

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

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**State-Level Complaint 2023:614  
El Paso County School District 20**

**DECISION**

**INTRODUCTION**

On November 30, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against El Paso County School District 20 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from November 30, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to develop, review, and revise an Individualized Education Program (“IEP”) that was tailored to meet Student’s individualized needs, from November 30, 2023 to present, specifically by:

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

- a. Failing to consider Student’s academic, developmental, and functional needs in violation of 34 C.F.R. §§ 300.320 and 300.324; and
  - b. Failing to include measurable annual goals designed to enable Student to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).
2. Failed to reimburse Parents for expenses of private education, including specialized instruction and related services, in violation of 34 C.F.R. § 300.148.

### **FINDINGS OF FACT**

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

#### **A. Background**

1. Student attends a District high school (“School”) part-time. *Interview with Parent*.
2. Student is eligible for special education and related services under the disability category of Multiple Disabilities. *Exhibit A*, pp. 1-5. He met the eligibility criteria for Intellectual Disability, Autism Spectrum Disorder, and Speech Language Impairment. *Id.*
3. Student is a kind young man who has a good sense of humor and likes to laugh. *Interviews with Case Manager and Parent*. He enjoys outside activities, like skiing and kayaking, and cooking with his family. *Id.* At home and at school, Student has difficulty staying focused. *Id.*

#### **B. Student’s 2022 IEP**

4. When the 2022-2023 school year began, Student’s IEP dated May 19, 2022 (“2022 IEP”) was in effect. *Exhibit A*, pp. 37-71. That IEP was developed near the end of Student’s tenth-grade year. *Id.* at p. 37.
5. The 2022 IEP reviewed Student’s present levels of performance using his most recent evaluation, reports from his current teachers, progress monitoring data, and District assessments. *Id.* at pp. 41-47. Student partially met his math IEP goal and made progress on his other annual goals. *Id.* at p. 43-44. The following NWEA scores were recounted in Student’s IEP:

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

Math:

Winter 2020-2021: 174

Spring 2020-2021: 154

Fall 2021-2022: 167

Winter 2021-2022: 167

Spring 2021-2022: 191

Reading:

Fall 2020-2021: 156

Winter 2020-2021: 157

Spring 2020-2021: ---

Fall 2021-2022: 172

Winter 2021-2022: 160

Spring 2021-2022: 176

*Id.* at p. 43.

6. As noted in the 2022 IEP, Student's disabilities impacted his progress in the general education curriculum. *Id.* at p. 49. Student read below grade level and needed "support and systemic programming to increase [his] reading levels." *Id.* Though math was a relative strength for Student, he still performed below grade level and needed to work on "basic math concepts" for life after high school. *Id.* Staying focused was a challenge for Student. *Id.* at p. 45.
7. The 2022 IEP included a postsecondary transition plan tailored to Student's goal of becoming a cook in a restaurant. *Id.* at pp. 53-54.
8. The 2022 IEP contained six annual goals, including, in part, the following:
  - Reading: "In order for [Student] to be successful in his post-school goal of becoming a cook, during the current IEP year, [Student] will increase his reading comprehending [sic] by reading and identifying story elements with 80% accuracy with adult support."
    - Objective 1: "[Student] will answer wh questions on short stories."
    - Objective 2: "[Student] will read a short story and identify story elements such as the plot, setting, and main idea."
    - Objective 3: "[Student] will increase his fluency reading and increase his word per minute reading to 150 words per minute."
    - Baseline: Student could answer wh questions with prompting with 20-60% accuracy depending on the question asked (i.e., Student struggled more with

why questions than with who/what/where questions.). No other baseline information (such as Student's current fluency rate) was included in the IEP.

- Writing: "In order for [Student] to be successful in his post-school job of becoming a cook, during the current IEP year, he will generate an opinion on a topic with 2-3 facts to support the opinion on a content specific topic, with adult support and prompting."
  - Objective 1: "With adult support, [Student] will write [ ] grammatically correct simple sentences with appropriate capitalization and punctuation."
  - Objective 2: "[Student] will write a five sentence paragraph that flows, using nouns, verbs, prepositions, and adjectives."
  - Baseline: Student could write only "limited sentences" without correct grammar. Though the goal indicated it would be measured using an accuracy percentage," no baseline percentage was provided.
  
- Math: "In order for [Student] to be successful in his post school goal of becoming a cook, during the current IEP year, [Student] will increase his math skills to include functional money skills and functional math concepts with an 80% accuracy with math tool supports."
  - Objective 1: "[Student] will improve his skills in adding and subtracting fractions."
  - Objective 2: "[Student] will improve his money skills by using functional money concepts, such as calculating salary earned, taxes on earnings, and time and half earning, etc."
  - Baseline: Student "can add, subtract, and multiply, but has challenges with division." Again, the goal indicated it would be measured using an accuracy percentage, but no baseline percentage was included.

*Id.* at pp. 55-64. Student's IEP also contained goals in the areas of independent living, language, and mental health. *Id.* None of goals in the 2022 IEP were repeated from his prior IEP. *See Exhibit 5*, pp. 80-83.

9. The 2022 IEP outlined numerous accommodations in the areas of presentation, response, setting and environment, timing and scheduling, and miscellaneous. *Id.* at p. 65. Student received instruction under a modified curriculum. *Id.* at p. 66.
  
10. Under the 2022 IEP, Student received the following special education and related services:

- Special Education: 1,650 minutes per week of direct specialized instruction provided by a special education teacher or paraprofessional. Student received 450 minutes of direct instruction outside the general education classroom, while the remaining minutes were provided inside the general education classroom. The IEP also specified that Student would receive up to 300 minutes per week of indirect services from a paraprofessional for lunch and transitions, as needed.
- Speech-Language Services: 90 minutes per month of direct speech/language services provided by a speech-language pathologist or a paraprofessional under the direct supervision of an SLP outside the general education classroom.
- Mental Health: 60 minutes per month of direct mental health services provided by a mental health provider outside the general education classroom.

*Id.* at pp. 68.

11. Per the 2022 IEP, Student spent 40-79% of his time in the general education environment. *Id.* at p. 69. This placement allowed Student the greatest access to general education and peers, while still ensuring he could receive appropriate instruction in math, reading, and life skills in the special education classroom. *Id.*

### C. Parents Request to Change Student's Placement

12. On November 30, 2022, the District convened Student's IEP Team based on a request from Parents to discuss Student's progress. *Exhibit D*, p. 3. During the meeting, Parents and their advocate expressed concern about Student's lack of progress and the repetition of his annual goals. *Interviews with Case Manager and Former Special Education Facilitator ("Facilitator"); Exhibit B*, pp. 14-15.
13. Based on Student's lack of progress, Parents and their advocate urged that Student's education be "outsourced." *Id.* at p. 14. Parents informed the District that, effective January 3, 2023, Student would be attending a private learning center ("Private Center") that offered services that "focus on the sensory-cognitive processing necessary for reading and comprehension." *Id.*; *CDE Exhibit 1*. After the four-week introductory period, Private Center would assess the effectiveness of its programming for Student and make a recommendation about next steps. *Exhibit B*, p. 14; *Exhibit 11*, pp. 2-3.
14. Parents asked the District to pay for Student's attendance at Private Center. *Id.* at p. 15; *Interviews with Case Manager and Facilitator*. District staff viewed this as a request for a change of placement and informed parents that a reevaluation was required to determine if Student's placement needed to be changed. *Exhibit B*, p. 17; *Interviews with Case Manager and Facilitator*.

15. Parents expressed concern about the 60-day evaluation period, given that Student was scheduled to start at Private Center in just over 30 days. *Exhibit B*, p. 18. District staff indicated the “speediness” of the reevaluation would depend on when the District received Parents’ consent and the supporting documents the District requested (such as Student’s initial evaluation by Private Center and the notes from Student’s doctor). *Id.*
16. During the November 30 meeting, the District sought consent to evaluate Student in the areas of academic performance, cognitive ability, health, adaptive performance, speech/language, occupational therapy, sensory integration, social-emotional status, and “autism evaluation/performance.” *Exhibit C*, pp. 4-6. Parents did not sign the consent during the meeting but, instead, indicated they needed more time to review the paperwork. *Exhibit B*, p. 18. Parents provided consent to evaluate on December 16, 2022. *Exhibit C*, p. 5.
17. That same day, Parents restated their request for the District to pay for Student’s attendance at Private Center in an email to Assistant Principal and Facilitator. *Exhibit 1*, p. 2.

#### **D. Student’s Attendance at Private Center**

18. Meanwhile, Student started attending Private Center on January 3, 2023. *Interview with Parents*. In September 2022, Private Center completed its Learning Ability Evaluation of Student. *Exhibit 11*, pp. 2-3. That evaluation included, among other assessments, the Peabody Picture Vocabulary Test, Woodcock Reading Mastery Test, Slosson Oral Reading Test, and the Gray Oral Reading Tests. *Ex. 11 (Amended)*, pp. 2-4. Student’s scores on these assessments fell at or below the first percentile. *Id.*
19. Beginning on January 3, 2023, Student attended Private Center for four hours per day, five days a week during Spring 2023. *Complaint*, p. 3. Following Student’s completion of a four-week exploratory period, Private Center recommended he complete “multiple rounds of 200-240 sessions per round-two to four sessions per day, five days per week.” *Exhibit 11*, p. 3.
20. During Spring 2023, Student also received approximately six hours of private tutoring per week at Parents’ expense. *Complaint*, p. 3. The tutors worked with Student on reading, math, and life skills. *Id.*; *Interview with Parent*. Student did not attend School or receive any other programming from the District from January 2023 through August 2023. *Interviews with Case Manager and Facilitator*.
21. While at Private Center, Student receives one-on-one instruction in the Private Center’s methodologies. *Interview with Parent*. He only has access to peers during breaks. *Id.*
22. On July 20, 2023, Private Center provided Parents a progress report with updated evaluation results. *Exhibit 13*, pp. 2-4. At that point, Student had received 198 hours of instruction in Private Center’s Visualizing and Verbalizing Program. *Id.* The report indicated that Student

“demonstrated improvement in multiple areas on the evaluation.” *Id.* The updated assessment scores showed some improvement. *Exhibit 11 (Amended)*, pp. 2-4.

23. For example, Student’s raw score on the Slosson Oral Reading Test went from 96 to 129. *Id.* at p. 2. His percentile increased from below the first percentile to the second percentile. *Id.* On the Woodcock Reading Mastery Test, Student’s score improved from 9 to 17. *Id.* This resulted in his percentile changing from below the first percentile to the third percentile. *Id.* However, Student’s standard score on the Peabody Picture Vocabulary Test decreased. *Id.* And, on the Gray Oral Reading Test, Student scores continued to fall at or below the first percentile in all areas. *Id.* at p. 3.
24. In the Complaint, Parents assert that Student’s scores on the Gray Oral Reading Test showed “over 1.7 years of growth in fluency and rate” during Student’s first six months at Private Center. *Complaint*, p. 11. It is true that the grade-level equivalency of Student’s scores improved from below first grade to first grade, seven months, but Student remained at the first percentile. *Exhibit 11 (Amended)*, pp. 3. Such growth is unlikely to have much functional impact on Student’s abilities. *Interview with CDE Specialist*.
25. Because Student continued to “exhibit numerous areas of substantial weakness on the evaluation,” Private Center stated that “we must continue instruction with a *guarded prognosis for significant outcomes and continued progress.*” *Exhibit 11 (Amended)*, p. 3 (emphasis added). Nonetheless, Private Center recommended “long-term intervention” for Student consisting of “multiple periods of intervention.” *Id.* By Private Center’s estimate, the “next period of intervention [would] likely range from 800 to 1200 sessions of instruction” (or 40 to 60 weeks of instruction). *Id.*
26. On January 19—upon request of the SCO—Parents provided Private Center’s most recent evaluation of Student. *Exhibit 27*, pp. 6-10. That evaluation occurred on December 15, 2023, after Student had received 620 hours of instruction at Private Center. *Id.* at p. 6. The assessment scores showed little improvement. *Id.*
27. For example, Student’s raw score on the Slosson Oral Reading Test, decreased from 129 to 120. *Id.* at p. 6. With the decrease, Student fell back to the first percentile. *Id.* Similarly, on the Woodcock Reading Mastery Test, Student’s score dropped from 16 to 14. *Id.* This decrease placed him back in the first percentile. *Id.* Student’s standard score on the Peabody Picture Test increased by six points, resulting in Student placing in the first percentile instead of below the first percentile. *Id.* On the Gray Oral Reading Test, Student’s scores in all areas continued to fall at or below the first percentile. *Id.* Parent said Private Center told him that the “lag” in Student’s scores was “to be expected” and that there was a scientific reason for the temporary lack of progress. *Interview with Parent*.

28. Once again, Private Center cautioned that “[a]lthough [Student] demonstrated initial improvement, he continues to exhibit numerous areas of substantial weakness on the evaluation. Therefore, we must continue instruction with a *guarded prognosis for significant outcomes*.” *Id.* at p. 9. Private Center recommended Student continue to receive four hours of sensory-cognitive instruction, five days a week for 10-12 weeks. *Id.* at p. 14. Long term, Private Center estimated Student would need 800-1000 sessions of instruction (or 40 to 50 more weeks of instruction). *Id.* Private Center also suggested Student begin math intervention and suggested he receive four hours per day of math instruction. *Id.*

#### **E. Student’s Reevaluation and February IEP Team Meeting**

29. During January 2023, Parents made Student available for his reevaluation after his sessions at Private Center. *Interview with Case Manager*. The District evaluated Student in all areas identified on the consent to evaluate form and completed Student’s reevaluation on February 14, 2023. *See Exhibit F*, pp. 1-25.

30. Nothing in the reevaluation indicated Student’s needs had materially changed. *Id.*; *Interviews with Case Manager and Facilitator*.

31. On February 28, 2023, the District convened Student’s IEP Team to consider his placement in light of the reevaluation. *Interviews with Case Manager, Facilitator, and Special Education Teacher; Exhibit B*, pp. 2-13; *Exhibit D*, p. 2.

32. During the meeting, the IEP Team reviewed Student’s evaluation from Private Center, as well as the District’s reevaluation. *Exhibit B*, pp. 2-13. Discussion regarding each portion of the reevaluation was led by the District staff member who completed the assessments or record review. *Id.* at pp. 2-4.

33. While the IEP team was discussing Student’s annual goals, Parents asked “if the school had scientific data to support that they can show change in [Student’s] brain to rewire him to learn.” *Id.* at p. 6; *Interviews with Case Manager, Facilitator, and Special Education Teacher*.

34. The IEP Team continued Student’s placement at School and denied Parents’ request to change Student’s placement to Private Center. *Interviews with Case Manager, Facilitator, and Special Education Teacher*. District staff determined they could continue to serve Student at School and were wary of Private Center’s focus only on reading. *Id.* Parents disagreed with this decision and indicated that the District team was “not capable enough to allow [Student] to advance per his diagnosis.” *Id.*

35. The District offered to have Private Center collaborate with the District on the development of Student’s goals and services, but Student did not return to School during Spring 2023. *Exhibit B*, p. 11; *Interviews with Case Manager and Facilitator*.



## F. 2023-2024 School Year

36. On July 21, 2023, Parents informed the District that Student would continue to attend Private Center during the 2023-2024 school year. *Exhibit C*, p. 20; *Interview with Parents*. District staff were not involved in the decision-making process. *Interview with Parents*.
37. On August 17, 2023, the District issued a PWN regarding Student's continued attendance at Private Center. *Exhibit C*, p. 20. That PWN indicated Student was attending Private Center based on Parents' decision and that the District remained ready and willing to serve Student at School full-time. *Id.*
38. Throughout the 2023-2024 school year, Student has attended Private Center in the morning before arriving at School between 11:50 a.m. and 12:15 p.m. *Complaint*, p. 13. He stays until School ends at 2:50 p.m. *Id.* As a result of his schedule, Student misses his specialized math and reading instruction. *Interview with Case Manager*. While at School, Student has been attending classes such as U.S History, Zoology, and Peer Performing Arts. *Id.*
39. Private Center has not reevaluated Student since July 2023. *Interview with Parent*. Student's November 2023 progress report from Private Center indicated generically that Student was making progress with Private Center's methodologies; however, it contained no data. *Exhibit 26*, pp. 4-5.
40. As of January 16, 2024, Parents had paid approximately \$73,000 for Student to attend Private Center. *Exhibit 27*, pp. 1-5. Parents also requested the District pay just over \$5,000 for private tutoring Student received between November 2022 and September 2023. *Exhibit 20*, p. 1; *Exhibit 21*, p. 1.
41. Last school year, Student was on track to graduate with his class in May 2024. *Interviews with Case Manager and Facilitator*. However, Student is no longer on track to graduate after missing all of Spring 2023 and attending School part-time during the 2023-2024 school year. *Id.*

## 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 failed to develop an IEP that was tailored to Student's individual needs, in violation of 34 C.F.R. § 300.320(a)(2). This violation resulted in a denial of FAPE.**

The first allegation in Parents' Complaint relates to the development of Student's IEP. This allegation is twofold. First, Parents contend the District failed to include annual goals to enable

Student to make progress in the general education curriculum. Second, Parents claim the District failed to consider Student's needs when refusing to place him at Private Center.

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. 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. *Bd. of Ed. v. Rowley*, 458 U.S. at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.* If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.* Here, the concerns raised by Parents challenge only the substantive nature of the IEP. Therefore, the SCO has only analyzed Student's IEP under the second prong of *Rowley*.

#### A. Annual Goals

An IEP must include measurable goals 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. at § 300.320(a)(2). To allow for the evaluation of a student's progress, IEP goals must be clear and objectively measurable. *Kuszewski v. Chippewa Valley Schs.*, 34 IDELR 59 (E.D. Mich. 2001), *aff'd*, 38 IDELR 63 (6th Cir. 2003, *unpublished*). Appropriate goals should be clear enough that a stranger, or person unfamiliar with the IEP, would be able to implement the goal, monitor student's progress on the goal and determine whether that progress was satisfactory. *Mason City Cmty. Sch. Dist.*, 46 IDELR 148 (SEA IA 2006). For students of transition age, the annual goals must be related to the Student's transition services. See *Writing Quality Secondary Transition IEPs that Include the Required Elements of Indicator 13*, pp. 15-15 (CDE ESSU May 2020), available at <https://www.cde.state.co.us/cdesped/qualitysecondaryiepgoals>.

Here, the Findings of Fact demonstrate that the annual goals in Student's 2022 IEP were deficient. First, Student's goals were not appropriately tied to his transition services. For example, Student's reading goal indicated that, "[i]n order for [Student] to be successful in his post-school goal of becoming a cook," Student would read and identify story elements, such as plot, setting and main idea with 80% accuracy. (FF #8.) Though foundational reading skills may be necessary for a cook, the goal, as written, does not relate to Student's post-secondary goal. While identifying the plot, setting, and main idea of a passage can demonstrate Student's reading comprehension, it had no relation to Student's goal to become a cook or actually working as a cook. One of the objectives for Student's math goal targeted adding and subtracting fractions. (*Id.*) That objective aligned more closely to Student's post-secondary goal, as Student may need to add and subtract fractions when cooking or making change.

Second, Student's goals lacked the specificity to be measurable. While two of the goals contained a target accuracy percentage, none of the goals specified how that accuracy percentage would be calculated. Would Student meet the goal if he identified story elements with 80% accuracy once? Or on 3 out of 5 occasions? Student's math goal stated that he would "increase his . . . functional money skills and functional math concepts with an 80% accuracy with math tool supports." (*Id.*) Such language is far too broad to be measurable. With regard to Student's reading goal, the goal did not specify what grade-level texts Student would use for comprehension. (*Id.*)

Additionally, none of the academic goals contained adequate baseline information to allow staff or Parents to determine whether Student was making adequate progress. For example, Student's math goal indicated he could "add, subtract, and multiply" but had "challenges with division." (FF # 8.) Without more information, one could not determine whether Student has made progress on the goal or, more likely, the objectives. Given that one of the objectives related to adding and subtracting fractions, the baseline should have identified Student's current ability to add and subtract fractions. (*Id.*)

Finally, Case Manager relied too heavily on objectives. Short-term objectives are "measurable, intermediate steps that provide general benchmarks for determining progress toward meeting the annual goals." *Pocatello Sch. Dist. #25*, 18 LRP 1820 (Idaho SEA 1991). Student's objectives were not intermediate steps and, sometimes, were not even related to the greater annual goal. For instance, while Student's reading goal indicated he would read passages and identify story elements, the third objective related to Student's reading fluency. (FF # 8.)

For these reasons, the SCO finds and concludes that Student's IEP did not contain measurable annual goals tailored to Student's educational needs, in violation of 34 C.F.R. § 300.320(a)(2). The goals were not reasonably calculated to allow Student to receive an educational benefit and violated the IDEA's substantive requirements related to IEP development, resulting in a denial of FAPE. *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).

Finally, the SCO must address Parents' concern about repetition of Student's goals from year-to-year. None of Student's goals in the 2022 IEP were repeated from his prior IEP. (FF # 8.) Any repetition of annual goals would have occurred outside the investigation period.

## **B. Parents' Concerns**

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 Cty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent's concerns, evaluation results, and "the academic, developmental, and functional needs of the child." 34 C.F.R. § 300.324(a).

Here, Parents have asserted that the District ignored Student’s academic, developmental and functional needs when his IEP Team declined to change Student’s placement to Private Center. Upon Parents’ request to change Student’s placement, the District appropriately initiated a reevaluation to determine whether Student’s needs had changed and, if so, whether Private Center would be an appropriate placement. (FF # 14.) Nothing in that reevaluation supported changing Student’s placement to Private Center. (FF # 30.) Nonetheless, the IEP Team still considered Parents’ request. (FF #s 31-32.) Ultimately, the IEP Team declined to change Student’s placement for two primary reasons. (FF # 34.) First, the IEP Team determined that Student could be properly served at School, a far less restrictive environment than Private Center. (*Id.*) Second, the IEP Team had concerns about Private Center focusing solely on Student’s reading skills, potentially to the detriment of his other academic abilities, functional skills, and communication needs. (*Id.*)

The decision by the IEP Team was consistent with a decision by the U.S. Court of Appeals for the Sixth Circuit in *C.K. v. Bd. of Ed. of Sylvania City Sch. Dist.*, 122 LRP 32994 (6th Cir. 2022). In that case, the Court acknowledged that the IDEA gave the primary responsibility for developing IEPs and determining appropriate educational methodology “to state and local educational agencies in cooperation with the parents.” *C.K.*, 122 LRP 32994. When considering private programming suggested by parents, a school district must balance *all* the student’s IEP goals. *Id.* (upholding school district’s rejection of intensive private reading program proposed by parents based on obligation to provide student with an “overall education”).

Here, the IEP Team based its decision on Student’s overall education, placing value on all his needs rather than just on his reading abilities. For this reason, the SCO finds and concludes that the District considered Student’s academic, developmental, and functional needs in developing his IEPs.

### **C. Compensatory Education**

Compensatory education is an equitable remedy intended to place a student in the same position he would have been but for the IDEA violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). A compensatory education award need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). Instead, the “ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Phillips v. Dist. of Columbia*, 932 F. Supp. 2d 42 (D.D.C. 2013). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the SCO finds and concludes that an award of compensatory education is not warranted. Student’s IEP contained goals targeting skills Student needed to develop. (FF # 8.) The goals were poorly written, lacking in specificity and, with regard to Student’s reading goal, not well-aligned

to his post-secondary goals. (See FF # 8.) However, though the goals were not substantively sound, Student continued to receive instruction in his areas of need. The District had one semester to work with Student on these goals before Parents pulled Student to attend Private Center. (FF # 18.) Since January 2023, Student has not returned to School for any specialized instruction. (FF # 20.) Therefore, the impact of the goals, if any, was limited to the first semester of the 2022-2023 school year. The SCO finds that Parents' unilateral placement of Student at Private Center had more of an impact on the educational services he received (or, rather, did not receive from the District) than the poor annual goals. For this reason, the SCO has not awarded any compensatory education. However, as set forth below, the SCO has crafted a separate remedy to address the denial of FAPE.

**Conclusion to Allegation No. 2: Parents are not entitled to reimbursement under 34 C.F.R. § 300.148 or ECEA Rule 5.01(9) of any of the expenses incurred for Private Center or private tutoring.**

With the second allegation in their Complaint, Parents assert that they are entitled to reimbursement of expenses for Private Center and private tutoring due to the District's failure to provide Student a FAPE. Parents seek more than \$65,000, as well as compensation for future expenses. (FF # 37.)

Under the IDEA, parents may be entitled to reimbursement of private school tuition if the school district failed to make a FAPE available to the student before the student was enrolled in the private school. 34 C.F.R. § 300.148(c); ECEA Rule 5.01(9). To qualify for reimbursement, parents' unilateral private placement must be appropriate. 34 C.F.R. § 300.148(c). Parents must also satisfy the notice procedures set forth in the IDEA. *Id.* at § 300.148(d).

An appropriate placement “provides significant learning and confers meaningful benefit.” *Anthony B. v. Colonial Sch. Dist.*, 123 LRP 24591 (3rd Cir. 2023) (quoting *Mary T. v. Sch. Dist. of Phila.*, 575 F.3d 235, 242 (3rd Cir. 2009)). Though a placement need not be “perfect,” it “must provide services allowing the student to make progress in reaching [his or] her academic, social, and behavioral goals.” *Id.* (alteration in original); *M.N. v. Hawaii*, 509 F. App'x 640, 113 LRP 725 (9th Cir. 2013) (unpublished) (affirming decision by district court that private placement was inappropriate where student focused solely on language acquisition without regard to student's needs in academics, social interaction, group instruction, and other areas).

As set forth above, the District denied Student a FAPE by failing to develop appropriate annual goals. However, this finding alone does not entitle Parents to reimbursement. Parents can only recoup the costs for Private Center if Private Center is an appropriate placement for Student. Here, the Findings of Fact do not demonstrate that Private Center was or is an appropriate placement for Student.

Private Center does not provide services to allow Student to make progress in reaching his academic, functional skills, and communication goals. At Private Center, Student receives one-

on-one reading instruction. (FF # 21.) He gets no specialized instruction in any other academic subjects or in functional skills. (*Id.*) Student only has access to peers during breaks and Student does not receive speech services. (*Id.*) Parents' selection of Private Center elevated Student's reading needs above every other component of his IEP.

Additionally, the SCO questions whether Private Center has provided Student significant learning or meaningful benefit. Parents and their counsel have lauded Private Center for Student's growth in its program, and Student has undoubtedly made some progress while at Private Center. (FF #s 22-28.) But Student's progress seems minimal when compared to the sheer volume of services he has received—nearly 200 hours of one-on-one instruction as of July 2023 when Private Center last evaluated him (and hundreds of hours more since that time). (*Id.*) Indeed, on many of the assessments, Student's scores remained at or below the first percentile. (*Id.*) On other assessments, Student's percentile improved from at or below the first percentile to the second or third percentile. (*Id.*) However, such growth is unlikely to confer a meaningful benefit on Student or result in a significant functional difference in his reading abilities. (FF # 24.) As early as July 2023 and as recently as December 2023, Private Center remarked that it had a "guarded prognosis for significant outcomes and continued progress" for Student. (FF #s 25, 28.) Yet, in the very same document, Private Center urged Parents to continue with the next round of 800-1000 hours of services. (*Id.*)

While Student was at Private Center, he missed out on other important academic instruction (namely in math), life skills instruction, and his related services. (FF # 20.) Nothing in the record indicates that Student continued to make progress in any of these areas during his time at Private Center. Given that Student has not received instruction in these other areas for one year, it is plausible that he has regressed to some degree.

Because Private Center has not provided significant learning or meaningful benefit and only serves Student's reading needs, the SCO has determined that Private Center was not an appropriate placement for Student under 34 C.F.R. § 300.148(c). As a result, the SCO finds and concludes that Parents are not entitled to reimbursement for expenses related to Private Center. Because the private tutoring was the result of Parents' unilateral placement of Student at Private Center (FF # 20), the SCO relatedly finds and concludes that Parents also are not entitled to reimbursement of those expenses.

**Systemic Nature of Violation: This investigation does not demonstrate violations that are systemic and likely to impact the future provision of services for all children with disabilities in the District if not corrected.**

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

*Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

The District's failure to develop appropriate measurable goals for Student was not systemic in nature. The goals at issue were all written by a single staff member, and nothing suggests the violation extends beyond that staff member or even, perhaps, this student.

### **REMEDIES**

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

1. Failing to develop an IEP that was appropriately tailored to Student's needs, in violation of 34 C.F.R. § 300.320(a)(2).

To remedy this violation, the District is ORDERED to take the following actions:

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

- a. By **Tuesday, February 27, 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. Executive Director of Special Education, current Special Education Facilitator, Assistant Principal, Case Manager, and Special Education Teacher must review this Decision, as well as the requirements of 34 C.F.R. § 300.320(a)(2). This review must occur no later than **Tuesday, March 5, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, March 8, 2024**.

#### **3. Training**

- a. Executive Director of Special Education, current Special Education Facilitator, Assistant Principal, Case Manager, and Special Education Teacher must attend and complete training provided by CDE on IEP development, including development of annual goals tied to students' transition plans. If these individuals are no longer employed by District, District may substitute individuals occupying identical roles

to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.320 and the related concerns addressed in this Decision.

- b. Executive Director and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.
- c. Such training shall be completed no later than **Tuesday, April 2, 2024**. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Friday, April 5, 2024**.

#### **4. Reevaluation and Review of IEP**

- a. The District must provide Parents with a form seeking consent to reevaluate Student by **Tuesday, March 5, 2024**. The reevaluation may include a review of records but must include an assessment of how all of Student's diagnosed disabilities are impacting him in the classroom setting.
  - i. If Parents refuse to sign consent for evaluation within 30 days of receipt, the District will be excused from conducting the reevaluation, 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 in accordance with 4(b) 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, May 13, 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. The IEP Team should ensure Student's goals are tailored to his individual needs and measurable.
- c. By **Friday, May 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.



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

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

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

### **CONCLUSION**

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

Dated this 29th day of January, 2024.



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Ashley E. Schubert  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-13**

- Exhibit 1: Email correspondence
- Exhibit 2: PWN
- Exhibit 3: PWN
- Exhibit 4: Release of information
- Exhibit 5: Special education file
- Exhibit 6: Testing summary
- Exhibit 7: KTEA report
- Exhibit 8: IEP
- Exhibit 9: Private Center documents
- Exhibit 10: Private Center email correspondence
- Exhibit 11: Private Center's initial evaluation (partial document)
- Exhibit 12: Private Center documents
- Exhibit 13: Private Center progress report
- Exhibit 14: Physician assistant's letter
- Exhibit 15: Physician's letter
- Exhibit 16: Private Center contact information
- Exhibit 17: Class schedules
- Exhibit 18: Email correspondence
- Exhibit 19: Private Center invoice
- Exhibit 20: Tutoring expenses summary
- Exhibit 21: Tutoring expenses summary
- Exhibit 22: Private Center progress report

### **Response, pages 1-7**

- Exhibit A: IEPs
- Exhibit B: Meeting notes
- Exhibit C: PWNs
- Exhibit D: Notices of Meeting
- Exhibit E: Progress reports
- Exhibit F: Evaluation reports
- Exhibit G: Grade and attendance reports
- Exhibit H: School calendars
- Exhibit I: District policies and procedures
- Exhibit J: Correspondence
- Exhibit K: Witness information
- Exhibit L: Verification of delivery to Parents

## **Reply, pages 1-9**

- Exhibit 11 (Amended): Private Center’s initial evaluation and reevaluation
- Exhibit 16 (Amended): Updated Private Center contact information
- Exhibit 23: CDE SLD form
- Exhibit 24: Participation Guidelines: Alternate Academic Achievement Standards
- Exhibit 25: Private Center Learning Ability Evaluation Consultation
- Exhibit 26: Private Center progress reports
- Exhibit 27: Supplemental documents from Private Center

## **Telephonic Interviews**

- Case Manager: January 9, 2024
- Executive Director of Special Education: January 9, 2024
- Former Special Education Facilitator: January 11, 2024
- Parent: January 19, 2024
- Special Education Teacher: January 11, 2024