

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

State-Level Complaint 2023:519
Douglas County School District RE-1

DECISION

INTRODUCTION

On February 28, 2023, 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 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

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (“CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from February 28, 2022 to the present 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 develop, review, and revise an individualized education program (“IEP”) that was tailored to meet Student’s individualized needs, from February 28, 2022 to present, by failing to ensure special education and related services in the areas of reading and writing enabled Student to advance appropriately toward attaining annual IEP goals, in violation of 34 C.F.R. §§ 300.320 and 300.324.

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.

FINDINGS OF FACT

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

A. Background

1. Student currently attends sixth grade at a K-8 District charter school (“School”). *Interview with Parent*.
2. Student is eligible for special education and related services under the disability category of Specific Learning Disability. *Exhibit A*, p. 24.
3. Student is witty, kind, gets along well with adults and teachers, and has no problems making friends among her classmates. *Interview with Assistant Principal; Exhibit A*, p. 26. She struggles with her academic work, particularly reading and writing. *Exhibit A*, p. 26. She reads and writes at a second- or third-grade level. *Exhibit A*, p. 29; *Exhibit 5*, p. 15; *Interview with Paraprofessional*.
4. Parent’s concern is that the District removed writing goals and specialized instruction when it revised Student’s IEP on January 6, 2022. *Complaint*, p. 4. The District’s position is that the removal was appropriate because Student had achieved mostly “average” scores for writing on the Woodcock-Johnson test. *Response*, p. 1. The District further indicated that Parent prevented the District from revising Student’s IEP because Parent refused to participate in an IEP meeting until an independent educational evaluation (“IEE”) could be obtained. *Id.* at pp. 1-2.
5. To analyze the concerns about the adequacy of Student’s IEP, it is necessary to examine Student’s writing needs and performance over time, including progress on annual IEP goals.

B. The 2021 IEP: Fourth Grade (2020-2021)

6. A properly constituted IEP Team convened and revised Student’s IEP on April 9, 2021 (“2021 IEP”). *Exhibit A*, p. 1.
7. The 2021 IEP and other documents in the Record provide information on Student’s levels of academic achievement and functional performance in fourth grade. *Id.* at p. 3. Specifically:

² The appendix, attached and incorporated by reference, details the entire Record. The District declined to make student’s special education teacher (“Special Education Teacher”) available for an interview. The SCO will interpret any consequent gaps in the Record against the District. See *CDE State-Level Complaint Procedures*, ¶ 7(a) (2010).

- Student’s teachers reported that she required adult assistance in reading, writing, completing work on her own, and attending to multi-step directions. *Id.* at p. 4.
 - Her progress on her annual writing goal was stated as: “[Student’s] story retell is 32 correct words per minute with adult support. We will continue to work on spelling skills, writing complete sentences and conventions.” *Id.* However, this statement does not use the goal’s required measurement, which was: “Given a written assignments on her instructional level [*sic*] with the support of a graphic organizer use at least three descriptive/key words appropriate to the text and write a complete sentence with correct capitalization, punctuation, spelling and grammar to 20% accuracy.” *Id.* Because the progress report ignores the goal’s performance criteria, it is impossible to determine whether Student had made progress on her goal. *See id.*
 - Student’s scores on the NWEA MAP assessment for language arts—which measures “grammar, mechanics, and the elements of writing”³ independently from reading—were in the seventh percentile for the fall semester and the second percentile in the spring semester. *Id.* at pp. 6, 29; *Exhibit F*, p. 9.
 - She had passing grades on all her academic subjects in fourth grade, including all As and Bs in the final quarter. *Exhibit A*, p. 26; *Exhibit F*, p. 9.
8. Student’s disability meant that her “overall difficulty in reading fluency, reading comprehension, and basic writing skills will impact her access to general education curriculum and classroom” and the IEP Team indicated that “[Student] will benefit with specialized instruction targeting those areas.” *Exhibit A*, p. 9.
 9. The IEP Team set a writing goal, to “expand sentence length and complexity in written work,” with a similar objective as her previous goal but targeting 100% accuracy rather than 20% accuracy. *Id.* at pp. 14-15. The objective provides: “Given a written assignments on her instructional level [*sic*] 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 and grammar to 100% accuracy.” *Id.* at p. 15.
 10. The IEP provided eleven accommodations, five of which targeted writing: (1) “Assessment accommodations . . . as determined by the subject teacher”; (2) “Accommodated spelling grade”; (3) “Adult support to model for writing”; (4) “Extended time and a half for lengthy writing tasks”; and (5) “Access to hand book/word bank/dictionary/speech to text for writing and spelling for classwork/homework.” *Id.* at p. 18.
 11. The IEP provided special education services. *Id.* at p. 20. As relevant here, the IEP provided 240 minutes per month of direct specialized instruction outside of the general education

³ NWEA, *MAP Growth Technical Report*, p. 11 (March 2019) available at https://www.nwea.org/uploads/2021/11/MAP-Growth-Technical-Report-2019_NWEA.pdf.

classroom and 30 minutes per month of indirect instruction for Student’s reading and writing goals. *Id.* Reading and writing services were combined in a single category. *See id.*

12. Student’s least restrictive environment (“LRE”) was at least 80% of the time in general education. *Id.* at p. 21.

C. The 2022 IEP: Fifth Grade (2021-2022)

13. A properly constituted IEP Team convened and revised Student’s IEP on January 6, 2022 (“2022 IEP”). *Id.* at p. 24. At this time, she was in fifth grade, although the first page of the IEP says that she was in sixth grade. *Interviews with Parent and Assistant Principal; Exhibit H*, p. 4; *Exhibit N*, p. 1; *Exhibit M*, p. 1. *Compare Exhibit A*, p. 24 with *Exhibit A*, pp. 26, 28-30.

14. The 2022 IEP and other documents in the Record describe Student’s levels of academic achievement and functional performance in fifth grade. *Id.* at p. 26. Specifically:

- Student’s writing teacher reported that Student had difficulty completing assignments on her own and would “benefit with reading passages and questions on tests alone, formatting ideas, for writing prompts, completing work by herself, and turning in work.” *Id.* at p. 26.
- With regard to her goal of achieving 100% accuracy on writing assignments at her instructional level using a graphic organizer, the IEP Team—for the second year in a row—ignored the goal’s metric and instead reported how she was doing when she had adult help. *See id.* at p. 27. The 2022 IEP states that Student was “making progress during writing intervention time *with adult guidance and support* to 90% accuracy.” *Id.* at p. 27 (emphasis added).
- Student’s scores on the NWEA MAP assessments in language arts were in the seventh percentile in the fall semester and the eighth percentile in the spring semester. *Id.* at p. 29.
- Her writing class grades were D, B, C, and B for each quarter of the school year, respectively. *Exhibit E*, p. 1.
- Student’s writing scores on the Woodcock-Johnson assessment, administered in the fall semester, were “low average” for spelling and “average” (ranging from the 26th to 47th percentiles) in the other writing sub-areas. *Id.*; *Exhibit N* (full profile report).

15. The SCO finds that Student, at the time of the January 2022 IEP meeting, had not demonstrated measurable progress on her April 2021 IEP writing goal because the 2022 IEP does not report progress according to the measurement required by the 2021 IEP. *Exhibit A*,

p. 27. Whereas the 2021 IEP set a goal of 100% accuracy *without* adult guidance and support, the 2022 IEP reports her performance only *with* adult guidance and support. *Id.*

16. The 2022 IEP's description of Student's needs and the impact of her disability reflects a continued need for support in writing. *Id.* at p. 39. It states that although "[she] demonstrated progress with her assessments scores," the IEP Team would "continue to work on reading and writing" because "[s]he demonstrated difficulty in the areas of spelling, sentence reading fluency, math facts fluency and word reading fluency" with "overall weakness in the area of reading fluency and written expression." *Id.* The IEP Team stated, "[e]vidence suggests that [her] overall weakness in the area of reading fluency and written expression will impact her access to educational standards inside the general education class" and "[s]he will benefit with specialized instruction in reading and writing independent skills." *Id.*
17. Although Student failed to meet her writing goal and the IEP Team acknowledged that she would benefit from specialized instruction, the IEP Team removed both her writing goal and her writing instruction. *Response*, p. 1; *see Exhibit A*, pp. 40, 43. Student's specialized instruction in literacy was reduced from 240 minutes in reading and writing to 120 minutes solely for reading. *Response*, p. 1; *Exhibit A*, p. 40.
18. The IEP Team kept most of Student's writing accommodations, only substituting her accommodation of an "accommodated spelling grade" with the accommodation that her work would be graded "based on content and not spelling." *Exhibit A*, p. 40.
19. Student's LRE remained at 80% or more of the time in the general education classroom. *Id.* at p. 44.

D. Sixth Grade to Present (August 2022 - May 5, 2023)

20. Student's 2022 IEP remained in effect for sixth grade and was not revised until the end of May 2023. *Interviews with Parent, Assistant Principal, Special Education Director.*
21. The IEP Team had not monitored or reported Student's writing progress since October 2021, Student's fifth-grade fall semester. *See Exhibit E*, p. 8. Other documents in the Record show Student's levels of academic achievement and performance in sixth grade. *See Exhibits B, E, M.*
22. In October 2022, the IEP Team added a new writing accommodation to the 2022 IEP, with Parent's agreement and without holding an IEP meeting: "[Student] needs a physical copy of notes prior to notes being taken." *Exhibit B*, p. 7.
23. Her NWEA MAP score for the first semester was in the first percentile, which is the lowest possible score. *Exhibit M*, p. 1.

24. Her writing grades were F and D for the first two quarters of the school year, respectively. *Exhibit E*, p. 2. Her grade-in-progress as of May 5, 2023, was F (50.53%). *Exhibit 11*, p. 1.
25. Although sixth-grade students work on five-paragraph essays in the general education classroom, Student is currently unable to formulate proper paragraphs and can only accomplish writing tasks ordinarily taught at a second- or third-grade level. *Interview with Paraprofessional*.
26. Parent obtained an IEE of Student in April 2023. *Exhibit 5*. The IEE documents Student's struggles since kindergarten and reports that Student has severe dyslexia and dysgraphia. *Id.* at p. 2. The IEE shows that Student has significant needs in both reading and writing. *Id.* at p. 5. Student's scores on the Wechsler Individual Achievement Test for written expression were very low average for spelling, low average for sentence and essay composition, and average for sentence writing fluency; however, the report qualifies these scores, saying, "[a]fter a review of multiple formal and informal writing samples, these scores appear to overestimate [Student's] writing skills." *Id.* at p. 15.

E. District's Rationale for Removing Student's Writing Goal and Services

27. The IEP Team based its decision to remove the writing goal and services on a single data point: the improvement in Student's writing scores between her 2019 Woodcock-Johnson assessment, when she scored "low average" or worse in six of nine writing categories, and her 2021 assessment, where she scored "low average" in only one category and "average" in the other eight. *Response*, p. 1; *Interview with Assistant Principal*; see *Exhibit A*, p. 59 (assessment scores).
28. Any IEP Team decision regarding a student's special education goals and services should be based on a body of evidence, not a single data point, according to both best practices and District policy. *Interviews with CDE Content Specialist 1 and Special Education Director*. The District follows and trains upon the CDE's IEP Procedural Guidance manual. *Interview with Special Education Director*. District policy and CDE's manual require IEP Teams to use a variety of measures to determine a child's needs when tailoring an appropriate educational program, and it specifically forbids the use of a single data point for making such decisions. *Interview with Special Education Director; CDE Exhibit 1*, pp. 21, 152. They require IEP Teams to set goals and provide services necessary to enable a student to be successful in the general education classroom environment. *Interview with Special Education Director; CDE Exhibit 1* pp. 30, 75, 129, 141. Finally, reading and writing skills should be considered together as a general capacity for literacy. *Interview with CDE Content Specialist 1*.
29. The District's position is that Parent, as a member of the IEP Team, agreed with the change. *Response*, pp. 2-3. The January 2022 IEP states, "The team in collaboration with the parents agreed with the Special Education program and services of [Student]." *Exhibit A*, p. 46.

30. Parent did not object during the meeting. *Interviews with Parent and Assistant Principal*. However, at the January 2022 IEP meeting, School staff led Parent to believe that Student no longer needed writing services based on the Woodcock-Johnson score. *Id.* Parent agreed to remove Student’s writing goal and services only because she believed School staff. *Interview with Parent; Exhibit A*, p. 46.
31. After Parent saw Student continue to struggle with writing, Parent realized that Student still needed writing support. *Interview with Parent*. She also received an external assessment of Student’s needs from a private educator who was giving Student specialized instruction in literacy. *Exhibit J*, p. 24. That educator said that Student would need 12-14 months of intervention in literacy—equivalent to hundreds of hours of supplemental instruction—to catch up to her grade level. *Id.*; *Interview with Parent*.
32. Parent, in October 2022, asked the District to add more specialized instruction in reading and writing to Student’s IEP and, in February 2023, asked the District to pay for additional private education to help Student catch up and to compensate for the reduction of Student’s services in January 2022. *Exhibit J*, pp. 3, 24; *Interview with Parent*.
33. In February 2023, after Parent’s request, Special Education Coordinator issued a prior written notice (“PWN”) to notify Parent that the District refused to consider Parent’s request for additional services without an IEP meeting. *Exhibit B*, p. 1.
34. The PWN lists Parent’s filing of this state complaint as one of several factors in the District’s decision to refuse an increase in services without an IEP meeting. *Id.* (“Any other factors considered by the team: . . . The parent has attempted to file a state complaint on this topic”).
35. Parent, who distrusted the District’s assessments following the January 2022 IEP meeting, declined to meet until the IEE could be performed and discussed at the meeting. *Interview with Parent; Exhibit J*, p. 3.
36. The IEE was completed at the end of April 2023, and an IEP meeting to review and revise Student’s IEP is planned for the end of May 2023. *Interview with Parent*.

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 develop, review, and revise an IEP that was tailored to meet Student’s individualized needs, from February 28, 2022 to present, in violation of 34 C.F.R. §§ 300.320 and 300.324. This violation resulted in a denial of FAPE.

The SCO first notes that, because the January 2022 IEP Team meeting occurred more than a year before Parent filed the Complaint, the SCO cannot consider the propriety of the events that

occurred at the January 6, 2022 IEP meeting. 34 C.F.R. § 300.153(c); *CDE State-Level Complaint Procedures*, ¶ 3(f). The SCO still has authority, however, to consider the propriety of the IEP itself. A deficient IEP continues to violate the IDEA each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day the IEP is in effect. *Weld County Sch. Dist. 6*, 81 IDELR 239 (Colo. SEA April 24, 2022). This investigation separates the events that occurred at the January 2022 IEP meeting from the 2022 IEP that resulted from the meeting and remained in effect until the time of the writing of this decision.

A. The 2022 IEP

Parent is concerned that, after the District removed the writing goal and services from the 2022 IEP, the IEP was inadequate and not designed to allow Student to make progress on annual goals. (FF # 4).

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 County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.*

i. IEP Development Process

An IEP must be developed by a team that includes, at a minimum, the parents, a regular education teacher, a special education teacher, a district representative or designee with knowledge of and authority to provide available district resources, and a person with the ability to interpret evaluation results (who may be one of the other members of the team). 34 C.F.R. § 300.321(a). When an IEP Team develops an IEP, it must consider the strengths of the child, the parent’s concerns, evaluation results, and “the academic, developmental, and functional needs of the child.” *Id.* § 300.324(a).

Here, Student’s IEP was developed in January 2022, which is outside the Complaint window of one year prior to the filing of the Complaint to present. Parent has not alleged that the development *process* was deficient. The IEP was developed by a properly constituted IEP Team on January 6, 2022. (FF # 13). The IEP considers Student’s strengths, Parent’s concerns, Student’s needs, the impact of her disability, her levels of academic performance at the time, and an annual goal. (FF #s 14-16). It also includes services and accommodations to help her reach the annual writing IEP goal, and a description of her LRE. (FF #s 17-19).

Thus, even if the development of the IEP were within the Complaint window, the SCO would find and conclude that the development process for the January 2022 IEP complied with the IDEA’s

procedures. *Rowley*, 458 U.S. at 206. The SCO next turns to the second question of whether the IEP was substantively appropriate. *Id.* at 207.

ii. Substantive Adequacy of the IEP

An IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F.*, 580 U.S. at 399. An IEP must include measurable goals and a statement of the special education and related services designed to “[m]eet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum” and any other educational needs that result from the child’s disability. 34 C.F.R. § 300.320(a)(2). An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. *Id.* § 300.320(a)(4).

Here, the IEP Team removed Student’s writing goal and reduced her services from a combined 240 minutes in reading and writing to only 120 minutes solely for reading. The SCO thus finds and concludes the 2022 IEP was not designed to allow Student to make progress in the general education curriculum. Although the IEP Team met the procedural requirement of reviewing the evidence regarding Student’s performance, the IEP Team ignored that evidence. (FF # 17). Student had not made progress on her annual writing goal from the 2021 IEP. (FF # 15). Her writing teacher said that she had trouble completing work by herself. (FF #s 14-16.) The IEP itself documented that she “demonstrated difficulty in the areas of spelling . . . and written expression” such that her deficiencies would “impact her access to educational standards inside the general education class” and that “[s]he will benefit with specialized instruction in . . . writing.” (FF # 16). She had scored in the seventh percentile on the NWEA MAP assessment in the fall semester. (FF # 14). Her grades in the first two quarters were a D and a B, achieved only with the supports provided by her IEP. (*Id.*). Student needed more specialized instruction, not less, to make progress on her annual goal and access the general education curriculum.

Student’s “average” scores in eight of nine categories on the Woodcock-Johnson writing assessment were not a sufficient justification for removing Student’s writing goal and services for four reasons: First, a favorable Woodcock-Johnson score has only glancing relevance to the substantive adequacy of the IEP; as noted, an IEP must be designed to allow the child to “make progress in the general education curriculum.” 34 C.F.R. § 300.320(a)(2). Progress in the general education curriculum is not the same as scoring well on a standardized test—a point illustrated by the 2022 IEP itself, which documented Student’s severe writing deficiencies in the same timeframe as her Woodcock-Johnson assessment. (FF #s 14-16). Second, a single data point cannot—as a matter of both law and District policy—justify the removal of goals or services. (FF # 28). *See* 34 C.F.R. § 300.306(c)(1) (requiring districts to determine educational need based on a variety of sources). Third, the Woodcock-Johnson score is an outlier, and nothing in the Record explains why every other assessment showed a severe deficit in Student’s writing abilities. (*See* FF #s 14-16, 20-26). The SCO cannot explore this question further with a key member of the IEP

Team because the District declined to allow the SCO to interview Special Education Teacher, the individual best qualified to answer it. Finally, even if the Woodcock-Johnson score indicated true progress in Student's writing ability, this would not justify the complete removal of the very supports that allowed Student to make that progress. See 34 C.F.R. §§ 300.320 and 300.324.

For these reasons, the SCO finds and concludes that, by removing Student's writing goal and services, the District implemented an IEP that was not tailored to Student's individualized needs, in violation of 34 C.F.R. §§ 300.320 and 300.324. This constitutes a substantive violation of the IDEA. See *D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d Cir. 2010) (holding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

B. The Duty to Review and Revise an IEP

Parent's next concern is that the District failed to address any lack of expected progress towards Student's annual goals and in the general education curriculum, in violation of 34 C.F.R. § 300.324(b)(1)(ii)(A).

Although the IDEA does not promise a particular educational or functional outcome for a student with a disability, it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Endrew F.*, 580 U.S. at 400. To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). The IDEA's procedures contemplate that a student's IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *Id.*

The U.S. Department of Education has confirmed school districts' obligation to monitor progress and convene the IEP Team if progress does not occur:

The IEP Team also may meet periodically throughout the course of the school year, if circumstances warrant it. For example, if a child is not making expected progress toward his or her annual goals, the IEP Team must revise, as appropriate, the IEP to address the lack of progress. Although the public agency is responsible for determining when it is necessary to conduct an IEP Team meeting, the parents of a child with a disability have the right to request an IEP Team meeting at any time. If a child is not making progress at the level the IEP Team expected, despite receiving all of the services and supports identified in the IEP, the IEP Team must meet to review and revise the IEP if necessary, to ensure the child is receiving appropriate interventions, special education and related services and supplementary aids and services, and to ensure the IEP's goals are individualized and ambitious.

U.S. Dept. of Ed., *Questions and Answers (Q&A) on U. S. Supreme Court Case Decision Endrew F. v. Douglas County School District Re-1*, No. 15 (2017).

Here, the SCO finds and concludes that the District failed to review, and as appropriate revise, Student's IEP as soon as it knew that she was not making expected progress. 34 C.F.R. § 300.324(b).

The IEP Team's failure to measure Student's progress using the goal's performance criteria (measurements) was an early warning that Student may not be making progress. (See FF #s 7, 14-15). Both the 2021 and 2022 IEPs described Student's need for adult support in writing as a deficiency. (FF #s 7, 14). In response to that deficiency, the IEP Team set annual goals for Student to write with only the assistance of a graphical organizer. (FF #s 7, 9). Yet at IEP meetings on April 9, 2021 and on January 6, 2022, the IEP Team reported Student's progress only in terms of how she could write *with adult support*. (*Id.*) Rather than confronting and addressing Student's difficulty writing on her own, the IEP Team—for two years running—measured and reported how well she could write with the help of an adult. (See FF #s 7, 14-15). As a result, Student's IEPs do not even contain any information indicating how she wrote independently. Then, the IEP Team removed her writing goal and services from the January 6, 2022 IEP, and stopped tracking her writing progress altogether. (FF #s 17, 21).

Student's performance after January 6, 2022 continued to raise concerns. When Student scored in the 8th percentile on the NWEA MAP assessment in writing in the spring semester following the January 2022 IEP meeting, this should have alerted the District that Student needed writing support. (FF # 14). Similarly, when Student's writing grade dropped from a B in the second quarter to a C in the third quarter, the IEP Team should have questioned whether Student was on track to make progress in writing. (FF # 14). The District should have also responded to Student's writing grade of F in the first quarter of her sixth-grade year, of D in the next quarter, and to her sixth-grade NWEA MAP score in the first percentile, the lowest possible score, yet the District ignored all of these red flags. (FF #s 23-24).

Parent's refusal to attend an IEP meeting before an IEE was available did not excuse the District's failure to review and revise Student's IEP for three reasons: First, the IDEA allows a parent and a school district to agree to revise an IEP without a meeting, so long as the annual IEP meeting already occurred. 34 C.F.R. § 300.324(a)(4). Thus, no IEP meeting was necessary to reinstate Student's writing goal and service minutes following the January 6, 2022 meeting. *Id.* But the District never offered to increase Student's services without a meeting, even though the District and Parent agreed to add a writing accommodation without an IEP meeting. (FF # 23). Second, the District could have convened an IEP meeting without Parent. *Id.* § 300.322(d). An IEP Team may convene without a parent when the district "is unable to convince the parents that they should attend." *Id.* Although convening without Parent to restore Student's writing goal and services would have been a procedure of last resort, the failure to do so resulted in a violation of the IDEA. See *Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (rejecting a similar argument from a school district and observing, "the regulations expressly provide for the development of an IEP without parental involvement"). Third, Parent reasonably distrusted the District following the January 2022 IEP meeting, because School staff incorrectly

told Parent that Student no longer needed a writing goal or service minutes. (FF # 30). The District did not attempt to restore trust. (See FF #s 33-34). Parent did not prevent the District from fulfilling its obligations, and the District did nothing to gain her cooperation.

For these reasons, the SCO finds and concludes that the District failed to review and revise Student's IEP to address Student's lack of progress toward her writing goal, in violation of 34 C.F.R. § 300.324(b)(1). This resulted in a procedural violation of the IDEA.

i. Procedural Violations

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if it (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*, 238 F.3d at 765-66.

Here, the SCO finds and concludes that District's violation deprived Student of an educational benefit. The District failed to properly track Student's progress in writing by reporting only how well she could write with adult help, it removed Student's writing goal and services although she had not been making progress even *with* those supports, and it failed to correct that mistake by failing to review and revise her IEP. The District ensured that Student would continue to not make progress. For this reason, the SCO finds and concludes that the District's violation resulted in a denial of FAPE.

C. Compensatory Education

Compensatory education is an equitable remedy intended to "provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005). Compensatory education need not be an hour-for-hour replacement, because less or even more specialized instruction may be necessary to make up for deficiencies caused by a school district's actions. *Id.* The guide for any compensatory award should be the IDEA's purposes, including providing FAPE to meet the needs of children with disabilities and ensuring that children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 719 (3d Cir. 2010).

Here, the District failed to properly track Student's writing goal and then improperly removed that goal and her specialized writing instruction in January 2022—despite the IEP Team's own report of continued deficiencies and no evidence of progress. After the District removed the writing goal and services, Student's writing grades dropped from Bs and Cs to Ds and Fs, and her score on the NWEA MAP assessment for language arts dropped from the eighth percentile to the first percentile—the lowest score possible. (FF #s 20-24). As a sixth grader, she currently reads and writes at a second- or third-grade level. (FF #s 3, 25-26.) The SCO finds that an award of hour-

for-hour compensatory education would not be excessive and that an award of 24 hours of specialized instruction is appropriate.

D. Improper Consideration of Parent’s State Complaint

Finally, the SCO is concerned that the District, when responding to Parent’s request for additional writing instruction, responded with a PWN refusing to add those services without an IEP meeting and cited Parent’s filing of this Complaint as a reason for its refusal. (FF # 34).

In making any decision regarding Student’s IEP, a school district must consider only those factors relevant to offering “an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 580 U.S. at 399. A parent’s use of procedural safeguards under the IDEA to resolve a special education concern has no relevance to a school district’s duty to craft an adequate IEP. *See, e.g.*, 34 C.F.R. §§ 300.320, 300.324 (describing the information an IEP Team must consider when developing or revising an IEP).

Accordingly, the SCO cautions the District here that it cannot respond to a parent’s use of dispute resolution, including the state complaint process, by making it more difficult for that parent and student to access the rights guaranteed by the IDEA.

Systemic IDEA Violations: This investigation does not demonstrate violations that are systemic and will likely impact the future provision of services for all children with disabilities in District if not corrected. 34 C.F.R. § 300.151(b)(2).

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).

Here, based on this investigation and the evidence in the Record, the SCO finds and concludes that the District’s IDEA violations are not systemic in nature and likely to impact other students if not addressed.

The District improperly removed Student’s annual IEP writing goal and specialized instruction based solely on a single data point—her 2021 Woodcock-Johnson writing assessment scores—with little relevance to Student’s ability to participate in the general education environment. (FF # 27). Moreover, the District ignored a significant body of evidence across three years showing that Student struggled and was continuing to struggle with her writing. (FF #s 7-8, 14-16, 22-26). But the SCO has not found evidence that the District systemically fails to develop and revise IEPs in this way. Indeed, Special Education Director stated that, according to District policy and CDE

guidance (which the District uses in training), IEP Teams must consider the entire body of evidence when determining a students' goals and services. (FF # 28). The District's policy is to provide those goals and supports necessary to enable a child with a disability to make progress in the general education curriculum. (*Id.*).

Nothing in the Record indicates that the District regularly removes goals and services based on a single data point and fails to review and revise students' IEPs in the face of a years-long lack of expected progress. For these reasons, the SCO finds and concludes that the violations noted in the Decision are not systemic.

REMEDIES

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

- a. Failing to develop, review, and revise an IEP that was tailored to Student's individualized needs, in violation of 34 C.F.R. §§ 300.320 and 300.324.

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

1. Corrective Action Plan

- a. By **Monday, June 26, 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 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. Final Decision Review

- a. Special Education Director, Special Education Coordinator, Special Education Teacher, and Assistant Principal must review this Decision and the requirements of 34 C.F.R. §§ 300.320 and 300.324. These reviews must occur no later than **Monday, July 24, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Monday, July 31, 2023**.

3. IEP Team Meeting

- a. Convene Student's IEP Team, at a mutually agreeable date and time, by **Monday, July 24, 2023**. In consideration of the concerns identified in this Decision, and in

conjunction with the IEE, Student's IEP Team must review and, as appropriate, revise Student's IEP to reflect her current needs in writing. The revised IEP must be tailored to Student's unique needs, in accordance with 34 C.F.R. §§ 300.320 and 300.324. If the IEP Team so reviewed and discussed Student's IEP at the May 2023 IEP meeting for Student, then no second meeting needs to be convened solely to accomplish this action.

- b. A copy of Student's IEP and notes from the IEP meeting must be provided to CDE no later than **Monday, August 21, 2023**. CDE may determine, at its sole discretion, whether the IEP meeting complied with these requirements. If CDE determines that the meeting did not comply, then the IEP Team must convene again upon a timeline to be determined by CDE.

4. Compensatory Education Services

- a. Student shall receive **24 hours of specialized instruction in literacy** provided through a contract between the District and a suitable provider at the District's expense. All 24 hours must be completed by **January 31, 2024**.
- b. By **Monday, July 10, 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 include the dates, times, and durations of planned sessions, to the CDE no later than **Thursday, July 13, 2023**. If the District and Parent cannot agree to a schedule by July 13, 2023, the CDE will determine the schedule for compensatory services by **Thursday, August 3, 2023**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. The parties must agree on the provider. If Parent refuses to meet with the District within this time, District will be excused from delivering compensatory services, provided that 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. If the parties are unable to agree on the provider, then the CDE will determine the provider by **Thursday, August 3, 2023**.
 - iii. Parent may opt out of some or all of the compensatory services if she wishes.

- c. Monthly consultation between the provider(s) delivering compensatory services and Special Education Director or Special Education 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.
- 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 must be completed by January 31, 2024 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 consultation with Parent and notify the CDE of any 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).

5. **Other Remedies**

- a. Based on the outcomes of the other remedies, CDE may require additional training, technical assistance, or revision of policy, procedure, or practice to address identified areas of concern. CDE may also request additional records to ensure identified concerns have been addressed.
- b. Any additional findings of noncompliance identified through these remedies must be corrected consistent with 34 C.F.R. § 300.600(e).

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. 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 25th day of May, 2023.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-4

- Exhibit A: IEPs
- Exhibit B: PWNs
- Exhibit C: Meeting Notices
- Exhibit D: Meeting Notes and Recordings
- Exhibit E: Progress Reports
- Exhibit F: Evaluation Reports
- Exhibit G: District Calendars for School Years 21-22 and 22-23
- Exhibit H: Attendance Records
- Exhibit I: Policies and Procedures
- Exhibit J: Correspondence and Emails
- Exhibit K: Staff with Knowledge
- Exhibit L: Verification of Delivery
- Exhibit M: Previous Complaint
- Exhibit N: Woodcock-Johnson Profile Report
- Exhibit O: COGAT Scores
- Exhibit P: Post 2021 Assessment Data
- Exhibit Q: District Guidance Documents

Reply, pages 1 of 1

- Exhibit 1: Assessments
- Exhibit 2: PWN
- Exhibit 3: Email
- Exhibit 4: Email
- Exhibit 5: IEE
- Exhibit 6: Meeting Recording
- Exhibit 7: Email
- Exhibit 8: Email
- Exhibit 9: Email
- Exhibit 10: Current Grades
- Exhibit 11: Current Grades

Telephone Interviews

- Parent: April 25, 2023
- Special Education Director: April 25, 2023
- Assistant Principal: May 4, 2023

- Paraprofessional: May 10, 2023