

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

State-Level Complaint 2021:541
Denver Public Schools

DECISION

INTRODUCTION

On December 20, 2021, the (“Parent”) 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 Denver Public Schools (“District”).¹ 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 December 20, 2020, through December 20, 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 properly implement Student’s IEP, specifically by failing to provide the following, in violation of 34 C.F.R. § 300.323:
 - a. Compensatory educational services, from June to August 2021;

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.

- b. Accommodations and modifications, from August 2021 to present.
2. Failed to develop an IEP in Fall of 2021 that was tailored to meet Student’s individualized needs, specifically by:
 - a. Removing 1:1 virtual check-ins with teachers as an accommodation from Student’s IEP, in violation of 34 C.F.R. §§ 300.320 and 300.324.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS:

A. Background

1. Student is fourteen years old and attends a District high school (“School”). *Exhibit A*, p. 25. Student is hard working and talented, with a strong sense of justice and a love of acting. *Interviews with Parents, Social Worker, and Case Manager*. Academically, Student requires support in reading and math, and she sometimes struggles with anxiety and executive functioning. *Interviews with Parents, Social Worker, and Case Manager; Exhibit A*, p. 28.
2. Student was first identified as eligible for special education and related services in 7th grade, during the 2019-2020 academic year. *See Exhibit A*, p. 25; *Reply*, p. 1. Student qualified for services under the Other Health Impairment (“OHI”) category due to struggles with executive functioning and anxiety. *Exhibit 7*, pp. 1, 12.
3. Parents disagreed with the eligibility determination and requested an independent educational evaluation (“IEE”). *Interview with Parents; see Exhibit 1*, pp. 1-23. District provided an IEE at public expense in November of 2019. *Interview with Parents; Exhibit 1*, p. 1. IEE results indicated Student met the diagnostic criteria for attention deficit hyperactivity disorder (“ADHD”) and generalized anxiety disorder, and further demonstrated Student had a specific learning disability (“SLD”) with impairment in reading and mathematics. *Id.* p. 19.
4. In March of 2020, a multidisciplinary team (“MDT”) reviewed the IEE results and determined that Student qualified for special education and related services with a primary disability of SLD, and a secondary disability of OHI. *Exhibit A*, p. 4.
5. In April of 2020, a properly constituted IEP Team considered the IEE results and Student’s August 2019 IEP to develop a new IEP (“2020 IEP”). *Id.* at p. 1. Student first began receiving services in August of 2019, but Parents felt District denied Student a FAPE because District

² The appendix, attached and incorporated by reference, details the entire record.

delayed the initial evaluation process for approximately seven weeks. *Exhibit C*, p. 1. In the Fall of 2020, Parents requested compensatory educational services due to the delay, and District scheduled an IEP meeting for January 11, 2021. *Exhibit E*, pp. 1-2.

B. The January 11, 2021 IEP Meeting

6. At the January 11, 2021 IEP meeting, District agreed with Parents that an unnecessary delay of the initial evaluation process resulted in Student missing services for approximately seven weeks. *Exhibit C*, p. 1. The IEP Team considered what educational impact likely resulted from the delay and created a compensatory education package intended to put Student where she would be had FAPE been provided during those seven weeks. *Id.*
7. The package provided the following from a District selected provider: one hour per week of direct literacy instruction for eight weeks, one hour per week of direct math instruction for eight weeks, one hour of direct executive functioning instruction integrated with academics for eight weeks, and 1 hour per week of group therapy for eight weeks. *Id.* District also agreed to reimburse Parents for a total of eight hours of outside individual therapy through Student's private therapist, and up to \$1,500 for the cost of a theater or art course to address Student's anxiety. *Id.* District further agreed to train School staff in IDEA evaluation and IEP implementation, as well as disability awareness and sensitivity. *Id.* at p. 2.
8. Prior written notice ("PWN") regarding compensatory educational services was provided to Parents on January 18, 2021, indicating they would be provided over the summer of 2021. *Id.* at pp. 1-2. Parents were told they would be contacted by a District staff member to arrange the compensatory educational services over the summer. *Interview with Parents*. The PWN indicated the compensatory educational services were to be provided in addition to the services contained in Student's IEP as District's offer of FAPE. *Exhibit C*, p. 1.

C. The 2021 IEP

9. On April 7, 2021, a properly constituted IEP Team met to review the 2020 IEP and develop a new IEP for Student ("2021 IEP"). *Exhibit A*, pp. 25-26, 49.
10. The 2021 IEP reviews Student's present levels of academic achievement and functional performance, documenting Student's grades, progress toward annual goals, and attendance, as well as observations obtained from Student's teachers. *Id.* at pp. 27-32.
11. The 2021 IEP indicates Student has deficits in reading and math due to SLD, and that she requires support to access grade level instruction in those areas. *Id.* at p. 5. She has been diagnosed with anxiety and ADHD, and she struggles with executive functioning. *Id.* at p. 33.

12. The 2021 IEP documents Parents' input, including that Student thrived during remote instruction, and their concerns that Student struggles with how she is perceived by others. *Id.* at p. 35.
13. The 2021 IEP contains annual goals in the areas of reading, mathematics, social/emotional wellness, and self-determination. *Id.* at pp. 36-40.
14. The 2021 IEP contains over 80 accommodations to help Student access the general education curriculum. *Id.* at pp. 40-43. The accommodations are grouped by needs in reading, math, anxiety, and executive functioning. *Id.* Relevant to this investigation are:
 - a. "Weekly communication will be provided to parents by classroom teachers and special education providers to ensure expectations for assignments are clear, provide with upcoming assignments and deadlines, communicate successes and challenges, and to monitor assignment completion[.]" *Id.* at p. 43.
 - b. "Use of text-to-speech software when needed[.]" *Id.* at p. 40.
 - c. "Small Group Setting" for assessments in Reading, Writing, Math, Science, and Social Studies. *Id.* at p. 44.
 - d. "All General Education, Foreign Language and, Major teachers to continue virtual 1:1 check-ins weekly with [Student][.]" *Id.* at p. 42.
15. The Service Delivery section provides for 90 minutes of weekly direct instruction in literacy and 90 minutes of weekly direct instruction in mathematics. *Id.* at p. 45. The 2021 IEP further provides for 30 minutes of weekly direct instruction and/or support in executive functioning skills and managing anxiety. *Id.* The 2021 IEP further states that a special education teacher will provide consultative services for 30 minutes each month to ensure Student has access to accommodations and resources so she can access grade level content and make progress. *Id.*
16. The compensatory services offered in the standalone PWN from January 2021, because they were still outstanding, were to be provided in addition to the 2021 IEP's services as part of Student's special education programming. *See Exhibit C*, p. 1.
17. The IEP Team determined it was appropriate for Student to be in the general education class at least 80 percent of the time. *Exhibit A*, pp. 12-13.
18. The 2021 IEP was in effect leading into the summer, and at the start of the 2021-2022 academic year, when classes began at School on August 24, 2021. *Id.* at p. 25; *CDE Exhibit 1*, p. 2.

D. 2021 IEP Implementation (Compensatory Services, June through August 2021)

19. Parents allege that District failed to provide the 32 hours of compensatory services that it agreed to provide over the summer of 2021. *See Complaint*, pp. 1-7. District concedes that the 32 hours of compensatory services were not provided. *See Response*, pp. 1-13.

Accessibility to Service Providers

20. District typically provides compensatory educational services through an outside tutoring agency. *Interview with Senior Manager of Special Education ("SMSE")*. To arrange for compensatory services, District calls the tutoring agency and tells them the number of hours, the type of instruction, and provides them with the parent's contact information. *Id.* The tutoring agency then arranges the tutoring directly with the parents. *Id.*
21. Two District staff members were tasked with calling the tutoring agency to arrange compensatory services for Student, but those staff members left their positions at School to seek employment elsewhere in District at the end of the 2020-2021 academic year. *Id.* As a result, no one contacted the tutoring agency to arrange for Student's services. *Id.*
22. SMSE indicates the two staff members provided their complete case files to District prior to leaving the position, and District's review of those files did not raise any concerns that other students were similarly affected by the staff members' departure. *Id.* The seven-week delay was unique to Student, and other students at School were not impacted as they did not receive similar compensatory service offers. *Id.* Moreover, the staff in charge of arranging the services were working remotely at the end of the 2020-2021 academic year, so there was less opportunity for oversight than is typical when those staff left their positions. *Id.*

Compensatory Education Services

23. Over the summer of 2021, Student attended a theater course and continued with private therapy, but she did not receive any compensatory services. *Interview with Parents*.
24. On August 23, 2021, the day before classes started for the 2021-2022 academic year, Parents informed District via email that Student did not receive the 32 hours of compensatory services. *Exhibit 1*, pp. 1, 185; *Interviews with Parents and SMSE*. Parents indicated the only compensatory services Student received were the theater course and private individual therapy for which District agreed to reimburse Parents. *Exhibit 1*, p. 1; *Interviews with Parents and SMSE*. Parents also asked SMSE if District provided the staff training that was agreed upon in January of 2021. *Exhibit 1*, p. 1.

25. SMSE responded on August 27, 2021 and indicated that it was the busiest week of the year for District, but that District would be in touch soon to address Parents' concerns and provide support. *Exhibit I*, p. 184. Parents followed up on September 3, 2021 to again ask for a response. *Id.* at p. 183.
26. On September 9, 2021, SMSE responded to Parents via email. *Id.* at p. 181. SMSE indicated the staff training took place at School at the beginning of the year in August, covering both IEP implementation and disability awareness and sensitivity. *Id.*; *Interview with SMSE*. SMSE asked Parents to submit invoices/documentation for the theater course and private individual therapy so District could reimburse Parents for the expense. *Exhibit I*, p. 181.
27. SMSE acknowledged the remaining 32 hours of compensatory services were not provided (8 hours of literacy instruction, 8 hours of math instruction, 8 hours of executive functioning instruction integrated with academics, and 8 hours of group therapy). *See id.* District proposed to provide the outstanding services owed to Student either through a third-party tutoring organization selected by District or through a private provider preferred by Parents. *Id.* at p. 182. District also proposed to provide the group therapy through group sessions at School or to work with Parents to select a private provider. *Id.* SMSE asked Parents to notify District what Parents would prefer by September 30, 2021. *Id.*
28. On September 24, 2021, Parents responded by email to indicate that the compensatory education package offered in January of 2021 was no longer sufficient and requested a series of items ranging from a lump sum financial payment to the removal of School staff members. *Id.* at pp. 180-181. Parents requested an IEP meeting, asked that SMSE attend the meeting, and indicated that they expected, "all team members to read the current IEP and know the history, to read the IEE in full so the diagnoses are understood, and to review the history of our case, including the FAPE violations in advance of any meetings with us." *Id.* at p. 181. Parents indicated they would be bringing an attorney to the meeting. *Id.*
29. District held an IEP meeting with Parents on October 11, 2021 to discuss, among other things, the outstanding compensatory educational services. *Interviews with Parents, SMSE, Case Manager, and Social Worker*. To date, an agreement has not been reached about the missed 32 hours of compensatory services. *Interviews with Parents and SMSE*. Student attended a theater course and private therapy over the summer of 2021, but to date Parents have not provided the invoices to District for reimbursement due to continued disagreements about the missed services. *Id.*
30. The SCO finds that District failed to provide Student with a total of 32 hours of compensatory services that she was entitled to receive between June and August of 2021.

E. 2021 IEP Implementation (Accommodations, August 24 to December 20, 2021)

31. The 2021 IEP was in effect when class began at School on August 24, 2021. *Interviews with Case Manager and Parents; Exhibit A*, p. 25. Parents allege District failed to implement the 2021 IEP's accommodations. *Interview with Parents; Complaint*, pp. 1-7. Specifically, Parents allege District failed to provide consistent weekly communications about Student, accommodations during two final exams, and consistent weekly virtual 1:1 check-ins with teachers. *Interview with Parents; Complaint*, pp. 1-7; *Reply*, pp. 1-13.

Accessibility to Student's Teachers

32. During the fall of 2021, Case Manager was responsible for ensuring Student's teachers were aware of their responsibilities under the 2021 IEP, including accommodations. *Interview with Case Manager*. In August, before the start of classes, Case Manager held a meeting with all of Student's teachers (apart from Student's English teacher) to review accommodations and discuss any that were unusual or unique to Student. *Id.* Case Manager also provided a copy of the 2021 IEP to all of Student's teachers, including English teacher, and she was available as a resource when Student's teachers had questions about their responsibilities under the 2021 IEP. *Id.*

33. Throughout the fall of 2021, Case Manager engaged in weekly check-ins with all of Student's teachers to ensure accommodations were being followed, and often facilitated communications between Student's teachers and Parents. *Id.* Case Manager asked all of Student's teachers to notify her in advance of tests so she could arrange accommodations, and on occasions when there were issues with Student's accommodations, Case Manager followed up with her teachers to correct the issues. *Id.*

34. As part of the 30 minutes of monthly consultative services required by the 2021 IEP, Case Manager visited teachers in-person to ask about Student's progress, make sure assignments were set up appropriately according to the 2021 IEP, and/or ensure Student's workload was reduced when appropriate. *Id.* Case Manager also oversaw a weekly communication log between Parents and Student's teachers so she could ensure Parents were kept apprised of Student's progress. *Id.*

35. The SCO accordingly finds that District appropriately informed Student's teachers of their responsibilities under the 2021 IEP.

Weekly Communication

36. The 2021 IEP provides that weekly communication will be provided to Parents by Student's teachers and special education providers to ensure expectations for assignments are clear, provide Parents with information on upcoming assignments and deadlines, communicate

successes and challenges, and monitor assignment completion. *Exhibit A*, at p. 43. Case Manager was responsible for ensuring weekly communication was provided to Parents during the fall of 2021. *Interview with Case Manager*.

37. At the beginning of each week, Case Manager sent out a survey to Student's teachers and asked them to log information, such as Student's performance, upcoming tests/exams, and what was discussed during the teacher's most recent 1:1 check-in with Student. *Id.*; see, e.g., *Exhibit B*, p. 1. Case Manager compiled the information and then provided it to Parents weekly, along with a "newsletter" outlining what she was currently working on with students in the "academic intervention" class at School (which Student regularly attended to receive specialized instruction). *Interview with Case Manager*.
38. Case Manager regularly facilitated communications between Parents and teachers, but she would also sometimes ask Parents to communicate with Student's teachers directly. *Id.* She consistently provided Parents with weekly communications and passed on what was provided by teachers but indicated there have been isolated occasions when teachers neglected to enter assignments into the log. *Id.* On those occasions, Case Manager communicated with Student's teachers after the fact to ensure they would enter assignments into the log. *Id.*
39. Service logs provided to Parents contain entries from teachers for every week of classes from August 2021 through the week of December 6, 2021, the week before final exams at School. See *Exhibit B*, pp. 1, 14-17; *CDE Exhibit 2*. Service logs also contain entries from Case Manager starting on August 17, 2021, which include details about Student's progress, assignments, and exams. *Id.* at pp. 75-84. There are entries in Case Manager's log for every week of classes from August 17, 2021 through December 14, 2021. *Id.*
40. Most of the communication between Parents and District during the fall of 2021 occurred via email. *Interviews with Parents, Case Manager, and SMSE*. A review of the email record demonstrates Parents were provided with frequent email communications regarding Student, and Case Manager was responsive to Parents emails and concerns throughout the fall of 2021, to include following up with Student's teachers on occasions when Parents had concerns about accommodations. See, e.g., *Exhibit I*, pp. 445, 1386.
41. In addition to communication logs and emails, Parents were provided with detailed reports regarding Student's progress toward her annual goals twice during the fall of 2021, with observations describing progress as of October 17, 2021 and December 13, 2021. *Exhibit G*, pp. 5-23. Parents were also provided with information about Student's assignments and progress through Schoology, a learning management system used at School to share information between Student's teachers and Parents, such as assignments and slides from classes. *Interviews with Case Manager and Parents*; see, e.g., *Exhibit I*, pp. 437-438.

42. Social Worker, who provides Student with social emotional support under the 2021 IEP, indicates she regularly communicates with Parents about Student via meetings, Google Meets, phone calls, and emails. *Interview with Social Worker*. Social Worker is present for Student's IEP meetings, and she keeps records of weekly time with Student to share feedback with Parents, although the notes themselves were kept private so Student feels free to share information with Social Worker. *Id.*; see *Exhibit B*, pp. 24-57.
43. The SCO finds, based on the consistent practices and information described by Case Manager and Social Worker combined with corroboration in the written record, that Student's teachers and special education providers provided weekly communications to Parents as required by the 2021 IEP.

Test Accommodations

44. Parents allege District failed to provide Student with accommodations during two final exams administered in December of 2021. *Complaint*, pp. 1-7; *Reply*, pp. 1-13. Specifically, Parents indicate Student was not provided with the option of text to speech on the exams or access to a small group setting. *Reply*, p. 6.
45. Case Manager indicates there were as many as two final exams during the fall of 2021 that were given early without notice to either Case Manager or Student, and as a result, Student did not receive accommodations. *Interview with Case Manager*. Case Manager indicates that the issue was handled at a District level, and thus, she was not personally involved in correcting the issue. *Id.*
46. In its Response, District concedes that Student did not properly receive her accommodations on a final exam administered in English in the Fall of 2021. *Response*, p. 5. District explains that the teacher who administered the exam did so in the final weeks of his employment with District, and District made efforts to address the issue when it was brought to its attention by altering Student's grade so the final exam would not impact her final grade in English. *Id.*
47. The email record demonstrates Parents contacted Student's English teacher directly on December 10, 2021 about a final exam which Student failed, and asked if Student was provided with accommodations on the exam. *Exhibit I*, p. 1628. The English teacher responded the same day and indicated that Student finished the exam within the allotted time, but he asked her a couple days later if she wanted additional time to work on it further, and she declined. *Id.* at p. 1627.
48. The English teacher further indicated the exam was written by District and was "quite rigorous" and thus he graded it on a curve. *Id.* Although Student received failing marks on the exam, the curved score on the exam only lowered Student's final grade in English from a 95.22% to a final grade of 95.00% (Student's grade on the exam was adjusted to an 80%). *Id.*;

Exhibit G, p. 28. Parents indicate both exam grades were later adjusted so Student would not receive failing marks, but they remain unsatisfied by this result. *Interview with Parents*.

49. The SCO finds—based on the consistent information provided by Case Manager and Parents, District’s admission that accommodations were not properly provided on the final exam in English, and the support for Parents’ position in the email record—that Student was not provided with accommodations for two final exams as required by the 2021 IEP in December of 2021.

1:1 Virtual Check Ins

50. During times of remote instruction, District provided all students receiving services under Section 504 Plans and IEPs with weekly 1:1 check ins with teachers as an accommodation to ensure they were successful since remote instruction did not offer the same opportunities for spontaneous conversations between teachers and students. *Interview with Case Manager and Social Worker; Response*, p. 8.
51. Student’s IEP Team had determined she benefitted from having 1:1 check ins during remote instruction, so the IEP Team added an accommodation to the 2021 IEP that these would continue when School returned to in-person instruction. *Interviews with Parents, Social Worker, and Case Manager*. The 2021 IEP provides that all of Student’s general education teachers will continue virtual 1:1 check-ins with her on a weekly basis. *Exhibit A*, p. 42. The check ins were intended to provide Student with a “safe space” so she could ask questions to teachers and check in about assignments and deadlines without triggering her anxiety. *Id.*
52. The 1:1 check ins were written to be virtual upon Parents’ request because (1) Parents reported that Student experiences anxiety if she must check in with teachers in front of other students, and (2) Parents liked having the opportunity to sit in on the 1:1 check ins when they were held while Student was at home. *Interviews with Parents, Case Manager, and Social Worker*.
53. When the accommodation was written into the 2021 IEP in April of 2021, the IEP Team planned for Student to receive her 1:1 check ins either during “teacher access” time or at the end of the day after classes. *Interview with Case Manager*. At the time, there was “teacher access” time from 7:30 a.m. to 8:00 a.m. one day each week at School (students were at School, but classes started late so students would have an opportunity to speak with teachers). *Id.* There was also time after classes each day available for meetings with teachers. *Id.* At the start of the 2021-2022 academic year, however, “teacher access” time was eliminated and class time each day was increased by 36 minutes. *Id.*
54. On August 17, 2021, prior to the start of classes, District met with Parents to discuss, among other things, the plan for the 1:1 check ins. *See Exhibit E*, p. 3. A plan was developed for

Student to meet with different teachers each day, generally at the end of the day between 3-3:15 p.m., with some of the meetings occurring in-person and some virtual. *See Exhibit B*, p. 23. Parents wanted the check ins to be virtual and held at a time when they could attend, but ultimately agreed to the plan developed on August 17 (though they told Case Manager if the plan did not work, they wanted the accommodation implemented as written).

Interview with Parents.

55. Service logs demonstrate the check-ins began the week of August 30, 2021, the second week of classes at School. *Exhibit B*, p. 58. Service logs and emails indicate that between the week of August 30, 2021 and the week of November 1, 2021, Student missed approximately 23 out of 60 weekly check ins. *See id.* at pp. 58-59. However, on 13 of those 23 occasions, service logs indicate Student missed the check in because she did not show up, she left early for another commitment, or Parents cancelled. *See id.*
56. Parents indicate they were concerned that, due to other commitments at School, Student was rushed when she met with teachers at the end of the day or she would miss the check-ins entirely, and thus, she was not getting much benefit from the check ins. *Interview with Parents.* Parents did not want Student to be pulled from classes or lunch for the check ins, and Student reported that she gets stressed when she must do the check-ins first thing in the morning at School. *Interviews with Parents, Case Manager, and Social Worker.*
57. The email record demonstrates Case Manager frequently coordinated the 1:1 check ins with Student's teachers, and District made ongoing efforts to facilitate the check ins in a way that would address Parents' concerns, for example, by making Case Manager's office available as a private meeting place so Student would not have to meet with teachers in front of peers. *See, e.g., Exhibit I*, p. 10.
58. The email record demonstrates that on some occasions the 1:1 check ins were missed for reasons such as teacher absences and conflicting School activities. *See, e.g., Exhibit I*, pp. 42, 85, 197-198. However, the email record also contains evidence that District made efforts to reschedule check ins or make up the time with Student on such occasions. *See, e.g., id.* at pp. 197-198. The record also confirms that many of the 1:1 check ins did not occur because Student missed the meetings, although teachers were available. *See, e.g., id.* at pp. 50, 205.
59. On September 24, 2021, Parents requested an IEP meeting to discuss the 1:1 check ins, and an IEP meeting was scheduled for October 11, 2021. *See id.* at pp. 1894-1898.

The October 11, 2021 IEP Meeting

60. On October 11, 2021, a properly constituted IEP Team met to discuss Parents' concerns. *Interviews with Parents, Social Worker, and Case Manager; Exhibit E*, p. 5. At the meeting, Parents expressed concerns that the check ins were not helpful for Student because they

were often missed, and Student was rushed during the check ins due to other School commitments. *Interview with Parents*.

61. Parents asked that the 1:1 check ins be virtual, and occur before classes at 7:00 a.m., when Parents could attend. *Interview with Parents*. Parents did not want Student to be pulled from classes, because she experienced anxiety when she was singled out in front of peers. *Id.* Parents also did not want Student missing lunch or academics, and Student expressed that she did not want the check ins first thing in the morning because it made her feel stressed. *Id.*; *Interview with Social Worker*.

62. On October 19, 2021, the IEP Team proposed an amendment to the 2021 IEP regarding Student's 1:1 virtual check-in accommodation:

Special ed teacher and the four core academic teachers will meet with [Student] once a week, for a maximum of 10 minutes per session – either virtually or in person. Reasonable efforts will be made to schedule meeting in a manner that does not cause undue rushing or conflict with pre-existing obligations (e.g., rehearsals).. [sic] Specialty teachers will meet with [Student] as needed. The purpose of these meetings [is] to support [Student] with organization and to clarify classroom expectations.

Exhibit A, pp. 81-82.

63. Parents replied on October 20, 2021 to indicate they disagreed with the amendment and that they wanted the accommodation implemented as written originally in the 2021 IEP. *Interview with Parents; Exhibit I*, pp. 27, 1826. A second IEP meeting was scheduled for November 10, 2021 to continue discussions. *Exhibit E*, p. 17.

The November 10, 2021 IEP Meeting

64. On November 10, 2021, a properly constituted IEP Team met and further discussed possible ways to implement the 1:1 check ins in a way that would both address Parents' concerns and benefit Student. *See id.*; *Interviews with Social Worker and Case Manager*. The IEP Team considered the possibility of having the check ins occur at 7:00 a.m., but Student expressed she did not want to have meetings before class and contract hours for teachers did not extend to 7:00 a.m. *Exhibit A*, p. 116; *Interview with Social Worker*. The IEP Team considered pulling Student from class with the teacher and having a substitute cover the class, but that was rejected because of the public nature of such pull-outs, and there were concerns Student would miss class time. *Exhibit A*, p. 116.

65. Although Parents asked for the check ins to be virtual and occur at 7 a.m., the IEP Team (including Parents) ultimately agreed to amend the 2021 IEP as follows:

All core academic and foreign language teacher check in with [Student] once a week on a designated day towards the end of the class period to establish what is assigned, due dates, extensions provided with dates and expectations for class related tasks to be recorded in writing by [Student] in a planner. Additional meeting time to be provided on an as needed basis.

Exhibit A, p. 116; Interviews with Parents, Case Manager, and Social Worker.

66. On November 11, 2021, Case Manager sent a draft of the amendment to Parents, and Parents responded on November 16, 2021 to indicate they agreed. *Exhibit I, pp. 201-202.*

1:1 Check Ins after 2021 IEP Amendment

67. After the amendment to the 2021 IEP, Case Manager sent a Google form containing the amendment to all of Student's teachers and asked them to respond by either indicating they understood the amendment or ask questions as necessary. *Interview with Case Manager; Exhibit B, p. 20.* Student's teachers were available for 1:1 check ins, but Student often did not attend. *Interview with Case Manager.*

68. The SCO finds, based on the detailed information provided by Case Manager and support for her account from the service logs and the email record, that Student was provided with 1:1 check ins as required by the 2021 IEP, throughout the fall of 2021 from August 24, 2021 through December 20, 2021.

F. Student's Progress during Fall 2021

69. In terms of grades, Student received either an "A" or a "B+" in all her courses at School during the fall semester of 2021, including the two classes in which she was not provided accommodations on the final exams. *Exhibit G, p. 3.* Student also made progress toward her annual IEP goals. *Id.* at pp. 5-12.

70. Social Worker, who regularly meets with Student to work on anxiety and executive functioning, indicates Student's anxiety and executive functioning have improved over the course of the 2021-2022 academic year, and Student is becoming much more independent in how she copes in the school environment. *Interview with Social Worker.* Social Worker adds that Student has said she prefers to have her check-ins during the day at School because it feels more natural, and that she has never reported any anxiety because of the changes to her 1:1 check ins over the fall of 2021. *Id.*

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 properly implement the 2021 IEP by failing to provide Student with compensatory services over the summer of 2021, in violation of 34 C.F.R. § 300.323. This failure to implement was material and results in a denial of FAPE.

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).

A. 2021 IEP Implementation (Compensatory Services, June through August 2021)

i. Parents’ Concerns

The 2021 IEP has been in effect since April of 2021. (FF # 18). District agreed through a PWN that it would provide Student with 32 hours of compensatory services over the summer of 2021 due to a delay in the initial evaluation process. (FF #s 6-7). District also agreed to reimburse Parents for 8 hours of individual private therapy and up to \$1,500 for the cost of a theater course. *Id.* The PWN provided to Parents in January of 2021 indicated the compensatory educational services would be provided to Student in addition to the services contained in Student’s IEP as District’s offer of FAPE. (FF # 8). Based on these facts, the SCO construes the compensatory services as a component of the 2021 IEP and will analyze this allegation as a failure to implement the 2021 IEP.

ii. Accessibility to Student’s Teachers

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

In January 2021 District agreed to provide compensatory services to Student over the summer, as documented in a standalone PWN. (FF # 8). The PWN indicated these compensatory services, which were still outstanding when the 2021 IEP was developed in April, would be provided to Student in addition to all other services and programming in District’s offer of FAPE (meaning the PWN essentially modified the offer of FAPE in the April 2021 IEP). (FF # 16).

When District provides compensatory services, it typically does so by arranging the services through a tutoring agency. (FF # 20). A District staff member contacts the tutoring agency, and the tutoring agency contacts parents directly to arrange the services. (*Id.*). In Student’s case, two District staff members were tasked with contacting the tutoring agency to arrange the compensatory services. (FF # 21). While those staff members left their positions before summer and the call was not made, the SCO nonetheless finds and concludes District appropriately informed these staff of their responsibilities regarding the compensatory services detailed in the PWN. The SCO now turns to whether the compensatory services were provided.

iii. Implementation of the Compensatory Services

Student attended a theater course and private therapy over the summer, between June and August of 2021. (FF # 23). District is willing, and has offered, to reimburse Parents for the cost consistent with their agreement. Parents have not provided District with invoices or documentation despite District’s request to do so. (FF # 29). The SCO finds and concludes District did not fail to implement the 2021 IEP with respect to the theater course or private therapy.

Parents allege, and District concedes, that the 32 compensatory services were not provided over the summer of 2021 (although District remains willing to provide the services). (FF #s 19, 23). The SCO accordingly finds and concludes that District failed to implement the 2021 IEP with respect to the offer of compensatory services, in violation of 34 C.F.R. § 300.323. The SCO must now determine whether District’s failure to implement was material.

iv. Materiality of Failure to Implement

The failure to implement 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 ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

Here, Student did not receive 32 hours of special education and related services the IEP Team determined were necessary to put Student in the place Student would have been had District not unnecessarily delayed the initial evaluation process. (FF #s 6-7). This represents more than a minor discrepancy between what was offered and provided, and thus the SCO finds and concludes that District's failure to implement the 2021 IEP was material. The SCO will now consider the effects of this denial of FAPE to determine whether compensatory education is appropriate. *See, e.g., Phillips v. District of Columbia*, 60 IDELR 277 (D.D.C. 2013) (concluding that a denial of FAPE does not in itself entitle a child to compensatory education).

v. 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).

Since compensatory education is an equitable remedy, principles of equity and fairness come into play and may impact whether compensatory education is awarded or the amount of the award. *See, e.g., Garcia v. Bd. of Educ. of Albuquerque Pub. Schs*, 49 IDELR 241 (10th Cir. 2008). One principle includes a party's failure to take advantage of such an award. *Id.* Other principles that may affect whether compensatory education is an appropriate remedy for a denial of FAPE include a parent's contribution to the violation, or a student's rate of progress and recoupment of skills despite the violation. *See, e.g., Manchester Sch. Dist.*, 4 ECLPR 611 (SEA NH 2004); *Smith v. Cheyenne Mountain Sch. Dist. 12*, 72 IDELR 173 (D. Colo. 2018).

Here, Student's IEP Team of its own volition determined in January 2021 that Student was entitled to compensatory education because of District's delay in providing an initial evaluation. (FF #s 6-7). Student's IEP Team—including Parents—agreed that this offer of compensatory services was appropriate to put Student in the place she would have been had District not unnecessarily delayed the initial evaluation process. (FF # 6).

District did not provide the compensatory services as promised over the summer. (FF # 30). However, upon learning of this oversight, District immediately offered to provide the missed services in September of 2021. (FF # 27). District also offered Parents the option to select their own private provider, a more flexible arrangement than that contemplated by the PWN. (*Id.*). Parents, however, indicated that the compensatory services offer was no longer adequate, and instead made additional requests, ranging from a lump sum payment to the removal of School personnel. (FF # 28). In doing so, Parents frustrated District's effort to provide the services. (*Id.*).

Despite Parents rejecting District's offer of compensatory services, there is no evidence Student was educationally harmed. (FF #s 19, 69). Student achieved good grades in all classes in the fall of 2021, and she made progress toward her annual goals under the 2021 IEP. (*Id.*). Student is showing improvement in executive functioning and anxiety, and she is becoming more independent in her coping strategies in the school environment. (FF # 69).

For these reasons, the SCO finds and concludes that compensatory services are not necessary to put Student in the position she would have been if not for the violation.

B. 2021 IEP Implementation (Accommodations, August 24 through December 20, 2021)

i. Parents' Concerns

The 2021 IEP was in effect when classes started on August 24, 2021. (FF # 31). Parents allege District failed to implement the 2021 IEP from August 24, 2021 through December 20, 2021. Specifically, Parents allege District failed to implement the accommodations by failing to provide weekly communication, accommodations on two final exams, and regular 1:1 virtual check ins. (*Id.*).

ii. Accessibility to Student's Teachers and Paraprofessionals

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

During the fall of 2021, Case Manager was responsible for ensuring Student's teachers were aware of the 2021 IEP's accommodations. (FF # 32). Case Manager met with all of Student's teachers, except for English teacher, at the beginning of the year before classes to review the accommodations and discuss any accommodations that were unusual or unique to Student. (*Id.*). All of Student's teachers, including English teacher, were provided with a copy of the 2021 IEP, and Case Manager was available for all of Student's teachers if they had questions about their responsibilities under the document. (FF #s 32).

During the fall of 2021, Case Manager engaged in weekly check ins with Student's teachers, and oversaw the completion of the communication logs, which were used to provide information on Student's progress to Parents. (FF #s 33-34). Case Manager frequently stopped by classes to check in with teachers about Student's accommodations and assignments, and to modify assignments and workload as needed. (FF # 34). She also served as a liaison between Parents and teachers and got involved as necessary to address issues with the 2021 IEP. (FF # 33).

All service minutes under the 2021 IEP were provided by Case Manager or Social Worker during the fall of 2021, and both staff members are familiar with the 2021 IEP. See (FF # 15). Social Worker is also present at Student’s IEP meetings. (FF # 42).

The SCO accordingly finds and concludes that District ensured teachers and service providers working with Student were informed of their responsibilities under the 2021 IEP, consistent with 34 C.F.R. § 300.323(d).

iii. Weekly Communication

The 2021 IEP provides that Student’s classroom teachers and special education providers will communicate with Parents weekly to ensure expectations for assignments are clear, provide advance notice of assignments and deadlines, and detail Student’s progress. (FF # 14).

Case Manager was responsible for ensuring weekly communication was provided to Parents, and she surveyed Student’s teachers at the beginning of each week for details such as performance, upcoming assignments, and deadlines. (FF # 36). Case Manager reviewed the information and provided it to Parents on a weekly basis, along with her observations and a “newsletter” outlining what she was working on with students in the “academic intervention” class. (FF # 37). Service logs from teachers and Case Manager contain entries for every week of classes between August 24, 2021 and the end of the fall 2021 semester. (FF # 39).

In addition to the communication log, Parents were kept apprised of Student’s progress and assignments via regular email communication, as well as through Schoology and phone calls, Google Meets, and meetings with Social Worker. (FF #s 41-42). Case Manager was responsive to Parents communications, and the email record demonstrates that Parents were kept informed of Student’s progress and meaningfully included in the decision-making process for Student. (FF # 36-42). The evidence in the Record indicates Student is achieving high marks in all classes and successfully accessing the general curriculum. (FF # 69).

For these reasons, the SCO find and concludes that District implemented the 2021 IEP in this respect, consistent with 34 C.F.R. § 300.323.

iv. Test Accommodations

The 2021 IEP provides that Student is to be provided with the option of text to speech and access to a small group setting for assessments in all academic subjects. (FF # 14). Parents allege Student was not provided with the option of text to speech or a small group setting for two finals exams that occurred in December of 2021. (FF # 44).

District concedes accommodations were not provided to Student on one final exam, and Case Manager concedes that there may have been two exams where Student did not receive

accommodations. (FF #s 45-46). The email record confirms that Student was not provided with accommodations on one final exam. (FF # 47). The SCO finds and concludes—based on the consistent information provided by Parents and Case Manager, support for Parents’ position in the written record, and District’s admission—that it failed to implement the 2021 IEP on two final exams during the fall of 2021, in violation of 34 C.F.R. § 300.323. The SCO must now determine whether this failure to implement was material.

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 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 ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail.” *Id.* But a child’s educational progress, or lack thereof, may indicate whether there has been more than a “minor shortfall in the services provided.” *Id.*

Here, Student was not provided with accommodations on two final exams. (FF # 49). While it is not possible for Student to retake the exams with the accommodations in place, District nonetheless took action to correct the issue. (FF #s 46, 48). Student’s grades on the exams were changed so Student would not be penalized for the poor marks. (FF # 48).

Student’s grades before and after the final exams were all at a “B+” or better, and Student is making progress toward her annual IEP goals. (FF #s 48, 69). There is no evidence that Student was not provided with accommodations on other tests or exams, and grades demonstrate that she is successfully accessing the curriculum in her classes. (FF # 69). Student’s progress is a strong indication that District’s deviation from the 2021 IEP’s requirements was a minor shortfall. The SCO accordingly finds and concludes that the failure to implement the 2021 IEP was not material and did not result in a denial of FAPE.

v. 1:1 Check Ins

At the start of the 2021-2022 academic year, the 2021 IEP provided that Student's classroom teachers would continue 1:1 virtual check ins with Student on a weekly basis. (FF # 50). The purpose was to provide Student with a "safe space" to ask questions of teachers since 1:1 virtual check ins proved beneficial for Student during remote instruction. (FF # 51).

Prior the start of the 2021-2022 academic year, District held a meeting to discuss, among other things, the plan for the virtual 1:1 check ins, since changes to the weekly schedule at School made coordinating the 1:1 check ins challenging. (FF #s 53-54). Parents and District agreed on a tentative plan for implementation of the 1:1 check ins, wherein Student would meet with different teachers each day, sometimes virtually, and usually at the end of the day. (FF # 54).

Service logs indicate that as many as 23 of the 60 check ins did not happen during the fall of 2021. (FF # 55). However, service logs also indicate that most of the missed check ins were due to Student not showing up, Student leaving the check ins early, or Parents cancelling. (*Id.*). Email records also demonstrate that on occasions when the check ins were missed due to teacher absence, efforts were made to reschedule or make up the time. (FF # 58). The email record also demonstrates District made efforts to address Parents' concerns about the check ins, for example by providing Student with use of Case Manager's office so she could meet privately with teachers. (FF #s 57-58).

When the 1:1 check in accommodation was amended in November of 2021, Case Manager shared the accommodation with all of Student's teachers, and explicitly asked them to indicate if they had questions about the new language. (FF # 67). Student's teachers were available for check ins after the amendment, but Student often did not attend. (*Id.*).

The SCO accordingly finds and concludes that District implemented the 2021 IEP in this respect, consistent with 34 C.F.R. § 300.323.

C. Systemic Violations

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, there is no evidence that the first implementation violation is systemic. District's failure to provide compensatory services was the result of two staff members leaving their positions at the end of the 2020-2021 academic year. (FF # 21). Although those staff members neglected to

call the third-party tutoring agency to arrange for services, they provided District with their case files and District reviewed those files to ensure other students were not similarly affected. (FF # 22). Once informed of the error, District acted quickly to correct it by proposing to provide the missed services and reimburse Parents for the theater course and private therapy. (FF #s 26-27).

For the second implementation violation, although District failed to ensure Student received accommodations on two final exams there is no evidence the issue impacted other students. See (FF #s 44-49). District also addressed the issue by adjusting Student's grades so she would not be penalized for low marks on the exams she took without accommodations. (FF # 48). There is no evidence that any other students at School or within District were similarly affected. The SCO thus finds and concludes that there is no evidence that this violation was systemic.

Conclusion to Allegation No. 2: District developed, reviewed, and revised an IEP that was tailored to meet Student's individualized needs.

The second allegation accepted for investigation suggests that District failed to develop an IEP that was tailored to Student's individualized needs because District removed 1:1 virtual check ins with teachers as an accommodation from the 2021 IEP in the fall of 2021.

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 inadequacy alleged by Parents is now addressed below considering these legal standards.

A. Development of the 2021 IEP

An IEP must contain measurable goals designed to: 1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and 2) meet each of the student's other educational needs that result from his or her disability. 34 C.F.R. § 300.320(a)(2). An IEP must also contain—among other components—a “statement 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.” 34 C.F.R. § 300.320(a)(4).

Here, the 2021 IEP was developed at a properly constituted IEP meeting on April 7, 2021. (FF # 9). The 2021 IEP contains measurable annual goals to address Student's functional needs, a

statement of the services to be provided, and the accommodations necessary for Student to access the general education curriculum. (FF #s 9-18). Parents raised no procedural concerns with the development of the 2021 IEP in April of 2021, and upon review, the SCO finds no related concerns.

In November 2021, the language describing the accommodation for 1:1 check ins was amended (but not removed, contrary to Parents' position). (FF # 65). That amendment was made at a properly constituted IEP meeting on November 10, 2021, and all members of the IEP Team, including Parents, agreed. (FF #s 65-66). The amendment was made based on a discussion of Student's needs, and Parents' concerns were meaningfully considered by the IEP Team, even if final language of the amendment was not exactly what Parents desired. (FF #s 64-66).

Accordingly, the SCO finds and concludes that the development of the 2021 IEP complied with IDEA's procedures. *Rowley*, 458 U.S. at 206. The second question, given Parents' concerns, is whether the amendment to the 1:1 check ins accommodation was substantively appropriate.

B. 1:1 Check Ins

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.

In developing the 2021 IEP, Student's IEP Team determined 1:1 check ins were beneficial to help her with anxiety and executive functioning. (FF # 51). The check ins were intended to provide her a "safe space" to access teachers and learn about deadlines and assignments. *Id.*

In practice, due to changes in the schedule at School in the fall of 2021, Student's check ins were usually at the end of each day when classes started in August. (FF # 54). Due to other commitments, Student often missed the check ins, or the check ins were rushed. (FF # 60). Parents asked for an IEP meeting because the check ins were not working for Student. (FF #s 55, 59). The IEP Team, including Parents, met on October 11, 2021 and November 10, 2021, to address Parents' concerns and possible changes to the check in accommodation. (FF #s 60-66).

Student did not want check ins at the beginning of the day because it made her feel stressed, and check ins at the end of the day did not work because of her other commitments. (FF #s 60-61, 64). Parents did not want Student missing lunch or academics, and Student felt stressed when she was pulled during classes or had to meet with teachers in front of peers. (FF # 64).

The IEP Team ultimately amended the accommodation to provide that Student would meet with teachers each day toward the end of the class period, which is what she prefers. (FF # 70). This allowed Student to meet with teachers during the day (when she would not be rushed or miss the check ins because of other obligations), while still being able to meet with teachers

when other students would not be around (since meeting with teachers around other students caused Student anxiety). See (FF # 65). Parents preferred that check ins be virtual and occur at 7:00 a.m., but indicated they agreed with the final language of the amendment. (FF # 66).

Student is achieving good grades in all her classes, and she is making progress toward her annual IEP goals. (FF # 69). Social Worker indicates Student is showing progress in her anxiety and executive functioning, and Student never expressed any anxiety around the changes to her 1:1 check ins. (FF # 70).

The SCO accordingly finds and concludes, in consultation with CDE Content Specialist 1, that District appropriately tailored the amendment to the 1:1 check ins to Student's individualized needs. The SCO finds and concludes further that District meaningfully considered Parents' concerns in developing the 2021 IEP. For these reasons, the SCO finds and concludes that District developed an IEP that was tailored to meet Student's individualized needs.

REMEDIES³

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

1. Failing to properly implement the 2021 IEP, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan
 - a. By **Friday, March 18, 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. Director of Special Education must review this Decision in its entirety with District's legal counsel, no later than **Monday, April 4, 2022**.
 - ii. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, April 15, 2022**.

³ In the Reply, Counsel for Parents asked for reimbursement of legal fees as a remedy. The "State complaint process is not an administrative proceeding or judicial action, and, therefore, the awarding of attorneys' fees is not available under the IDEA for State complaint resolutions." *Analysis of Comments and Changes to the 2006 Part B Regulations*, 71 Fed. Reg. 156, 46,602 (August 14, 2006).

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 18th day of February, 2022.



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-7

- Exhibit X: PWN of Intent to Provide Comp Ed

Response, pages 1-13

- Exhibit A: IEPs
- Exhibit B: Service Logs
- Exhibit C: PWN
- Exhibit D: none
- Exhibit E: Notice of Meetings
- Exhibit F: Evaluations and Assessments
- Exhibit G: Progress Monitoring Reports
- Exhibit H: Policies and Procedures
- Exhibit I: Correspondence
- Exhibit J: List of Staff
- Exhibit K: Verification of Delivery to Parents

Reply, pages 1-13

- Exhibit 1: IEE
- Exhibit 2: Treatment Letter
- Exhibit 3: Clinical Notes
- Exhibit 4: Doctor Visit Info
- Exhibit 5: Health Letter
- Exhibit 6: Correspondence
- Exhibit 7: 2019 IEP
- Exhibit 8: Emails re 1:1 Meetings
- Exhibit 9: Emails re College Board Request
- Exhibit 10: Planner Goal History
- Exhibit 11: Letter
- Exhibit 12: Emails re Math Tutoring

Telephonic Interviews:

- Case Manager: February 1, 2022
- Director of Special Education: February 3, 2022
- Parents: February 1, 2022
- Senior Manager of Special Education: February 1, 2022

- Social Worker: February 2, 2022

CDE Exhibits:

- CDE Exhibit 1: School Calendar for August 2021
- CDE Exhibit 2: School Calendar for December 2021