

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

**State-Level Complaint 2022:508
Weld County School District 6**

DECISION

INTRODUCTION

On February 23, 2022, the parent (“Parent”) of a student (“Student”) previously identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Weld County School District 6 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 23, 2021 through February 23, 2022 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop, review, and revise an IEP tailored to Student’s individualized needs between February 23, 2021 and July 1, 2021, in violation of 34 C.F.R. § § 300.324 and 300.320, specifically, as follows:
 - a. Failing to modify the curriculum to Student’s ability level, and

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. Failing to develop adequate annual IEP goals related to Student’s postsecondary transition needs.
2. Failed to provide Parent with adequate prior written notice of the action taken by the District at Student’s IEP Team meeting held on or around February 17, 2021, in violation of 34 C.F.R. § 300.503.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the SCO makes the following FINDINGS OF FACT:

A. Background

1. Student attended a District high school (“School”) during the 2020-2021 school year. *Interview with Parent*. Student did not reside within the boundary of the District but, instead, entered the District through open enrollment during the 2018-2019 school year. *Interview with Assistant Director of Special Education (“Assistant Director”); Response*, p. 1.
2. During the 2020-2021 school year, Student qualified for special education and related services under the disability categories of Specific Learning Disability (“SLD”) and Speech or Language Impairment. *Exhibit A*, p. 12; *Exhibit L*, p. 3. Student was eligible for SLD under all eight areas. *Exhibit L*, p. 3.
3. Student is an easygoing, organized, enthusiastic young lady. *Interviews with Parent and Special Education Teacher*. Special Education Teacher recalled Student working harder than any other student he has ever taught. *Interview with Special Education Teacher*. Student loves spending time with her siblings and enjoys music and art. *Interview with Parent*.
4. Social interactions cause Student to feel anxious, and she struggles to interact with peers. *Interviews with Parent and Special Education Teacher*. In the classroom, Student’s slow speed—both at learning concepts and completing assignments—presented the biggest challenge for her. *Interview with Special Education Teacher*.
5. School is an alternative high school with a much smaller student population than District’s other high schools. *Interview with Assistant Director*. School operates on an accelerated quarter system, which allows students to earn credits faster (and catch up on credits if they enter School behind on credits). *Id.; Response*, p. 2. Theoretically, if a student passed

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

all of her classes, she could graduate in two years and one quarter. *Interview with Assistant Director.*

6. For the most part, School uses the same curriculum as District's comprehensive high schools. *Interview with Special Education Teacher.* However, School provides all of its students accommodations such as smaller class sizes, more support, and extra opportunities (such as correcting and resubmitting assignments). *Id.* School offers a much smaller variety of elective courses than District's traditional high school. *Interview with Assistant Director.*

B. October 2020 IEP Team Meeting

7. On October 7, 2020, Student's IEP Team met to conduct her annual review. *Interview with Special Education Teacher; Exhibit A, pp. 1-2.* The IEP Team met virtually, and Parent attended the meeting. *Interviews with Parent and Special Education Teacher.* This was Special Education Teacher's first IEP Team meeting as Student's case manager. *Interview with Special Education Teacher.*
8. Neither Special Education Teacher nor Parent could recall whether the IEP Team discussed modifying Student's curriculum during the October meeting. *Interviews with Parent and Special Education Teacher.* Parent, however, remembered asking about modified work for Student during parent-teacher conferences. *Interview with Parent.* Special Education Teacher believed modifying the curriculum would be a disservice to Student. *Interview with Special Education Teacher.* Historically, Student had not performed well on assessments, but her academic outcomes were strong (and continued to improve). *Id.*
9. A few weeks before the IEP Team meeting, Student completed the CDE Transition Interview, Strengths Explorer, and MI Advantage. *Exhibit A, p. 23.* Notably, on the CDE Transition Interview, Student indicated that, if she moved out on her own tomorrow, she would need help with money management, paying bills, domestic skills, and locating housing. *Id.* at p. 70.
10. During the meeting, the IEP Team discussed these assessments and reviewed Student's existing post-secondary transition plan ("Transition Plan"). *Interviews with Parent and Special Education Teacher.* Student's Transition Plan did not contain an independent living skills goal, noting that "[t]his goal is not applicable as [Student] is a high functioning individual." *Id.* at p. 26. Despite the assessment data indicating Student's challenges with money management and housing, the IEP Team did not add an independent living skill goal for Student. *Interview with Special Education Teacher.* Independent living skills encompass all of the skills a student would need to live independently and can include anything from brushing teeth to grocery shopping to paying bills and locating housing. *Interview with CDE Consultant.*

11. Special Education Teacher reminded Parent that Student would graduate at the end of the 2020-2021 school year. *Interview with Special Education Teacher*. Parent expressed concerns about Student graduating early and Student's Transition Plan. *Id.* In response to Parent's concerns, the IEP Team discussed concurrent enrollment at Community College as an option for delaying graduation and agreed to enroll Student in a personal finance course to address Parent's concerns around budgeting. *Id.*
12. Parent expressed concerns about adequacy of Student's Transition Plan and wanted to have a more solid plan in place for after graduation. *Interview with Parent*. Ultimately, no substantive changes were made to the existing Transition Plan. *See Exhibit A*, pp. 25-28; *Exhibit L*, pp. 21-23.

C. The 2020 IEP

13. The October 7 IEP Team meeting resulted in an IEP dated October 7, 2020 ("2020 IEP"). *See Exhibit A*, pp. 13-34.
14. The section of the 2020 IEP regarding present levels of performance indicated that Student scored 202 on the NWEA/MAP Math assessment in September 2020, placing her in the eighth percentile. *Exhibit A*, p. 16. On the NWEA/Map Language Arts assessment, Student scored 211, placing her in the 24th percentile. *Id.* Student was reading at approximately a fifth-grade level. *Id.* The 2020 IEP described the progress Student made on her annual IEP goals but did not state that she met any of her goals. *Id.* at pp. 22-23.
15. According to the 2020 IEP, Student's disabilities affected "her ability to comprehend complex concepts in the classroom and explain what she understands" and caused her to "struggle with social interactions." *Id.* at p. 25.
16. The Transition Plan in the 2020 IEP identified the following postsecondary goals:
 - Career Employment Goal: After completing her training, Student will work towards owning her own daycare operation.
 - Post-School Education/Training Goal: Student will pursue training for professional Early Childhood Educators. She may pursue this certificate while still attending high school through a concurrent enrollment program.
 - Independent Living Skills Goal: This goal is not applicable as Student is a high-functioning individual.

Id. at p. 26.

17. The Transition Plan listed Student's projected graduation date as March 19, 2021. *Id.* at p. 26.

18. Under the section for Planned Course of Study, the Transition Plan detailed Student's remaining credits but did not identify any courses needed for or tailored to Student's postsecondary goals. *Id.* at pp. 26-27.

19. Student's transition services and activities included:

- Education/Instruction and Related Services: "Special Education staff will co-teach some math and language arts classes. General educators will ensure that [Student] is learning the most from her classes. The counseling department will assist [Student] in finding the right college for her based on her wants and needs, while monitoring her successful completion of the credits she needs to graduate from college."
- Career/Employment and other Post-School Adult Living Objectives: "The school job counselor will help [Student] plan and prepare for her future after graduation. The counselors will enroll [Student] in classes that will provide her with life skills. These classes will include cooking, AVID for organization, and probably concurrent enrollment classes for Early Childhood Education."
- Community Experiences: "[Student's] family will show her around the community and be sure she knows how to get where she is going. School staff will also incorporate field trips and extended learning opportunities to help [Student] become comfortable with the community around her[.]"
- Agency Linkages: "[Student] has been referred to SWAP and is consulting on what services will look like."

Id. at p. 26.

20. The 2020 IEP contained the following annual goals:

- Reading: "In order to prepare for a career, [Student] will work to improve her Lexile from 800 to 950 as measured by NWEA growth tests, Achieve3000 and other curriculum-based assessments by 10/7/2021."
- Writing: "By October of 2021, in order to prepare for written communications for her daycare operation, [Student] will independently write a 5-paragraph essay that includes a thesis, textual evidence, correct grammar and punctuation, and a concluding paragraph as measured by writing samples."

- Mathematics: “In order to prepare to manage her own finances while working in a daycare operation, [Student] will prepare a personal budget and interpret and apply the budget with 100% accuracy as measured by teacher observations and student interviews by October of 2021.”
- Social/Emotional Wellness: “[Student] will demonstrate appropriate peer relations, peer interaction, and engage in group discussions in 4 out of 5 opportunities as observed by teachers.”
- Communication: “In order to improve vocational success, [Student] will work with her SLP and/or in a small group to practice skills and/or strategies that will allow her to communicate successfully in her chosen vocation.”

Id. pp. 28-30. Though these goals addressed, in part, Student’s ultimate career employment goal, they were not tied to Student’s postsecondary education goal. *Interview with CDE Consultant*. In developing annual goals for transition-age students, IEP Teams should work backwards from the postsecondary goals and determine what skill gaps a student needs to close in order to meet the postsecondary goal. *Id.*

21. The 2020 IEP did not indicate that Student needed a modified curriculum but listed several accommodations, such as graphic organizers and step-by-step instructions, designed to assist Student in accessing the general education curriculum. *Exhibit A*, p. 30.

22. The 2020 IEP required Student to receive the following special education and related services:

- Specialized Instruction: 600 minutes per week of direct special education instruction in the areas of math and language arts provided by a special education teacher inside the general education classroom;
- Speech/Language Services: 120 minutes per month of direct speech services provided by a speech language pathologist or speech pathologist assistant outside the general education classroom; and
- Psychological Services: 60 minutes per month of direct psychological services provided by a school psychologist, school-based therapist, or school counselor outside the general education classroom.

Id. at p. 32.

23. Under the 2020 IEP, Student spent at least 80% of her time in the general education environment. *Exhibit A*, p. 33. This placement was based on Student’s past success in co-taught, general education classrooms. *Id.*

D. Concurrent Enrollment at Community College

24. During the 2020-2021 school year, Student met with School Counselor to discuss options for concurrent enrollment at Community College. *Interview with Special Education Teacher*. Community College offers several early childhood education certifications that aligned with Student's long-term goal of owning her own daycare. *Id.* Attending classes at Community College would have allowed Student to temporarily delay her graduation from School. *Id.*
25. Student enrolled in classes at Community College and was scheduled to begin in January 2021. *Id.*; *Interview with Parent*. Based on School Counselor's recommendation, Student enrolled in Advanced Academic Achievement, a course designed to help students develop the skills needed in the college environment. *Response*, p. 5.
26. However, before Student began attending classes, Student and Parent decided it was not feasible at that time and unenrolled Student. *Interview with Parent*. Parent indicated this decision was based on transportation difficulties. *Id.* According to Parent, District proposed Student attend School in the morning Monday through Friday. *Id.* Student's parents would be responsible for transporting Student to Community College for classes in the afternoon. *Id.* Due to their work schedules, Parents were unable to take Student to Community College. *Id.* At the time, Student had not learned how to navigate the public transit system. *Id.*

E. Additional Assessments

27. In early 2021, Parent continued to have concerns about Student's Transition Plan. *Interviews with Parent and Special Education Teacher*. In response, District agreed to conduct additional assessments and review Student's Transition Plan. *Id.*
28. In February 2021, Transition Services Teacher conducted the Transition Planning Inventory ("TPI") and the Life Centered Career Education Competency Assessment ("LCCE") to further guide Student's transition planning. *Interview with Transition Services Teacher*. The results of the TPI demonstrated that Student needed support in the areas of Further Education/Training, Daily living, and Community Participation. *Id.*; *Exhibit A*, p. 55. Similarly, the results of the LCCE indicated Student faced challenges in the areas of Personal/Social and Daily Living. *Interview with Transition Services Teacher*; *Exhibit A*, p. 55. Specifically, Student indicated she struggled with how to obtain an apartment, cleaning, childcare, and government. *Exhibit A*, p. 55.

F. February 2021 Meeting

29. On February 17, 2021, Parent met virtually with Assistant Director, Assistant Principal, Special Education Teacher, and Transition Services Teacher to review the additional assessments and discuss options for Student's transition services. *Interviews with Assistant Director, Parent, Special Education Teacher, and Transition Services Teacher.* This meeting was not scheduled as an IEP Team meeting for reasons that are unclear. *See Exhibit A, pp. 1-79.*
30. Transition Services Teacher explained the results of the assessments to the attendees. *Interviews with Assistant Director, Special Education Teacher, and Transition Services Teacher.* Assistant Director and Transition Services Teacher presented a variety of options to Parent for Student's transition services. *Id.* These options included, in part, Student transferring to a comprehensive high school (either in District or in her home school district) with a broader range of courses, attending District's 18-21 Transition Program part-time, enrolling in Community College concurrent with School, or participating in other programs in the community. *Interview with Transition Services Teacher; Exhibit K, p. 1.*
31. Parent expressed to attendees that she was not interested in transition programs but, instead, wanted Student to stay in high school. *Interviews with Assistant Director, Special Education Teacher, and Transition Services Teacher.*
32. No decisions were made at the meeting. *Id.; Interview with Parent.* The meeting was very upsetting to Parent, and she needed time to consider the available options. *Interview with Parent.*
33. On March 9—with Parent's consent—the District amended the 2020 IEP to incorporate the results of the additional assessments. *Interview with Special Education Teacher; Exhibit A, pp. 42-64, 79.* No other changes were made to the 2020 IEP. *Interview with Special Education Teacher; Exhibit A, pp. 42-64.*
34. Student's IEP Team did not convene again before the end of the 2020-2021 school year. *Interview with Special Education Teacher; Response, p. 9.* No further changes were made to Student's Transition Plan or to her 2020 IEP. *Interview with Special Education Teacher; see Exhibit A, pp. 1-79.*

G. Student's Graduation

35. By the end of the 2020-2021 school year—Student's junior year—Student had earned the credits required for a regular high school diploma. *Response, p. 2.* Student's cumulative GPA was 3.57. *Id.* Due to the COVID-19 pandemic, Student's graduation was not held until July 2021. *Interview with Assistant Director.*

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 tailor the 2020 IEP to Student’s individualized needs, in violation of 34 C.F.R. §§ 300.320 and 300.324(a)(1). This violation resulted in a denial of FAPE.

In her Complaint, Parent alleged the District failed to tailor Student’s IEP to her individualized needs, resulting in a violation of the IDEA. Specifically, Parent asserted that the District failed to: (1) modify the curriculum to Student’s ability level, and (2) develop adequate annual IEP goals related to Student’s postsecondary transition needs.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. The SCO will analyze each of the inadequacies alleged by parent under the *Rowley* standard.

A. Modified Curriculum

An IEP is “the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982)). In developing an IEP, the IEP Team must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” 34 C.F.R. § 300.324(a). Along with a statement of the special education and related services to be provided to the student, an IEP must identify the “program modifications or supports” that will be provided to enable the student “to be involved in or make progress in the general education curriculum.” 34 C.F.R. § 300.320(a)(4).

Here, Parent alleged that the District improperly developed Student’s IEP by failing to modify the curriculum to Student’s ability level. Parent contends this failure hindered Student’s academic growth. Before analyzing this allegation, the SCO must provide clarity on the scope of the allegation being investigated.

As acknowledged above, the record is not clear as to whether the IEP Team considered Student’s need for a modified curriculum during the October 2020 IEP Team meeting. (FF # 8.) Regardless, the 2020 IEP indicated that Student did not need any curricular modifications. (FF # 20.) Because the IEP Team meeting occurred more than a year before Parent filed the Complaint, the SCO

cannot consider the propriety of the events that occurred at the meeting itself. 34 C.F.R. § 300.153(c); CDE’s *Complaint Procedures*, ¶ 3(f). But the SCO still has authority to consider the propriety of the IEP itself. In essence, a deficient IEP continues to violate the IDEA each day that a school district implements the IEP, allowing the one-year time limitation to begin later (in theory, as late as the final day the IEP is in effect). This investigation separates the events that occurred at the IEP Team meeting from the 2020 IEP that resulted from the meeting—a nuanced, but important, distinction.

As to the first prong of the *Rowley* standard, nothing in the record indicates that the 2020 IEP did not comply with the IDEA’s procedural requirements regarding modifications. The 2020 IEP indicated, as required, whether or not Student needed curricular modifications. (FF # 20.) And the 2020 IEP was developed at a properly convened IEP Team meeting. (FF # 12.) The 2020 IEP, therefore, satisfies the first prong of the *Rowley* test.

The second prong of the *Rowley* test considers whether the IEP was substantively appropriate by asking whether the IEP was reasonably calculated to enable the child to receive an educational benefit. The evidence in the record indicates that Student was able to benefit from general education without curricular modifications. (FF #s 8, 34.) Indeed, Student graduated at the end of her junior year with a 3.5 GPA and earned a standard high school diploma. (FF # 34.) As an alternative school, School provided all its students with accommodations in the classroom (such as extra support and additional opportunities to correct assignments); these accommodations increased Student’s ability to access the general education environment without a modified curriculum. (FF # 6.) For these reasons, the portion of Student’s 2020 IEP related to curricular modifications was reasonably calculated to enable Student to receive an educational benefit, satisfying the second prong of *Rowley*. The SCO, therefore, finds and concludes that Student’s 2020 IEP—at least with regard to curricular modifications—was appropriately tailored to Student’s needs, as required by 34 C.F.R. § 300.320.

B. Annual Goals and Transition Plan

Among other required components, an IEP must contain measurable annual 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). Beginning with the first IEP developed at age 15, but no later than the end of ninth grade, an IEP is required to include a transition plan. ECEA Rule 4.03(6)(d). Such plan must identify “appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills,” as well as the transition services the student needs to reach those goals. *Id.*; *see also* 34 C.F.R. § 300.320(b). As defined in the IDEA, “transition services” refers to:

- (a) A coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
- (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

34 C.F.R. § 300.43(a). A student's individual needs inform the development of the student's annual goals and transition plan.

As noted above, the first prong of *Rowley* asks whether an IEP complies with the IDEA's procedures. Here, the SCO finds that the 2020 IEP failed to comply with the IDEA's procedural requirements for transition services and annual goals. Neither Student's Transition Plan nor her annual goals were tailored to her individualized needs.

With regard to Student's Transition Plan, the IEP Team failed to develop a postsecondary independent living skills goal for Student. (FF # 15.) Neither the ECEA nor the IDEA require development of an independent living skills goal. ECEA Rule 4.03(6)(d) and 34 C.F.R. § 300.320(b). Instead, an independent living skills goal is discretionary and only required "where appropriate." ECEA Rule 4.03(6)(d); 34 C.F.R. § 300.320(b). However, the data available to Student's IEP Team evidenced Student's need for an independent living skills goal. (FF #s 9, 27.) As early as September 2020, Student expressed concern with her ability to manage money, pay bills, and locate housing. (FF # 9.) Student needed these skills to live independently. *See* CDE, *Writing Quality Secondary Transition IEPs* at p. 5 (May 2020), available at <https://www.cde.state.co.us/cdesped/qualitysecondaryiepgoals> (providing examples of appropriate independent living skills goals). In response, the IEP Team included an annual goal regarding budgeting. (FF # 11, 19.) The creation of this annual goal alone demonstrates the need for a postsecondary independent living skills goal. The additional assessments conducted in February 2021 further supported development of a postsecondary independent living skills goal. (FF # 27.) Yet, Student's IEP Team took no action in response to the additional assessments. (FF #s 31-33.)

Additionally, the IEP Team failed to individualize the transition services and activities identified in Student's Transition Plan. The Education/Instruction and Related Services described could apply equally to any other student at School. (FF # 18.) School's counseling department likely assisted all students in finding the right college, just as it "assist[ed] Student in finding the right college." (*Id.*) Nothing in that section pertains specifically to Student's postsecondary goals or her other individual needs. (*Id.*) And the Planned Course of Study portion of Student's Transition Plan merely recited the remaining credits needed for graduation, without tying any of the courses to Student's actual goals or needs. (FF # 17.)

Similarly, Student's IEP Team failed to consider Student's functional needs in developing her annual IEP goals. Though her annual goals loosely referenced her aspiration to own her own day care, the annual goals did not tie back to Student's postsecondary goals. For example, Student's postsecondary education goal involved obtaining an early childhood certificate, perhaps through concurrent enrollment at Community College. (FF # 15.) Classes at School, for all students, were highly accommodated. (FF # 6.) None of Student's annual goals seek to prepare her for attendance at Community College but, instead, skip ahead to owning a daycare. (FF # 19.) One of the reasons Student did not attend Community College during Spring 2021 was due to issues over transportation. (FF # 25.) At the time, Student had not learned how to navigate the bus system. (*Id.*) Perhaps this situation could have been avoided if Student's IEP Team had looked at what skills Student would need to attend Community College and developed annual goals based on those skill gaps. In doing so, Student's IEP Team would have developed annual goals based on Student's functional needs, instead of only her academic needs, consistent with 34 C.F.R. § 300.324(a).

For these reasons, the SCO has determined that Student's 2020 IEP did not comply with the IDEA's procedural requirements under the first prong of the *Rowley* standard. As a result, the SCO finds and concludes that the District failed to tailor Student's IEP to her individual needs, resulting in a procedural violation of 34 C.F.R. §§ 300.320 and 300.324.

C. Procedural Violation

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

Here, District's failure to develop an IEP tailored to Student's individualized needs likely impeded Student's right to a FAPE and deprived Student of an educational benefit. Courts have acknowledged the difficulty in determining whether a procedural violation involving transition planning resulted in a denial of FAPE:

Showing educational harm is necessarily difficult to do with respect to transition services, which prepare a student for what will happen in the future. Academic and social success in high school is weak evidence that a student will succeed in the less structured environments of work and college.

S.G.W. v. Eugene Sch. Dist., No. 6:16-cv-01612, 2017 WL 1027031 (D. Ore. Mar. 16, 2017). In the end, the *S.G.W.* court relied upon the "extent to which the transition services were individually

tailored to meet student’s needs.” *Id.* Because the student’s transition services were not individually tailored, the Court found that the procedural violation amounted to a denial of FAPE. *Id.*; see also *Jefferson Cty. Bd. of Ed. v. Lolita S.*, 581 F. App’x 760, 765 (11th Cir. 2014) (finding failure to individualize postsecondary goals and transition services amounted to a denial of FAPE). Indeed, the very premise of the IDEA is to ensure children with disabilities receive a FAPE “designed to meet their unique needs and prepare them for further education, employment, and independent living.” 34 C.F.R. § 300.1(a).

Here, Student’s 2020 IEP similarly suffered from a lack of individual tailoring. Even though Student made progress during the 2020-2021 school year and earned her diploma, Student could have benefited even more from an IEP that was tailored to her individualized needs. And that benefit—especially when related to her functional needs as she transitioned from School to adult life—could have had significant effects. For these reasons, the SCO finds and concludes that the procedural violation resulted in a denial of FAPE.

D. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he 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. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). Compensatory education remains available to students even after graduation. *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 63 (1st Cir. 2002). The SCO now explains a compensatory education package designed to help place Student in the same position she would have been had the District properly tailored her Transition Plan and annual goals to her individual needs.

This violation cannot be easily remedied. No remedy adequately compensates for the time Student spent with an inadequate IEP, especially given that Student has graduated. Here, the District failed to tailor Student’s Transition Plan to her individualized needs, including failing to develop an independent living skills goal even where assessments indicated Student’s need for such a goal. Thus, the SCO finds an award of 10 hours of compensatory transition services appropriate. These services will allow Student to target her independent living skills and further aid her transition from School.

D. Systemic IDEA Violation

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are “critical” to the 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).¹⁴

Here, nothing in the record indicates that District’s failure to properly tailor IEPs is systemic in nature. Instead, these violations likely resulted from Special Education Teacher’s new role as Student’s case manager and the IEP Team’s view of Student as a hardworking, successful student, causing them to overlook some of her disability-related needs. For these reasons, the SCO finds and concludes that the violation is not systemic in nature.

Conclusion to Allegation No. 2: No decisions were made at the meeting held on February 17, 2021, and, therefore, no PWN was required. No violation of 34 C.F.R. § 300.503(a) occurred. However, the District’s inaction on Student’s Transition Plan violated 34 C.F.R. § 300.324. This violation resulted in a denial of FAPE.

In her Complaint, Parent asserted that the District failed to provide adequate documentation regarding the IEP Team’s determination of Student’s eligibility for the District’s transition program following a meeting held on February 17, 2021.

The IDEA requires PWN to be provided to the parents of a child with a disability within a reasonable time before the public agency:

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. § 300.503(a). Failure to provide prior written notice within a reasonable time before refusing to initiate or change a student’s identification constitutes a procedural violation that may result in a denial of FAPE. *See El Paso County Sch. Dist. 2*, 113 LRP 44602 (SEA CO 08/15/13). The notice must be provided so that parents have enough time to fully consider and respond to the action before it is implemented. *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). But, for changes made at an IEP Team meeting, the PWN must be sent after the meeting, not before. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46691 (2006). Providing PWN before the meeting would suggest that the decisions were made before the meeting and without parental input. *Id.*

PWN must include a description of the action proposed or refused by the district; an explanation of why the district proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; a description of other options the IEP team considered and the reasons why those options were rejected; and a description of any other factors relevant to the district’s proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(3) and (6)-(7). It must also include a statement that the parents of a child

with a disability have protections under the procedural safeguards and the means of obtaining a copy if the notice is not for an initial evaluation, and sources for parents to contact to obtain assistance in understanding the procedural safeguards. *Id.* § 300.503(b)(4)-(5).

As the Findings of Fact demonstrate, the February 2021 meeting was not an IEP Team meeting, and no decisions were made regarding Student’s Transition Plan or Student’s eligibility for District’s Transition Program during the meeting. (FF #s 30, 31.) Instead, the attendees reviewed the new assessments and discussed transition options for Student. (FF # 29.) At the conclusion of the meeting, Parent requested time to consider the various options. (FF # 30.) Because no decisions were made during the meeting, District neither proposed nor refused to take any action. Thus, the requirements for PWN were not triggered, and no PWN was required. As such, the SCO finds and concludes that District did not violate 34 C.F.R. § 300.503.

However, the District’s inaction on Student’s Transition Plan resulted in a second violation of 34 C.F.R. § 300.324. After Parent expressed concerns about the adequacy of Student’s Transition Plan, the District collected additional data and agreed to review the plan. (FF #s 26, 27.) During the February 2021 meeting, the District presented Parent with myriad options for Student’s transition planning and services, but no decisions were made at that meeting. (FF # 29.) No further discussions occurred, and no decisions were made before Student’s graduation. (FF # 33.) By not taking any action, the District left the determination of Student’s FAPE—at least with regard to transition services—up to Parent. Under the IDEA, determinations of a student’s special education and related services must be made by the IEP Team. 34 C.F.R. § 300.324. Even though Parent indicated she needed time to consider the options, the District cannot delegate IEP Team decisions to Parent. For these reasons, the SCO finds and concludes that the District failed to convene Student’s IEP Team during Spring 2021 to consider recent assessment data and review (and, if necessary, revise) Student’s Transition Plan in light of the data, consistent with 34 C.F.R. § 300.324(b). This failure resulted in a procedural violation of 34 C.F.R. § 300.324.

A. Procedural Violation

As explained above, a procedural violation may result in a violation of FAPE if the procedural violation: (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent’s opportunity to participate in the IEP process).

For the reasons outlined in Part C of the analysis of Allegation No. 1, the SCO finds and concludes that this procedural violation resulted in a denial of FAPE. Here, the failure to review Student’s Transition Plan in light of the new assessments only compounded the existing violation of 34 C.F.R. § 300.324 that resulted from the District’s failure to tailor Student’s IEP to her needs.

B. Compensatory Education

Because this second violation merely compounded the existing violation of 34 C.F.R. § 300.324, no additional award of compensatory education is warranted here.

C. Systemic IDEA Violation

As noted above, pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2).

Again, nothing in the record indicates that the District's additional violation of 34 C.F.R. § 300.324 is systemic in nature. For this reason, the SCO finds and concludes that the violation is not systemic in nature.

REMEDIES

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

- a. Failing to tailor an IEP to a student's individualized needs, in violation of 34 C.F.R. § 300.324; and
- b. Failing to consider recent assessment data and determine whether any revision was necessary to a student's IEP, in violation of 34 C.F.R. § 300.324.

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

1. Corrective Action Plan

- a. By **Monday, May 23, 2022**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violation 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. Attendance and completion of training provided by CDE on transition services. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.43, 300.320(b), 300.324 and ECEA Rules 2.51 and 4.03(6)(d) and the related concerns addressed in this decision. Director of Special Education and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is

mandatory for Special Education Teacher. Such training shall be completed no later than **Monday, June 13, 2022.**

- ii. 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 the CDE no later than **Monday, June 20, 2022.**
- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **10 hours of transition services** provided by District through District's 18-21 Transition Program. These services must target the areas of need identified in the TPI and LCCE, with particular focus on development of Student's daily living skills. All 10 hours must be completed by **Monday, August 22, 2022.**
- b. To verify that Student has received the services required by this Decision, the District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
 - i. **By Monday, June 6, 2022,** the District shall schedule compensatory services in collaboration with Parent. 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. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
 - ii. The District shall submit the schedule of compensatory services to the CDE no later than **Monday, June 13, 2022.** If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that

session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

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

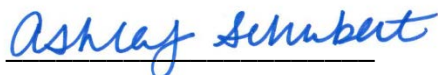
Colorado Department of Education
Exceptional Student Services Unit
Attn.: Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE 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. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 24th day of April, 2022.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Exhibit 1: Email Correspondence

Response, pages 1-12

- Exhibit A: IEPs
- Exhibit B: Blank
- Exhibit C: PWNs
- Exhibit D: Service Logs
- Exhibit E: Progress Monitoring Reports
- Exhibit F: Grade Reports
- Exhibit G: District Policies and Procedures
- Exhibit H: Email Correspondence
- Exhibit I: Blank
- Exhibit J: Blank
- Exhibit K: Meeting Notes
- Exhibit L: 2019-2020 IEP and Eligibility Documents

Reply, pages 1-3

- Exhibit 2: Email Correspondence

Telephone Interviews

- Assistant Director of Special Education: April 5, 2022
- Parent: April 7, 2022
- Special Education Teacher: April 5, 2022
- Transition Services Teacher: April 5, 2022