

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

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**State-Level Complaint 2022:561  
Douglas County School District RE-1**

**DECISION**

**INTRODUCTION**

On November 14, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Douglas County School District RE-1 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation 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**

The Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations of the IDEA that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, this investigation will be limited to the period of time from November 14, 2021 through November 14, 2022 for the purpose of determining if a violation of the IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to properly implement Student’s IEP from November 14, 2021 to present, in violation of 34 C.F.R. § 300.323, specifically by:
  - a. Failing to provide Student the specialized instruction in reading required by her IEP, and

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<sup>1</sup> The IDEA is codified at 20 U.S.C. § 1400, *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1, *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

- b. Failing to provide Student the accommodations required by her IEP.

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following FINDINGS OF FACT (“FF”):

#### **A. Background**

1. Student currently attends sixth grade at a District charter school (“School”). *Interview with Parent*. School serves students in grades kindergarten through eighth grade. *Interview with Special Education Teacher*. A single special education teacher manages School’s caseload of approximately 30 students with IEPs. *Interviews with Special Education Teacher and Speech Language Pathologist (“SLP”)*.
2. Student is eligible for special education and related services under the disability category of Specific Learning Disability. *Exhibit A*, p. 77.
3. Student is a kind, complimentary, chatty girl. *Interviews with Parent, Special Education Teacher, and Writing/Social Studies Teacher*. Reading presents the biggest challenge for Student at School. *Interviews with Parent and Special Education Teacher*. Student currently reads at a third-grade level. *Interview with Special Education Teacher*.

#### **B. Student’s 2021 IEP**

4. During the 2021-2022 school year, Student was in fifth grade at School. *Interview with Parent*. When the school year began, Student’s IEP dated April 9, 2021 (“2021 IEP”) was in effect. *Exhibit A*, pp. 1-23.
5. At the time the 2021 IEP was written, Student was transitioning back to in-person instruction after receiving remote instruction due to the COVID-19 pandemic. *Interview with Parent*. The present levels of performance portion of the 2021 IEP indicated that Student had made progress on her prior IEP annual goals but had not met any of those goals. *Exhibit A*, pp. 4-5. On her most recent i-Ready reading assessment in December 2020, Student scored 451, well below the expected grade level range of 557-629. *Id.* at p. 6. Student’s scores placed her at a first-grade reading level. *Id.* At the time, Student was in fourth grade. *Id.* Student similarly scored below grade level on her August 2020 i-Ready math assessment. *Id.* Student’s score was 390, below the expected grade level range of 465-526. *Id.*

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

6. As noted in the 2021 IEP, Student's disability affected her reading fluency, reading comprehension, and basic writing skills and impacted her ability to access the general education curriculum. *Id.* at p. 9. Student had additional challenges in the areas of sound production and handwriting. *Id.*
7. The 2021 IEP contained five annual goals for reading, writing, communication, and physical motor. *Id.* at pp. 11-17. Specifically, Student's reading and writing goals provided as follows:
  - Reading: Given a passage on her instructional level, Student will read 20/20 or 100% correct words with the support of symbol imagery to be able to visualize sounds and letters in words as a basis for orthographic awareness, phonemic awareness, word attack, word recognition, spelling and contextual reading fluency as evidenced by scoring guides, rubrics, and teacher grades.
  - Writing: Given a written assignment on her instructional level with the support of a graphic organizer, Student will list descriptive key words appropriate to each sentence and write story retell using the target words with correct capitalization, punctuation, spelling, and grammar to 100% accuracy as evidenced by scoring guides, rubrics, and teacher guides.

*Id.* at pp. 11-13.

8. The 2021 IEP provided Student numerous accommodations, including, in part:
  - Preferential seating with teacher discretion,
  - Assessment accommodations driven by Student's needs as determined by the subject teacher,
  - Check-ins for understanding of directions, assignment details, and requirements on longer assignments and monitoring progress,
  - Adult support to model for writing,
  - Oral presentation of all assessments, and
  - Access to a word bank/dictionary/speech-to-text for writing and spelling on classwork and homework.

*Id.* at p. 18.

9. Under the 2021 IEP, Student received the following special education and related services:
  - Specialized Instruction:
    - 240 minutes per month of direct specialized instruction provided by a special education teacher outside the general education classroom to work on Student's reading and writing goals.

- 30 minutes per month of indirect specialized instruction provided by a special education teacher outside the general education classroom. A special education teacher should collaborate with a paraprofessional to provide Student support on her reading and writing goals inside the general education classroom.
- Speech/Language Services: 120 minutes per month of direct speech/language services provided by a speech language pathologist outside the general education classroom.
- Physical Therapy: 120 minutes per month of direct physical therapy provided by a physical therapist outside the general education classroom.

*Id.* at p. 20.

10. Per her IEP, Student spent at least 80% of the time in the general education classroom. *Id.*

### **C. District Policies and Staff Practices**

11. The District requires all schools, including charter schools, to fully implement students' IEPs. *Interview with Special Education Coordinator ("Coordinator")*. To ensure IEPs are implemented, staff must track services provided in Enrich. *Id.* This requirement applies to staff at District schools and charter schools. *Id.*
12. During the school day, the paraprofessionals tracked services provided to students in the special education Resource Room at School using a handwritten daily log. *Interviews with Paraprofessional #1 and Paraprofessional #2; Exhibit D*, pp. 37-151. The written log had columns for time in, time out, student's name, and subject. *Interview with Special Education Teacher; Exhibit D*, pp. 37-151. The written log did not identify which staff member provided the services to each student. *Interview with Special Education Teacher; Exhibit D*, pp. 37-151. However, on or around October 25, 2022, Special Education Teacher revised the written log to include a column for teacher initials. *See, e.g., Exhibit D*, p. 122. Special Education Teacher indicated that she, too, used the written log to track the services she provided, though Paraprofessional #1 was adamant that only paraprofessionals used the written logs until this Complaint was filed. *Interviews with Special Education Teacher and Paraprofessional #1*.
13. At the end of the day, Special Education Teacher transferred the information from the log into Enrich, consistent with District policy. *Interview with Special Education Teacher; Exhibit D*, pp. 1-36. Enrich did not allow Special Education Teacher to select a paraprofessional as a service provider, so all services were entered under Special Education Teacher's name even if she did not provide the service. *Response*, p. 2.

#### **D. Implementation of the 2021 IEP**

14. Prior to the beginning of the school year, Special Education Teacher gave a presentation to School staff regarding the special education students at School. *Interview with Special Education Teacher*. After the presentation, Special Education Teacher provided IEP snapshots to School's teachers. *Id.* Paraprofessional #1 recalled being provided a copy of Student's IEP snapshot. *Interview with Paraprofessional #1*. However, Paraprofessional #2—who was a long-term substitute in the Resource Room during the 2021-2022 school year—indicated she was not aware of the contents of Student's IEP. *Interview with Paraprofessional #2*.
15. As noted above, between November 15, 2021 and January 6, 2022, Student's IEP required her to receive 240 minutes per month of specialized instruction targeting her reading and writing goals. *Exhibit A*, p. 20. The 2021 IEP separately required Student to receive assistance with assessments (such as oral presentation) as an accommodation. *Id.* at p. 18.
16. From November 15 to November 30, Student received 35 minutes of specialized instruction targeting her reading and writing goals. *Exhibit D*, pp. 35-36. Special Education Teacher assisted Student with grammar tests for an additional 20 minutes, but Student was not receiving specialized instruction during that time. *Id.* Based on these facts, the SCO finds that the District failed to provide Student with 85 minutes of specialized reading and writing instruction in November 2021. The CDE does not have the authority to issue findings beyond the one-year time limitation; as a result, the SCO has only held the District accountable for one-half of the required monthly services (or 120 minutes).
17. During December, School provided Student 100 minutes of specialized reading and writing instruction. *Id.* at pp. 32-35. Based on this fact, the SCO finds that the District failed to provide Student with 140 minutes of specialized reading and writing instruction in December 2021.
18. Parent questioned whether Special Education Teacher or one of the paraprofessionals provided Student's specialized reading and writing instruction during the 2021-2022 school year. *Interview with Parent*. At that time, the written logs did not indicate which staff member provided the instruction. *Exhibit D*, pp. 37-121. Special Education Teacher acknowledged that she was the only one trained to provide Student's specialized instruction, as neither Paraprofessional #1 nor Paraprofessional #2 were licensed special education teachers. *Interview with Special Education Teacher*. However, she conceded that she had a substitute when she needed to do testing, interview students, or had a lot of meetings. *Id.* The substitute was not always a special education teacher, and, during the 2021-2022 school year, Paraprofessional #2 frequently substituted for Special Education Teacher. *Interviews with Paraprofessional #2 and Special Education Teacher*.
19. When questioned, Paraprofessional #2 indicated she worked with students using the Read Naturally program during the 2021-2022 school year, though she could not recall whether she worked specifically with Student. *Interview with Paraprofessional #2*. School staff

personally observed Paraprofessional #2 providing Student with reading instruction during the 2021-2022 school year. *Interviews with Paraprofessional #1 and SLP*. Additionally, these staff members could not recall a time in which they witnessed Special Education Teacher providing Student specialized instruction, leading them to believe that Student only received specialized instruction from Paraprofessional #2. *Id.* School staff indicated other students at School had been similarly impacted by Special Education Teacher's failure to provide the specialized instruction required by their IEPs. *Id.*

20. Because the written logs did not identify the staff member providing services and all entries on the Enrich log contain Special Education Teacher's name, the SCO cannot determine which services were provided by Special Education Teacher and which might have been provided by someone other than a special education teacher, such as Paraprofessional #2.
21. Nevertheless, in total, the SCO finds that the District failed to provide Student with 225 minutes of reading and writing instruction required by the 2021 IEP.

#### **E. 2022 IEP**

22. In January 2022, Student's IEP Team developed a new IEP for Student following her triennial reevaluation. *Exhibit A*, p. 77. That IEP was dated January 6, 2022 ("2022 IEP"). *Id.* at pp. 77-99.
23. The present levels of performance portion of the 2022 IEP indicated that Student had made progress on her prior IEP annual goals but had not met any of those goals. *Id.* at p. 80. Student received a score of 451 on an i-Ready reading assessment in December 2021, below the grade level range of 581-640. *Id.* at p. 81. On the Fall 2021 NWEA Assessment, Student scored in the 6th percentile for reading and in the 32nd percentile in math. *Id.*
24. As noted in the 2022 IEP, Student's disability continued to affect her reading fluency, reading comprehension, and basic writing skills and impacted her ability to access the general education curriculum. *Id.* at p. 92. Student had additional challenges in the areas of sound production and handwriting. *Id.*
25. The 2022 IEP contained one annual goal for reading. *Id.* at pp. 93. Specifically, Student's reading goal provided as follows:
  - Reading: Given 10 to 15 multisyllabic words on her instructional level, Student will decode and spell 30% accuracy with emphasis on word origin and word structure as measured by scoring guides, rubrics, or teacher grades.

*Id.* at p. 93.

26. The 2022 IEP provided Student the same accommodations as the 2021 IEP, as well as an additional accommodation requiring teachers to remind Student to turn in her classwork, homework, and projects.

*Id.* at p. 94.

27. Under the 2022 IEP, Student received the following special education and related services:

- Specialized Instruction:
  - 120 minutes per month of direct specialized instruction provided by a special education teacher outside the general education classroom to work on Student’s reading goal.
  - 30 minutes per month of indirect specialized instruction provided by a special education teacher outside the general education classroom. A special education teacher should collaborate with a paraprofessional to provide Student support on her reading goal inside the general education classroom.
- Physical Therapy: 30 minutes per month of indirect physical therapy services provided by a physical therapist outside the general education classroom. The physical therapist should collaborate with Student’s teachers regarding any physical motor concerns.

*Id.* at p. 96.

28. Per her IEP, Student spent at least 80% of the time in the general education classroom. *Id.* at p. 97.

#### **F. Implementation of the 2022 IEP**

29. School resumed on January 4, 2022, following winter break. *Exhibit F*, p. 1. As noted above, Student’s 2022 IEP required 120 minutes per month of specialized reading instruction beginning on January 6, 2022. *Exhibit A*, p. 96.

30. Special Education Teacher provided updated IEP snapshots to School staff throughout the school year as IEPs were revised. *Interview with Special Education Teacher*.

31. In January, Special Education Teacher provided Student with 60 minutes of specialized reading instruction. *Exhibit D*, pp. 27-31. On two occasions—January 11 and January 24—the Enrich log indicated Special Education Teacher separately worked with Student on reading and writing. *Id.* at pp. 28-30. However, on both dates, the written log evidenced only that Special Education Teacher worked with Student on writing. *Id.* at pp. 54, 59. Therefore, the

SCO has not counted those 40 minutes of reading services. The SCO also has not included time spent assisting Student with reading tests, as that assistance fell within Student's accommodations and was not instruction. Based on these facts, the SCO finds that the District failed to provide Student with 60 minutes of reading instruction in January 2022.

32. In February, Student received no specialized reading instruction. The Enrich log stated that Special Education Teacher provided reading intervention on February 1; however, the written log indicated that Student received assistance with writing and math on that date. *Id.* at pp. 26, 63. In Enrich, Special Education Teacher stated that she provided Student with "reading and writing intervention" on February 7, 14, and 28. *Id.* at pp. 23-25. The written log stated only that Special Education Teacher worked with Student on writing those days. *Id.* at pp. 66, 69, and 74. Because the written logs were contemporaneously maintained and carefully demarcate the targeted subject, the SCO finds the written logs to be a more reliable indicator of the type of work done or instruction provided on a given day. Based on these facts, the SCO finds that the District failed to provide Student with 120 minutes of reading instruction in February 2022.
33. In March, the Enrich log suggested Student worked on "reading and writing intervention" on only four days: March 28, March 29, March 30, and March 31. *Id.* at pp. 20-21. Over these four days, Special Education Teacher allegedly provided Student with 285 minutes of reading and writing intervention, while also working with her on writing classwork for 70 minutes. *Id.* If accurate, the Enrich logs show that Special Education Teacher provided Student with 355 minutes (or nearly six hours of instruction/assistance) over that four-day period. No daily written logs were produced for this time period, preventing the SCO from comparing the Enrich and written logs. The SCO inquired as to why the logs were missing but did not timely receive a response given the District's winter break.
34. Nonetheless, the SCO finds the March entries on the Enrich logs to be unreliable. On March 29, Student allegedly received 95 minutes of reading and writing intervention. *Id.* at p. 20. The SCO questions whether Student would have the stamina for 95 consecutive minutes of reading and writing intervention. Additionally, the backloading of so many service minutes on the final four days of the month appears suspect. Assuming Special Education Teacher met with Student on at least one of these days, the SCO gives the District credit for 30 minutes of reading instruction. Based on these facts, the SCO finds that the District failed to provide Student with 90 minutes of reading instruction in March 2022.
35. In April, the Enrich log indicated Student received 240 minutes of "reading and writing intervention" over the three-day period between April 4 and April 6, with 120 minutes of intervention on April 6 alone. *Id.* pp. 19-20. No written logs were provided for this time period. *See id.* pp. 79-80. Similarly, between April 13 and April 15, the Enrich logs showed Special Education Teacher providing Student with 260 minutes of "reading and writing intervention." *Id.* at pp. 18-19. On April 18, the Enrich log stated that Student received 30 minutes of "reading and writing intervention" from 1:30-2:00, while the written log has no



entries for that time period. *Id.* at pp. 18, 85. Instead, the written log showed that Student completed a math practice test from 10:25-11:00, for which a separate entry appears in Enrich. *Id.* at p. 85. For the reasons stated above, the SCO finds these entries on the Enrich logs to be unreliable.

36. An Enrich entry on April 25 indicated that Student received 30 minutes of “reading and writing intervention.” *Id.* at p. 17. No written log was produced for that date, so the SCO finds one-half of the time was used for reading and one-half of the time was used for writing.
37. Assuming Special Education Teacher met with Student at least once between April 4-6 and once between April 13-15, the SCO gives the District credit for 60 minutes of reading instruction. Based on these facts, the SCO finds that the District failed to provide Student with 45 minutes of reading instruction in April 2022.
38. In May, the Enrich logs showed that Student received 30 minutes of “reading and writing intervention” on May 2, 9, 16, and 24. *Id.* at pp. 13-16. No written logs were produced for those dates, so the SCO finds one-half of the time was used for reading and one-half of the time was used for writing. Based on these facts, the SCO finds that the District failed to provide Student with 60 minutes of reading instruction in May 2022.
39. In August, Student received 88 minutes of reading instruction. *Id.* at pp. 10-13. The Enrich log contained three entries for August 24, two for reading and one for math. *Id.* at pp. 11-12. Only one reading session appeared in the written logs, and the SCO has given the District credit for that 11-minute session. *Id.* at p. 94. Though the Enrich log indicated Student received 30 minutes of “reading and writing intervention” on August 29, the written log showed that Student received math assistance but no reading intervention. *Id.* at p. 97. The SCO has not given the District credit for this instruction. Based on these facts, the SCO finds that the District failed to provide Student with 32 minutes of reading instruction in August 2022.
40. In September, the District provided Student 93 minutes of reading instruction. *Id.* at pp. 6-11. As a result, the SCO finds that the District failed to provide Student with 27 minutes of reading instruction in September 2022.
41. In October, Student received 40 minutes of reading instruction. *Id.* at pp. 2-6. The Enrich log stated that Student received 50 minutes of reading instruction on October 24, but the written log showed that the District provided Student 15 minutes of reading support. *Id.* at pp. 3, 121. Additionally, on October 25, the written log stated that Student received 50 minutes of writing help, though the Enrich log indicated Student worked on “reading and writing intervention.” *Id.* The SCO has not given the District credit for these service minutes.
42. Finally, the Enrich logs stated that Student worked on “reading and writing intervention” for 35 minutes on October 27 and 50 minutes on October 31. *Id.* at pp. 2-3. The written logs,

however, indicated that the intervention was provided by Paraprofessional #1. *Id.* at pp. 124, 126. Therefore, these 85 minutes have not been included in the total reading instruction. Based on these facts, the SCO finds that the District failed to provide Student with 80 minutes of reading instruction in October 2022.

43. In November, Student received 243 minutes of reading instruction; however, all 243 minutes were provided by Paraprofessional #1 instead of Special Education Teacher. *Id.* at pp. 1-3; 127-142. These minutes do not satisfy the requirements of the 2022 IEP. *Exhibit A*, p. 96. Based on these facts, the SCO finds that the District failed to provide Student with 120 minutes of reading instruction in November 2022.
44. In total, between January and November 2022, the District failed to provide Student with 634 minutes of reading instruction required by Student's 2022 IEP.
45. School staff questioned whether Student received the specialized instruction required by her 2022 IEP during both the 2021-2022 and the 2022-2023 school years. *Interviews with Paraprofessional #1 and SLP*. Before Parent filed this Complaint, staff only saw paraprofessionals providing instruction to Student. *Id.* School staff indicated other students at School had been similarly impacted by Special Education Teacher's failure to provide the specialized instruction required by their IEPs. *Id.* Staff shared these concerns with Principal during Fall 2022; Principal stated only that she would talk to Special Education Teacher. *Id.*
46. Once this Complaint was filed, Student began working with Special Education Teacher on a more regular basis. *Id.*
47. Additionally, School staff questioned the quality of instruction Special Education Teacher provided to Student (and other students at School). *Id.* During a staff meeting in Fall 2022, Special Education Teacher discussed ways to support Student's reading skills with School's Reading Specialist. *Id.* Reading Specialist works with students in the School's RTI-process but does not support special education students. *Id.* Special Education Teacher indicated she was working with Student on reading syllables but did not have Student read sentences or paragraphs. *Id.* Staff recalled Reading Specialist being surprised that Special Education Teacher was not using sentences or paragraphs with a sixth-grade student. *Id.*

### **G. Implementation of Student's Accommodations**

48. Parent's Complaint alleged that the District failed to implement Student's accommodations in Fall 2022, by not helping Student keep up with her homework, taking points off for late assignments, and not setting her up with speech-to-text. *Complaint*, p. 6.
49. As support, Parent referenced a specific incident that occurred in October 2022. *Id.* On Friday, October 7, students were copying Science Teacher's notes off the board. *Interview with Science Teacher*. Science Teacher noticed that Student was braiding her hair instead of taking

notes. *Id.* Though Student assured Science Teacher that she was taking notes, Science Teacher checked Google classroom and found that Student had not been taking notes. *Id.* Science Teacher told Student she needed to copy the notes over the weekend and show them to Science Teacher on Monday. *Id.* Student did not complete the work over the weekend. *Id.* On Monday, Science Teacher told Student she would have to go to detention during lunch on Tuesday to complete the notes. *Id.*

50. According to Science Teacher, Student was not referred to detention based on her behavior but, instead, because it was a safe, supervised space for Student to complete the notes. *Id.* Science Teacher indicated she occasionally uses detention for other students who need to complete missing work. *Id.*
51. After this incident, Parent met with School staff to discuss adding an accommodation to Student's IEP that required teachers to provide Student with a copy of notes, rather than making Student copy them from the board. *Interviews with Coordinator and Special Education Teacher.* This accommodation was added to Student's IEP on October 30, 2022. *Exhibit A*, pp. 110, 126.
52. Student's teachers indicated they were aware of Student's accommodations and implemented them in their classrooms. *Interviews with Science Teacher and Writing/Social Studies Teacher; Response*, pp. 3-6. Specifically, Students' teachers went over her assignments with her and reminded her to turn in her homework. *Interviews with Science Teacher and Writing/Social Studies Teacher; Response*, pp. 3-6. Science Teacher also regularly provided a list of Student's missing assignments to Special Education Teacher, so that Special Education Teacher could help Student locate or complete those assignments. *Interview with Science Teacher.* Student was not penalized for late assignments. *Interviews with Science Teacher and Writing/Social Studies Teacher.*
53. During Fall 2022, School implemented a system where Student stayed a few minutes after her final period of the day to meet with Writing/Social Studies Teacher to go over her assignments. *Interviews with Coordinator and Writing/Social Studies Teacher.* However, Parent decided to have Student stop participating after only a few days. *Interview with Writing/Social Studies Teacher.*
54. For the last several school years, Student had access to speech-to-text software, though none of Student's teachers recalled her ever using it. *Interviews with Science Teacher, Special Education Teacher, and Writing/Social Studies Teacher.*
55. Based on these facts, the SCO finds and concludes that the District implemented the accommodations in Student's 2022 IEP.

## CONCLUSIONS OF LAW

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

**Conclusion to Allegation No. 1: The District failed to fully implement Student’s 2021 and 2022 IEPs by not providing Student all the required specialized instruction, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE and was systemic in nature.**

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

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

### **A. Implementation of 2021 IEP**

Student’s 2021 IEP required the District to provide Student with 240 minutes per month of specialized reading and writing instruction. (FF # 9.) As detailed in the Findings of Fact, the District failed to provide Student with all of the required instruction in November and December 2021. (FF #s 16, 17, 21.) This failure was not due to Student’s teachers and service providers being unaware of their responsibilities under her IEP. (FF # 14.) Indeed, Special Education Teacher gave a presentation to School staff on School’s special education caseload and provided IEP snapshots to teachers and service providers. (*Id.*) Though Paraprofessional #2—who was a long-term substitute during the 2021-2022 school—indicated she was not aware of Student’s IEP, nothing in the Record suggested the District’s failure to implement was a result of Paraprofessional #2’s lack of knowledge. (FF # 14, 16, 17.) The 2021 IEP required Special Education Teacher to provide Student’s specialized instruction. (FF # 9.) Therefore, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

The District has not offered any explanation as to why it did not provide Student with the services required by the 2021 IEP. Instead, the District asserted that Student received all necessary services, even though the District’s own documentation indicated otherwise. (FF #s 16, 17.) Regardless, because the District failed to provide Student with 225 minutes of specialized reading and writing instruction in November and December 2021, the SCO finds and concludes that the

District did not fully implement Student's 2021 IEP. (FF #s 16, 17, 21.) This resulted in a violation of 34 C.F.R. § 300.323.

### **B. Implementation of 2022 IEP**

Beginning in January 2022, Student's 2022 IEP mandated that she receive 120 minutes of specialized reading instruction provided by a special education teacher. (FF # 27.) As detailed in the Findings of Fact, the District failed to provide Student with the required amount of instruction each month between January 2022 and November 2022. (FF #s 29-45.) Special Education Teacher provided IEP snapshots to School staff at the beginning of each school year and as IEPs were updated during the course of the school year. (FF #s 14, 30.) And Special Education Teacher herself was responsible for providing the missing services. (FF # 27.) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. 300.323(d).

No evidence in the record suggests that the District also failed to implement Student's accommodations under the 2022 IEP. (FF #s 48-55.) Though Parent has expressed concerns over Science Teacher's use of the detention classroom, Science Teacher's action was not contradictory to or otherwise violative of the 2022 IEP. (FF #s 49-50.)

Once again, the District has offered no reason why Student did not receive the services required by the 2022 IEP. But, as detailed above, the District failed to provide Student with 634 minutes of specialized reading instruction. (FF #s 29-44.) Therefore, the SCO finds and concludes that the District failed to fully implement Student's 2022 IEP, resulting in a violation of 34 C.F.R. § 300.323.

### **C. Materiality of Failure to Implement**

The failure to implement a "material", "essential", or "significant" provision of a student's IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with "sister courts . . . that a material failure to implement an IEP violates the IDEA"); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an "essential element of the IEP" denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the "significant provisions of the IEP" denies a FAPE). "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail." *Id.* But a child's educational progress, or lack thereof, may indicate whether there has been more than a "minor shortfall in the services provided." *Id.*

This case involves more than a minor discrepancy between the services required and the services provided. Here, the District neglected to provide Student with the necessary specialized instruction in reading and writing for eleven consecutive months spanning two separate school

years. (FF #s 16, 17, 21, 29-47.) As a mid-year sixth grader, Student reads at a third-grade level. (FF #s 1, 3.) The District's failure undoubtedly impacted Student's ability to improve her reading and writing skills and, as a middle schooler, her ability to access all her general education coursework.

Even though the IDEA does not require school districts to track special education and related services provided to students with IEPs, the District mandates that staff track services in Enrich. (FF # 11.) Special Education Teacher indicated that she and the paraprofessionals tracked all services provided to students using written logs and, subsequently, entered them into Enrich. (FF #s 12, 13.) Therefore, although written logs are not required, the SCO has relied on the District's logs to determine whether Student received the required specialized instruction. The missing written logs and the contradictions in the logs are concerning.

Even when Student was provided specialized instruction, questions exist about who provided those services and whether that individual was qualified to provide reading intervention. (FF #s 18-19.) The manner in which Special Education Teacher, Paraprofessional #1, and Paraprofessional #2 documented the services makes it impossible for the SCO to determine who provided the services on what date (except for services provided after October 2022). (FF # 20.) Indeed, it is possible that Special Education Teacher did not provide Student *any* specialized instruction during the investigation period. (FF #s 19, 45.) Regardless, the SCO has given the District credit for the services logged in Enrich *and* supported by the written log.

For these reasons, the SCO finds and concludes that the District's failure to implement both Student's 2021 IEP and 2022 IEP to be material failures that amount to a denial of FAPE. This denial of FAPE entitles Student to an award of compensatory services. *See Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

#### **D. Compensatory Services**

Compensatory services are 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 services 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).

Here, the District failed to provide Student with a significant amount of services. In total, Student missed approximately 859 minutes of specialized instruction (or over 14 hours). (FF #s 21, 44.) This specialized instruction was the primary component of Student's IEPs and crucial to Student's access to her middle school classes (which all require reading and writing). The SCO accordingly awards Student 180 minutes of specialized writing instruction and 660 minutes of specialized reading instruction.

### **E. Systemic Nature of Violations**

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).

The SCO finds and concludes that this case raises concerns that the District’s failure to implement Student’s IEPs was systemic in nature. School serves students from kindergarten through eighth grade and has only a single special education teacher. (FF # 1.) Special Education Teacher’s caseload contains approximately 30 students. (*Id.*) Her frequent need for substitutes suggests that her caseload may be unmanageable for a single individual. (FF # 18.) Her caseload has also resulted in Student (and other students) receiving instruction from individuals who are not appropriately licensed. (FF #s 18, 19, 43.) School staff—who personally observed students in the Resource Room—were adamant that multiple students did not receive the specialized instruction required by their IEPs during both the 2021-2022 and 2022-2023 school years. (FF #s 19, 45.)

For these reasons, the SCO finds that the District might not have fully implemented other students’ IEPs during his same time period. Below, the SCO has outlined remedies designed to address the systemic violation.

### **REMEDIES**

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

- a. Failing to properly implement an IEP, in violation of 34 C.F.R. § 300.323.

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

#### **1. Corrective Action Plan**

- a. By **Friday, February 17, 2023**, 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. Special Education Director, Coordinator, Principal, Assistant Principal, and Special Education teacher must review this Decision, as well as the

requirements of 34 C.F.R. § 300.323. This review must occur no later than **Friday, February 24, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, March 3, 2023**.

- 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 **180 minutes of direct specialized instruction in writing** provided by a District special education teacher or through a contract between the District and a suitable provider at the District's expense. All 180 minutes must be completed by **Friday, May 26, 2023**.
- b. Student shall receive **660 minutes of direct specialized instruction in reading** provided by a District special education teacher or through a contract between the District and a suitable provider at the District's expense. All 660 minutes must be completed by **Friday, July 28, 2023**.
- c. **By Friday, February 17, 2023**, 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 **Tuesday, February 21, 2023**. If the District and Parent cannot agree to a schedule by February 17, 2023, the CDE will determine the schedule for compensatory services by **Friday, March 3, 2023**.
  - 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.
- d. Monthly consultation between the provider(s) delivering compensatory services and Coordinator 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.

- e. 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.
- f. 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.
- g. 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).

### 3. **Procedures to Address Systemic IDEA Violation**

- a. By **Friday, March 3, 2023**, the District must conduct a systematic review to ensure IEPs for students on Special Education Teacher's caseload were fully implemented between November 15, 2021 and November 15, 2022. In conducting this review, the District must complete the following activities and provide the information to the CDE for review:
  - i. Identify the names of all students on Special Education Teacher's caseload during the relevant time period;
  - ii. Identify the amount of specialized instruction (if any) required by students' IEPs during the relevant time period;

- iii. Review all service logs (both written logs and Enrich logs) to determine whether each student received the specialized instruction required by his or her IEP;
  - iv. Identify the amount of specialized instruction each student received during each month of the relevant time period; and
  - v. Identify the amount of specialized instruction (if any) the District failed to provide each student during each month of the relevant time period.
- b. A proposed template to detail this information (such as an Excel spreadsheet) must be submitted with the District's proposed plan on **Friday, February 17, 2023** for approval by CDE Special Education Monitoring and Technical Assistance Consultant.
- c. If the District determines that it failed to fully implement the IEPs of other students on Special Education Teacher's caseload, then the District must submit a plan to CDE Special Education Monitoring and Technical Assistance Consultant detailing how the District intends to individually determine those students' entitlement to compensatory services by **Friday, March 10, 2023**.
- i. This plan must be consistent with OSEP's guidance for determining compensatory services. *See Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act, 79 IDELR 232 (OSERS 2021), Questions D4-6.*
  - ii. This plan must also be consistent with CDE's guidance for determining compensatory services. *See Special Education & COVID-19 FAQs (CDE 2021), Compensatory Services, available at [https://www.cde.state.co.us/cdesped/special\\_education\\_faqs#compensatory](https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory).*
  - iii. While the above guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.
- d. If CDE Special Education Monitoring and Technical Assistance Consultant and the District agree on the plan by **Monday, March 20, 2023**, the District must use the plan to make individualized determinations about each student's need for compensatory services.

- e. If the District and CDE Special Education Monitoring and Technical Assistance Consultant cannot reach agreement on a plan by **Monday, March 20, 2023** or the CDE has concerns with the District’s plan, the District will respond within two weeks to any record requests from the CDE to allow the CDE to determine the compensatory education awards.
- f. By **Monday, April 24, 2023**, the District must submit to the CDE a prior written notice (“PWN”) for each student whose IEP was not fully implemented. The PWN must detail the type and amount of services the student did not receive, as well as the IEP Team’s determination regarding compensatory education services.

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

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

**NOTE:** Failure by the District to meet any of the timelines set forth above may adversely affect the District’s annual determination under the IDEA and subject the District to enforcement action by the CDE.

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13; Rule 2620-R-2.07(9). 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 13th day of January, 2023.



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Ashley E. Schubert  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-8**

- Exhibit 1: Parent's notes
- Exhibit 2: Email correspondence
- Exhibit 3: Email correspondence
- Exhibit 4: Email correspondence
- Exhibit 5: Email correspondence
- Exhibit 6: Email correspondence
- Exhibit 7: Student's schedule
- Exhibit 8: Annotated service logs

### **Response, pages 1-7**

- Exhibit A: IEPs
- Exhibit B: PWN
- Exhibit C: Notice of Meeting
- Exhibit D: Service logs
- Exhibit E: Progress reports
- Exhibit F: School calendar
- Exhibit G: Student's attendance and grade reports
- Exhibit H: District policies
- Exhibit I: Email correspondence
- Exhibit J: List of District staff
- Exhibit K: Delivery confirmation to Parent

### **Telephone Interviews**

- Coordinator of Special Education: December 15, 2022
- Paraprofessional #1: December 19, 2022; January 5, 2023
- Paraprofessional #2: December 16, 2022
- Parent: December 27, 2022
- Special Education Teacher: December 15, 2022
- Speech Language Pathologist: January 10, 2023
- Science Teacher: December 16, 2022
- Writing/Social Studies Teacher: December 15, 2022