

**State-Level Complaint 2024:515
Academy School District 20**

DECISION

INTRODUCTION

On February 13, 2024, 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.

On February 13, 2024, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in an impasse, and, on March 12, 2024, the SCO resumed the investigation.

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 February 13, 2023 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 violations occurring after February 13, 2023.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to properly implement Student’s IEP from February 13, 2023 to February 21, 2023 and from August 14, 2023 to October 12, 2023 in violation of 34 C.F.R. §§ 300.320 and 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 instruction required by her IEP; and
 - c. Failing to provide Parent with accurate and complete reports on Student’s progress from the beginning of the 2023-2024 school year to present.
2. Failed to educate Student in the Least Restrictive Environment (“LRE”) from the beginning of the 2023-2024 school year to present, in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323(c).
 3. Failed to develop, review, and revise an IEP that was tailored to Student’s individualized health needs from February 13, 2023 to present, in violation of 34 C.F.R. § 300.324.
 4. Failed to permit Parent to inspect and review Student’s education records within 45 days of Parent’s request, which was made on or about December 12, 2023, in violation of 34 C.F.R. § 300.613.
 5. Failed to protect the confidentiality of Student’s personally identifiable information (“PII”) and disclosed Student’s PII to other parties without Parent’s consent in the course of providing student schedules and CORA-requested emails to another parent, on or about October through December 2023, in violation of 34 C.F.R. §§ 300.622-623.

RELATED DECISION

This Decision concludes the second of two recent state complaint investigations into School’s Significant Support Needs (“SSN”) program.

The first investigation (“First Investigation”), ended with a decision issued on March 22, 2024 that is attached as CDE Exhibit 1.² That investigation disclosed staffing issues that affected all the students in the SSN program. Accordingly, that investigation made several findings of fact and conclusions of law applicable to all the students in the SSN program, including Student. Those findings and conclusions will not be reconsidered or repeated at length in this Decision, and are, where appropriate, incorporated herein by reference.

² That decision is also available online at <https://www.cde.state.co.us/spedlaw/sc2023-613>.

FINDINGS OF FACT

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

A. Background

1. Student, a “fun,” “very caring” child who enjoys music, dance, and helping others in class when she can, attended third grade in School’s SSN program in the 2022-2023 school year and fourth grade from the beginning of the 2023-2024 school year until December 15, 2023, at which time Parents withdrew her from School’s SSN program and enrolled her, via an administrative transfer, in a different SSN program in the District. *Interview with Parents; Response*, pp. 8-9; *Exhibit A*, pp. 5, 7, 27.
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. *CDE Exhibit 1*, p. 3. 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. *Id.*
3. Student is eligible for special education and related services under the categories of Other Health Impairment and Speech or Language Impairment. *Exhibit A*, p. 27.

B. Student’s IEP

Allegations Related to Student’s IEP

4. Parents have alleged that the District should have revised Student’s IEP to add an Individual Health Plan (“IHP”) to address her individualized health needs related to vision, adapted physical education, and assistance with nutrition, water, and toileting. *Complaint*, pp. 6-7.
5. Parents have also alleged failures to implement Student’s IEP. *See id.* at pp. 1-8. Specifically, they allege a failure to provide specialized instruction, to monitor and report Student’s progress, and to educate Student in her LRE. *See id.*

Development of Student’s May 2023 IEP

6. On May 1, 2023, a properly composed IEP Team—Parents, Student’s general education teacher, Student’s special education teacher, an SSN paraprofessional, a representative of the District, and Student’s related service providers—convened for the annual IEP Team meeting to review and revise Student’s IEP. *Exhibit A*, pp. 48-49.

³ A list of documents and interviews is appended to this Decision and details the entire Record. The District provided its exhibits with consecutive numbering across all exhibits. This Decision cites the consecutive numbering so that, for example, page 415 is the first page of Exhibit Q.

7. The IEP reflects that the IEP Team considered and discussed Student's strengths, Parents' concerns, evaluation and assessment results, and Student's academic, developmental, and functional needs. See *id.* at pp. 27-44. The IEP Team also entered a statement explaining how Student's disabilities impacted her involvement in and progress in the general education curriculum. See *id.* at pp. 29-34.

Contents of Student's IEP

8. Because the timeframe for the accepted allegations spans from February 13, 2023 through December 15, 2023, both Student's May 2022 IEP and May 2023 IEP were in effect for a portion of the relevant period. See *id.* at pp. 5, 27. The IEPs are, as relevant to this investigation, materially the same except as noted below.
9. The IEPs described Student's health. *Id.* at pp. 6, 9-11, 30-32. She did not have an IHP. *Id.* Her performance and needs were described as follows:
 - a. Due to dysphagia, she required her food or beverage to be thickened to prevent aspiration. *Id.*
 - b. She wore SMOs/orthotics. *Id.* She "navigate[d] her environment by walking and running," "can climb the ladder to the slides [on the playground]," "can throw a small ball approx. 15 feet," could "catch a ball by trapping to her chest" when motivated, "kick a ball without losing her balance," "jump 18 inches forward," and "gallops when asked to either skip or gallop."
 - c. Her vision was being followed by providers at a local hospital and "[s]he does wear glasses." *Id.*
 - d. She was able to use a regular toilet, get on and off by herself, maintain her balance while pulling her pants up and down, and wash her hands at the sink using a stool with only verbal cueing. *Id.*
 - e. Neither the 2022 IEP nor the 2023 IEP indicated that Student had vision-related needs. See, e.g., *id.* at p. 34 (noting that Student did not require a learning media plan for any visual impairment).
10. The IEPs provided goals in literacy, mathematics, access skills, and communication; it did not provide any goals for physical education. See *Exhibit A*.
11. The IEPs provided accommodations. *Id.* at pp. 21, 40. As relevant here: she was to be given increased time, demonstration, and breakdown of new gross motor skills; gross motor skill practice would be built into her day; and she would be given opportunities to build independence with her self-care, including additional wait time to encourage independence with dressing and undressing while toileting. *Id.* at pp. 21, 40. She did not have any accommodations related to her vision. See *id.*

12. The IEPs provided special education and related services. *Id.* at pp. 24-25, 42-43. As relevant here, she received 2,040 minutes per week of direct and 60 minutes per week of indirect special education services in the SSN program, which included all her academic instruction. *Id.* She also received direct occupational therapy (30 minutes per month), direct physical therapy (15 minutes per month), direct speech language therapy (120 minutes per month), and indirect speech language therapy (30 minutes per month). *Id.* She did not receive adapted physical education. *See id.*
13. The IEPs set Student's LRE as 40-79% of the time in the general education environment. *Id.* at pp. 26, 44.
14. An IEP amendment dated October 11, 2022 stated that Student's liquids, which had been mixed with a certain amount of thickener would, after that date, be mixed with less thickener because of her improvement in swallowing and not aspirating. *Id.* at p. 48.
15. In the Prior Written Notice section of the 2023 IEP, it stated "Team discussed how [Student's] visual impairment could be affecting her literacy skills." *Id.* at p. 44. Parents had noticed that Student favored her good eye; at that time, they were looking at any factor that could explain Student's lack of progress in literacy, although they eventually determined that the lack of teaching was the likely cause. *Interview with Parents.*

C. Implementation of Student's IEP

Accessibility of IEP to Staff

16. As determined in the First Investigation, the District made the IEPs of the SSN program students, including Student, accessible to the students' instructors and providers. *CDE Exhibit 1*, pp. 6-7.

Providing Specialized Instruction

17. The First Investigation also discussed the SSN program's severe staffing shortage. *Id.* at pp. 7-18, 26-27. That investigation described the District's inability to employ properly licensed and endorsed teachers to provide specialized instruction in the SSN program. *See id.* It also described other staffing issues that created an environment in the SSN program where it was impossible for any student to receive specialized instruction consistent with an IEP. *See id.*
18. The First Investigation concluded that, due to the lack of staff to provide individualized attention to each student's work, as well as the other staffing-related issues, the District failed to provide specialized instruction to the students in the SSN program, including Student, from November 1, 2022 through February 20, 2023, and from the

beginning of the 2023-2024 school year to February 13, 2024, which was the outer limit of the investigation. See *id.*

19. Here, Parents responded to the staffing-related issues by requesting an administrative transfer to a different SSN program within the District. *Interview with Parents*. The transfer was granted, and Student did not attend School's SSN program after December 15, 2023. *Id.*

Progress Monitoring and Reporting

20. As discussed and determined in the First Investigation, the SSN program's staffing shortage resulted in an inability to monitor the SSN program's students' IEP goal progress through at least October 24, 2024. *CDE Exhibit 1*, p. 23.
21. Looking at the period of October 24 through Student's last day on December 15, the Record shows that Student's progress on her annual IEP goals was not fully monitored or reported. *Exhibit A*, pp. 36-40; *Exhibit J*, pp. 113-17.
22. Specifically, her first literacy objective was measured and reported using a different metric than required by her IEP; her second literacy objective was not measured or reported; her second mathematics objective was not measured or reported; and her third communications objective was not monitored or reported. See *id.*
23. Accordingly, the SCO finds that Student's progress was not fully monitored or reported from the beginning of the 2023-2024 school year through Student's last day at School.

Addressing Student's Health Assistance Needs

24. The paraprofessionals in the SSN program assisted Student with her hygiene, toileting, and nutrition needs. *Interviews with Paraprofessionals ("Paras") 1, 2, 3, 4, and 5; Exhibit F*, p. 3.
25. Specifically, they thickened Student's beverages for her dysphagia and prompted her to use the bathroom, which she was able to do by herself with verbal cues. *Interviews with Paras 1, 2, and 5*.
26. Regarding Student's vision, the District was aware that she had an implantable collamer lens in one eye and that, although this had improved her vision, she needed to wear her glasses full-time. See *Exhibit C*, p. 53; *Exhibit L*, p. 123.
27. The paraprofessionals did not notice any definite signs that Student had trouble with her vision. *Interviews with Paras 1, 3, 4, and 5*. They needed to prompt Student to keep her glasses on. *Id.* One paraprofessional, when asked whether Student showed any signs of vision difficulties, noted that Student would hold papers up closer to her face occasionally, but she and another paraprofessional also noted that Student's glasses—in common with other children with glasses—were often very smudged from

her hands and frequently needed to be wiped off. *Interview with Paras 3 and 4.* Another paraprofessional, a licensed teacher who worked as a paraprofessional with Student in the 2022-2023 school year, said Student's vision did not appear to interfere with her academic work. *Interview with Para 5.*

28. As for Student's physical education, Student's 2022-2023 and 2023-2024 report cards showed that she earned a "3 out of 4" in physical education, which meant that she "demonstrate[d] understanding of target concepts and skills." *Exhibit J*, pp. 97-98. Her physical education teacher, when asked about Student's performance in her general education physical education class in fall 2023, said she was a welcome member of the class, generally performed within two grade levels of the state standards for physical education (with variability from two grades below to meeting her own grade, depending on how she felt that day), and showed progress across the semester by increasingly following instructions, working with the teacher and other children, and generally becoming more comfortable "going with the flow" of the class and participation. *Interview with Physical Education Teacher.*

Educating Student in Her LRE

29. The First Investigation found that the SSN program's staffing shortage resulted in an inability to include the program's students, including Student, in the general education environment for more than a minimal amount of time. *CDE Exhibit 1*, pp. 19-20.
30. Further investigation for this Complaint has bolstered that conclusion: Student's general education teacher wrote that he saw Student in his classroom between zero and four hours each week. *Exhibit N*, p. 265. Similarly, although Student's physical education class met every four schooldays, Physical Education Teacher had Student in her class from two to four times per month. *Interview with Physical Education Teacher.*

D. Parents' Record Request

31. On December 12, 2023, in the course of researching other SSN programs in the District, Parents submitted a request to the District for "All records, emails, letters, communications etc. within [District] and [School] systems pertaining to or including by name, our student, [Student] from August 15, 2021 to present. Any and all documents, emails, communications, etc. naming [Student] related to the SSN program at [School] for school years 2022-2023 and 2023-[present]." *Exhibits 1 and 2.*
32. Parents' request also included a "Waiver and Authorization to Release Information Under FERPA" form and, in addition to a second narrative request for "all education records" on that form, Parents checked the line for "All records or information" as the "Information to be released." *Id.*

33. The District produced 219 pages of emails in response to Parents' request—nothing more. *Exhibit 3*.
34. Parents objected and stated their belief that Student's educational file contained more than just emails between Parents and staff. *Exhibit 1*, p. 2.
35. The District responded that the emails represented all the documentation that Parents had requested. *Id.* at p. 1.
36. On January 19, 2024, Parents made a second request. *Exhibit N*, pp. 184-86. They again requested "a copy of all educational records while [Student] was enrolled at [School]." *Id.*
37. In response, the District provided Student's entire educational file on March 4, 2024. *Response*, p. 17; *Interview with Parents*. The file did not include the 219 pages of emails Parents had previously received. See *Exhibit 4*. Instead, it consisted of 519 pages of progress reports, IEPs, attendance records, evaluations, consents and releases, etc. See *id.*
38. Because Student's educational record consisted of more than the 219 emails provided in response to Parent's first request, the SCO finds that the District's response to Parent's first request was incomplete.

E. Disclosure of PII

39. Parents have alleged that the District improperly shared students' PII on two occasions. See, e.g., *Complaint*, pp. 8-9.
40. On the first occasion, a District staff member who was providing support to the SSN program until a full-time teacher could be hired, sent an Excel file with a student's schedule to the student's parent—but the document also included the other SSN program students' first names and schedules on other worksheets. *CDE Exhibit 2*. The parent who received the schedules neither deleted the file nor informed School or District; rather, she sent the file with the students' PII to an advocate who was working with some of the SSN program parents at that time. *Id.*
41. On the second occasion, on December 5, 2023, the District provided 344 pages of emails concerning the SSN program in response to a Colorado Open Records Act ("CORA") request by a parent ("CORA Parent"). *Exhibit Q*, p. 433.
42. CORA Parent emailed District staff and informed them that several instances of PII in the emails had not been redacted. *Id.* at pp. 431-32. She provided a detailed list of the places where information had not been redacted. *Id.*
43. The emails were heavily redacted, but the missed redactions included parent, grandparent, and student names. *Id.*; see generally *CDE Exhibits 3 and 4*.

44. District staff replied to CORA Parent with a version of the CORA request with further redactions and a request for CORA Parent to delete the original version. *Exhibit Q*, p. 426.
45. CORA Parent did not delete the original version. *Interview with CORA Parent*. She gave the emails to the same advocate who received the student schedules. *Id.* CORA Parent's detailed list of unredacted PII was also shared and appears verbatim in the Complaint. See, e.g., *Complaint*, p. 9.

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 Student's IEPs accessible to her providers in compliance with 34 C.F.R. § 300.323(d). The District did not fully implement Student's IEP because it did not provide the specialized instruction required by Student's IEP from February 13, 2023 to February 21, 2023, and from August 14, 2023 to October 12, 2023, in violation of 34 C.F.R. § 300.323. Further, the District did not monitor or report Student's progress as required by her IEP, in violation of 34 C.F.R. § 300.323. These violations resulted in a denial of FAPE.

Parents have alleged that the District did not make Student's IEP accessible to her providers. Parents have also alleged that the District did not provide the specialized instruction, progress monitoring, and progress reporting required by Student's IEP.

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).

IEP Accessibility

A school district must ensure that every student's IEP is accessible to the student's teachers and providers. 34 C.F.R. § 300.323(d). As determined in the First Investigation, the District made the IEPs of the students in the SSN program accessible. *CDE Exhibit 1*, pp. 25-26. Accordingly, the SCO finds and concludes that the District made Student's IEP accessible in compliance with 34 C.F.R. § 300.323(d).

Specialized Instruction

Only properly licensed and endorsed teachers may provide specialized instruction under the ECEA and IDEA. 34 C.F.R. §§ 300.156(c); ECEA Rule 3.04; *Denver Public Schools*, 122 LRP 39748 (Colo. SEA Sept. 30, 2022). As discussed and determined in the First Investigation, the District did not employ properly licensed and endorsed teachers to provide specialized instruction in the SSN program from November 1, 2022 to February 20, 2023, and from the beginning of the 2023-2024 school year through February 16, 2024. *CDE Exhibit 1*, pp. 26-27. Further, the SCO also determined that the staffing and conditions of the SSN program during these periods resulted in a lack of individualized attention to the program's students and a consequent failure to provide their specialized instruction. *Id.* at p. 27.

Accordingly, the SCO finds and concludes that the District did not implement Student's IEP because it did not provide the specialized instruction required by her IEP, in violation of 34 C.F.R. § 323.300(c).

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.

Because providing specialized instruction was essential to providing a FAPE, this violation resulted in a denial of FAPE for the students in the SSN program. *CDE Exhibit 1*, p. 27 (citing *Van Duyn ex. rel Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007)).

In the First Investigation, the District was ordered to provide 64 hours of summertime compensatory specialized instruction to all students enrolled in the SSN program at any time between December 1, 2022 and October 24, 2023. *Id.* at pp. 30-31, 43-44. That remedy addressed the failure to provide specialized instruction to the SSN program students. See *id.* Accordingly, because that remedy encompassed and included the

failure to provide specialized instruction to Student, no additional remedy is ordered. See *id.*

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), 300.323(c).

Here, the District did not monitor and report Student's progress as required by her IEP. (FF #s 20-23.) Accordingly, the SCO finds and concludes that the District did not properly monitor and report Student's progress on her IEP goals, in violation of 34 C.F.R. § 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. Although additional information would have been helpful to Parents' review of other SSN programs, any actual monitoring data from the SSN program would have been limited given the greater failure to provide specialized instruction. Accordingly, the SCO finds that the failure to monitor and report Student's progress was not a denial of FAPE, if only because these violations were overshadowed by other, more impactful violations of the IDEA.

Conclusion to Allegation No. 2: 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.

Parents have alleged that the District did not educate Student in the general education environment as required by her IEP.

“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).

Here, Student’s LRE was 40-79% of her time in the general education environment. (FF #s 13, 29-30.) Due to the District’s staffing difficulties, however, her actual time was much less—from zero to four hours per week in the general education classroom, two to four times a month in physical education, and minimal time in the general education environment overall. (*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.

Procedural violations of IDEA are only actionable to the extent that they (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); see *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, the SCO finds that this 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.

The SCO has ordered a remedy to ensure the District complies with the requirements of 34 C.F.R. §§ 300.114 and 300.323.

Conclusion to Allegation No. 3: Student’s IEP adequately addressed Student’s individualized needs in compliance with 34 C.F.R. § 300.324. No violation is found.

Parents have alleged that Student’s IEP was inadequate because it did not adequately address Student’s individualized health needs—specifically, her needs related to her vision, her needs for adapted physical education, and her needs for assistance with nutrition, water, and toileting.

As noted above, an IEP is “the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F.*, 580 U.S. at 399 (2017).

Determining whether an IEP complies with the requirements of the IDEA requires analysis under the two-prong test 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.*

IEP Development Process

The IDEA sets forth the procedure for developing an IEP: As relevant here, a properly composed 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)(1). The IEP must include a statement explaining how the child's disability impacts the student's involvement in and progress in the general education curriculum. *Id.* § 300.320(a)(1)(i).

The Record shows that a properly composed IEP Team considered the required factors: Student's strengths; Parents' concerns; Student's evaluation and assessment results; and Student's academic, developmental, and functional needs. (FF #s 6-7.) The IEPs also included a statement describing the impact of Student's disability on her involvement and progress in the general education curriculum. (*Id.*)

For these reasons, the SCO finds and concludes that the development of Student's IEP complied with the IDEA's procedural requirements, in compliance with 34 C.F.R. § 300.324.

Substantive Adequacy of the IEP

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. The IEP must identify the special education and related services and supplementary aids and services that will be provided to allow the child to (1) advance appropriately toward the IEP's annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in extracurricular and nonacademic activities. *Id.* § 300.320(a).

School districts are obligated to address a student's individualized school health service needs as necessary to provide a FAPE. See 34 C.F.R. § 300.34(a)(13). School districts are also obligated to provide specialized instruction in the area of physical education when necessary to provide a FAPE, just as with any other area of the general education curriculum. See *id.* § 300.39. Parents' specific concerns involve Student's needs for (1) her vision impairment, (2) for adapted physical education, and for assistance with (3) nutrition, water, and (4) toileting. (FF #s 4-5.)

Vision: The District had no reason to believe, and the facts do not show, that Student's vision required more than wearing her glasses. (FF # 9, 26-27.) The paraprofessionals understood that Student needed to wear her glasses; they reminded her to wear her glasses, and they cleaned her glasses when smudged. (*Id.*) They, including a person who was a licensed teacher but worked with Student as a paraprofessional in the 2022-2023 school year, saw no indication that Student's vision might be interfering with her

education. (*Id.*) Based on these facts and the lack of any indication that Student needed visual supports, the District acted appropriately by not including such supports in her IEP.

Adapted physical education: Although Student's IEP did not require adapted physical education, the SCO finds and concludes that the District did not have a duty to offer that service given Student's individualized needs. Student was able to perform the physical movements necessary to participate in physical education with her class. (FF # 9.) Indeed, she did participate in physical education with her class when the SSN program had sufficient staffing. (FF # 28.) She worked well with the teacher and her nondisabled peers, and she showed progress over the course of the semester as she improved her abilities to follow directions and to independently participate in the class. (*Id.*) For these reasons, adapted physical education was not necessary to address Student's unique needs that resulted from her disability.

Nutrition and water: The IEP recognized that Student needed her food and water thickened, as necessary, due to her dysphagia, and a PWN amended the IEP to specify how much thickener to use to match Student's updated needs. (FF #s 9, 14.) The paraprofessionals stated that they did this, and nothing in the Record suggests more support was needed. (FF # 25.) For these reasons, the SCO finds and concludes that the IEP addressed Student's individualized needs in this respect.

Toileting: Finally, the IEP also recognized that Student needed assistance with toileting and provided an accommodation stating that she would be given additional time to dress and undress. (FF # 9.) The paraprofessionals stated that they provided this accommodation, and nothing in the Record suggests that more support was needed. (FF # 25.) For these reasons, the SCO finds and concludes that the IEP addressed Student's individualized needs in this respect.

Overall, the SCO finds and concludes that Student's IEP addressed her individualized needs and was reasonably calculated to allow her to make progress appropriate in light of her circumstances, in compliance with 34 C.F.R. § 300.324.

Conclusion to Allegation No. 4: The District did not permit Parents to inspect and review Student's education records in response to their December 12, 2023 request, in violation of 34 C.F.R. § 300.613. This was not a denial of FAPE.

Parents allege that the District did not allow them to review Student's education records in response to their December 12, 2023 request.

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child's education records. 34 C.F.R. § 300.613(a). Accordingly, a school district "must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency." *Id.* A district must comply with a request from a parent to review his or her child's education records "without unnecessary delay and before any meeting regarding an IEP," and in no case more than 45 days after the request. *Id.* The right of parents to inspect education records includes

a “right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.” 34 C.F.R. § 300.613(b). The IDEA borrows the definition of “education records” from the Family Educational Rights and Privacy Act (“FERPA”). 34 C.F.R. § 300.611(b). FERPA defines education records as those records that are “directly related to a student” and “maintained by an educational agency or institution or by a party acting for the agency or institution.” 34 C.F.R. § 99.3. A record means “any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.” *Id.*

Here, on December 12, 2023, Parents submitted a request to the District for all Student’s education records. (FF #s 31-38.) The District’s disclosure in response to that request consisted solely of emails between Parents and staff from the School and District. (*Id.*) The District’s disclosure was incomplete, however, as demonstrated by the District’s second disclosure of March 4, 2024 in response to Parents’ January 19, 2024 request. (*Id.*) That production included Student’s progress reports, evaluations, assessments, IEPs, and other records that the District needed to maintain in order to provide Student’s education. (*Id.*)

For these reasons, the SCO finds and concludes that the District did not permit Parents to inspect and review Student’s education records in response to their December 12, 2023 request, in violation of 34 C.F.R. § 300.613.

The SCO also finds and concludes that the Record does not show this violation impeded Student’s right to a FAPE, significantly impeded Parents’ opportunity to participate in the decision-making process or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); see *Knable*, 238 F.3d at 765-66. It is true that Parents should have had Student’s education records when they were researching other SSN programs. However, the delay did not impede their ability to participate in the decision-making process, it did not cause a deprivation of educational benefit for Student, and Parents were able to find an SSN program without the records. See *id.*

Conclusion to Allegation No. 5: The District disclosed students’ PII without consent, in violation of 34 C.F.R. § 300.622. This was not a denial of FAPE.

Parents have alleged that the District disclosed multiple students’ PII on two occasions in violation of 34 C.F.R. § 300.622.

The IDEA requires school districts to protect the confidentiality of any personally identifiable information it collects or maintains. 34 C.F.R. §§ 300.610-627. “PII” refers to information that contains, as relevant here, “[t]he name of the child, the child’s parent, or other family member,” or “other information that would make it possible to identify the child with reasonable certainty.” *Id.* § 300.32. Parental consent must be obtained before a student’s PII is disclosed, with exceptions that are not relevant here. *Id.* § 300.622.

Here, District staff inadvertently disclosed multiple students' schedules, including Student's schedule, when sending one student's schedule to the student's parent. (FF #s 39-45.) The District also missed several necessary redactions across 344 pages of emails, including names of several parents, grandparents, and students, including that of Student. (*Id.*) Accordingly, the SCO finds and concludes that the District disclosed PII without consent, in violation of 34 C.F.R. § 300.622. This resulted in procedural violations of the IDEA.

As explained above, a procedural violation of the IDEA amounts to a denial of FAPE only 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 (6th Cir. 2001). Both occasions were clearly accidents. The emails were heavily redacted, showing that the District understood its duties, and the District acknowledged and attempted to correct its error once it knew that some redactions had been missed. (FF # 44.) In each instance, the PII was disseminated further only because the recipients intentionally distributed it. (FF #s 40, 45.) The District's violation did not constitute a denial of FAPE.

REMEDIES

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

- a. It did not fully implement Student's IEP, in violation of 34 C.F.R. § 300.323;
- b. It did not educate Student according to the LRE in her IEP, in violation of 34 C.F.R. §§ 300.114 and 300.323;
- c. It did not permit Parents to inspect and review Student's education records, in violation of 34 C.F.R. § 300.613; and
- d. It disclosed students' PII without consent, in violation of 34 C.F.R. § 300.622.

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

1. Corrective Action Plan

- a. By **Monday, June 10, 2024**, the District shall submit to 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. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance. To the extent that the District has addressed a violation in response to CDE's decision in 2023:613, the District may reference the specific portion of the 2023:613 CAP that addresses the violation in lieu of repeating it in this CAP.

2. Final Decision Review

- a. Special Education Executive Director, SSN Facilitator, District Floater, and New Principal must review this Decision. This review must occur no later than **Monday, June 10, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, June 14, 2024**.

3. LRE Tracking

- a. On the **second Tuesday of each month** from September 2024 through January 2025, the District shall submit to CDE a log that includes: (1) each student in School's SSN program; (2) each student's LRE; (3) for each day of the prior month, the time each student spent in the general education environment.

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 10th day of May, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-12

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence
- Exhibit 3: Correspondence
- Exhibit 4: Student Records

Response, pages 1-22

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Evaluations
- Exhibit D: PWNs
- Exhibit E: Meeting Documentation
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: Behavior Logs
- Exhibit I: Incident Reports
- Exhibit J: Progress Reports
- Exhibit K: Calendars
- Exhibit L: Communication Logs
- Exhibit M: Policies
- Exhibit N: Emails
- Exhibit O: Correspondence
- Exhibit P: Verification of Delivery
- Exhibit Q: Miscellaneous Documents

Telephone Interviews

- Special Education Executive Director: April 10, 2024
- Para 5: April 10, 2024
- Para 1: April 16, 2024
- Para 2: April 16, 2024
- Parents: April 17, 2024
- New Principal: April 17, 2024
- District Floater: April 17, 2024
- District Physical Education Coordinator: April 17, 2024
- Para 3: April 18, 2024
- Para 4: April 18, 2024
- Physical Education Teacher: April 25, 2024

CDE Exhibits

- CDE Exhibit 1: Decision in State Complaint 2023:613

- CDE Exhibit 2: Correspondence
- CDE Exhibit 3: Correspondence
- CDE Exhibit 4: Correspondence