

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 2023:553**  
**Colorado Charter School Institute**

**DECISION**

**INTRODUCTION**

On June 20, 2023, 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 the Charter School Institute (“Institute”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from June 20, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to implement Student’s IEP in August and September 2022, by failing to provide Student with the special education and related service minutes required by his IEP, in violation of 34 C.F.R. § 300.323.

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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.

2. Failed to provide Parent with periodic reports on Student’s progress between August 2022 and present, in violation of 34 C.F.R. § 300.320(a)(3)(ii).
3. Failed to hold an annual review meeting on or before March 2, 2023, to review and, as appropriate, revise Student’s IEP, in violation of 34 C.F.R. § 300.324(b).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>2</sup> the SCO makes the following FINDINGS:

#### **A. Background**

1. During the 2022-2023 school year, Student was a fifth grader at a school (“School”) authorized by Institute. *Interview with Parents*. Student enrolled in a different school for the 2023-2024 school year. *Id.*
2. Student is eligible for special education and related services under the disability category of Specific Learning Disability (“SLD”). *Exhibit A*, p. 4. He requires specialized instruction in basic reading skills and reading fluency. *Id.*
3. Student is a kind and hard-working young man. *Interview with Parents; Exhibit A*, p. 19. He enjoys watching television and playing sports. *Interview with Parents*. In the classroom, Student has difficulty advocating for himself and lacks self-confidence. *Id.*; *Exhibit A*, p. 19.

#### **B. Institute’s Oversight of School**

4. Institute is a non-district charter school authorizer that serves as the administrative unit—Colorado’s term for local educational agency—with authority for delivering special education services to School. *CDE Ex. 1, Institute Special Education Coordinator’s Handbook*, p. 2. As the administrative unit, Institute bears ultimate responsibility for full administration of the special education services and programming offered by its schools, including the provision of a FAPE for all IDEA-eligible children with disabilities. *Id.*; ECEA Rule 2.02.
5. Institute assigns a special education coordinator to each school it authorizes. *Interviews with Institute’s Director of Special Education (“Director”) and Institute’s Assistant Director of Special Education (“Assistant Director”)*. The coordinator serves as Institute’s primary contact with the school and maintains ongoing communication with the school throughout the school year. *Id.* During the course of a school year, the coordinator performs an IEP review to check for IDEA compliance. *Id.* Areas of concern identified during the IEP review inform the training coordinator provides to the school. *Id.*

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

6. The coordinator assigned to School (“Coordinator”) attended weekly meetings with School staff and provided onboarding training to each special education teacher hired by School. *Interview with Coordinator*. One of the special education teachers was new to special education, so Coordinator audited the first 15 IEPs she completed to ensure they complied with the IDEA. *Id.* Additionally, Coordinator reviewed two IEPs as part of an official audit. *Id.* Those IEPs had minor issues related to accommodations for state assessments and the measurability of a goal that were corrected. *Id.*

### C. Student’s IEP

7. The 2022-2023 school year began on August 17, 2022. *Response*, p. 2. At the time, Student’s IEP from March 2, 2022 was in effect (“IEP”). *Exhibit A*, pp. 1-16. Though the IEP was dated March 2, 2021, the year on the IEP was a typographical error, and the IEP was developed on March 2, 2022. *Interview with School’s Director of Learning Support Systems (“LSS Director”); Parent’s Reply*, p. 1. School developed this IEP during the spring of Student’s fourth-grade year. *Exhibit A*, pp. 1-2.
8. Student’s IEP reviewed his present levels of performance, noting that Student performed below grade level in reading, writing and math. *Id.* at p. 4. Recent i-Ready diagnostic scores placed Student at a second-grade level in both reading and math. *Id.* Though Student had made progress on his annual IEP goals, he had not yet met any of those goals. *Id.* at pp. 4-5.
9. As noted in the IEP, Student’s SLD impacted his ability to access the general education curriculum and learn and retain information at the same rate as his peers. *Id.* at p. 6. His IEP acknowledged he “struggle[d] with depth of vocabulary knowledge and struggle[d] to find words to communicate at times,” impacting his comprehension and communication in the classroom. *Id.*
10. The IEP contained six annual goals in reading, communication, math, and writing. *Id.* at pp. 7-11.
11. The IEP identified ten accommodations, such as frequent checks for understanding, use of scaffold supports for reading grade-level text, and pairing directions with a visual. *Id.* at p. 12.
12. Under the IEP, Student received the following special education and related services<sup>3</sup>:

- Specialized Instruction

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<sup>3</sup> A service delivery statement must be sufficiently detailed for parents to understand what specific services and supports a school district is offering to provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017). This includes describing the setting in which a particular service will be provided. *See, e.g., S.H. v. Mount Diablo Unified Sch. Dist.*, 70 IDELR 98 (N.D. Cal. 2017) (finding that the district violated the IDEA when it failed to spell out whether the 40 minutes of speech and language services would be delivered to the student individually or in a group setting). In this case, although the IEP’s service delivery statement does not sufficiently describe the setting in which the services are to be provided (i.e., it provides that services will be provided either “inside or outside the general education classroom”), this has been corrected in the May 2023 IEP to specify that services will be provided outside of the general education setting. *Exhibit A*, p. 30.

- Literacy: 120 minutes per week of direct specialized literacy instruction provided by a special education teacher or a paraprofessional under the direct supervision of a special education teacher inside or outside the general education classroom.
- Math: 60 minutes per week of direct math instruction provided by a special education teacher or a paraprofessional under the direct supervision of a special education teacher inside or outside the general education classroom.
- Speech/Language Therapy
  - 120 minutes per month of direct speech/language therapy provided by a speech language pathologist inside or outside the general education setting, in a small group or one-on-one.

*Id.* at p. 14.

13. Per the IEP, Student spent at least 80% of his time in the general education classroom. *Id.* at p. 15.

#### **D. School's Staffing Challenges**

14. During Fall 2022, School's special education team was significantly understaffed. *Interviews with Principal and LSS Director*. When fully staffed, School would have three special education teachers and two or three special education paraprofessionals. *Interview with LSS Director*. One of the special education teachers would have served as the coordinator of the special education team. *Id.*
15. When School started, School employed one special education teacher and two special education paraprofessionals. *Id.*; *Exhibit M*, p. 1. Two other special education teachers were hired on September 1 and October 1. *Exhibit M*, p. 1. However, by October 10, two of the teachers had quit, leaving School with only one special education teacher. *Id.* School employed a single special education teacher until February 21, when a second teacher was hired. *Id.*
16. School worked independently to fill the vacancies by posting the positions on numerous job boards and sharing the postings via word-of-mouth. *Id.* Additionally, School reached out to Institute to see how Institute might be able to help. *Id.* Though Institute often assists schools with staffing issues, each school is ultimately responsible for filling all vacancies at the school. *Interviews with Director and Assistant Director*.

17. School was never fully staffed during the 2022-2023 school year, because it never employed more than two special education teachers. *Interview with LSS Director.*

#### **E. Staffing Impact on Students**

18. Last school year, School served approximately 700 students in kindergarten through eighth grade. *Interview with Principal.* About 70 of those students had IEPs at the beginning of the school year. *Interview with LSS Director.*

19. Without enough special education teachers, School had to “drastically curtail its special education services during August and September. It was not until October that [School] was able to provide all of the special education services owed to its students.” *Response*, p. 3. Even in October, School only had a single special education teacher to oversee the IEPs of all 70 students. *Interview with LSS Director; Exhibit M*, p. 1.

20. Beginning in October, LSS Director—who holds a valid special education endorsement—started meeting with the special education paraprofessionals to help them learn “what to do with scholars so they could start pulling groups and do progress monitoring.” *Interview with LSS Director.* LSS Director served as Middle School Assistant Principal until October 1 and, therefore, was unable to meet with the paraprofessionals in August or September. *Id.* While Student’s IEP permitted his specialized instruction to be provided by a special education teacher or a paraprofessional under the supervision of a special education teacher, it is unclear what other students’ IEPs required. *Id.*

21. All students with IEPs were impacted—in one way or another—by the staff vacancies. *Id.*

#### **F. Implementation of Student’s IEP**

22. Beginning on October 25, Student received specialized instruction in a small group led by Paraprofessional #1. *Id.; Exhibit E*, pp. 1-18. Student’s IEP required that he receive 120 minutes per week of specialized literacy instruction and 60 minutes per week of specialized math instruction. *Exhibit A*, p. 9. His IEP also required speech/language therapy; however, those services are not at issue in this investigation. *Id.; Complaint*, pp. 1-9.

23. Student’s literacy group met from 8:10 a.m. to 8:40 a.m. on Tuesday through Friday, for a total of 120 minutes per week. *Exhibit E*, pp. 10-18. Paraprofessional #1’s log indicated that Student received these services consistently during this time period with the exception of when Student was absent, when School was closed, or during state assessments. *Id.*

24. Student did not receive any specialized literacy instruction between August 17 and October 24. *Interview with LSS Director; Exhibit E*, pp. 10-18. Over the course of these nine weeks, he should have received 18 hours of specialized literacy instruction. *Exhibit A*, p. 9. The SCO finds that Institute failed to provide Student with 18 hours of specialized literacy instruction.

25. Similarly, beginning on October 25, Student’s math group met from 2:50 p.m. to 3:20 p.m. on Tuesday through Friday, for a total of 120 minutes per week. *Exhibit E*, pp. 1-9. Again, Paraprofessional #1’s log demonstrated that these services were consistently provided except when Student was absent, when School was closed, or during state assessments. *Id.*
26. Student did not receive any specialized math instruction between August 17 and October 24. *Interview with LSS Director; Exhibit E*, pp. 1-9. He should have received nine hours of specialized math instruction during this time period. *Exhibit A*, p. 9. The SCO finds that Institute failed to provide him with 9 hours of specialized math instruction. However, School provided Student with extra math services during the remainder of the school year, allowing Student to recoup the missed math services by the end of January 2023. *Exhibit E*, pp. 1-9.

### **G. Progress Monitoring**

27. School operated on a trimester system, yet Student’s IEP erroneously indicated he would be provided progress reports “[q]uarterly with report cards, at IEP meetings, [and] upon request.” *Exhibit A*, p. 9; *Interview with LSS Director*. During the 2022-2023 school year, the trimesters ended on November 4, February 17, and May 26. *Exhibit H*, p. 1.
28. Parents did not recall receiving any progress reports during the 2022-2023 school year. *Interview with Parents*. During this investigation, School produced a progress report dated November 29, 2022. *Exhibit G*, p. 2. Parents had not seen this progress report prior to this investigation. *Interview with Parents*.
29. Regardless, the November progress report contained information only on Student’s reading and writing goals; the report made no mention of his math or communication goals. *Exhibit G*, p. 2. That progress report indicated Student made “sufficient progress” on his reading and writing goals, even though Student was reading 53 words per minute when his baseline was 75 words per minute. *Id.*
30. School also produced a prior written notice (“PWN”) that contained Student’s progress on his communication goals as of February 24, 2023. *Exhibit C*, p. 1. LSS Director indicated Speech Language Pathologist (“SLP”) was leaving School and wanted to memorialize Student’s progress before she left. *Interview with LSS Director*. At the time, SLP was having difficulty entering Student’s progress into the appropriate form in Enrich, so she entered it into the PWN form so it would not be lost. *Id.* There is no indication in the Record that this PWN was ever provided to Parents and, indeed, Parents did not remember receiving this PWN. *Interview with Parents*. Nonetheless, this PWN provided no information on Student’s goals in reading, writing, or math. *Exhibit C*, p. 1.
31. No other progress reports or progress monitoring data were provided by School. *See Exhibit G*, pp. 1-18. Student’s May 2023 IEP contains progress monitoring data for his reading and

math goals but no data for his writing and communication goals. *Exhibit A*, pp. 23-24. Moreover, the only datapoints for his reading and math goals were from May 3 and May 4—the day before and the day of his IEP Team meeting. *Id.*

32. School does not have any written policies or procedures regarding progress monitoring. *Interview with LSS Director*. Institute has written guidance and video training regarding proper progress monitoring available to School on its website. *Interviews with Director and Assistant Director*.

#### **H. Annual IEP Review**

33. Student’s annual IEP review was due on or before March 2, 2023. *Exhibit A*, p. 1.
34. On April 4, Parent contacted Paraprofessional #1 to ask who she should contact to schedule Student’s IEP Team meeting. *Exhibit 3*, p. 1. Two days later, Student’s Case Manager emailed Parent to introduce herself and to schedule Student’s IEP Team meeting. *Exhibit J*, p. 12. Parent agreed to schedule the meeting on May 4. *Id.*
35. Even though Case Manager joined School in late February, Parents were not aware that she was managing Student’s IEP. *Interview with Parents*. Student had at least three case managers during the 2022-2023 school year. *Id.*; *Exhibit M*, p. 1. Parents indicated that School would not have scheduled Student’s IEP Team meeting if Parents had not prompted them to do so. *Interview with Parents*.
36. As scheduled, School convened Student’s IEP Team on May 4 to conduct his annual review and develop a new IEP. *Exhibit A*, pp. 17-51.
37. School acknowledged that Student’s IEP Team meeting was conducted after the IDEA’s required one-year timeframe. *Interview with LSS Director*. According to School, the delay was due to “the backlog it experienced all year because of its lack of special education staff in August and September.” *Response*, p. 7. It took School all year to work through the backlog of students’ IEP Team meetings; however, LSS Director indicated School is now caught up. *Interview with LSS Director*.

#### **I. Compensatory Services**

38. In light of the staff shortage at the beginning of the school year, Parent emailed LSS Director and Case Manager on May 19, 2023 requesting Student’s service log for the school year. *Exhibit J*, p. 63. Once Parent received and reviewed the logs, she responded: “[I]t appears that services were not provided in August or September. I would like to know the proposed amount of compensatory services.” *Id.* at p. 67.

39. LSS Director responded and offered to provide Student with 14 hours of compensatory reading services. *Id.* at pp. 65-66. LSS Director gave Parent the choice between in-person services in June, virtual services in July, or additional services next school year. *Id.* Parent replied, indicating that she preferred in-person services. *Id.* at p. 81.
40. LSS Director allowed Parent to choose between an existing writing club being held for general education students or 1:1 service. *Id.* at p. 80. Parent chose the writing club. *Id.* Student's IEP Team was not involved in the determination of his compensatory services. *Interview with LSS Director.*
41. On May 29, 2023, School issued a PWN memorializing the compensatory services being offered to Student. *Exhibit C*, p. 5. The PWN does not acknowledge that Student missed services in October 2022, even though Paraprofessional #1's service log indicates that her literacy group began on October 25, 2022. *Id.*; *Exhibit E*, p. 10.
42. The compensatory services took place from 11:30 a.m. to 1:30 p.m. over eight days in June at a general education writing workshop that was being held at School. *Interview with LSS Director.* Paraprofessional #2 led the workshop and connected Student's work with his relevant IEP goals. *Id.* Student only attended seven days and, therefore, received 14 hours of specialized instruction. *Id.*
43. School only offered compensatory services to those families who asked about them during IEP Team meetings or via email to School staff. *Interview with LSS Director.* "If families did not request it, we did not reach out to say, 'Hey, let us know if you want compensatory hours.'" *Id.* Instead, "[i]f it was brought up during any meetings or any conversations, it was addressed." *Id.* LSS Director indicated School is "super diligent" about ensuring families understand their parental rights, including their right to request compensatory services. *Id.*
44. Neither Institute nor School has any written policies or procedures outlining how compensatory services should be determined. *Interviews with Director, Assistant Director, and LSS Director.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: Institute failed to implement Student's IEP in August and September 2022, by failing to provide Student with the specialized instruction required by his IEP, in violation of 34 C.F.R. § 300.323. This resulted in a denial of FAPE.**

Parent's concern is that Institute failed to properly implement Student's IEP in August and September 2022, when School was understaffed. Parent has not challenged Institute's provision of related services.



### **A. Legal Requirements for IEP Implementation**

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).

The IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *See, e.g., El Paso County Sch. Dist. 20*, 122 LRP 39732 (SEA CO 06/05/22) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage); *see also In re: Student with a Disability*, 121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

### **B. Accessibility of Student’s IEP to Teachers**

The SCO first determines whether Institute satisfied its obligation under 34 C.F.R. § 300.323(d), by ensuring appropriate staff were informed of their responsibilities under Student’s IEP. Here, Student had at least three different case managers over the course of the school year. (FF # 35.) And, for a majority of the school year, one special education teacher served as case manager to all of School’s students with IEPs. (FF #s 15, 19.) The staff vacancies and turnover make it difficult to determine whether Student’s IEP was made available to all necessary staff. But, as the Findings of Fact make clear, the failures regarding IEP implementation were directly tied to a lack of staff, not uninformed staff. (FF #s 14-21.) As a result, the SCO finds and concludes that no violation of 34 C.F.R. § 300.323(d) occurred.

### **C. Specialized Instruction**

Student’s IEP required him to receive 120 minutes per week of specialized literacy instruction and 60 minutes per week of specialized math instruction. (FF # 12.) As detailed in the Findings of Fact, Institute failed to provide Student with specialized instruction in both subject areas from August 17 to October 24. (FF #s 24-26.) During this time, Student missed 18 hours of literacy

instruction and 9 hours of math instruction. (FF #s 22-26.) For this reason, the SCO finds and concludes that Institute failed to fully implement Student’s IEP, in violation of 34 C.F.R. § 300.323.

#### **D. 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.*

Here, Institute failed to provide Student with his specialized literacy and math instruction for more than two months of the school year. (FF #s 22-26.) This specialized instruction was the key component of his IEP. (FF # 12.) Institute’s failure to provide this instruction for nearly a quarter of the school year was more than a minor discrepancy between what was required and what was provided. The SCO finds and concludes that failure to implement constituted a material failure that resulted in 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).

#### **E. Compensatory Services**

Compensatory services are an equitable remedy intended to place a student in the same position he would have been but 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, Institute failed to provide Student with a significant amount of services. In total, Student missed approximately 27 hours of specialized instruction: 18 hours of literacy instruction and 9 hours of math instruction. (FF #s 22-26.) As noted in the Findings of Fact, Student received extra math instruction over the course of the school year, allowing him to recoup the missing services

by late January 2023. (FF # 26.) As a result, the SCO, in consultation with CDE Content Specialist— finds that no award of compensatory specialized instruction in math is warranted.

After Parent requested compensatory services, School agreed to provide Student with 16 hours of compensatory literacy services during June 2023. (FF #s 39-41.) School staff worked with Parent to determine the amount and nature of Student’s compensatory education, offering Student an hour-by-hour award of compensatory services. (*Id.*)

Ultimately, Student missed one day of the writing workshop, so he received 14 hours of compensatory services. (FF # 42.) Because Student’s specialized instruction did not start until October 25, Institute owed Student 18 hours of specialized instruction, not 14 hours as calculated by School. (FF # 24.) Given that Student’s literacy instruction was the primary component of his IEP and critical to his transition to middle school, the SCO awards Student four hours (240 minutes) of specialized literacy instruction.

**Conclusion to Allegation No. 2: Institute failed to adequately monitor Student’s progress on his annual IEP goals during the 2022-2023 school year, in violation of 34 C.F.R. § 300.320(a)(3). This violation resulted in a denial of FAPE.**

The second allegation concerns the progress reports—or lack thereof—that Institute provided during the 2022-2023 school year.

Under the IDEA, school districts must provide periodic reports on the progress a student is making towards the student’s annual goals. 34 C.F.R. § 300.320(a)(3). As the Findings of Fact demonstrate, Institute failed to properly monitor Student’s progress throughout the 2022-2023 school year. (FF #s 28-31.) During this investigation, School contended it provided Parent written progress reports at the end of first and second trimester and verbally reviewed Student’s progress during the May 2023 IEP Team meeting. (FF # 27.) However, both written progress reports were incomplete and inadequate. (FF #s 28-30.) The report from first trimester contained data on Student’s reading and writing goals but not his math or communication goals. (FF # 29.) Similarly, the report from second trimester discussed only Student’s communication goal (and was prepared on a prior written notice form). (FF # 30.) Moreover, Parents did not recall receiving either of the written progress reports, and School has no documentation showing that the progress reports were provided to Parents. (FF #s 28-31.)

The Findings of Fact also indicate that any review of Student’s progress during the May 2023 IEP Team meeting was inadequate. (FF # 31.) Student’s final IEP contained progress monitoring data for his reading and math goals but none for his writing and communication goals. (*Id.*) The datapoints for the reading and math goals were from May 3 and May 4—the day before and the day of the IEP Team meeting. (*Id.*) The lack of any other datapoints suggests that Case Manager was not monitoring Student’s progress consistently, if at all, since her arrival in February 2023.

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

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

Here, the Findings of Fact indicate that Institute failed to provide Parent with progress reports for the entire 2022-2023 school year. (FF #s 27-31.) Even assuming Parent had received the incomplete progress reports produced by School, those reports would have only provided Parent with progress information on his reading, writing, and communication goals one time during the school year. (*Id.*) Parent would not have received any information on Student's progress on his math goal until the May 2023 IEP Team meeting. (*Id.*)

Institute's failure significantly impeded Parent's opportunity to participate in the decision-making process. Parent attended Student's May 2023 IEP Team meeting without any substantive information on Student's progress on his existing annual goals and, yet, was expected to participate in the development of the goals for his subsequent IEP. For this reason, the SCO finds and concludes that Institute's procedural violation amounted to a denial of FAPE.

**Conclusion to Allegation No. 3: Institute failed to review Student's IEP at least annually, in violation of C.F.R. § 300.324(b). No denial of FAPE occurred.**

The third concern in Parent's complaint relates to the timeliness of Student's annual IEP review meeting. Parent contends Institute failed to conduct Student's meeting within required timeframe.

The IDEA mandates that each student's IEP be reviewed "periodically, but not less than annually" to determine whether the student has achieved his or her annual IEP goals and revises the IEP as appropriate. 34 C.F.R. § 300.324(b). As indicated in the Findings of Fact, School acknowledged that Student's annual review was untimely. (FF # 37.) Student's annual review was due on or before March 2, 2023, but School did not convene his IEP Team until May 4, 2023. (FF #s 33-36.) For this reason, the SCO finds and concludes that Institute failed to review Student's IEP at least annually, resulting in a procedural violation of 34 C.F.R. § 300.324(b).

The failure to comply with a procedural requirement of the IDEA results in a denial of FAPE where the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the

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

Here, Institute conducted Student's annual review on May 4, 2023, two months after the March 2, 2023 deadline. (FF #s 33, 36.) Though the annual review was undoubtedly untimely, and a two-month delay in reviewing a student's IEP may result in a denial of FAPE under different circumstances, there is no indication given the facts specific to this investigation that this procedural violation adversely impacted Student or Parent. During the interim period, Student continued to receive supports under his existing IEP and, indeed, the May 2023 IEP was not materially different than Student's prior IEP. (FF # 36.) Parent still had the same opportunity to participate in the May IEP Team meeting that she would have had if Institute had held the meeting in March 2023. For these reasons, the SCO finds and concludes that Institute's procedural violation did not amount to a denial of FAPE.

**Systemic IDEA Violations: This investigation demonstrates violations that are systemic in nature and will likely impact the future provision of services for all children with disabilities in Institute if not corrected.**

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in Institute. 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 the Findings of Fact in this case indicate that each of Institute's violations—failure to implement, failure to progress monitor, and failure to review IEPs at least annually—was systemic in nature. During the 2022-2023 school year, School served 700 students from kindergarten through eighth grade. (FF # 18.) From August 17 to February 21, School had only one special education teacher for approximately 70 students with IEPs. (FF # 15.) The lack of adequate staff impacted *all* students with IEPs. (FF # 21.) School has acknowledged that specialized instruction was not provided in August and September and that it took the entire school year to work through the backlog of IEP Team meetings. (FF #s 20, 37.) The Findings of Fact in this investigation suggest that School staff similarly failed to monitor the progress of other students with IEPs. (FF #s 15, 19, 27-31.)

The result of an investigation in a recent, separate state complaint make these systemic findings more concerning. In State-Level Complaint 2023:543, the CDE found that Institute failed to both implement students' IEPs and monitor students' progress—two of the same systemic violations in this investigation. See *Charter School Institute*, CDE Decision 2023:543 (August 2023). That

complaint involved a different school authorized by Institute, raising the concern about whether these violations exist Institute-wide versus being isolated to individual schools.

For these reasons, the SCO finds the violations in this Decision to be systemic in nature. Below, the SCO has outlined remedies to address the systemic violations.

### **REMEDIES**

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

- a. Failing to properly implement Student’s IEP, in violation of 34 C.F.R. § 300.323;
- b. Failing to adequately monitor Student’s progress on his annual IEP goals, in violation of 34 C.F.R. § 300.320(a)(3); and
- c. Failing to review Student’s IEP at least annually, in violation of 34 C.F.R. § 300.324(b).

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

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

- a. By **Friday, September 22, 2023**, Institute 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 Institute 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 Institute’s timely correction of the areas of noncompliance.

#### **2. Final Decision Review**

- a. Special Education Director, Assistant Director, Coordinator, Principal, LSS Director, School’s special education teachers, and School’s special education paraprofessionals must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.320, 300.323, and 300.324. This review must occur no later than **Friday, September 29, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, October 6, 2023**.

#### **3. Procedures**

- a. By **Friday, November 3, 2023**, Institute must submit written procedures on progress monitoring consistent with 34 C.F.R. § 300.320(a)(3).
- b. At a minimum, the procedures must offer clear guidance on the frequency of monitoring a student's progress, the preparation of progress reports, and the provision of progress reports to parents.
- c. Institute can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. Institute must ensure that all special education providers in Institute receive a copy of the procedures no later than **Monday, December 4, 2023**. Evidence that the procedures were shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Monday, December 11, 2023**.

#### **4. Training**

- a. Special Education Director, Assistant Director, Institute's special education coordinators, Principal, LSS Director, School special education teachers, and School's special education paraprofessionals must attend and complete training provided by CDE on IEP implementation and progress monitoring. If these individuals are no longer employed by Institute or School, Institute may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. § 300.320 and 300.323 and the related concerns in this Decision.

#### **5. Compensatory Education Services for Student's Denial of FAPE**

- a. Student shall receive **4 hours (240 minutes) of direct specialized literacy instruction** provided through a contract between Institute and a suitable provider at Institute's expense. All 4 hours must be completed by **Friday, December 22, 2023**.
- a. **By Friday, September 29, 2023**, Institute 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. Institute shall submit the schedule of compensatory services to the CDE no later than **Friday, October 6, 2023**. If Institute and Parent cannot agree to a schedule by Friday, September 29, 2023, the CDE will determine the schedule for compensatory services by **Friday, October 13, 2023**.

- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with Institute within this time, Institute will be excused from delivering compensatory services, provided that Institute diligently attempts to meet with Parent and documents such efforts. A determination that Institute diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with the CDE.
- b. To verify that Student has received the services required by this Decision, Institute 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.
- c. 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, Institute will be excused from providing the service scheduled for that session. If for any reason Institute fails to provide a scheduled compensatory session, Institute 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.
- d. 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).

## **6. Determination of Compensatory Education Services for Students**

- a. By **Friday, September 29, 2023**, Institute shall submit to CDE for review, a draft letter to be sent to the parents of all students with IEPs in effect during the 2022-2023 school year (“Students”). This letter shall notify parents that their Student was identified in a recent state complaint decision (with information on where to find the decision) as a student who might require compensatory services as a result of a failure to monitor progress and implement IEPs.
  - i. This can be a form letter, but it must include an individualized section indicating the services the Student should have received under any IEPs that were in effect during the 2022-2023 school year.



- ii. The letter must invite parents to meet with the Student’s IEP Team to determine the Student’s need for compensatory services, if any, and indicate that the IEP Team will meet to assess the Student’s need for compensatory services, whether or not parents participate.
  - iii. The letter must include a section requiring parents to sign, acknowledging their receipt of the letter and understanding of its contents. The letter can be signed in advance or at the IEP Team meeting required in Remedy 6(b).
  - iv. The letter must be sent by Institute to parents and CDE no later than **Friday, October 27, 2023.**
    - 1. If the Student no longer attends School but still attends an Institute school, the letter must be sent to parents by Friday, October 27, 2023.
    - 2. If the Student no longer attends any Institute school, the letter must be sent to the parents’ last known address, and Institute must make reasonable attempts to reach them, including contacting the Student’s last known administrative unit of residence.
    - 3. If Institute is unable to reach the parents of a Student who no longer attends an Institute school, Institute will be excused from determining or delivering compensatory services for that Student, provided that Institute diligently attempts to reach parents and documents such efforts. A determination that Institute diligently attempted to meet with parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
  - v. Institute must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.
- b. By **Friday, January 26, 2024**, at a mutually agreeable time and place, Institute must convene IEP Teams for all Students to determine how they were impacted by these violations and what, if any, compensatory services they require to put them in the position they would have been in, but for Institute’s violation. As a reminder, CDE offers free IEP facilitation with an impartial third party to promote effective communication and assist the IEP team in developing an IEP based on the student's needs. CDE facilitation is completely voluntary. If parents and Institute agree, facilitation can be used to support any meetings ordered as a remedy in the final decision for any state complaint. More information is available at <https://www.cde.state.co.us/cdesped/facilitated-iep-info>.

- i. A representative from Institute, like Assistant Director or Coordinator, should be included in every IEP Team meeting.
- ii. If parents are unwilling to meet with Institute, the IEP Team may convene without parents, provided Institute made diligent efforts to include the parents and documented those efforts. A determination that Institute diligently attempted to include with parents, and should thus be permitted to meet without them, rests solely with the CDE.
- iii. In determining whether a Student requires compensatory services and, if so, how much, the IEP Team must consider the factors laid out in the following state and federal guidance. 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.
  - 1. OSEP’s Guidance: *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.
  - 2. CDE’s Guidance: *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).
- c. After the IEP Team meetings, and no later than **Friday, February 9, 2024**, Institute must issue, to parents and the CDE, a detailed prior written notice (“PWN”) for each Student. The PWN must detail the type and amount of services the Student did not receive. It must also include the IEP Team’s determination and rationale regarding the needed compensatory education services. The PWN must include information about Student’s progress on IEP goals and in the general education curriculum.

**7. Provision of Compensatory Education Services for Students**

- a. By **Friday, March 8, 2024**, Institute shall schedule all compensatory services in collaboration with parents. 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. Institute shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Tuesday, March 12, 2024**. If Institute and parents cannot agree to a schedule for any Student by

March 8, 2023, the CDE will determine that Student's schedule for compensatory services by **Friday, April 5, 2024.**

- i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with Institute within this time, Institute will be excused from delivering compensatory services, provided that Institute diligently attempts to meet with Parents and documents such efforts. A determination that Institute diligently attempted to meet with Parents, and should thus be excused from providing compensatory services, rests solely with the CDE.
  - ii. Parents may opt out of some or all of the compensatory services if they wish.
- b. Monthly consultation between the provider(s) delivering compensatory services and Director, Assistant Director or Coordinator shall occur to evaluate Students' 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. Institute must submit documentation that these consultations have occurred for each Student **by the second Monday of each month**, once services begin, until compensatory services have been completed for that Student. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- c. To verify that Students receive the services required by this Decision, Institute must submit records of service logs for each Student to the CDE by the **second Monday of each month** until all compensatory education services for that Student 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.
- d. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. If for any reason, including illness, a Student is not available for any scheduled compensatory services, Institute will be excused from providing the service scheduled for that session. If for any reason Institute fails to provide a scheduled compensatory session, Institute will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents and notify the CDE of the change in the appropriate service log.
- e. All compensatory services must be completed by **Monday, July 15, 2024.**

## 8. 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 Institute to meet any of the timelines set forth above may adversely affect Institute's annual determination under the IDEA and subject Institute 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 19th day of August, 2023.



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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-4

#### Response, pages 1-9

- Exhibit A: IEPs
- Exhibit B: IEPs
- Exhibit C: PWNs
- Exhibit D: Notices of Meeting
- Exhibit E: Service Logs
- Exhibit F: Student's Attendance
- Exhibit G: Progress Reports
- Exhibit H: School Calendar
- Exhibit I: Blank
- Exhibit J: Email Correspondence
- Exhibit K: List of Witnesses
- Exhibit L: Verification of Delivery to Parent
- Exhibit M: Special Education Staff Information

#### Reply, pages 1-2

- Exhibit 1: IEP
- Exhibit 2: Prior Evaluation
- Exhibit 3: Email Correspondence
- Exhibit 4: Email Correspondence
- Exhibit 5: Email Correspondence

#### CDE Exhibits

- CDE Exhibit 1: Institute's Special Education Coordinator's Handbook

#### Interviews

- Assistant Director: August 2, 2023
- Coordinator: August 16, 2023
- Director: August 2, 2023
- LSS Director: July 31, 2023
- Parents: August 2, 2023
- Principal: July 31, 2023