

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

State-Level Complaint 2022:533
Mesa County Valley School District 51

DECISION

INTRODUCTION

On July 18, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Mesa County Valley School District 51 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified five 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 July 18, 2021 through July 18, 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 an IEP tailored to Student’s individualized needs in October 2021, in violation of 34 C.F.R. §§ 300.320 and 300.324, specifically by:
 - a. Failing to develop annual goals designed to meet Student’s needs.

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.

2. Deprived Parent of meaningful participation in the IEP Team meetings held on October 22, 2021 and December 8, 2021, in violation of 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1)(ii), and 300.501(b)-(c).
3. Failed to properly implement Student’s IEP between August 1, 2021 and May 31, 2022, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide Student the service minutes for adaptive PE, literacy, and academic access, as required by his IEP.
4. Failed to monitor Student’s progress on annual IEP goals and provide Parent with periodic reports on Student’s progress from August 1, 2021 to May 31, 2022, in violation of 34 C.F.R. §§ 300.320(a)(3).
5. Amended Student’s IEP between January 2022 and March 2022 without agreement from Parent and outside of an IEP Team meeting, in violation of 34 C.F.R. § 300.324(a)(6).

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 is a seventh grader at a District middle school (“School”). *Interview with Parent*. This investigation concerns Student’s sixth-grade year at School. *Id.* During sixth grade, Student attended choir, lunch, recess, science, and social studies with general education students. *Interview with Case Manager*. He received language arts and math instruction in the significant support needs (“SSN”) classroom. *Id.*
2. Student is eligible for special education and related services under the disability categories of Other Health Impairment (“OHI”) and Autism Spectrum Disorder (“ASD”). *Exhibit A*, p. 7.
3. Student is social and enjoys interacting with his peers, though at times he has difficulty reading social cues. *Interviews with Case Manager and Parent*. He loves music and has enjoyed singing in choir at School. *Id.* Student also participates in Unified Sports after school with his general education peers *Id.* At School, Student struggles with changes in routine and staying focused on non-preferred tasks. *Id.*

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

B. Student's March 2021 IEP

4. Student's IEP dated March 18, 2021 ("March 2021 IEP") was in effect when the 2021-2022 school year began. *Exhibit 2*, pp. 2-29.
5. The March 2021 IEP reviewed Student's present levels of performance, noting that Student had met or partially met the majority of his annual goals for the prior IEP year, including a math goal regarding counting back change up to \$10.00. *Id.* at pp. 3-9. The March 2021 IEP indicated that math was Student's strongest subject and provided extensive detail regarding Student's performance in all instruction/service areas. *Id.*
6. As noted in the March 2021 IEP, Student's disabilities impacted his ability to access general education and necessitated additional support in the areas of academics, communication, and motor skills. *Id.* at pp. 10-11.
7. The March 2021 IEP contained seven goals targeting Student's reading, writing, math, self-determination, physical motor, and communication skills. *Id.* at pp. 16-20. Of note, Student's math goal stated:
 - Goal 3: [Student] will convert and compare two fractions with different numerators and different denominators, e.g., by creating common denominators or numerators or by comparing to a benchmark fraction such as $\frac{1}{2}$, with symbols $>$, $=$, or $<$, and justify the conclusions, e.g., by using a visual fraction model at 80% accuracy.

Id. at p. 16.
8. The March 2021 IEP provided Student numerous accommodations, including, in part, peer support, technology or a scribe for writing, visual reminders and schedules, and manipulatives for math. *Id.* at pp. 20-21. Student was instructed using a modified curriculum. *Id.*
9. Under the March 2021 IEP, Student received the following special education and related services:
 - Specialized Instruction:
 - Literacy: 1,800 minutes per month of direct literacy instruction provided by a special education teacher outside the general education classroom; and
 - Math: 900 minutes per month of direct math instruction provided by a special education teacher outside of the general education classroom.

- Academic Access Services:
 - 1,200 minutes per month of direct academic access services provided by a special education teacher outside the general education classroom; and
 - 1,300 minutes per month of direct academic access services provided by a special education teacher inside the general education classroom.
- Occupational Therapy: 60 minutes per month of direct occupational therapy provided by an occupational therapist outside the general education classroom.
- Adapted Physical Education: 100 minutes per month of direct adapted physical education provided by an adapted P.E. teacher outside the general education classroom.
- Speech/Language Services: 90 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education environment.

Id. at pp. 24-25.

10. Per the March 2021 IEP, Student spent 40-79% of the time in the general education environment. *Id.* at p. 26.

C. Parent's Concerns and October IEP Team Meeting

11. In August 2021, Student began middle school at School. *Interview with Parent*. His case manager was a first-year SSN teacher. *Interview with Case Manager*.

12. At the beginning of the school year, Case Manager provided a snapshot of Student's March 2021 IEP to each of his teachers and service providers. *Id.* District staff also had electronic access to Student's IEP. *Id.* As Student's IEP changed during the school year, Case Manager provided updated snapshots to his teachers and service providers. *Id.*

13. In early October, Parent met with Case Manager for Student's parent-teacher conference. *Interview with Parent*. During the conference, Case Manager and Parent discussed Student's math curriculum. *Id.* After researching the curriculum, Parent became concerned that it would not be challenging enough for Student. *Id.*; *Exhibit K*, p. 66. Parent already had concerns about the language arts program Case Manager was using. *Exhibit K*, p. 66.

14. Parent emailed Special Education Coordinator ("Coordinator") on October 18, to request "an IEP Team meeting to discuss SSN programming for [language arts] and math, current goals,

and progress monitoring.” *Id.* at p. 65. The District promptly scheduled an IEP Team meeting for October 26. *Id.* at p. 71.

15. On October 21, Parent sent an agenda to Coordinator and Case Manager, outlining the issues she wanted to discuss at the IEP Team meeting. *Id.* at pp. 71-72. The agenda contained twelve numbered items with topics or questions. *Id.* Some of the agenda items included reviewing Student’s reading, writing and math goals, reviewing his progress monitoring, answering Parent’s specific questions about the curricula, and reviewing other available curricula. *Id.*
16. On October 26, the District convened a properly composed IEP Team to address Parent’s concerns. *Interviews with Case Manager and Parent.* Parent and her advocate attended the meeting. *Id.* Instead of addressing only Parent’s concerns, Case Manager conducted the meeting as if it were an annual review meeting, working through each section of Student’s IEP. *Id.*
17. Student’s teachers and service providers (including his science and social studies teachers) discussed updated information on Student’s present levels of performance and current progress on his IEP goals. *Id.* Case Manager asked Parent her thoughts on adding a money goal for Student. *Interview with Parent.* Prior to the IEP Team meeting, Case Manager reviewed Student’s prior math goals and noted that he had not worked on a money multiplication goal before (even though he had worked on making change up to \$10.00 during the prior school year). *Interview with Case Manager.* Case Manager seemed enthusiastic about the goal, so Parent agreed. *Interview with Parent.* Parent did not express any concern about the new math goal during the IEP Team meeting. *Interviews with Case Manager and Parent.*
18. The IEP Team discussed the curricula at issue but did not “go point-by-point” through Parent’s agenda. *Id.* Parent participated in the meeting, and District staff thoughtfully considered her feedback and suggestions. *Interview with Case Manager.* Case Manager felt that all of Parent’s questions had been answered. *Id.* Ultimately, however, Parent felt that she did not get all the answers she wanted about Student’s curricula. *Interview with Parent.*
19. The day after the meeting, Parent emailed the IEP Team to thank them:

I want to thank you all for your participation at [Student’s] IEP meeting, for being a part of [Student’s] team, and for playing such an important role in his middle school growth and experience. Thank you all for your patience and flexibility in covering all parts of his IEP. When I called this meeting, I originally wanted to talk about a limited scope and didn’t realize we would be covering all parts of his IEP. It was reassuring though to hear about his overall growth and how you are supporting him in so many other areas too.

Exhibit K, p. 82.

D. October 2021 IEP

20. The IEP Team meeting resulted in a new IEP dated October 26, 2021 (“October 2021 IEP”). *Exhibit A*, pp. 149-71.
21. The October 2021 IEP contained updated information on Student’s present levels of performance, noting that Student was making progress on his IEP goals but had not yet met those goals. *Id.* at pp. 151-57. Student’s science and social studies teachers provided information regarding his performance in their classes. *Id.*
22. The discussion of Student’s math performance indicated that Student was “able to verbally compare fractions with the same denominator with 100% accuracy. [Student] is able to compare fractions with different numerators and denominators using a visual fraction model with 62% accuracy.” *Id.* at p. 151. The IEP did not contain the results of any math assessments. *Id.* at pp. 151-57.
23. The October 2021 IEP revised Student’s existing math goal from the March 2021 IEP and added a second math goal. *Id.* at p. 162. Student’s two math goals stated:
- Goal 4: “With visual representations, [Student] will compare, convert between, and order fractions, decimals, and percent at 80% accuracy on a targeted curriculum-based assessment.”
 - Goal 5: “With a set of 10 problems, [Student] will be able to multiply multi-digit money problems with 80% accuracy.”

Id.

24. Student’s specialized math instruction was increased to 1,300 minutes per month of direct instruction. *Id.* at p. 169. His academic access services were reduced to 1,800 minutes per month of direct academic access services inside the general education classroom. *Id.*
25. Other than these changes, the rest of the October 2021 IEP remained the same as the March 2021 IEP. *See id.* pp. 149-71; *Exhibit 2*, pp. 2-29.

E. Parent’s Continued Concerns

26. After the October 2021 IEP Team meeting, Parent’s concerns persisted. *Id.* Additionally, Parent felt the October 2021 IEP was inaccurate and incomplete in areas. *Id.*

27. On November 7, Parent sent Case Manager a detailed email setting forth her concerns. *Exhibit K*, pp. 104-05. Specifically, Parent expressed concern about Student's IEP goals, input from teachers, the impact of disability statement, and the Parent input section of the IEP. *Id.*
28. Coordinator responded and indicated that an IEP Team meeting would be necessary to address Parent's concerns. *Id.* at p. 104.
29. On December 5, Parent sent an email with an attached agenda listing the concerns she wanted to address at the IEP Team meeting. *Id.* at pp. 120-22. Her agenda included: Student's present levels of performance, the impact of disability statement, parent input, IEP goals, accommodations, and Student's service delivery. *Id.*
30. The District convened Student's IEP Team again on December 8, 2021. *Exhibit A*, p. 2. Parent and her advocate attended. *Id.* at p. 3. During this meeting, Parent again freely participated and offered her own suggestions. *Interviews with Case Manager and Parent*. Parent acknowledged that the IEP Team discussed most of her agenda items. *Complaint*, p. 7.
31. Before both IEP Team meetings, Case Manager gathered information from other IEP Team members to be able to address the items on Parent's agendas. *Interview with Case Manager*. Case Manager felt that the IEP Team discussed Parent's concerns during each meeting and does not recall Parent expressing otherwise during the meetings, only afterwards. *Id.*

F. December 2021 IEP

32. The IEP Team meeting resulted in a new IEP dated December 8, 2021 ("December 2021 IEP"). *Exhibit A*, pp. 7-30.
33. The December 2021 IEP contained updated information on Student's present levels of performance, including recent assessment results. *Id.* at pp. 9-13. This section noted that Student was making progress on most of his IEP goals but had not made any progress on his math goal regarding converting fractions, decimals, and percentages. *Exhibit K*, p. 183. Case Manager noted that:

When converting fractions to decimals [Student] had a difficult time with the concept of division. With progress monitoring and gap analysis it was determined that [Student] would benefit from working on his division skills.

Id. at p. 183.

34. As a result, Student's math goal regarding converting fractions, decimals, and percentages was replaced. *Id.* at p. 190. The new math goal targeted Student's division skill gap. *Id.* The December 2021 IEP contained the following math goals:

- Goal 1: “[Student] will be able to solve division problems up to 100 with 80% accuracy as measured every two weeks.”
- Goal 2: “With a set of 10 problems, [Student] will be able to multiply multi-digit money problems with 80% accuracy.”

Id. at pp. 190-91.

35. The December 2021 IEP also contained new parent input authored by Parent. *Id.* at pp. 14-15.
36. The remainder of the October 2021 IEP remained unchanged in the December 2021 IEP. *See id.* at pp. 181-200.

G. Further Meetings and IEP Amendments

37. On December 13—five days after the IEP Team meeting—Parent emailed Coordinator and Case Manager requesting a meeting to discuss Student’s “math instruction, levels, and goals.” *Id.* at pp. 126-27. Parent specifically asked that the meeting not be an IEP Team meeting but, instead, a less formal meeting where the participants could have a more in-depth discussion. *Id.* Parent and the District agreed to meet after Winter break. *Id.*
38. Throughout early January, Case Manager, Coordinator, and Parent exchanged emails about errors or omissions in the December 2021 IEP. *Id.* at pp. 145-56, 238-43. Ultimately, the District amended Student’s December 2021 IEP in January (“January 2022 Amendment”). *Exhibit A*, pp. 43-45. Parent signed a form, agreeing to amend Student’s IEP outside of an IEP Team meeting. *Id.* The consent form indicated that the purpose of the January 2022 Amendment was to correct clerical errors and include input from teachers and service providers who were excused from the December IEP Team meeting. *Id.*
39. In advance of the meeting, Case Manager sent Parent recent math assessment data. *Id.* at pp. 157-60. The data showed skill gaps in geometry and division. *Id.* Parent replied, indicating that she agreed with regard to geometry but disagreed as to division. *Id.* Parent felt Student demonstrated division skills when challenged at home. *Id.*
40. On February 25, Parent, Case Manager, and other District staff met to discuss Student’s math needs. *Interview with Case Manager*. The attendees at this meeting agreed that Student had mastered Goal 1 from the December 2021 IEP (the math goal regarding division up to 100) and agreed that Student needed a goal targeting long division. *Interview with Parent*. Case Manager indicated she would send Parent a draft goal after the meeting. *Id.*
41. Case Manager emailed Parent a draft goal on March 4. *Exhibit K*, p. 380. Parent thought the goal needed more specificity and sent a revised draft goal. *Id.* Neither Case Manager nor

Parent recalled any further discussion about the revised goal until parent-teacher conferences in May. *Interviews with Case Manager and Parent.*

42. In early May, Case Manager sent an amendment form home for Parent to sign. *Id.* Parent signed the form, agreeing to the amend Student's IEP outside of an IEP Team meeting. *Exhibit 4*, p. 150. The amendment to the December 2021 IEP was finalized on May 4, 2022 ("May 2022 Amendment"). *Exhibit A*, pp. 7-30. As amended, the December 2021 IEP contained the following two math goals:

- Goal 1: "[Student] will find whole-number quotients with up to 3-digit dividends and one-digit divisors with 80% accuracy when given a set of 10 problems by the end of the IEP cycle."
- Goal 2: "With a set of 10 problems, [Student] will be able to multiply multi-digit money problems with 80% accuracy."

Id. at pp. 17-18.

H. Implementation of Student's IEPs

43. In her Complaint, Parent asserted that Student did not receive all of the special education and related services required by his IEPs during the 2021-2022 school year. *Complaint*, p. 2. Specifically, Parent alleged the District failed to provide Student with all of the required service minutes for adapted P.E., literacy instruction, and academic access. *Id.* In her Reply, Parent acknowledged that Student received the required literacy instruction but maintained her argument as to Student's adapted P.E. and academic access services. *Reply*, p. 2.

44. The expectation in the District is that delivery of all special education and related services will be documented in a service log. *Interview with Special Education Coordinator for Compliance ("Compliance Coordinator")*.

45. Throughout the school year, Student's IEPs required that he receive 100 minutes per month of directed adapted P.E. services outside the general education classroom. *See Exhibit 2*, p. 9; *Exhibit A*, pp. 27, 169. The District conceded that Student did not receive all of the adapted P.E. required by his IEPs. *Exhibit N*, pp. 4-5. Indeed, the service logs indicate that Student received only 180 minutes of adapted P.E. throughout the school year, with no adapted P.E. being provided after March 18, 2022. *Exhibit F*, pp. 7-58. An additional 120 minutes of adapted P.E. were provided to Student inside the general education classroom, inconsistent with the requirements of his IEP. *Id.* The District failed to provide Student approximately 750 minutes of adapted P.E. during the 2021-2022 school year. *See Exhibit F*, pp. 7-58.

46. Student's IEPs also required him to receive academic access services inside the general education classroom and outside the general education classroom. *See Exhibit 2*, p. 9; *Exhibit*

A, pp. 27, 169. Depending on the IEP, the amount of service minutes varied. *Id.* The December 2021 IEP indicated that Student would:

receive[] academic access support for social studies and science inside the general education classroom from the Special Education Teacher supporting understanding the content, expectations, and pre-teaching. Outside of the general education classroom he receives assistance with completing general education classroom modified assignments.

Exhibit K, p. 197.

47. The District's service logs do not document any academic access services being provided to Student prior to January 4, 2022, even though those services were required all year. *Exhibit F*, pp. 7-58. When asked about this, Case Manager indicated that she (or a paraprofessional under her supervision) provided Student the required support in his science and social studies classroom. *Interview with Case Manager*. At the time, Case Manager did not realize she needed to document these services in accordance with the District's practice. *Id.*
48. After receiving guidance from her mentor, Case Manager began documenting the academic access services in January 2022. *Id.* During third quarter, Student's academic access services were consistently documented in the service logs. *See Exhibit F*, pp. 7-58. However, during fourth quarter, the services were not consistently documented. *Id.* Case Manager indicated that, even though the services were not always documented in the service log, she provided the services to Student during each science and social studies class every day Student was at School. *Interview with Case Manager*.
49. Based on the consistency in Student's schedule and later service logs, the SCO finds that Student received the academic access minutes required by his IEPs.

I. Progress Monitoring

50. Each of Student's IEPs indicated that Student's progress on his IEP goals would be monitored regularly and progress reports would be provided quarterly. *See, e.g., Exhibit A*, p. 158. The District expects staff to monitor students' progress every two weeks. *Interview with Compliance Coordinator*. When an IEP review meeting is held near the end of a quarter, the District often reports a student's progress at the IEP Team meeting in lieu of providing a progress report. *Id.*
51. First quarter ended on October 13. *Exhibit I*, p. 2. Parent asked about Student's progress report during the IEP Team meeting on October 26. *Interview with Parent*. On November 2, Parent emailed Case Manager to ask about the status of Student's first quarter progress report, noting that first quarter ended more than two weeks earlier. *Exhibit K*, p. 92. The following day, Case Manager emailed Parent Student's progress report. *Id.*

52. The first quarter progress report tracked Student's progress on each of his IEP goals. *Id.* at pp. 93-97.
53. However, Student's second quarter progress report failed to track his progress on all of his IEP goals. *See Exhibit G*, p. 9-14. Specifically, that progress report did not contain any data points or commentary regarding Student's progress on goals 6 and 8. *Id.* Many of the other goals contained a data point or two but provided no commentary regarding Student's progress. *Id.*
54. The third quarter progress report tracked Student's progress on each of his IEP goals. *Id.* at pp. 2-8.
55. Yet—as with second quarter—the fourth quarter progress report was incomplete. *See id.* Specifically, the fourth quarter report did not include any progress monitoring for goals 2 and 4 for that quarter. *Id.* Additionally, the progress monitoring for goal 6 was not substantive in that it did not provide any information tied to Student's IEP goal. *Id.*
56. Student's progress reports showed that he made progress on the math goal regarding multiplication of money throughout the school year. *Id.* at p. 3. Student increased from a baseline score of 50% accuracy in October 2021 to 70% accuracy in May 2022. *Id.* Though Student made progress, he had not yet met this goal by the end of the school year. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The October 2021 IEP was tailored to Student's individualized needs, as required 34 C.F.R. § 300.320(a)(2). No violation of the IDEA occurred.

Parent's first allegation contends that the October 2021 IEP was not tailored to Student's individualized needs for two reasons: (1) the math goal was not supported by data; and (2) the IEP lacked an academic access goal.

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.

The inadequacies alleged by Parent are addressed below in light of these legal standards.

A. Annual Goals

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 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. *Id.* § 300.320(a)(2).

Under the first prong of the *Rowley* standard, nothing in the record indicates that the October 2021 IEP did not comply with the IDEA’s procedural requirements. Indeed, the October 2021 IEP was developed at a properly convened IEP Team meeting and contained the required IEP elements. (FF #s 16-18, 20-36.) Parent has not alleged that the October 2021 IEP was procedurally deficient; instead, she argues that one of annual goals developed by the IEP Team was inadequate and that a necessary goal was missing. Therefore, the SCO finds and concludes that the October 2021 IEP 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. Here, the SCO individually examines each of Parent’s concerns to determine whether the October 2021 IEP was reasonably calculated to enable Student to receive an educational benefit.

Math Goal

First, Parent challenges the suitability of the math goal added to Student’s October 2021 IEP. That goal targeted Student’s ability to multiply multi-digit money problems. (FF # 34.) Parent alleges this goal was not supported by any information in Student’s present levels of performance or any data. Case Manager developed this goal after reviewing Student’s prior IEPs and recognizing that he had not worked on multiplication with money problems yet (though he had worked on addition and subtraction in money problems). (FF # 17.)

The October 2021 IEP did not expressly identify multiplication of money as a skill gap. Case Manager developed this goal—which she considered to be a useful life skill for all students—after noticing Student had not previously worked on a money multiplication goal. (FF # 17.) Nothing in the record indicates that including this goal in Student’s IEP somehow prevented him from receiving an educational benefit. This goal was supplementary to Student’s existing math goal. (FF # 34.) And, indeed, Student made progress on this goal throughout the seven months he was working on it, suggesting that the goal allowed him to grow and receive an educational benefit. (FF # 56.)

Academic Access Goal

Second, Parent contends that the October 2021 IEP failed to include a goal related to Student's academic access services.

Under the IEP, Student received academic access services to allow him to participate in general education science and social studies classes. (FF #s 24, 46.) With these services, Case Manager helped to pre-teach content and ensure Student understood the content. (FF # 46.) Outside of the general education classroom, Case Manager worked with Student on modified assignments from the general education classes. (FF # 46.) Without a goal measuring his response to these services, Parent argues his IEP Team could not determine if he was responding to the instruction.

The SCO respectfully disagrees. Student's IEPs contain input from his general education science and social studies teachers. (FF # 17.) And Parent can use Student's grades to gather information on how Student is responding to his academic access services. Student's IEP Team *could* have developed a goal tied to Student's academic access services, but such a goal was not *necessary* for Student to be able to benefit from the services themselves or the general education courses in which he received them. For these reasons, the SCO finds and concludes that Student's October 2021 IEP was reasonably calculated to allow him to receive an educational benefit even without an academic access goal.

The October 2021 IEP satisfies the second prong of the *Rowley* standard. The SCO, therefore, finds and concludes that Student's 2021 IEP—at least with regard to goals—was appropriately tailored to Student's needs, as required by 34 C.F.R. § 300.320. No violation of the IDEA occurred.

Conclusion to Allegation No. 2: Parent had an opportunity to meaningfully participate in the IEP Team meetings held in October and December 2021, consistent with 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). No violation of the IDEA occurred.

The second allegation accepted for investigation concerns Parent's participation at IEP Team meetings held on October 22, 2021 and December 8, 2021. Parent alleged she was denied meaningful participation in both meetings because not all of her questions regarding curricula were answered and because the resulting IEPs contained inaccuracies.

The IDEA requires that parental participation be meaningful, to include carefully considering parents' concerns for enhancing the education of the child. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii). Meaningful consideration occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful consideration does not require that a school district simply agree to whatever a parent has requested. *Jefferson Cnty. Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). But parental participation must be more than "mere form."

R.L. v. Miami-Dade Cnty. Sch. Bd., 757 F.3d 1173, 1188 (11th Cir. 2014). “It is not enough that the parents are present and given an opportunity to speak at an IEP meeting.” *Id.*

An IEP meeting “serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child.” *Letter to Richards*, 55 IDELR 107 (OSEP 2010). “The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . .” *Id.*

Here, Parent had an opportunity to meaningfully participate in both IEP Team meetings. As the Findings of Fact indicate, the IEP Team meetings were scheduled at Parent’s request and focused, at least in part, on agendas submitted by Parent. (FF #s 14-16, 18, 27-31.) Parent and her advocate attended both meetings. (FF #s 16, 30.) Nothing in the record indicates that Parent was unable to speak freely during the meetings or that her suggestions were not given thoughtful consideration by the IEP Team. (FF #s 18, 30-31.)

In her Complaint, Parent expressed frustration that the first IEP Team meeting did not focus solely on her agenda or answer all of her questions. Case Manager felt that all of Parent’s agenda items had been addressed during the meeting and only learned of Parent’s discontent after the meeting. (FF # 18.) Regardless, each time Parent raised concerns, the District convened a meeting to work through her concerns. (FF #s 14, 27-28.) Parent’s outstanding agenda items from the October IEP Team meeting were answered during the December IEP Team meeting. (FF #s 29-30.) The District was, at all times, highly responsive to Parent, even though not all of her suggestions (particularly those with regard to curricula) were accepted.

Additionally, the fact that the IEPs contained inaccuracies does not bear on Parent’s ability to participate in the meetings themselves. More likely, those inaccuracies reflect that Case Manager was a first-year special education teacher.

For the above reasons, the SCO finds and concludes that the District did not deprive Parent of the opportunity to meaningfully participate in the IEP Team meetings held in October and December 2021.

Conclusion to Allegation No. 3: The District failed to properly implement Student’s IEPs during the 2021-2022 school year, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

Third, Parent alleges that the District failed to properly implement Student’s IEPs during the 2021-2022 school year. Parent specifically contends the District did not provide Student the adapted P.E. and academic access services required by his IEPs.

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.* 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. Knowledge of Student’s IEP

As a preliminary matter, the SCO must determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the findings demonstrate that Case Manager, Student’s teachers, and Student’s service providers were aware of their responsibilities under Student’s 2021 IEP. (FF # 15.) Case Manager provided paper copies of Student’s IEP to his general education teachers and service providers before the beginning of the school year. (*Id.*) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

B. Implementation of Student’s IEP

Parent has alleged the District failed to properly implement Student’s IEP by failing to provide him the adapted P.E. and academic access services required by his IEP.

Adapted P.E.

Student’s IEPs required that he receive 100 minutes per month of directed adapted P.E. services outside the general education classroom. (FF # 45.) As noted in the Findings of Fact, the District failed to provide Student with approximately 750 minutes of adapted P.E. during the 2021-2022 school year. (*Id.*) As a result, the SCO finds and concludes that the District failed to properly implement Student’s IEPs, in violation of 34 C.F.R. § 300.323.

Academic Access

Throughout the school year, Student’s IEPs required that he receive academic access services inside and outside of the general education classroom to allow him to access his general education science and social studies courses. (FF # 46.) Case Manager conceded that she did not perfectly document delivery of Student’s academic access services, in part due to it being her first year as a special education teacher. (FF #s 47-48.) However, Case Manager indicated that Student received the academic access services in science and social studies each day that he was

at School, even if those services were not properly documented. (*Id.*) The IDEA does not require perfection in service logs; indeed, the IDEA itself does not even require service logs.

As explained in the Findings of Fact, the consistency in Student’s schedule and later service logs provides credible evidence that Student received his academic access services in science and social studies. For these reasons, the SCO finds and concludes that Student received the academic access services required by his IEP, consistent with 34 C.F.R. § 300.323.

C. Materiality of Failure to Implement

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. App’x 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. Dist. 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. App’x 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. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

Here, the District failed to provide Student with one of his related services for nearly the entire school year. This violation amounts to more than minor discrepancy between the services Student received and those required. For these reasons, the SCO finds the District’s failure to implement Student’s IEPs to be material. This failure resulted in a denial of FAPE to Student. Given the degree to which a FAPE was denied, “Student is entitled to compensatory services.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package in order to help place Student in the same position with respect to making progress on IEP goals if not for the violation.

Here, the District failed to provide Student with 750 minutes of adapted P.E. over the course of the school year. (FF # 45.) All of the missed services would have been provided one-on-one. As a result, the SCO finds an award of 540 minutes of adapted P.E. appropriate. Where possible, the compensatory services will be provided to Student during Unified Sports after school. This will allow Student to derive the benefit of adapted P.E. while engaging in Unified Sports with his general education peers.

E. Systemic IDEA Violation

Pursuant to its general supervisory authority, CDE must 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).

Here, it does not appear that the District’s failure to implement Student’s IEPs was systemic in nature. Instead, these violations likely resulted from a single District staff member who did not diligently provide services to Student (or document the provision of those services). Nothing in the record indicates that the District regularly fails to implement students’ IEPs.

Conclusion to Allegation No. 4: The District failed to adequately monitor Student’s progress on Student’s annual IEP goals during the 2021-2022 school year, in violation of 34 C.F.R. § 300.320(a)(3). This procedural violation did not result in a denial of FAPE.

The fourth allegation concerns the adequacy of progress reports the District provided during the 2021-2022 school year. Parent alleges the progress reports were incomplete and, with regard to the first quarter report, untimely.

Under the IDEA, school districts must provide periodic reports on the progress a student is making toward the student’s annual goals. 34 C.F.R. § 300.320(a)(3). As the Findings of Fact demonstrate, the District failed to properly monitor Student’s progress during the second and fourth quarters of the 2021-2022 school year. (FF #s 53, 55.) Each of those progress reports lacked information on at least two of Student’s goals (or 25% of the goals under Student’s IEPs). (*Id.*) For this reason,

the SCO finds and concludes that the District failed to provide Parent with adequate reports on Student's progress, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

In her Complaint, Parent also contests the timeliness of the first quarter progress report. Though first quarter ended on October 13, Parent did not receive the progress report until November 3. (FF # 51.) Three weeks passed between the end of the quarter and delivery of the progress report. Though the IDEA requires school districts to provide periodic reports, it does not dictate that the report be provided in a specific timeframe or by a specific deadline. Though three weeks may have been longer than Parent preferred, the SCO does not find this brief delay to be violative of the IDEA, especially where Student's IEP Team met and discussed Student's progress in the interim. (FF # 17.)

A. Denial of FAPE

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, the District properly monitored Student's progress during the first and third quarter of the school year—or one-half of the school year. (FF #s 52, 54.) However, the progress reports for second and fourth quarter were incomplete. (FF # 53, 55.) Respectively, these progress reports lacked data on two and three of Student's eight IEP goals. (FF # *Id.*) These progress reports were undoubtedly deficient but still provided Parent with information on the vast majority of Student's goals.

The District's failure to properly monitor Student's progress during second and fourth quarter did not significantly impede Parent's right to participate in the decision-making process regarding Student's FAPE. Though Parent lacked some information, Parent attended two IEP meetings during the second quarter, met with Case Manager during third quarter, and had a parent-teacher conference in fourth quarter. (FF #s 16, 30, 40-41.) The incomplete progress reports also had no bearing on Student's right to a FAPE and did not deprive him of an educational benefit. For these reasons, the SCO finds and concludes that the District's procedural violation did not amount to a denial of FAPE.

B. Systemic IDEA Violation

As noted above, CDE must exercise its general supervision authority to 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). As with the District's failure to implement, the failure to properly monitor

Student’s progress on his IEP goals stems from District staff members who did not diligently monitor Student’s progress and/or did not complete the progress report. Nothing in the record suggests that this failure extends throughout the School or the District. For these reasons, the SCO finds and concludes that the violation was not systemic in nature.

Conclusion to Allegation No. 5: The District amended Student’s IEP consistent with 34 C.F.R. § 300.324(a)(6). No violation of the IDEA occurred.

In her Complaint, Parent alleges the District amended Student’s IEP outside of an IEP Team meeting and without Parent’s approval.

Under the IDEA, an IEP may be amended in one of two ways:

- (1) By the entire IEP Team at an IEP Team meeting, or
- (2) In a written document outside an IEP Team meeting, as long as parents and the school district agree.

34 C.F.R. § 300.324(a)(6).

Here, the District amended Student’s IEP twice during the 2021-2022 school year—once in January 2022 and once in May 2022. (FF #s 38, 42.) Both amendments occurred via a written document outside of an IEP Team meeting. (*Id.*) And, on both occasions, Parent signed a consent form and agreed to amend Student’s IEP outside of an IEP Team meeting. (*Id.*) For these reasons, the SCO finds and concludes that the amendments of Student’s IEP complied with 34 C.F.R. § 300.324(a)(6). No violation of the IDEA occurred.

REMEDIES

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

- a. Failing to fully implement an IEP, in violation of 34 C.F.R. § 300.323(c)(2); and
- b. Failing to provide periodic reports on a student’s progress toward annual goals, in violation of 34 C.F.R. § 300.320(a)(3).

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

1. Corrective Action Plan

- a. By **Friday, October 14, 2022**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

- i. Case Manager and Adapted P.E. Teacher must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.320 and 300.323. This review must occur no later than **Friday, October 28, 2022**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, November 4, 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 the District's timely correction of the areas of noncompliance.

2. Compensatory Education Services for Denial of a FAPE

- a. Student shall receive **540 minutes of direct adapted P.E. services** provided by a District adapted P.E. teacher or a general education P.E. teacher in consultation with an adapted P.E. teacher. These services must target Student's current annual IEP goals. All 540 minutes must be completed by **Friday, March 31, 2023**.
- b. **By Friday, October 28, 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 District shall submit the schedule of compensatory services to the CDE no later than **Friday, November 4, 2022**. If the District and Parent cannot agree to a schedule by August 10, 2022, the CDE will determine the schedule for compensatory services by **Monday, November 14, 2022**.
 - i. 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. Where possible, the compensatory services will be provided to Student during Unified Sports after school.
- c. Monthly consultation between the provider(s) delivering compensatory services and Director of Special Education shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and

delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- d. To verify that Student has received the services required by this Decision, the District must submit records of service logs to 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.
- e. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. 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.
- f. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to receive during the school day (including time in general education).

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


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

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will work with the 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 16th day of September, 2022.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-12

- Exhibit 1: Service Logs
- Exhibit 2: IEPs
- Exhibit 3: Progress Reports
- Exhibit 4: Email Correspondence

Response to Request for Information, pages 1-4

- Exhibit A: IEPs
- Exhibit B: Blank
- Exhibit C: Blank
- Exhibit D: Blank
- Exhibit E: Blank
- Exhibit F: Service Logs
- Exhibit G: Progress Reports
- Exhibit H: Attendance and Grade Reports
- Exhibit I: School Calendar
- Exhibit J: District Policies
- Exhibit K: Email Correspondence
- Exhibit L: Blank
- Exhibit M: Delivery Confirmation of Response
- Exhibit N: District's Legal Response

Reply, pages 1-5

Telephone Interviews

- Case Manager: August 26, 2022; September 7, 2022
- Moderate Needs Teacher: August 26, 2022
- Parent: August 26, 2022
- Special Education Coordinator of Compliance: August 26, 2022; September 1, 2022