

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 2021:530  
El Paso 20 (Academy) School District**

**DECISION**

**INTRODUCTION**

On November 23, 2021, the (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”) filed a state-level complaint (“Complaint”) against El Paso 20 (Academy) School District (“District”).<sup>1</sup> The State Complaints Officer (“SCO”) determined that the Complaint identified two (2) allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), 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 23, 2020, through November 23, 2021, for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to develop, review, and revise an IEP tailored to Student’s individualized needs in literacy and math, from November 23, 2020 to present, in violation of 34 C.F.R. §§ 300.320 and 300.324.
2. Failed to properly implement Student’s IEP from January 2021 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 provide the special education and related services required by Student’s IEP, specifically in the areas of literacy and math, in violation of 34 C.F.R. § 300.323.

### **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 is 16 years old and currently attends a District high school (“School”). *Interview with Parent, Exhibit A*, p. 16. Student is a shy, compassionate, and kind child, who loves soccer and being around her peers. *Interviews with Parent, Case Manager, and Special Education Teacher*. Academically, Student struggles with math and reading, and she was diagnosed in early childhood with dyslexia and dyscalculia. *Interview with Parent*.
2. Student qualifies for special education and related services under the Specific Learning Disability (“SLD”) category. *Exhibit A*, p. 27.
3. During the 2020-2021 academic year, when Student was a sophomore at School, she received special education services under a November 12, 2020 IEP (“2020 IEP”). *Exhibit A*, pp. 1, 16; *Interview with Case Manager*. Parent alleges District failed to tailor the 2020 IEP to her individualized needs in literacy and math. *Interview with Parent; Complaint*, pp. 1-12.

#### **B. The 2020 Triennial Reevaluation**

4. The 2020 IEP was developed as part of Student’s triennial reevaluation. *Exhibit A*, p. 1; *Exhibit F*, pp. 1-8; *Interview with Case Manager; Exhibit I*, p. 29; *Exhibit D*, p. 1. District provided Prior Written Notice (“PWN”) and consent to Parent on September 28, 2020, and Parent consented to the reevaluation on October 29, 2020. *Exhibit D*, p. 1; *Exhibit F*, p. 6; *Exhibit I*, p. 29. The consent form indicated the reevaluation would be conducted in the areas of Academics and Health. *Exhibit D*, p. 1.
5. The PWN did not explain what evaluation procedures, tests, records, or reports the reevaluation was to be based on, or what options were considered by the IEP Team. See *Exhibit D*, pp. 1-3. Nonetheless, District assessed continuing eligibility by collecting teacher/parent observations and performing a records review of grades and results on screeners and state assessments. See *Exhibit F*, pp. 1-8; *Interview with Case Manager*.

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

6. The reevaluation took place on November 2, 2020. *Exhibit F*, p. 6. A grade report indicated Student was passing most subjects with a C or better but was failing Algebra 1. *Exhibit F*, at p. 7. Her average scores on math tests were 61.8 percent, and a random sample of three writing prompts, each 2 to 3 sentences in length, had a total of five punctuation and sentence structure errors. *Id.*
7. District reviewed Student's results on screeners and general state assessments. *Id.* at pp. 1-5. None of the assessments referenced in the records review, apart from STAR Assessments, were from 2020 (many results went as far back as 2013). *See id.*
8. District also compiled observations and input from Parent and Student's teachers. *Id.* at p. 6. Parent's observations included comments like "[m]ost time spent on math and science" and "[loses] focus during MS team classes – suggested she listen during lectures while doing something else like stretching or doing yoga." *Id.* at p. 6.
9. The teacher observations and input reported that Student "appears to have trouble with reading directions" however "it is difficult to distinguish between understanding content and directions"; "[Student] does not usually self-advocate, but has started to ask more questions in class"; and "[Student] takes a little bit longer to complete assignments [and] sometimes forgets to turn them in after I stop reminding students of due dates." *Id.* at p. 7.
10. District did not conduct any diagnostic assessments to determine deficits in Student's foundational reading and math skills. *Consult with CDE Content Specialist 1*. District also did not assess Student for possible memory or attention issues, despite observations from teachers and Parent that she was failing to turn in assignments and engage in class. *Id.* Nevertheless, District relied on the records review and observations alone to determine Student continued to qualify for services under the SLD category and develop the 2020 IEP. *Exhibit F*, pp. 1-9; *Exhibit A*, pp. 1-15.

### C. The 2020 IEP

11. On November 12, 2020, a properly constituted IEP Team met to develop the 2020 IEP. *Exhibit A*, p. 1; *Interviews with Case Manager and Parent*.
12. The 2020 IEP reviewed Student's present levels of academic achievement and functional performance, documenting the grades and teacher observations obtained during the reevaluation. *Exhibit A*, pp. 3-4. The 2020 IEP indicated Student did not take the Northwest Evaluation Association ("NWEA") assessment in the fall of 2020, and that Student scored well below average on the aimswebPLUS assessment in both reading and math. *Id.* at p. 4.
13. In the Student Needs and Impact of Disability section, the 2020 IEP indicated deficits in reading comprehension, reading fluency, math computation, and written expression impact

her ability to participate in the general education classroom without specialized instruction. *Id.* at p. 5. Student's SLD can negatively impact acquisition of new content and can impair Student's ability to process information. *Id.*

14. The 2020 IEP did not detail how Student performed on her previous annual goals. *See id.* at pp. 1-8. It indicated Parent would be notified of progress toward goals on a quarterly basis, and at annual IEP reviews. *Id.* at p. 8.
15. The 2020 IEP documented Parent's input from the reevaluation as well as some of Parent's notes from the November 2020 IEP meeting, such as, "[Parent] asked about math problem reduction – [Case Manager] explained [that] is not a high school level accommodation and [that] would be a discussion to have with the Math teacher." *Id.*
16. Case Manager conducted an informal transition assessment with Student to develop post-school goals. *Id.* at p. 4. Student said she planned to attend college after graduation and become a fashion designer. *Id.*
17. The 2020 IEP contained post school goals for Student in Education/Training and Employment. *Id.* at p. 6. The IEP Team determined an Independent Living Skills goal was not appropriate. *Id.* Although the 2020 IEP contained information on the Planned Course of Study, it also indicated Student would take "electives of her choosing her Freshman Year" demonstrating that this language was not updated from her freshman year. *Id.* The 2020 IEP also incorrectly listed Student as attending a District middle school, and the date for the next meeting section was likewise inaccurate as written. *See Exhibit A*, p. 1.
18. The 2020 IEP contained the following annual goals:
  - a. Goal # 1 (Reading): "Given support at her level, [Student] will increase her Reading comprehension, by improving her Aims Web reading score from 199 to 204 by the end of her IEP year." *Id.* at p. 8.
  - b. Goal # 2 (Mathematics): "In order to be ready to meet her post[-]secondary goals, [Student] will demonstrate acquired Math skills, by increasing her Aims web score from 196 to 199 by the end of her IEP year." *Id.* at p. 9.
  - c. Goal # 3 (Writing): "In order to meet her goal of going to college, by the end of her IEP year, [Student] will improve her writing skills. When given a writing prompt and using a word processor [Student] will have fewer than two mistakes per writing prompt[sic]. Errors include spelling, word tense, grammar, punctuation, etc." *Id.* at pp. 9-10.

19. The 2020 IEP contained accommodations to help Student access the general education curriculum. *Id.* at p. 10. They were not specific to an academic subject and included access to technology with word processing or speech to text options for writing, frequent checks for understanding, and assessment administration in an alternate setting. *Id.*
20. The Service Delivery section provided for 180 minutes of weekly direct “Resource Services” and 15 minutes of indirect case management. *Id.* at p. 13. There was neither an explanation of what skills or academic subject Student was to work on during the 180 minutes of “Resource Services” nor details on who was to provide the services to Student. *See id.*
21. The IEP Team determined it was appropriate for Student to be in the general education class 40 to 79 percent of the time. *Id.* p. 13. The SCO finds, however, that if Student was only receiving 180 minutes of special education service each week, the Least Restrictive Environment (“LRE”) should have been the general education classroom at least 80 percent of the time. Case Manager admits this was an error, and the LRE should have been written as at least 80 percent of the time in general education. *Interview with Case Manager.*
22. The 2020 IEP was in effect from November 11, 2020 through November 9, 2021. *See Exhibit A*, pp. 1, 16. In addition to raising concerns in the Complaint with the appropriateness of the 2020 IEP, Parent also alleges District failed to implement the 2020 IEP. *Complaint*, pp. 1-12.

**D. Implementation of the 2020 IEP (January 1, 2021 through November 8, 2021)**

23. Parent’s concern regarding implementation is that Student’s general education teachers were not appropriately trained in their responsibilities under the 2020 IEP. *Interview with Parent; Complaint*, pp. 1-12. Parent indicated she must sometimes advocate for Student’s accommodations with teachers, and that Student’s general education teachers were not sufficiently familiar with Student’s accommodations. *Interview with Parent.*

**Accessibility to Student’s Teachers**

24. All of Student’s instructors were provided a snapshot of the accommodations under the 2020 IEP at the beginning of the year. *Interview with Case Manager.* Case Manager works with general education teachers to ensure Student receives accommodations on assignments and tests when necessary, and Case Manager is available as a resource when staff have questions about Student’s needs. *Id.*
25. Special Education Teacher, one of the primary staff members responsible for providing Student with special education services, regularly collaborates with Case Manager. *Interview with Special Education Teacher.* Special Education Teacher also sometimes advocates for Student’s accommodations with Student’s general education teachers. *Id.*

26. The email record demonstrates that, on occasion, Parent contacted Student's general education teachers to advocate for accommodations. *See e.g., Exhibit 4, pp. 1-2; Exhibit 5, pp. 1-4.* The email record also demonstrates that general education teachers were responsive and willing to provide the accommodations to Student in response to Parent's inquiries. *Exhibit 4, pp. 1-2; Exhibit 5, pp. 1-4.* Emails also demonstrate staff were aware of Student's accommodations under the 2020 IEP. *See id.* Case Manager was included on communications so she could support the general education staff and ensure, for example, that Student was allowed to retake an exam with accommodations on an occasion where a teacher forgot one of Student's exam accommodations. *See Exhibit 4, pp. 1-2.*
27. The SCO finds, based on the similarities of Case Manager and Special Education Teacher's statements, and the support for their statements in the email record, that District appropriately informed Student's instructors of their responsibilities under the 2020 IEP.

*"Resource Services" and Indirect Case Management*

28. From November 11, 2020 through November 9, 2021, Student received 180 minutes of "Resource Services" under the 2020 IEP, twice a week, in 90 minute blocks in School's Study Skills class. *Interviews with Parent, Case Manager, and Special Education Teacher.*
29. From November 11, 2020 through November 9, 2021, Case Manager also provided 15 minutes of weekly indirect case management for Student, sometimes in connection with a specific assignment or test, and on other occasions supporting Student with personal struggles. *Interview with Case Manager.*
30. Parent alleges the Study Skills class was not appropriately tailored to Student's needs and served as a "glorified study hall." *Interview with Parent; Complaint, pp. 1-12.* Parent does not allege that District failed to provide Student with 180 minutes of weekly time in the Study Skills class or 15 minutes of weekly indirect case management. *Interview with Parent.*
31. Case Manager and Special Education Teacher confirm that, aside from days when she was absent, Student was regularly provided with the 180 minutes of weekly "Resource Services" and Case Manager regularly conducted 15 minutes of weekly indirect case management under the 2020 IEP. *Interviews with Case Manager and Special Education Teacher.*
32. The SCO accordingly finds Student received the service minutes required by the 2020 IEP. However, given Parent's concern with the appropriateness of the 2020 IEP, the SCO now turns to the programming provided through the Study Skills class.

## **E. The Study Skills Class and Student's Performance**

### The Study Skills Class

33. The Study Skills class at School typically starts with 20 minutes of direct instruction, and for the rest of the class, students work on quizzes, homework, tests, etc. either independently or with the assistance of the resource room teacher. *Interviews with Case Manager, Parent, and Special Education Teacher.* Students are polled by the instructor on what they are working on in their classes, and case managers or teachers can also advocate for the instructor to work with a student on a specific assignment or academic subject. *Id.*
34. Each Study Skills class has anywhere from 5 to 13 students and runs all day at School. *Interviews with Case Manager and Special Education Teacher.* All students in the Study Skills class are IDEA-eligible (there are approximately 100 total children in the Study Skills program). *Interview with Case Manager.* Special Education Teacher explains that District considers Study Skills to be a mild to moderate needs program, and that the students in Study Skills have a variety of qualifying disabilities. *Id.*
35. Special Education Teacher performs some direct instruction during Study Skills, and she “can” support students in using Reading Plus, which is an adaptive literacy program that works on fluency, comprehension, vocabulary, stamina, and motivation. *Interview with Case Manager; Exhibit B, p. 1; Exhibit A, p. 29.* Student is also enrolled in AVID, a curriculum that focuses on improving reading, writing, comprehension, and notetaking. *Exhibit B, p. 1.*
36. Nonetheless, the 2020 IEP does not describe how many of Student’s minutes in Study Skills will be spent working on Reading Plus or what specific reading needs are targeted by the program. Also, AVID does not qualify as specialized instruction. *See Exhibit A, pp. 1-15; Consultation with CDE Content Specialist 1; ECEA Rule 2.43(2)(c).*
37. Special Education Teacher has a limited math background, so Student is expected to go to School’s PAL Lab. *Interviews with Case Manager, Special Education Teacher, and Parent.* The PAL Lab is a room where students can receive math tutoring from a teacher or an “upper-level” student in AP math. *Interviews with Case Manager and Special Education Teacher.* When Student has a math assignment that she does not understand, she can go to the PAL Lab during her time in Study Skills and give it to the instructor for assistance. *Interview with Special Education Teacher.*
38. The 2020 IEP contained no reference to the PAL Lab or a description of how many “Resource Service” minutes were supposed to be spent in the PAL Lab. *See Exhibit A, pp. 1-15.* Student is “supposed” to go to the PAL Lab as needed during her time in Study Skills each week as part of her special education minutes, but District staff indicate she often chooses not to. *Interviews with Case Manager and Special Education Teacher.*

39. Parent is concerned that the PAL Lab only has peer tutoring available, and that the adult in the room is there to supervise rather than to instruct. *Interview with Parent*. Special Education Teacher indicates the PAL Lab also has an adult instructor that is available to assist students with math. *Interview with Special Education Teacher*. The SCO finds that, regardless of whether the tutoring is provided by a peer or a math teacher, the services in the PAL lab do not qualify as direct specialized math instruction. *Id.*; *Consultation with CDE Content Specialist 1*; ECEA Rule 2.43(2)(c).

Student’s Progress Under the 2020 IEP

40. There are no service logs for Student’s time in the Study Skills class. *See Exhibit B*, pp. 1-2. Special Education Teacher uses a communication log to track what is being taught in various classes, but there are no logs to track how often Special Education Teacher works with each student in a particular subject. *Interviews with Special Education Teacher and Parent*.

41. District tracked Student’s performance toward annual goals on a quarterly basis, by generating reports of her performance on the aimswebPLUS assessment and reviewing random samples of Student’s journals from the Study Skills class. *See Exhibit A*, p. 8-10. The progress reports indicate Student made the following progress toward annual goals:

<u>Annual Goal #</u>	<u>Goal</u>	<u>Baseline as of November 12, 2020</u>	<u>Progress as of March 19, 2021</u>	<u>Progress as of May 21, 2021</u>	<u>Progress as of October 20, 2021</u>	<u>Progress as of November 8, 2021</u>
<u>Goal # 1 (Reading)</u>	204	199	199	191	185	10 <sup>th</sup> Percentile
<u>Goal # 2 (Math)</u>	199	196	196	205	181	181
<u>Goal # 3 (Writing)</u>	Fewer than 2 mistakes per journal entry	Average of 5 mistakes	Average of 2 mistakes	Average of 3 mistakes	Average of 3 mistakes	Average of 4 mistakes

*Id.* at pp. 8-10, 34-35.

42. Student did not achieve any of the annual goals in the 2020 IEP, and she showed an overall decline in performance in reading and math, as measured in progress reports. *See id.*

43. In terms of grades, Student passed all classes with a C or better during the Spring of 2021 (apart from Psychology where she received an F). *Exhibit L*, p. 2.

44. On November 8, 2021, a properly constituted IEP Team met to review the 2020 IEP and develop Student's 2021 IEP ("2021 IEP"). *Exhibit A*, p. 16; *Interviews with Case Manager and Parent*. Aside from general screeners and state assessments like the NWEA, aimswebPLUS assessment, and Preliminary Scholastic Aptitude Test ("PSAT"), District did not perform any new evaluations or assessments prior to developing the 2021 IEP. *See Exhibit A*, pp. 18-20; *Exhibit F*, pp. 1-8.

#### **F. The 2021 IEP**

45. Unlike the 2020 IEP, the 2021 IEP accurately documents that Student attends School, and the Dates of Meetings section is likewise updated and accurate. *Exhibit A*, p. 16.

46. The 2021 IEP reviews Student's present levels of academic achievement and functional performance, documenting grades and the teacher observations on her performance. *Id.* at pp. 18-19.

47. The observations from Student's teachers include, "it is difficult to assess how much [Student] comprehends because she has missed so many of the assessments" and "when in class, [Student] is quiet and keeps to herself. Often, when I attempt to engage her in the discussions, she often has not read the assignment or. . .seems disengaged." *Id.* at p. 18.

48. The 2021 IEP contains Student's results for the NWEA assessment in math and aimswebPLUS assessment in reading and math. *Id.* at p. 19. The Grade Report indicates that when the 2021 IEP was developed, Student was passing most of her courses with a C or better, but she was receiving an F in both Geometry and American Lit. *Id.*

49. The Student Needs and Impact of Disability of the 2021 IEP is the same as that of the 2020 IEP. *See Id.* at pp. 5, 20.

50. The 2021 IEP documents Parent input, indicating that "[Parent] expressed concern regarding [Student's] progress on IEP goals, [Student] has been enrolled in the reading plus program in order to help [Student] gain the reading skills she needs to become more successful." *Id.* at p. 20. It adds the "team decided we will meet again in February for a parent meeting to discuss [Student's] progress in the reading plus program." *Id.*

51. Case Manager conducted an informal transition assessment with Student to update her post-school goals. *Id.* at p. 20. In the interview, Student said she now plans to attend cosmetology school and live with a close friend after graduating. *Id.*

52. The 2021 IEP contains post school goals for Student in Education/Training and Employment. *Id.* at p. 21. The IEP Team determined an Independent Living Skills goal was not appropriate

because Student's independent living skills are age appropriate. *Id.* The Planned Course of Study is updated to reflect that Student is no longer a freshman at School. *Id.* at p. 22.

53. The 2021 IEP contains the following annual goals:

- a. Goal # 1 (Reading): "Given support at her level, [Student] will increase her Reading comprehension, by improving her Aims Web percentile score from [10<sup>th</sup> percentile] to [15<sup>th</sup> percentile] by the end of her IEP year." *Id.* at p. 23.
- b. Goal # 2 (Mathematics): "In order to be ready to meet her post[-]secondary goals, [Student] will demonstrate acquired Math skills, by increasing her Aims web score from 181 to 190 by the end of her IEP year." *Id.* at p. 24.
- c. Goal # 3 (Writing): "In order to meet her goal of going to college, by the end of her IEP year, [Student] will improve her writing skills. When given a writing prompt and using a word processor [Student] will have fewer than two mistakes per writing prompt[sic]. Errors include spelling, word tense, grammar, punctuation, etc." *Id.* at pp. 24-25.

54. Case Manager indicated Student's math goal was adjusted lower than the math goal in the 2020 IEP because the IEP Team indicated Student's declining performance in math was due to her unwillingness to access math supports in the PAL Lab during her Study Skills time. *Id.*

55. The 2021 IEP contains accommodations to help Student access the general education curriculum. *Id.* at p. 25. Like the 2020 IEP, the accommodations are not specific to an academic subject though some are new (such as providing Student the use of a hall pass to leave class and take a walk to reduce anxiety). *See id.*

56. The Service Delivery of the 2021 IEP is identical to that of the 2020 IEP: 180 minutes of weekly direct "Resource Services" and 15 minutes of indirect case management. *Id.* at p. 28. Like the 2020 IEP, there is no explanation of what skills or academic subject Student is to work on during "Resource Services" or who is to provide the services. *See id.*

57. Regarding placement options, the 2021 IEP provides that the IEP Team agreed Student requires remediation of skills in reading comprehension and fluency, math comprehension and application, and written expression, but that such remediation is best delivered by the special education department through the resource room (i.e. Study Skills). *See id.*

58. The Prior Written Notice section of the 2021 IEP explains that the "IEP Team also considered more direct service time to support [Student's] academic progress. However, the team agreed that the identified service time would best meet her needs." *Id.* at p. 29. Parent does

not agree with this decision and asked for explicit instruction in reading and math. *Interview with Parent.*

59. Like the 2020 IEP, the 2021 IEP erroneously reports the IEP Team determined it was appropriate for Student to be in the general education class 40 to 79 percent of the time. However, the front page of the 2021 IEP shows Student as being in the general education classroom at least 80 percent of the time, which Case Manager confirms is the correct LRE. *Exhibit A, pp. 16, 29; Interview with Case Manager.*

60. Director of Special Education oversees special education compliance at District, and though he does not have first-hand knowledge of Student, he reviewed her documentation when the Complaint was filed and does not have any concerns about her services as written in the IEPs. *Interview with Director of Special Education.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District failed to develop, review, and revise an IEP, from November 23, 2020 to the present, that was tailored to meet Student’s individualized needs, in violation of 34 C.F.R. § 300.324. This violation resulted in a denial of FAPE.**

The first allegation accepted for investigation suggests that the 2020 IEP and the 2021 IEP were not tailored to Student’s individualized needs in math and literacy.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* at 207. The inadequacies alleged by Parent are now addressed below considering these legal standards.

#### **A. Development of the 2020 IEP and the 2021 IEP**

A public agency must ensure that a reevaluation of each child with a disability is conducted at least once every three years unless the parent and the public agency agree that reevaluation is unnecessary. 34 C.F.R. § 300.303. Reevaluations must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current

classroom based, local, or State assessments, and classroom-based observations; and observations by teachers and related service providers. 34 C.F.R. § 300.305(a)(1).

Based on that review, and input from the child's parents, the public agency must then identify what additional data, if any, is needed to determine: whether the child continues to have a disability, and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. 34 C.F.R. § 300.305(a)(2). Reevaluations must be sufficiently comprehensive to identify all of the child's special education needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(6).

Here, District failed to comply with IDEA's procedures in the development of the 2020 IEP and the 2021 IEP by failing to comprehensively reevaluate Student to determine her individualized areas of need. (FF # 4-10).

The 2020 IEP was developed as part of Student's triennial reevaluation. (FF # 4). To reevaluate Student for continuing eligibility, District obtained observations from Parent, teachers, and service providers, and reviewed Student's performance on State assessments and screeners. (FF # 4-10). Notably, many results of these assessments and screeners were dated, going as far back as 2013. (FF # 7). District did not review existing evaluation data or perform any new evaluations or assessments into Student's foundational literacy or math skills. (FF # 10).

Student historically qualifies for special education under the SLD category, and District was aware of deficits in reading comprehension, reading fluency, math computation, and written expression. (FF # 2, 13). Despite this, District did not reevaluate Student in the areas of math and literacy, and thus, District did not address all of Student's disability related needs. (FF # 10).

When District developed the 2021 IEP, it once again obtained observations from Parent and teachers and detailed Student's progress on State assessments and screeners. (FF # 12). However, District again failed to evaluate Student's foundational math and literacy skills. (FF # 44). District did not order any new evaluations or assessments beyond State assessments and screeners, and thus, again failed to address all of Student's disability related needs. *Id.*

Overall, in consultation with CDE Content Specialist 1, the SCO finds and concludes that a deep dive into the root of Student's reading and math deficits was crucial to develop an IEP tailored to Student's individualized needs in math and literacy. (FF # 10, 44). The SCO accordingly finds and concludes that District failed to administer a comprehensive reevaluation to determine Student's areas of need, and by failing to do so, failed to comply with IDEA's procedures at 34 C.F.R. §§ 300.303, 300.304, and 300.305.

The SCO accordingly finds and concludes that District failed to administer a comprehensive reevaluation to determine Student's areas of need, in violation of IDEA's procedures at 34 C.F.R. §§ 300.303, 300.304, and 300.305. Because the IEP development process did not comply with IDEA's procedures, District failed to tailor an IEP to Student's individualized needs in literacy and math. *Rowley*, 458 U.S. at 206-207.

### **B. IEP Tailored to Student's Individualized Needs**

An IEP must be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. In essence, "[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created." *Id.* at 1001. The IEP Team must consider, among other things, the results of the initial or most recent evaluation and the academic, developmental, and functional needs of the child. 34 C.F.R. § 300.324(a)(1).

An IEP must also clearly specify "the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a child." 34 C.F.R. § 300.320(a)(4). Special education instruction must be specially designed, which means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and ensure access to the general curriculum. ECEA Rule 2.43(2)(c).

In this case, District failed to comprehensively reevaluate Student and therefore lacked the information necessary to tailor an IEP to Student's individualized needs. (FF # 10, 44). As a result, both the 2020 IEP and 2021 IEP were not tailored to Student's individualized needs.

The 2020 IEP lacks any description of the specialized math and literacy instruction Student was to receive, and merely indicates she would spend 180 minutes each week receiving "Resource Services" in Study Skills. (FF # 20). There is no explanation of who would provide the services or of which skills and subject matter Student would work on during each Study Skills class. *Id.* Moreover, "Resource Services" as listed in the 2020 IEP is vague and does not qualify as specially designed instruction. 34 C.F.R. § 300.320(a)(4) and ECEA Rule 2.43(2)(c).

Also, Student's annual goals in reading and math were built only on scores from the aimswebPLUS assessment, and there is no explanation of specific reading or math skills Student will work on to be able to make progress on each annual goal. *See* (FF # 18). Though not required under IDEA, there is no progress monitoring beyond quarterly reports of Student's scores on the aimswebPLUS assessment. *See* (FF # 40-41). However, Student did not achieve any annual goals and quarterly reports show an overall decline in performance in reading and math. (FF #42). Moreover, the 2020 IEP was replete with errors, and some sections, such as the Planned Course of Study section, were not updated from previous years. (FF # 17, 21).

When District met to review the 2020 IEP and develop the 2021 IEP, it was aware that Student showed a declining performance on math and reading skills, as tracked by the aimswebPLUS assessment, and that she met no annual goals. (FF # 42). She struggled in math during the 2020-2021 and 2021-2022 academic years and due to the lack of detail in the 2020 IEP, received little specialized instruction during Study Skills. (FF # 6, 36, 38, 42, 48).

Nevertheless, District again failed to conduct a comprehensive evaluation of Student's needs, and the 2021 IEP's service delivery was written identical to that of the 2020 IEP. (FF # 44, 56). Student's new annual goals target the same areas of need as in the 2020 IEP, but they are not designed to improve educational results and still lack a description of any specific reading or math skills Student will work on to make progress toward each annual goal. (FF # 18, 53-54); *Questions and Answers on Andrew F. v. Douglas County School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17) (indicating IEP Teams must consider a "child's present levels of performance and [. . .] previous rate of progress" and ensure "that children with disabilities have the chance to meet challenging objectives, as reflected in the child's IEP goals"). As a result, Student received little in the way of specialized instruction during "Resource Services."

For all these reasons, the SCO finds and concludes that District failed to tailor both the 2020 IEP and the 2021 IEP to meet Student's individualized needs, in violation of 34 C.F.R. § 300.324.

### **C. Compensatory Education**

Compensatory education is an equitable remedy intended to place a student in the same position she would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an "hour-for-hour calculation." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). 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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, for the entire year at issue in this investigation, Student received services under the 2020 IEP and 2021 IEPs that were not tailored to her individualized needs. During the time that the 2020 IEP and 2021 IEP were in effect, Student's performance in math and reading declined, and Student did not receive any direct specialized instruction in math. (FF # 39, 42) Upon consultation with CDE Content Specialist 2, and in consideration of Student's age and individualized needs, the SCO awards the following compensatory educational services: (1) 15 hours of specialized reading instruction and (2) 15 hours of specialized math instruction.

**Conclusion to Allegation No. 2: District properly implemented the 2020 IEP, consistent with 34 C.F.R. § 300.323.**

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

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).

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP’s requirements which did not impact the student’s ability to benefit from the special education program did not amount to a “clear failure” of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding “short gaps” in a child’s services did not amount to a material failure to provide related services). Thus, a “finding that a school district has failed to implement a requirement of a child’s IEP does not end the inquiry.” *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, “the SCO must also determine whether the failure was material.” *Id.* Courts will consider a case’s individual circumstances to determine if it will “constitute a material failure of implementing the IEP.” *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

**A. Implementation of the 2020 IEP (January 1, 2021 through November 8, 2021)**

**Parent’s Concerns**

From January 1, 2021 through November 8, 2021, the 2020 IEP was in effect. *See* (FF # 11, 44). Parent alleges District failed to implement the 2020 IEP during this time. (FF # 23). Specifically, Parent’s concern centers on a failure to inform Student’s general education teachers of their responsibilities under the 2020 IEP. *Id.*

### Accessibility to Student's Teachers

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d).

Here, all of Student's general education teachers were provided with a snapshot of the accommodations under the 2020 IEP at the beginning of the year. (FF # 24). All service minutes under the 2020 IEP were provided from either Case Manager, in the form of indirect case management, or Special Education Teacher, in the form of time in the Study Skills class. (FF # 28-29).

Case Manager and Special Education Teacher collaborate frequently about Student, and both advocate for Student's accommodations with her general education teachers. (FF # 24-25). Although there have been occasions when a general education teacher has forgotten an accommodation, Student's general education teachers are responsive to Parent requests in this respect. (FF # 26). Also, Case Manager ensures that District staff are aware of their responsibilities on an occasion when an accommodation is missed. *Id.*

The SCO therefore finds and concludes that District ensured teachers and service providers working with Student were informed of their responsibilities under the 2020 IEP. (FF # 27).

### "Resource Services" and Case Management

The 2020 IEP provided for 180 weekly minutes of "Resource Services" and 15 weekly minutes of indirect case management. (FF # 20). Parent does not allege that Student was not provided with these service minutes. (FF # 30). Although these service minutes were not tailored to Student's individualized needs, as discussed above, the SCO finds and concludes that District did not fail to implement the 2020 IEP.

**Systemic IDEA Violations: This investigation demonstrates violations that are systemic and will likely impact the future provision of services for all children with disabilities in District if not corrected.**

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

Here, the SCO finds systemic concerns associated with the use of "Resource Services" in Student's IEPs, and the delivery of those services through District's Study Skills class. (FF # 34-

37). The 2020 IEP and 2021 IEP vaguely provided Student with 180 minutes of “Resource Services” in the Study Skills class as her sole form of specialized instruction, though there is no explanation or description of what “Resource Services” means. *See* (FF # 21).

Although Student was in the Study Skills class for 180 minutes every week, she received almost no direct specialized instruction. Study Skills classes run all day at School, and while a special education teacher is in the room, most of the time is spent on independent work, much like a traditional study hall. (FF # 33-39). There are as many as 100 IDEA-eligible students with a variety of qualifying disabilities participating in the Study Skills class, and each class contains between 5 and 13 students—all of whom have different disability related needs and take different classes. *See* (FF # 34).

Student received almost no direct specialized instruction during her time in Study Skills, but District nonetheless counted every minute that she was in the Study Skills class as “Resource Services” regardless of whether she was receiving direct specialized instruction, working independently, or doing something else, like accessing tutoring in the PAL Lab. *See* (FF # 38). The 2020 and 2021 IEPs contained no description of what was meant by “Resource Services.” Director of Special Education personally reviewed Student’s IEPs when the Complaint was filed, and he saw no issues with how services were documented therein. (FF # 60).

The SCO’s concerns center around students who may have similarly vague IEPs identifying “Resource Services” that do not translate to direct special education instruction in the Study Skills class. Unless those students have IEPs that provide specifics on how the “Resource Services” will be delivered during Study Skills, those students may be receiving little actual direct specialized instruction during their time in Study Skills, despite receiving their full entitlement of “Resource Services” under their IEPs.

Accordingly, based on consultation with CDE Content Specialist 2, the SCO finds and concludes that the violation noted in this Decision is systemic but narrowly limited to other students at School who are enrolled in Study Skills and receive “Resource Services” pursuant to an IEP (i.e., the IEP does not contain a sufficiently specific description of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a child). The SCO will accordingly craft a remedy that requires that District develop procedures for identifying such students and, as appropriate, revising their IEPs to include descriptions of the specific services that will be provided during Study Skills.

### **REMEDIES**

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

1. Failing to develop, review, and revise an IEP tailored to Student’s individualized needs, in violation of 34 C.F.R. § 300.324.

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

1. Corrective Action Plan

- a. By **Monday, February 28, 2022**, 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 District is responsible. The CAP must, at a minimum, provide for the following:
  - i. By **Monday, May 2, 2022**, District must identify and provide CDE the names of all similarly situated District students who currently receive some or all of their special education and related service minutes in Study Skills class at School. By **Monday, June 6, 2022**, District shall verify to CDE that the issue involving the areas of noncompliance identified in this Decision have been corrected, to include an individualized determination whether each student identified above needs to have their IEP revised to provide accurate and detailed descriptions of the direct special education and related services each student is entitled to during his or her time in Study Skills.
- b. Attendance and completion of training provided by CDE on IEP development, review, and revision. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.303, 300.304, 300.324, 300.503, and the related concerns noted in this decision. Special Education Coordinator and CDE Special Education Monitoring and Technical Assistant Consultant, Rebecca O’Malley, 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. This training is mandatory for Special Education Teacher, Case Manager, and Director of Special Education. Such training shall be completed no later than **Monday, May 2, 2022**.
  - i. 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, May 13, 2022**.

- c. 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 District’s timely correction of the areas of noncompliance.

2. Reevaluation and IEP Meeting

- a. By **Monday, March 28, 2022**, District must conduct a comprehensive evaluation of Student in all possible areas of need, including specifically math, literacy, memory, social emotional, and attention. Consent for the evaluation must be obtained no later than **Monday, February 28, 2022**. Although District may determine the appropriate evaluations and evaluators, the evaluation must be conducted in all areas of suspected need and consistent with IDEA’s evaluation procedures at 34 C.F.R § 300.304 and the evaluator(s) must be appropriately licensed, trained, and knowledgeable to conduct the assessments. The decision as to which evaluations and evaluators will be used must be made by a team that includes a licensed school psychologist. District may contract with a private provider for the reevaluation if necessary. Evidence that this evaluation has occurred—including consent to evaluate, PWN, and the evaluation report—shall be provided to CDE by **Monday, April 25, 2022**.
- b. Student’s IEP team shall consider the results of the evaluation and tailor Student’s IEP to meet Student’s individualized needs. Consistent with 34 C.F.R. § 300.320(a)(4), the service delivery statement must describe with sufficient specificity the supports and services that Student will receive to advance toward attaining her annual goals. To evidence that the IEP team considered this evaluation and appropriately tailored Student’s IEP, the District shall provide a copy of Student’s final IEP to CDE by **Monday, May 16, 2022**.

3. Compensatory Educational Services and Denial of FAPE

- a. Student shall receive **15 hours of specialized reading instruction** and **15 hours of specialized math instruction** outside the general education classroom. This instruction must be provided by an appropriately licensed special education teacher. All 30 hours must be completed by **Friday, May 27, 2022**.
- b. By **Monday, February 7, 2022**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives.

- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents their efforts. A determination that District diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with CDE.
- c. Monthly consultation between the provider(s) delivering compensatory services and Special Education Teacher shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred by the second Monday of each month, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- d. To verify that Student has received the services required by this Decision, the District must submit records of service logs to CDE by the second Monday of each month until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. The District shall communicate with the District as necessary to obtain this information.
  - i. If for any reason, including illness, Student is not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the monthly service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Becky O'Malley  
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 District's annual determination under the IDEA and subject District to enforcement action by the Department. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See* 34 CFR § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 22<sup>nd</sup> day of January, 2022.



Ross Meyers  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-12**

- Exhibit 1: IEP
- Exhibit 2: Correspondence
- Exhibit 3: Correspondence 2
- Exhibit 4: Correspondence 3
- Exhibit 5: Correspondence 4

### **Response, pages 1-10**

- Exhibit A: IEPs
- Exhibit B: Affidavit of Attestation
- Exhibit C: PWN
- Exhibit D: Requests for Consent
- Exhibit E: Notices of Meeting
- Exhibit F: Evaluation and Assessment Results from 2020/2021 and 2021/2022
- Exhibit G: Progress Monitoring Reports and Grades
- Exhibit H: District Policy
- Exhibit I: Correspondence
- Exhibit J: List of Involved Staff
- Exhibit K: Verification of Delivery to Parent
- Exhibit L: Additional Documentation (Report Card, COVID-19 info, etc.)

### **Telephonic Interviews:**

- Case Manager: January 7, 2022
- Director of Special Education: January 7, 2022
- Parent: January 5, 2022
- Special Education Teacher: January 7, 2022