.O. v. Escondido Union Sch. Dist.*, 59 F.4th 394, 412-13 (9th Cir. 2023); *Dougall v. Copley-Fairlawn City Sch. Dist. Bd. Of Educ.*, 2020 WL 435385, at *28 (N.D. Ohio Jan. 28, 2020).

By contrast, on the rare occasion that a school's classroom environment is so deficient that a student cannot receive a FAPE, the district bears responsibility, and the parents' refusal to send their child into the inadequate classroom does not excuse the district from its duty to provide a FAPE. A recent case from Pennsylvania addressed a remarkably similar situation. *Hempfield School Dist. V. S.C., M.C., and S.R.-A*, 2024 WL 384918, 124 LRP 3142 (E.D. Penn. 2024). After the regular classroom teacher for a kindergarten program for children with autism left on maternity leave, the school district was unable to find either a replacement or a long-term substitute. *Id.* at *5-*6. The district staffed the room with one qualified teacher, who had to split his time with other duties, and multiple day-to-day substitutes who did not have the appropriate training for the program. *Id.* Even after the district eventually hired a qualified, full-time teacher, the court ruled that the lack of support for that teacher—there were too few aides and paraprofessionals to help manage the room—resulted in an inability for her to provide meaningful specialized instruction. *Id.* at *7-*8, *20, *24. To determine what happened in the classroom, the court credited the testimony of two aides who had resigned despite the district's argument that they were non-credible "disgruntled former employees." *Id.* at *20. The court found that the staffing issues, which resulted in a denial of FAPE in one school year, continued unabated into the next year. *Id.* at *23. The parents disenrolled their child from the school mid-way through the second school year, and, ultimately, the court ruled that the school district was responsible for paying for the child's education for the entire year, including the months in which the child was attending the new school chosen by the parents. *Id.* at *28.

It should be noted that the circumstances are not common where parents may remove their student from school yet still demand the school district provide compensatory education or tuition reimbursement. The law imposes procedural and substantive requirements both before and after a student's removal, as well as equitable and other limitations. See 34 C.F.R. § 300.148; *Florence County Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 14 (1993); *Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass.*, 471 U.S. 359, 371 (1985). Parents who unilaterally remove their child from a public school to later seek compensatory education or tuition reimbursement do so "at their own peril" and may be "responsible for the cost of doing so." *Doe By & Through Doe v. Bd. of Educ. of Tullahoma City Sch.*, 9 F.3d 455, 461 (6th Cir. 1993).

C. IEP Accessibility

The SCO must first determine whether the District satisfied its obligation to make Students' IEP accessible to her teachers and providers. 34 C.F.R. § 300.323(d). Here,

the Findings of Fact demonstrate that Students' teachers and providers, as well as School administration, had access to those IEPs. (FF #s 21-24.) Accordingly, the SCO finds and concludes that the District made Students' IEPs accessible in compliance with 34 C.F.R. § 300.323(d).

D. Specialized Instruction

a. Requirements for Providing Specialized Instruction

The legal requirements for staff licensure provide a minimum floor of staff qualifications necessary to provide specialized instruction. The IDEA requires CDE to "establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities." 34 C.F.R. § 300.156(a). These qualifications "must ensure that each person employed as a public school special education teacher . . . [h]as obtained full State certification as a special education teacher." *Id.* § 300.156(c).

The Rules for the ECEA provide that "[a]ll personnel providing special education services to children with disabilities shall be qualified," and "[a]ll special education teachers shall hold Colorado's teacher's certificates or licenses with appropriate endorsements in special education." ECEA Rule 3.04. The Rules require that the teacher's endorsement match the teacher's caseload: "Each special education teacher will serve, at a minimum, a majority of special education students with the same identified area of need as that teacher's special education license or certification endorsement." *Id.* A failure to staff an appropriately licensed teacher to provide specialized instruction required by students' IEPs results in a failure to implement the IEPs. *Denver Public Schools ("DPS")*, 122 LRP 39748 (Colo. SEA Sept. 30, 2022).

b. The Failure to Provide Specialized Instruction

Students' IEPs required that they be provided specialized instruction. (FF # 34.) Here, the District did not staff a full-time teacher with an appropriate licensure during any of the three periods at issue: November 1, 2022 to February 20, 2023; the beginning of the 2023-2024 school year, August 14, 2023 to October 10, 2023; and October 10, 2023 to February 16, 2024.

From November 1, 2022 to February 20, 2023, while Former SSN Teacher was on leave, the paraprofessionals, in the absence of a long-term special education teacher, implemented Former SSN Teacher's schedules and administered the classwork she left as best as they could. (FF #s 25-33) Paraprofessionals, however, are not teachers and cannot be employed as teachers. 34 C.F.R. § 300.156(c). Accordingly, the duty to provide specialized instruction was not fulfilled.

From the beginning of the 2023-2024 school year to October 10, 2023, the program did not have consistent and adequate supervision by an appropriately licensed and endorsed

teacher. (FF #s 52-69.) Although District staff, including especially District Floater, provided support, no District staff acted as a full-time teacher in the SSN program. (*Id.*) No District or School staff had an ongoing, individualized understanding of and response to Students' academic needs, growth, and regression. (*Id.*) Again, the duty to provide specialized instruction was not fulfilled.

From October 11, 2023 through February 16, 2024, the program was run by New SSN Teacher. (FF #s 73-82.) New SSN Teacher held a "moderate needs" endorsement for her teaching license. (*Id.*) More than half of the students in the SSN program were eligible for special education services under "severe needs" disability categories. (FF # 53.) Accordingly, she could not legally teach them. *ECEA Rule* 3.04(1)(a)(i). Because New SSN Teacher did not hold the correct licensure and endorsements, she could not fulfill the District's duty to provide specialized instruction according to Students' IEPs. *DPS*, 122 LRP 39748.

Although the lack of a properly credentialed teacher is sufficient to find a violation, the SCO further finds and concludes in the alternative that the lack of individualized attention to Students' academic performance resulted in a failure to provide specialized instruction in these three time periods. The substitute teachers did not have sufficient time to provide individualized instruction to each of the Students, and the SSN program was not adequately staffed to allow the teachers and paraprofessionals to provide sustained, individualized education to Students. *Hempfield*, 2024 WL 384918 at *20.

For these reasons, the SCO finds and concludes that the District failed to implement the SSN program Students' IEPs because it failed to provide the specialized instruction required by those IEPs, in violation of 34 C.F.R. § 300.323.

c. Denial of FAPE

A district's failure to implement an IEP may result in a denial of a FAPE, allowing remedies such as compensatory services. *Id.* § 300.17; *ECEA Rule* 2.19. However, not every deviation from an IEP's requirements results in a denial of FAPE. Only the omission of a "material," "essential," or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. V. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822.

Here, because providing specialized instruction to Students was essential to their FAPE, the SCO finds and concludes that this failure to provide instruction was a material failure and denial of FAPE. *Id.*

E. Student's Related Services

Student's IEP required that she receive 60 minutes per month of direct occupational therapy, 15 minutes per semester of consultative/indirect physical therapy, and 120 minutes per month of direct SLT. (FF # 13.)

a. The 2022-2023 School Year

In the 2022-2023 school year, Student received the required 15 minutes per semester of consultative/indirect physical therapy. (FF #s 40-43.)

In the 2022-2023 school year, she did not receive the required 60 minutes per month of occupational therapy. (*Id.*) She did not receive occupational therapy because Parents chose to remove her from School to attend an ABA program on the day that OT provided direct services at School. (*Id.*)

As explained above, a school district is not responsible for providing services when a parent's actions prevent the district from providing services. *See Montgomery*, 111 LRP 54915. Parents cannot succeed "in [their] refusal to allow the IEP to be implemented as written while at the same time complaining that the fact that it was not implemented . . . entitled [the student] to compensatory education." *Id.* Because the occupational therapy in 2022-2023 school year was missed as a result of Parents' choice, the District is not responsible for the failure to provide the services.

In the 2022-2023 school year, Student did not receive the required 120 minutes per month of SLT. (FF #s 40-43.) Unlike the occupational therapy, however, the missed SLT was not due to a scheduling conflict or any choice by Parents. (*Id.*) The Record shows that the District simply did not provide these services. (*Id.*) The District did not provide 720 minutes (12 hours) of SLT required by Student's IEP. (*Id.*)

b. The 2023-2024 School Year

In the 2023-2024 school year, as the Findings of Fact demonstrate, Student received the minutes of consultative/indirect physical therapy required by her IEP, but she did not receive 260 minutes of occupational therapy or 570 minutes of SLT. (*Id.*)

The SCO finds and concludes that, in the unusual circumstances of the SSN program in the 2023-2024 school year here, Parents' removal of Student from School did not relieve the District of its obligation to provide Student's services.

The SSN program lacked adequate staffing to the degree that, at times, there were as few as one or two paraprofessionals and no permanent teacher for a classroom of thirteen children with severe needs. (FF #s 61, 68.) Despite the District's efforts, the lack of a permanent teacher resulted in a void of organization and expert oversight from the beginning of the year until October 10. (FF #s 51-68.) Then, after New SSN Teacher was

hired on October 10, School continued to remain an environment in which the provision of FAPE was improbable due to the persistent lack of staffing, consequent disorder within the room, and mismanagement by New SSN Teacher, who was not appropriately licensed, qualified, or experienced to teach students with this level of need. (FF #s 72-80.)

In contrast to the 2022-2023 school year, when Parents' decision to remove Student was the reason that Student could not receive occupational therapy, in the 2023-2024 school year Parents had no part in making the SSN program an environment in which Student could not receive a FAPE. (FF #s 51-68, 72-80.) Parents did not create the deficiencies of the SSN program in the 2023-2024 school year, and Parents could do nothing to correct or improve the program. (See *id.*) Student could not receive a FAPE in that environment from the beginning of the year until her withdrawal, and she could not have received a FAPE after October 24 even if she had remained in the program. Parents' decision to remove Student had no bearing on the District's ability to provide a FAPE in the SSN program.

On these extraordinary facts, the SCO finds and concludes that Parents did not forfeit Student's right to services by removing her from the SSN program. The District's obligation to provide services spans the beginning of the year until February 16, 2024, which is the date that New SSN Teacher resigned and the outer limit of this investigation. (FF #s 89-93.)

c. Denial of FAPE

As this discussion shows, during the periods of the 2022-2023 and 2023-2024 school years covered by this investigation, Student missed a total of 1,290 minutes of SLT and 260 minutes of occupational therapy.

Student's SLT and occupational therapy were material, essential, and significant to her FAPE. Accordingly, the SCO finds and concludes that this violation was a material failure and denial of FAPE. *Van Duyn*, 502 F.3d at 822.

F. Curriculum Modifications

An IEP must identify the "program modifications or supports" that will be provided to enable the student "to be involved in or make progress in the general education curriculum." 34 C.F.R. § 300.320(a)(4).

Here, Students' IEPs required that their curriculums be modified. (FF # 37-39.) No qualified instructor, however, worked directly with Students for a sufficiently sustained period of time to understand their individual needs or to thoughtfully modify their curricula on a continual basis to allow them both to make academic progress for their goals and to participate meaningfully with general education classes. (FF #s 37-39, 72, 87-88.)

Because providing curriculum modifications for children with disabilities is an “essential element of the IEP,” and the failure to do so for the lengthy periods of time at issue was “more than a minor discrepancy,” the SCO finds and concludes that the District’s failure constituted a denial of FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027.

G. Student’s Healthcare Plan

Student’s IEP incorporated a health care plan requiring supervision to prevent her from choking on food, eating non-food objects, eloping, and self-injury. (FF #s 107-111.) As the Findings of Fact show, the Record does not support a conclusion that the District failed to implement this plan. (*Id.*) Accordingly, the SCO does not find a violation.

H. Progress Monitoring and Reporting

A parent’s right to participate in the development of their child’s educational program requires that they be regularly informed of progress toward IEP goals. See *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017) (“[I]n enacting the IDEA, Congress was as concerned with parental participation in the *enforcement* of the IEP as it was in its *formation*.”). For that reason, school districts must monitor students’ progress and periodically give parents a report of their student’s progress toward meeting annual goals, in accordance with the schedule described in the IEP. 34 C.F.R. § 300.320(a)(3).

Here, as the Findings of Fact demonstrate, Student’s progress was monitored in the 2022-2023 school year but not the 2023-2024 school year. (FF #s 112-123.) Further, the District did not properly report Student’s progress to Parents for the second quarter of the 2022-2023 school year or the first quarter of the 2023-2024 school year. (*Id.*) Accordingly, the District failed to provide reports in accordance with Student’s IEP, in violation of 34 C.F.R. § 300.323(c).

The omission of a “material,” “essential,” or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *Neosho R-V Sch. Dist.*, 315 F.3d at 1027. The District’s failure to report Student’s progress in the 2022-2023 school year left Parents in the dark about the state of the SSN program and the effectiveness of the District’s educational program during Former SSN Teacher’s absence, causing a missed opportunity for Parents to intervene. Similarly, the failure of monitoring and reporting in the 2023-2024 school year deprived Parents of the data they should have possessed going into the IEP Team meetings, which they could have used to advocate that the SSN program was inadequate for Student’s education. Accordingly, the SCO finds and concludes that the District’s failures to monitor and report progress resulted in a denial of FAPE.

I. Compensatory Education

Compensatory services are an equitable remedy designed to restore a student to the position they would be in had the violation not occurred. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). When awarded, compensatory services need not be an

“hour-for-hour calculation.” *Colo. Dept. of Ed.*, 118 LRP 43765 (Colo. SEA June 22, 2018). The amount and nature of compensatory services should be determined according to the purposes of the IDEA, which include providing an individualized FAPE to meet each child’s particular needs. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

a. Compensatory Education for SSN Program Students

Here, balancing the significant loss caused by the failure to provide specialized instruction and individualized curriculum modifications for nearly nine months of school—December 1, 2022 to February 20, 2023 and August 14, 2023 to February 16, 2024—against the children’s ability to tolerate additional hours of compensation on top of their ordinary schooling, the SCO, after consulting CDE’s content specialists, will award 64 hours of compensatory education to each of the Students, which includes Student. This compensatory education shall be provided over the summer following the 2023-2024 school year by a properly credentialed educator and sufficient support staff to ensure a meaningful and individualized opportunity for the children to make progress on their IEP goals.

b. Additional Compensatory Services for Student

As for the 1,290 minutes of SLT and 260 minutes of occupational therapy required by Student’s IEP but not provided, the SCO finds that awarding two-thirds of the missed amount of services is an appropriate amount to allow Student to recoup progress in these areas alongside the demands of her regular education and other activities. Accordingly, the SCO will award 860 minutes of SLT and 174 minutes of occupational therapy, to be provided within the year following the date of this Decision.

Conclusion to Allegation No. 2: The District did not develop an IEP that adequately addressed Student’s behavioral needs from December 1, 2022 to October 24, 2023, in violation of 34 C.F.R. § 300.324(a)(2)(i). The District also did not properly determine whether Student qualified for ESY services, in violation of 34 C.F.R. § 300.106. This resulted in a denial of FAPE.

A. The November 2022 IEP’s Behavioral Intervention Plan

a. The Failure to Develop an Adequate IEP

Parents are concerned that Student’s IEP was inadequate because it did not adequately address Student’s behavioral needs.

An IEP is “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 County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP

development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.*

Because the November 2022 IEP Team meeting occurred more than a year before Parents filed the Complaint, the SCO cannot consider the propriety of the events that occurred at the November 1, 2022 IEP meeting. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ 3(f). The SCO still has authority, however, to consider the propriety of the IEP itself. A deficient IEP continues to violate the IDEA each day that a school district implements the IEP, 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). This investigation separates the events that occurred at the meeting from the IEP that resulted and remains in effect today.

A substantively adequate IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F.*, 580 U.S. at 399. An IEP must include measurable goals and a statement of the special education and related services designed to "[m]eet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum" and any other educational needs that result from the child's disability. 34 C.F.R. § 300.320(a)(2). An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* § 300.320(a). In the case of a child whose behavior impedes the child's learning or that of others, it must include positive behavioral interventions and supports, and other strategies, to address that behavior. *Id.*

Here, the IEP Team understood that Student had behavioral needs that impeded her ability to learn, and it explained in Student's IEP that she had difficulty transitioning to non-preferred activities, responded to undesired or changed environments with screaming, undressing, self-harm, and elopement. (FF # 17.) When an academic demand was placed on her, she would engage in protest or attempt to escape. (FF # 17.) To respond to these disruptions to Student's learning, the IEP Team copied the behavioral plan developed by Student's ABA program. (FF #s 15-20.) The ABA program's behavioral plan was not developed by Student's IEP Team, informed by a comprehensive evaluation, or adapted to or suitable for the school environment. (*Id.*) It was not designed to teach Student to be aware of and have agency over her behavior. (*Id.*) As such, it was not tailored to Student's needs at School or developed to allow her, as an individual, learn how to integrate successfully in the general education environment. (*Id.*)

Accordingly, the SCO finds and concludes that the District's failure to address behavioral needs that impeded her ability to access instruction rendered Student's IEP inadequate, in violation of 34 C.F.R. §§ 300.320(a) and 300.324(a).

b. *The Failure to Review and Revise Student's IEP*

Parents are concerned that the District did not, after initially developing the IEP in November 2022, review and revise it to address Student's lack of anticipated progress.

Although the IDEA does not promise a particular educational or functional outcome for a student with a disability, it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Andrew F.*, 580 U.S. at 400. To that end, school districts have—in addition to the duty to develop an adequate IEP—an affirmative duty to review and revise a student's IEP at least annually, and more frequently as needed to address changed needs or a lack of expected progress. 34 C.F.R. § 300.324(b).

Here, District and School staff knew that Student exhibited challenging behaviors, including hitting people and attempting to elope when an academic demand was placed on her. (FF #s 17, 79, 109-110.) Yet in all Student's time at School until Parents withdrew her for safety reasons, the District never attempted to gather data regarding Student's behaviors in a structured manner with the intent to design and implement positive behavioral strategies to bring her to a point when she would *not* hit people and run when an academic demand was placed on her. (FF #s 15-20.)

Accordingly, the SCO finds and concludes that the District failed to review and revise Student's IEP to address her behavioral issues, in violation of 34 C.F.R. § 300.324(b).

c. Denial of FAPE and Order for an Evaluation in an Appropriate Environment

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 205-06. However, failure to comply with a procedural requirement amounts to a denial of FAPE only if the procedural violation (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. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765 (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Student's behaviors regressed severely during her time at School, where staff had no strategy for teaching her positive behaviors. (FF #s 45, 79.) The District's failure to comply with the IDEA's requirements for developing and revising IEPs constitutes a denial of FAPE because this failure impeded Student's right to a FAPE and deprived her of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765; see *D.S. v. Bayonne Bd. Of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

As a remedy, the SCO will order the District to conduct an evaluation and functional behavioral assessment within specific parameters to ensure Student's reliable evaluation data.

B. Extended School Year Services

Parents are concerned that the District inappropriately determined that Student did not qualify for ESY.

A school district must provide ESY services when a child's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the child. 34 C.F.R. § 300.106(a)(2). ESY services cannot be limited to a particular category of disability or unilaterally limited in the type, amount, or duration of those services. 34 C.F.R. § 300.106(a)(3). ESY services are appropriate when the body of evidence demonstrates that the student will experience a severe loss of skills or knowledge that will significantly jeopardize the educational benefit gained during the regular school year. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022 (10th Cir. 1990); *Colorado Springs Dist. 11*, 110 LRP 22639 (SEA CO 2010).

There are factors other than regression and recoupment that may be analyzed to determine whether ESY is a necessary component of FAPE. *Johnson v. Indep. Sch. Distr. No. 4 of Bixby, Tulsa Cty.*, 921 F.2d 1022, 1030-31 (10th Cir. 1990). These include: a child's degree of regression suffered in the past, the exact time of past regression, the ability of parents to provide educational structure at home, a child's rate of progress, a child's behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with nondisabled children, the areas of a child's curriculum that need continuous attention, a child's vocational needs, and whether the requested services are extraordinary for the child's condition as opposed to an integral part of a program for populations of students with the same disabling condition. *Id.*

Here, the Record contains two worksheets reflecting data collected by an unknown person as well as a form that "checks the boxes" for an ESY determination but leaves the spaces for showing the basis of those checked boxes blank with the exception of noting that Student attended an ABA program. (FF #s 46-51.) The worksheets reflect an attempt to gauge Student's performance on her IEP goals, but it does not address all of Student's goals. (*Id.*) It reflects a deliberate attempt to assess Student's risk of regression over breaks, but it reflects a partial and failed assessment because it does not address any factors other than regression and recoupment. (*Id.*)

Accordingly, the SCO finds and concludes that the District did not conduct a proper determination of Student's need for ESY. *Johnson*, 921 F.2d at 1030-31. As noted above, a procedural violation constitutes a denial of FAPE 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. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765. Here, the failure to properly determine Student's need for ESY services by gathering data regarding Student's academic performance significantly impeded Parents' opportunity to participate in the decision-making process. If Parents had possessed the data that should have been collected, Parents could have used that data to challenge the ultimate determination that Student did not qualify for

ESY. Accordingly, this violation was a denial of FAPE. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765.

C. Compensatory Education

As noted above, compensatory services are an equitable remedy designed to restore a student to the position they would be in had the violation not occurred. *Reid*, 401 F.3d at 518. The amount and nature of compensatory services should be determined according to the purposes of the IDEA, which include providing an individualized FAPE to meet each child's particular needs. *Ferren C.*, 612 F.3d at 717-18.

Here, the District's failure to develop a behavioral plan to assess Student's needs, compounded by its failure to properly assess Student's potential behavioral regression over breaks and the traumatic circumstances of the SSN program in the 2023-2024 school year, resulted in severe regression in Student's behavior. (FF # 45, 79). The SCO, after consulting CDE's content specialists, awards 16 hours of education in behavioral skills by a mental health provider, behavioral health provider, or special education teacher. The provider or teacher must have both expertise and experience in serving children with autism, and these services may be obtained by contracting with a private provider.

D. Caution Regarding the Development of a New Behavioral Plan

The SCO cautions the District that its proposed behavioral plan, the "Escalation Cycle Management Plan," which is outside of the scope of this investigation because it has not yet been adopted, cannot be adopted as it stands. It does not comply with the IDEA and Colorado law for two reasons: First, a behavioral plan developed without adequate student-specific data cannot be tailored to address Student's individualized needs, in violation of 34 C.F.R. §§ 300.320(a) and 324(a). Second, writing the use of restraint holds into a behavioral plan violates Colorado law, even if the restraints are included only for a "crisis" or "as a last resort."

The Colorado Protection of Individuals from Restraint and Seclusion Act, often cited as the Protection of Persons from Restraint Act, forbids school districts from writing restraint and seclusion into students' behavioral plans:

Restraint and seclusion must never be used:

- (a) As a punishment or disciplinary sanction;
- (b) As part of a treatment plan or behavior modification plan;
- (c) For the purpose of retaliation by staff; or
- (d) For the purpose of protection, unless:
 - (l) The restraint or seclusion is ordered by the court; or

(II) In an emergency, as provided for in subsection (1) of this section.

C.R.S. § 26-20-103(1.5) (emphasis added). The U.S. Department of Education has explained that the use of restraints and seclusion signal the need for a new behavioral plan, and should not be part of the plan itself:

As many reports have documented, the use of restraint and seclusion can have very serious consequences, including, most tragically, death. Furthermore, there continues to be no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques. . . . [S]chools must make every effort to structure safe environments and provide a behavioral framework, such as the use of positive behavior interventions and supports, that applies to all children, all staff, and all places in the school so that restraint and seclusion techniques are unnecessary.

. . .

When restraint or seclusion is repeatedly used with a child . . . a review of the student's BIP should occur, the prescribed behavioral strategies should be modified, if needed, and staff training and skills should be re-evaluated. The need for the review is based on the individual needs of the child and the determination should include input from the family; a review could be necessitated by a single application of restraint or seclusion.

Department of Education, *Restraint and Seclusion: Resource Document*, pp. iii, 17 (May 15, 2012).⁵

The SCO cautions the District that, when the IEP Team convenes in accordance with the remedies ordered in this Decision, the District must not plan for a crisis by including the use of restraints in Student's behavioral plan. The District should instead consider alternatives that will avoid the need for holds and enable Student to make progress appropriate in light of her circumstances. *Andrew F.*, 580 U.S. at 399.

Conclusion to Allegation No. 3: The District did not educate Student according to the LRE in her IEP, in violation of 34 C.F.R. §§ 300.114 and 300.323. This resulted in a denial of FAPE.

⁵ Available at <https://www2.ed.gov/policy/seclusion/restraints-and-seclusion-resources.pdf>.

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). A child’s placement must be determined by the IEP Team (including parents), must be individualized, and must be based on the IEP. *Id.* § 300.116; ECEA Rule 4.03(8)(a); U.S. Dept. of Ed., *Questions and Answers (Q&A) on Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (Dec. 7, 2017). The IEP must include evidence that supports the student’s LRE placement. See *H.L. v. Downingtown Area Sch. Dist.*, 624 Fed. Appx. 64, 68-69 (3d Cir. 2015) (mem.). The IEP Team must first consider placing a student with disabilities in the regular classroom. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). Before a student’s LRE may be changed to a more restrictive setting, the IEP Team must consider any supplemental aids and services that could facilitate the student’s placement in a less restrictive setting. *Id.* Any significant change in placement—such as the addition or termination of services, or a changed opportunity to participate in nonacademic activities—must be made upon consideration of reevaluation. ECEA Rule 4.03(8)(b)(ii)(B).

Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii). However, if a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

Here, Student’s LRE was less than 40% of time in the general education classroom; however, the IEP Team anticipated that Student would access her accommodations in the general education classroom and access the general education environment to the best of her ability. (FF # 14.) Student’s 2023-2024 class schedule included lunch, recess, elevations/electives, and math in the general education environment. (*Id.*)

While Former SSN Teacher was on leave in the 2022-2023 school year, the paraprofessionals were sufficiently organized and staffed to implement Former SSN Teacher’s schedules, and to accompany Students as needed for their time in the general education classroom, recess, lunch, and elevations. (FF #s 94-99.)

In the conditions of the SSN program during 2023-2024 school year, however, Student—as well as Students as a group—received minimal time in the general education environment because there were not enough staff to accompany them. (*Id.*)

Accordingly, the SCO finds and concludes that the District failed to educate Student in her LRE as required by her IEP, in violation of 34 C.F.R. §§ 300.114 and 300.323. This procedural violation constitutes a denial of FAPE because it impeded Student’s right to learn alongside her nondisabled peers to the extent appropriate, one of the most important aspects of a FAPE, and it caused a deprivation of the educational benefit of

learning alongside her nondisabled peers. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765.

Conclusion to Allegation No. 4: Parents meaningfully participated in the October 10, October 17, and October 24, 2023 IEP Team meetings, consistent with 34 C.F.R. §§ 300.322 and 300.324(a)(1)(ii).

In their Complaint, Parents expressed a concern about the District's refusal to allow Parents to participate fully in the October 10, October 17, and October 24, 2023 IEP Team meetings.

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Sytsema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering a parent's concerns for enhancing the education of his or her child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County Sch. Dist. RE-1*, 118 LRP 28108 (Colo. SEA March 22, 2018). However, parental participation must be more than "mere form." *R.L. v. Miami-Dade County Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Parents do not have "veto power" over IEP Team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (Calif. SEA May 5, 2015). An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but the public agency is ultimately responsible for ensuring the IEP" provides a FAPE. *Id.* When no agreement with parents can be reached, the school district must determine the appropriate offer of FAPE and provide parents a prior written notice of its determinations. *Id.*

In this case, as the Findings of Fact demonstrate, Parents expressed their concerns, those concerns were heard, and the Record shows that the District responded to those concerns. (FF #s 100-106.) Parents brought two different advocates to the October 17 and October 24 meetings, and their BCBA accompanied them to the October 24 meeting.

(*Id.*) Parents submitted questions and feedback over email, and District Floater answered Parents' questions and incorporated that feedback into the IEP draft. (*Id.*) The District sent Parents an updated draft of the IEP after the October 17 meeting and before the October 24 meeting. (*Id.*) There is no evidence that Parents were not heard at any of the three IEP Team meetings or that the District did not respond to Parents' input, either then or later through email. (*Id.*)

Although Parents take issue with District Floater's declining to type into the draft everything they or their advocate wanted to have added to the draft, the IDEA does not require IEP Teams to write into an IEP, or onto a shared computer screen, everything that parents or advocates want written. Although Parents complain that District Floater did not provide a copy of the IEP draft immediately after the October 24 meeting, the IDEA does not require the District to do so; OT's providing of a draft was a courtesy, not a requirement. Finally, as for staff exiting and returning, and District Floater leaving without further discussion, credible accounts of the meeting reflect that Parents' advocate provoked unnecessary conflict through her incivility. (*Id.*) Under the circumstances, staff coped by taking a short break and ending the meeting when nothing more would occur but unproductive argument. (*Id.*) These were reasonable choices that did not harm Parents' ability to make themselves heard.

For these reasons, the SCO finds that the District did not impede Parents' right to participate in decision-making regarding their daughter's education at the October IEP Team meetings. No IDEA violation occurred.

Conclusion to Allegation No. 5: The District did not ensure that SSN program staff possessed the required licensure, in violation of 34 C.F.R. § 300.156 and ECEA Rule 3.04. This resulted in a denial of FAPE.

As stated above, in the discussion regarding Allegation 1, section C, the IDEA requires that "each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school [h]as obtained full State certification as a special education teacher." 34 C.F.R. § 300.156(c). The IDEA requires CDE to 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). 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). School districts bear responsibility for ensuring that schools comply with state licensing requirements. ECEA Rule 3.03.

As decided above, in the same section, the District did not provide staff with appropriate credentials to teach in and oversee the SSN program on a daily basis. The SCO understands that the staffing shortages may have been out of the District's control. However, the IDEA does not excuse a district's failure to implement an IEP or other noncompliance based on staffing shortages. *See, e.g., In re: Student with a Disability*, 121 LRP 38674 (Kan. SEA Oct. 20, 2021) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage). The IDEA anticipates that school

districts and IEP Teams will act immediately to correct any shortfalls, from whatever source, that threaten students' ability to make progress appropriate in light of their circumstances. *Id.* § 300.324(b).

The teachers arranged by the District as substitutes did not, with a few exceptions, hold a special education endorsement at the time they substituted. (FF #s 26, 28, 73.) The IDEA requires that anyone who acts as a special education teacher must hold the correct licensure. 34 C.F.R. § 300.156(c). Neither the IDEA nor CDE provide an exception for substitute teachers.

Because the District's failure to provide staff with the appropriate credentials resulted in impediments to Students' right to a FAPE and caused a deprivation of educational benefit, this violation resulted in a denial of FAPE. 34 C.F.R. § 300.513(a)(2); *Knable*, 238 F.3d at 765-66.

Conclusion to Allegation No. 6: The District did not provide required specialized instruction to the students who attended the SSN program from December 1, 2022 through February 20, 2023 and from August 14, 2023 through February 16, 2024.

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).

The failure to provide the specialized instruction required by Students' IEPs is "systemic" to School. As explained above in the discussion for Allegation 1, section C, the District failed to provide the specialized instruction required by the IEPs of all the students enrolled in School's SSN program from December 1, 2022 through February 20, 2023, and from August 14, 2023 through February 16, 2024. And as decided in Allegation 1, section H, the SCO will order 64 hours of compensatory education to each of the Students as a remedy. This violation appears to be a result of the District's struggles to staff the room rather than any District-wide policy. The District, to its credit, began its own efforts to find a special education teacher in addition to School's efforts once it learned that School had failed to find a teacher, and the District did eventually hire a properly credentialed teacher for the SSN program using a contract agency. (FF # 82.)

The Record does not show that other violations—the failure to implement Students' IEPs, the failure to properly develop and revise Student's IEP, and the failure to educate Student in her LRE—are likely to recur throughout the District. It appears that Student's incomplete BIP was a result of the wholesale copying of her ABA behavioral plan, specific to her, rather than as a matter of policy, because other Students' BIPs do not show the same error. (FF # 20.) The failure to review and revise her IEP, and the failure to educate

her in her LRE, appear to be a result of the District's staffing difficulties rather than any District-wide policy. As noted, the District has taken efforts to correct the staffing situation by helping School find a teacher and, ultimately, by hiring a teacher through a contract agency. (FF # 82.)

REMEDIES

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

- a. Failing to implement Students' IEPs, in violation of 34 C.F.R. § 300.323;
- b. Failing to develop, review, and revise Student's IEP, in violation of 34 C.F.R. §§ 300.324(a)-(b);
- c. Failing to properly determine Student's eligibility for ESY, in violation of 34 C.F.R. § 300.106(a)(2);
- d. Failing to educate Student according to the LRE in her IEP, in violation of 34 C.F.R. §§ 300.114 and 300.323; and
- e. Failing to ensure that staff possess the required licensure, in violation of 34 C.F.R. § 300.156 and ECEA Rule 3.04.

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

1. Corrective Action Plan

- a. By **Friday, April 12, 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. Subsequent to 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 Executive Director, Director for Special Education Instruction, SSN Facilitator, and New Principal must review this Decision. This review must occur no later than **Friday, April 12, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, April 12, 2024**.

3. Reevaluation, Completion of New FBA, and Review of IEP and BIP

- a. The District must provide Parents with a form seeking consent to conduct a comprehensive reevaluation of Student, which will include, at a minimum, a functional behavioral assessment (“FBA”), by **Monday, April 15, 2024**. The reevaluation and FBA must meet the following criteria:
 - i. The reevaluation and FBA must be conducted in a school setting.
 - ii. The school setting must be staffed with a full-time teacher who possesses a valid Colorado teaching license.
 - iii. The school setting must be sufficiently staffed to implement Student’s IEP.
 - iv. The reevaluation must include an assessment of how all of Student’s identified disabilities are impacting her in the classroom setting.
 - v. The FBA must include:
 1. Consultation with a BCBA who will make personal observations of Student;
 2. Detailed identification of Student’s negative behaviors in observable and measurable terms, including intensity, duration, setting, and a detailed assessment of antecedents and consequences;
 3. A detailed summary statement concerning the function of Student’s behavior, as well as what interventions and strategies have been tried previously and their effects;
 4. Confirmation of the summary statement through formal observation of behavior, antecedents, and consequences; and
 5. Development of a competing behavior summary to identify desired behavior, common reinforcing consequences, and alternative behaviors.
 - vi. If Parents refuse to sign consent for evaluation within 10 days of receipt, the District will be excused from conducting the reevaluation and FBA, provided the District diligently attempts to resolve disagreements about the scope of the evaluation and secure signatures and documents such efforts. A determination that the District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating Student, rests solely

with CDE. Regardless, the District must still convene Student's IEP Team as required below.

- b. The District must convene Student's IEP Team, at a mutually agreeable date and time, within 30 days of the reevaluation or Parents' refusal to sign the consent and no later than **Monday, June 10, 2024**. In consideration of the reevaluation and Student's current academic performance, the IEP Team must review and, as necessary, revise Student's current IEP, in accordance with 34 C.F.R. § 300.320, to address Student's unique needs and the concerns identified in this Decision, including Student's behavioral needs. The IEP Team should ensure Student's goals are tailored to her individual needs and are measurable.
- c. By **Monday, June 24, 2024**, the District must provide copies of the signed consent for reevaluation, evaluation report, notice of the IEP Team meeting, and finalized IEP to the CDE Special Education Monitoring and Technical Assistance Consultant.

4. Compensatory Education for Students

- a. Students, which includes Student, shall each receive **64 hours** of in-person, compensatory specialized instruction to be delivered during a summer program. This instruction must be provided by an appropriately licensed special education teacher with an adequate number of support staff to meet Students' needs in the course of the program. This may be an existing summer program if it meets these licensure and staffing requirements.
 - i. This instruction must target Students' IEP goals.
 - ii. All 64 hours must be completed **prior to the beginning of the 2024-2025 school year**.
 - iii. Parents may opt out of some or all of the compensatory education.
- b. By Friday, April 19, 2024, the District shall notify CDE Special Education Monitoring and Technical Assistance Consultant whether it intends to use an existing summer program for this remedy along with an explanation of how the program will meet the requirements stated above, along with any supporting documentation. CDE will approve or reject the District's proposal within two weeks.
- c. By **Monday, May 15, 2024**, the District shall provide the schedule for this compensatory education to CDE and all parents of the Students.
- d. By **Friday, April 19, 2024**, the District shall provide CDE with proof that this offer has been communicated to all the parents of Students, such as an

email summary of any conversation or agreement. A determination that any parents declining compensatory education have been provided with sufficient information about what is being offered and why rests solely with the CDE. In the event that CDE determines parents were not given sufficient information, District may be required to provide the parents with additional information at CDE's direction.

- e. Consultation between the provider(s) delivering compensatory education and Director or the Director's Designee shall occur once every two weeks to evaluate Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that the compensatory education is designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **within seven days after the end of the summer program**. This documentation must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- f. To verify that Students have received the compensatory education required by this Decision, the District must submit records of service logs to the CDE by **Friday, August 16, 2024**. 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.
- g. These compensatory education services will be in addition to any services Students currently receive, or will receive, including ESY, that are designed to advance them toward their IEP goals and objectives. This compensatory education must be provided to Students outside of the regular school day (such as before and/or after school, during free periods, on weekends, or during school breaks) to ensure Students are not deprived of the instruction they are entitled to (including time in general education). If for any reason, including illness, an individual Student is not available for any scheduled compensatory education, District will be excused from providing the education 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 education and must immediately schedule a make-up session in consult with all parents and notify the CDE of the change in the appropriate service log.

5. Compensatory Services for Student

- a. Student shall receive the following in-person compensatory services:
 - i. **860 minutes of speech-language therapy** to be provided by an appropriately licensed and qualified speech-language therapist.

- ii. **174 minutes of occupational therapy** to be provided by an appropriately licensed and qualified occupational therapist.
 - iii. **16 hours of education in behavioral skills**. This instruction must be provided by a mental health provider, behavioral health provider, or special education teacher. The provider or teacher must have both expertise and experience in serving children with autism. These services may be obtained by contracting with a private provider. The District and Parents must agree on the provider. If the District and Parents cannot agree on a provider, each must submit two acceptable providers to CDE Special Education Monitoring and Technical Assistance Consultant, who will then have sole discretion to make the final determination of the provider.
- b. These services must target Student's goals. All services must be completed by **one year after the date of this Decision**.
- c. **By Wednesday, April 24, 2024**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Friday, April 26, 2024**. If District and Parents cannot agree to a schedule by March 25, 2024, the CDE will determine the schedule for compensatory services by **Friday, May 10, 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.
- d. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until

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

- e. To verify that Student has received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance her toward her IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, during free periods, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents and notify the CDE of the change in the appropriate service log.

6. District Procedures

- a. By **Wednesday, June 19, 2024**, the District shall submit to CDE Special Education Monitoring and Technical Assistance Consultant, for review and approval, proposed written policies and procedures to address all systemic concerns noted in this Decision, specifically including procedures regarding:
 - i. District responses to an inability to provide specialized instruction due to lack of staffing, with a plan to identify the problem, provide properly credentialed coverage, and provide compensatory education as appropriate for the gap in teaching.
- b. 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.
- c. District must ensure that all District-level special education staff and all school principals (or the school's equivalent of a principal), including at charter schools, receive a copy of the approved procedure no later than **Friday, July 12, 2024**.

7. Technical Assistance

- a. At the beginning of the 2024-2025 school year, the SSN program at School must be staffed by a teacher with an appropriate license and endorsement, as explained in this Decision. During the professional learning days prior to the 2024-2025 school year, and the first three weeks of the 2024-2025 school year, the SSN teacher must participate in ongoing training and technical assistance (“TA”) with a specialist in SSN program management. The specialist must have five or more years of experience overseeing an SSN program or an equivalently challenging educational environment, as well as experience teaching students with autism and intellectual disabilities. The specialist’s qualifications should be comparable to those of SSN Facilitator. The specialist may be a District employee, such as SSN Facilitator, or one retained through a private agency. This TA shall, at a minimum, provide the School SSN Program support with ongoing development of programming, scheduling, and compliance with the IDEA.
 - i. The District shall propose a specialist to CDE by identifying the specialist and submitting his or her resume to Special Education Monitoring and Technical Assistance Consultant by **Wednesday, July 17, 2024**. CDE will approve or deny the proposed specialist within two weeks. If the District cannot find a qualified specialist, the CDE will provide support.
 - ii. The specialist must spend three hours during the professional learning days prior to the 2024-2025 school year (August 1 through 12), and then three hours per school day in-person at the SSN program for the first three weeks of the 2024-2025 school year (the weeks beginning August 12, August 19, and August 26, 2024). The hours must be varied, i.e., not always in the morning or always in the afternoon, to ensure that a compliant classroom environment is implemented throughout the school day.
 - iii. Director or the Director’s Designee will keep a log of these sessions, including date, length, and activities of the session, as well as any agreed-upon action items. The District must submit an updated log by **the Wednesday following each of the first three weeks of the year** (August 21, August 28, and September 4, 2024), once TA has begun.

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 22nd day of March, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-21

Response, pages 1-25

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: PWNs
- Exhibit E: IEP Meeting Notes
- Exhibit F: Service Logs
- Exhibit G: Attendance Logs
- Exhibit H: Behavior Logs
- Exhibit I: Progress Reports
- Exhibit J: Calendars
- Exhibit K: Communication Logs
- Exhibit L: Policies
- Exhibit M: Correspondence
- Exhibit N: Staff List
- Exhibit O: Verification of Delivery
- Exhibit P: Student List
- Exhibit Q: IEPs
- Exhibit R: Additional Documents
- Exhibit S: Parents' Complaint

Other Parent Exhibits

- Exhibit P. Supp. A: Assorted Documents
- Exhibit P. Supp. B: Email
- Exhibit P. Supp. C: Correspondence, Schedules

Other District Exhibits

- Exhibit D. Supp. A: Emails
- Exhibit D. Supp. B: Assorted Documents
- Exhibit D. Supp. C: Assorted Documents
- Exhibit D. Supp. D: Assorted Documents
- Exhibit D. Supp. E: Student Work
- Exhibit D. Supp. F: Assorted Documents

CDE Exhibits

- Exhibit 1: Media
- Exhibit 2: Correspondence

Telephone Interviews

- Parents: January 10, 2024 and February 26, 2024
- Special Education Executive Director: January 17, 2024
- Speech Language Pathologist: January 17, 2024
- Physical Therapist: January 18, 2024
- School Dean: January 18, 2024
- Occupational Therapist: January 18, 2024
- Parents' Advocate: January 18, 2024
- Paraprofessional 3: January 19, 2024
- Paraprofessional 4: January 19, 2024
- Parent 2: January 19, 2024
- Parents 3: January 19, 2024
- Parents 4: January 19, 2024
- BCBA: January 19, 2024
- School Nurse: February 1, 2024
- New Principal: February 1, 2024
- Former Principal: February 1, 2024
- Paraprofessional 1: February 1, 2024
- SSN Facilitator: February 1, 2024
- District Floater: February 1, 2024
- Paraprofessional 5: February 1, 2024
- New SSN Teacher: February 6, 2024
- Former SSN Teacher: February 20, 2024
- Gen Ed Teacher: February 20, 2024
- Paraprofessional 2: February 21, 2024