

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

**State-Level Complaint 2024:566
Widefield School District 3**

AMENDED DECISION

INTRODUCTION

On June 5, 2024, a third-party individual (“Complainant”) filed a state-level complaint (“Complaint”) under the Individuals with Disabilities Education Act (“IDEA”) ¹ against Widefield School District 3 (“District”) concerning three District special education staff members (“Teacher 1”, “Teacher 2”, and “Teacher 3”). The Colorado Department of Education (“CDE”) 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 CDE has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after June 5, 2023. Information prior to June 5, 2023 may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to noncompliance occurring after June 5, 2023.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b) of the IDEA:

1. Whether District failed to ensure Teacher 1 possessed the required certifications and licenses from August 2023 through October 2023, in violation of 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.
2. Whether District failed to ensure Teacher 2 possessed the required certifications and licenses from January 2024 through May 2024, in violation of 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.

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.

3. Whether District failed to ensure Teacher 3 possessed the required certifications and licenses from April 2024 to present, in violation of 34 C.F.R. §§ 300.156 and 300.207, and ECEA Rule 3.04.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,² the CDE makes the following findings of fact (“FF”):

A. Background

1. This Complaint concerns whether Teacher 1, Teacher 2, and Teacher 3 possessed the required certifications and licenses while they worked at a District middle school (“School”) during the 2023-2024 school year. *Complaint*, p. 4. Complainant was hired by District in spring 2023 as a contract special education teacher at a different school. *Interviews with Complainant, School Principal (“Principal”), and Human Resources Director (“HR Director”)*. Complainant transitioned to School to assist in building its significant support needs program (“SSN Program”) in the summer of 2023 where she continued to work until May 23, 2024. *Interviews with Complainant and Assistant Special Education Director (“Assistant Director”)*.
2. Complainant’s concerns stem from an online credential query she conducted in April 2024 to verify whether certain employees at School were properly licensed to provide direct specialized instruction. *Interview with Complainant*. Based on that search, Complainant alleges that Teacher 1, Teacher 2, and Teacher 3 did not possess certifications and licenses required by IDEA and ECEA Rules to serve as special education teachers. *Complaint*, p. 4.
3. District denies this allegation, asserting that Teacher 1 and Teacher 2 possessed the required certifications and licenses for their roles as long-term substitutes. *Response*, p. 6. District contends Teacher 3 served as an appropriately trained and supervised paraprofessional. *Id.* at p. 7.
4. Teacher 1, Teacher 2, and Teacher 3 worked in District’s inclusive social communication classroom, a center-based program (“Center Program”) serving students with behavioral and communication needs, primarily students with autism. *Response*, p. 3; *Interviews with Principal, Complainant, Special Education Director (“Director”), and Assistant Director*.

B. Certification and Licensure of Teacher 1

5. District hired Teacher 1 in February 2023 as a paraprofessional for the Center Program *Interview with HR Director*. At this time, Teacher 1 was having conversations with Principal about becoming a special education teacher. *Id.* She informed Principal that she was going to return to school to get her degree. *Id.* Based on this desire, she was encouraged to apply for

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

a special education teacher position. *Id.* District hired Teacher 1 in August 2023 as a long-term substitute for the Center Program. *Id.*

6. Teacher 1 was hired “knowing that she could not be a case manager for a student. She could not write their IEPs or be the main contact in an [IEP] meeting.” *Interview with HR Director.* However, HR Director stated that Teacher 1 could provide daily whole-group instruction. *Id.*
7. Specifically, Teacher 1 was given a long-term substitute assignment effective from August 8, 2023 until May 23, 2024 in the Center Program. *Exhibit A, p. 4; Exhibit D; Interview with HR Director.* Teacher 1 possessed a valid substitute authorization—Substitute Teacher (K-12) license—but she did not have a certification or licensure to teach special education during the 2023-2024 school year. *CDE Exhibit 1; Exhibit A, p. 1.* Teacher 1 left the District in late October. *Interview with Principal.*

C. Certification and Licensure for Teacher 2

8. Teacher 2 was a paraprofessional in a different school district prior to the 2023-2024 school year. *Interviews with Principal and HR Director.*
9. Teacher 2 applied for the vacant position left by Teacher 1 in November of 2023. *Interview with HR Director.* She was hired to replace Teacher 1 in the Center Program starting in January 2024 and was also told that she was not to act as a case manager to students but that she was allowed to give direct whole-group special education instruction. *Exhibit D; Interview with HR Director.* Teacher 2 was going to school to obtain a special education endorsement or license. *Interviews with Principal and Assistant Director.*
10. Teacher 2’s long-term substitute assignment was effective from January 4, 2024 until May 23, 2024. *Exhibit B, p. 2.* Teacher 2 possessed a valid substitute authorization—Substitute Teacher (K-12) license—but she did not have a certification or licensure to teach special education during the 2023-2024 school year. *CDE Exhibit 1; Exhibit B, p. 2.*

D. Certification and Licensure for Teacher 3

11. Teacher 3 was a paraprofessional in the SSN Program at School during the 2023-2024 school year. *Exhibit D; Response, p. 1; Interviews with Complainant, HR Director and Principal.*
12. Teacher 3 expressed interest in and applied to fill a SSN teacher position that opened at the end of the 2023-2024 school year. *Response, p. 1-3; Interviews with Complainant, Principal and Director.*
13. Complainant’s concern is that Teacher 3 had received the teaching position in the SSN Program for the upcoming 2024-2025 school year. *Complaint, p. 4; Interview with Complainant.* During this investigation, District indicated that Teacher 3 will not be a SSN teacher for the upcoming 2024-2025 school year. *Interviews with HR Director, Teacher 3,*

Director. Instead, Teacher 3 will be a long-term substitute. *Response*, p. 7; *Interviews with Principal, Teacher 3, Assistant Director*.

14. Teacher 3’s long-term substitute assignment is effective from August 26, 2024 until May 22, 2025. *Exhibit C*, p. 1. Teacher 3 possessed a valid substitute authorization—Substitute Teacher (K-12) license—but she did not have a certification or licensure to teach special education during the 2023-2024 or 2024-2025 school year. *CDE Exhibit 3; Exhibit B*, p. 2.

E. The Center Program

IDEA-Eligible Students in the Center Program

15. During the 2023-24 school year, School was in session for 36 weeks of instruction. *Exhibit F*. Thirteen IDEA-eligible students (“Students”), from sixth through eighth grades, participated in the Center Program. *Response*, p. 3; *Interviews with Principal, Complainant, Director, and Assistant Director*. The Center Program is next to the SSN Program and many times the two share resources. *Interviews with Complainant and Principal*. Some Students may attend general education classes outside depending on their needs outlined in their IEPs. *Interview with Principal; See e.g. Exhibit I*.
16. There is no set curriculum in the Center Program, as it needs to be responsive to the various needs of its students. *Response*, p. 3. Students received direct specialized instruction in the Center Program pursuant to IEPs. *See Exhibit I*.
17. Teacher 1 and Teacher 2 both had access to Enrich so that they could access Students’ IEPs. *Interview with Director*. There was also a central repository of data in the classroom to share information on Students’ progress that could be accessed by licensed special education teachers (“Special Education Teacher A” and “Special Education Teacher B”), and Teacher 1 and Teacher 2. *Id*.
18. District submitted copies of Students’ IEPs and progress monitoring. *See Exhibit I*. Each IEP required the following direct specialized instruction:
- Student 1: 2,035 direct weekly service minutes to be delivered outside the general education classroom.
 - Student 2: 1,920 direct weekly service minutes to be delivered outside the general education classroom.
 - Student 3: 2,005 direct weekly service minutes to be delivered outside the general education classroom.
 - Student 4: 1,920 direct weekly service minutes to be delivered outside the general education classroom.

- Student 5: 2,005 direct weekly service minutes to be delivered outside the general education classroom.
- Student 6: 2005 direct weekly service minutes to be delivered outside the general education classroom.
- Student 7: 1,920 direct weekly service minutes to be delivered outside the general education classroom.
- Student 8: 2,005 direct weekly service minutes to be delivered outside the general education classroom.
- Student 9: 1,920 direct weekly service minutes to be delivered outside the general education classroom.
- Student 10: 1,930 direct weekly service minutes to be delivered outside the general education classroom.
- Student 11: 1,995 direct weekly service minutes to be delivered outside the general education classroom.
- Student 12: 2,005 direct weekly service minutes to be delivered outside the general education classroom.
- Student 13: 1,920 direct weekly service minutes to be delivered outside the general education classroom.

19. The average number of direct specialized instruction required by Students' IEPs is 1,968 minutes per week. *See CDE Exhibit 2; See e.g. Exhibit I.* Six of the thirteen Students demonstrated either insufficient progress or no progress/regression on their annual IEP goals. *Id.*

Direct Support and Supervision in the Center Program

20. District hired Teacher 1 and Teacher 2 as long-term substitutes in the Center Program with the understanding that they were not to act as case managers for the students. *Interviews with Principal, Director, and Assistant Director.* Rather, they were to receive supervision, coaching, and guidance from licensed and endorsed special education teachers. *Response*, p. 3. According to District, licensed and endorsed special education teachers were asked to divide the caseload of Students amongst themselves. *Interview with HR Director.*

21. The case managers for Students were Special Education Teacher A and Special Education Teacher B. *Interviews with Assistant Director, Director, and Principal.* They possessed required certification and licensure in special education for the positions they held during the 2023-2024 school year. *Interviews with HR Director, Director, Complainant, and Assistant*

Director. Teacher 1 and Teacher 2 received some supervision and guidance for the purpose of providing direct specialized classroom instruction during weekly meetings and monthly coaching sessions with Special Education Teacher A and Special Education Teacher B. *Exhibit J*; *Exhibit K*.

22. Special Education Coach also provided guidance and coaching to Center Program teachers, particularly around specially designed instruction. *Response*, p. 3; *Interviews with Principal and Director*. She possessed required certification and licensure in special education for the position she held during the 2023-2024 school year. *Interviews with HR Director, Director, Complainant, and Assistant Director*. District coaching logs show that Teacher 1 met with Special Education Coach monthly on Fridays from 10:30-11:10am. *Exhibit J*, p. 1.
23. Despite the presumed roles for Special Education Teacher A and Special Education Teacher B as supervisors and case managers for the Center Program, they had their own caseload of students outside of the Center Program. *Interviews with Complainant, Principal and Director*. This included mild-moderate classrooms in which they provided specialized instruction. *Id*.
24. Complainant stated Special Education Teacher A and Special Education Teacher B did not spend any time in the Center Program assisting with the provision of specialized instruction or otherwise supporting Teacher 1 and Teacher 2 because they each had their own classrooms to supervise. *Interview with Complainant*. Principal stated that Special Education Teacher A and Special Education Teacher B were in the Center Program to provide support daily. *Interview with Principal*. He added that, in addition to serving as case managers, they handled progress monitoring and helped prepare draft IEPs. *Id*.
25. Director was unable to quantify how many times Special Education Teacher A and Special Education Teacher B were present in the Center Program. *Interview with Director*. She estimated Special Education Teacher A might have been present three times a week, and that Special Education B did not spend any time supporting and supervising in the Center Program. *Id*. Overall, Director described Special Education Teacher A and Special Education Teacher B as having “a passive role supporting case management.” *Id*. Assistant Director stated that Special Education Coach was in Center Program several times per week depending on what Teacher 1 and Teacher 2 were working on. *Interview with Assistant Director*.
26. At any given time, Teacher 1 and Teacher 2 were supported by two to four educational assistants (or paraprofessionals). *Response*, p. 3; *Interview with Principal*. Other staff served Students in the Center Program as well, including, when needed or required by an IEP, general education teachers, school social workers, and the school psychologist. *Response*, p. 3. Given the competing responsibilities for Special Education Teacher A and Special Education Teacher B under their own caseloads, the SCO finds that they were not adequately present in the Center Program to supervise or otherwise support Teacher 1 and Teacher 2.

F. Special Education Service Provision in the Center Program

Teacher 1

27. Teacher 1 was the primary instructor in the Center Program from August 2023 until her resignation in October 2023. *Exhibit A*, p. 4; *Exhibit B*, p. 2; *Interviews with Complainant, Principal, Assistant Director, Director and HR Director*. A series of daily short-term substitutes filled the special education teacher vacancy in the Center Program from the end of October until the end of December 2023 when Students left for winter break. *Interview with Assistant Director*.
28. From August 2023 through October 2023, Teacher 1 provided direct services to Students in the Center Program. *Response*, pp. 4-5; *Exhibits I; Exhibit J*. In addition to implementing Students' IEPs, Teacher 1 participated in the IEP process for Students by attending their meetings as a special education teacher. *Exhibit I*.
29. Special Education Coach was present in the Center Program once a month for thirty minutes to support Teacher 1. *Response*, p. 5; *Exhibit J; Interview with Complainant*. Additionally, Special Education Teacher A would meet with Teacher 1 during her off-period two to three times a week to train her on writing IEPs. *Interviews with Principal and Complainant*.
30. District, and specifically Assistant Director, were aware that Teacher 1 could have a challenging year because she would have former elementary school students in her class who had significant social and emotional struggles. *Interview with Assistant Director*. For instance, due to the support one student required, Teacher 1's educational assistants would run the Center Program while she worked with this student. *Id*.
31. Based on these facts, the SCO finds that District did not provide Students in the Center Program with their required specialized instruction from August 2023 through October 2023.

Teacher 2

32. Teacher 2 was the primary instructor in the Center Program from January 2024 until her resignation in May 2024. *Response*, pp. 4-5; *Exhibit B*, p. 2; *Interviews with Complainant, Principal, Assistant Director, Director, and HR Director*.
33. From January 2024 through May 2024, Teacher 2 provided direct services to Students in the Center Program. *Response*, p. 3; *Exhibits I; Exhibit K*. In addition to implementing Students' IEPs, Teacher 2 also participated in the IEP process for Students by attending their meetings as a special education teacher. *See e.g. Exhibit I; Exhibit K*.
34. Special Education Teacher A, Special Education Teacher B, and Special Education Coach served as case managers for Students in the Center Program, and provided support with planning, instruction, classroom management, and coaching for Teacher 2. *Interview with Assistant Director*. District coaching logs show that Teacher 2 received support and learned

how to deliver specialized instruction from Special Education Coach for thirty minutes weekly on Thursday afternoons. *Exhibit K; Interview with Assistant Director.*

35. For instance, Special Education Teacher A would meet with Teacher 2 after school and on the weekends to train her on writing IEPs. *Interview with Assistant Director.* District's coaching logs reflect that Teacher 2 felt overwhelmed with IEP meetings, an inability to progress monitor, and with learning how to enter grades. *Exhibit K*, pp. 1—8.
36. Based on these facts, the SCO finds that District did not provide Students in the Center Program with their required specialized instruction from January 2024 through May 2024.

Teacher 3

37. Teacher 3 was a paraprofessional in the SSN Program from August 2023 until May 2024. *Exhibit A*, p. 5; *Interviews with Complainant, Principal, Assistant Director, Director, and HR Director.* Teacher 3 received training and supervision from SSN Teacher. *Id.* Teacher 3 will also be a paraprofessional in the SSN Program for the upcoming 2024-2025 school year. *Exhibit C*, p. 1.
38. Teacher 3 did not provide any direct services to Students in the SSN Program. *Response*, pp. 5-6. Teacher 3's role was to serve Students in the SSN Program at the direction and under the supervision of the SSN Teacher. *Id.*

G. Policies, Practices and Procedures

39. District has two written policies pertinent to this investigation. *Exhibit E.* With respect to personnel qualifications, one policy provides:

It is the policy of the Board of Education of [District] to employ only those licensed and/or authorized employees who hold an appropriate license and/or authorization as required by state and federal statutes, including but not limited to the Colorado Teacher Employment, Compensation and Dismissal Act, and by the rules and regulations of the Colorado Department of Education.

Id. at p. 1.

40. With respect to substitute authorization, another written policy lists the employment requirements of guest personnel (i.e. substitute teachers), and states that an applicant must have: (1) A Current Colorado Educator License or approved Substitute Authorization on file; (2) A current, completed licensed application on file; (3) A copy of appropriate transcripts on file; (4) Completed substitute onboarding documentation; (5) Orientation or a meeting with Human Resources or designee; and (6) Approval by the Board of Education. *Id.* at p. 2.

41. Director acknowledged a lack of memorialized processes and procedures related to the hiring of licensed teachers and providers, stating that District is “constantly improving their documentation of processes and that District could have more guidance related to the hiring of licensed instructors.” *Interview with Director*. She further indicated that new guidance and support could include developing a process to make supervising and coaching substitutes more consistent across the board if a substitute is notified that they will have to fill a long-term substitute assignment which consists of delivering specialized instruction or performing other duties that an otherwise licensed special education teacher would be expected to perform. *Id.*
42. Here, District attributed hiring Teacher 1 and Teacher 2 as long-term substitutes, rather than hiring appropriately licensed and endorsed special education teachers, to a staffing shortage and “lack of candidates.” *Interview with HR Director*. Both expressed interest in becoming a special education teacher even though they lacked proper certification and licenses. *Interviews with Assistant Director, Principal, and HR Director*. District was aware of this, and instead gave them both long-term substitute assignments. *Exhibit A, p. 4; Exhibit B, p. 2.*
43. Generally, when hiring a special education teacher in District there is a vetting process whereby all appropriately licensed and endorsed applicants are put in a folder to create a pool of candidates. *Interview with Principal*. However, due to staffing shortages, the process more closely resembles District announcing internally to all its schools that an available candidate has applied and can fulfill the requirements of a certain opening. *Id.* Interested schools may then reach out to District expressing their interest in a candidate. *Id.*
44. In times of staffing shortages, District has tried different methods of hiring appropriately licensed teachers to include a primary method of using a website where applicants apply directly online. *Interview with Director*. Current District employees who express interest in becoming special education teachers are generally encouraged to pursue the appropriate education and licensure. *Interviews with HR Director, Assistant Director, and Director*.
45. The process developed by District to ensure its special education staff possess required licenses and credentials consists of using applicant tracking system Frontline (formerly AppliTrack). *Interview with HR Director*. Additionally, District’s human resources department verifies the licensure status of all applicants with the CDE. *Interview with Director*.
46. After School hires a new employee to provide special education services, District’s HR department will track license expirations using its own internal process in addition to the CDE also sending automatic notifications about expired licenses. *Interview with Assistant Director*. District has denied applicants from working in certain positions because they did not possess the proper licenses and endorsements for the position. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegations No. 1-3: District did not ensure that Teacher 1, from August 2023 through October 2023, and Teacher 2, from January 2024 through May 2024, possessed the required certifications and licenses, as required by 34 C.F.R. § 300.156 and 300.207 and ECEA Rule 3.04. This resulted in a denial of FAPE for Students. District ensured Teacher 3 possessed the required certifications and licenses from April 2024 to present, as required by 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

A. Certifications and Licenses: Legal Requirements

The CDE must establish qualifications to ensure that special education teachers are “appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.” 34 C.F.R. § 300.156(a); *Memorandum to State Directors of Special Educ.*, 81 IDELR 287 (OSEP 2022). This includes ensuring that all special education teachers have obtained state certification as special education teachers. 34 C.F.R. § 300.156(c). School districts must ensure that staff are “appropriately and adequately prepared, subject to the requirements of § 300.156.” *Id.* at § 300.207.

To that end, “all special education teachers shall hold Colorado teacher’s certificates or licenses with appropriate endorsements in special education.” ECEA Rule 3.04(1)(a)(i). School districts are responsible for ensuring their staff comply with state licensing requirements. ECEA Rule 3.03. School districts may not waive IDEA personnel qualification requirements on an emergency, temporary, or provisional basis. *Memorandum to State Directors of Special Educ.*, 81 IDELR 287 (OSEP 2022).

A school district's decision to employ uncertified substitute teachers who are not on the path to certification to provide instruction to special education students will likely violate the IDEA. *See, e.g., Universal Acad. Charter Sch.*, 70 IDELR 84 (SEA MN 2017) (finding that a substitute teacher without certification was not qualified to implement a student’s IEP even if she received frequent instructions from the school principal); *S.B. v. Murfreesboro City Schs.*, 67 IDELR 117 (M.D. Tenn. 2016) (finding a student did not receive appropriate behavioral services and supports when the district assigned an uncertified substitute teacher to take over a special education day class while the regular teacher was on maternity leave); *But see Abington Sch. Dist.*, 117 LRP 9209 (SEA PA 02/14/17), *aff’d on other grounds*, 73 IDELR 179 (E.D. Pa. 2018) (ruling a substitute teacher appropriately addressed a student’s needs with information and direction from the school principal). Indeed, a one-year substitute authorization for an applicant to serve as a substitute educator requires only that the applicant hold a high school diploma or its equivalent, and that the applicant attests to having worked successfully with children. 1 CCR 301-37 § 4.05(1)(c).

Finally, the IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (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. Teacher 1

Here, Complainant's concern is that Teacher 1 did not possess the proper certifications and licenses to serve as a special education teacher. (FF # 2). Teacher 1 served as Students' special education teacher from August 2023 through October 2023. (FFs # 5, 7, 27, 28). Teacher 1 was not licensed to teach special education in Colorado during the 2023-2024 school year. (FFs # 5, 7). Nevertheless, Teacher 1 fulfilled the duties of an otherwise credentialed and licensed special education teacher, including the delivery of direct specialized instruction pursuant to Students' IEPs. (FFs # 5-7, 21-31). Even assuming Teacher 1 received weekly coaching and guidance, the SCO cannot reconcile the fact that Special Education Teacher A and Special Education Teacher B had their own caseloads and classrooms and, thus could not provide the level of guidance and supervision needed to ensure Students were able to access their education. (FFs # 6, 22-26).

Accordingly, the SCO finds and concludes that District did not ensure Teacher 1 possessed the required certifications and licenses from August 2023 through October 2023, as required by 34 C.F.R. §§ 300.156, 300.207 and ECEA Rules 3.03 and 3.04.

C. Teacher 2

Here, Complainant's concern is that Teacher 2 did not possess the proper certifications and licenses to serve as a special education teacher. (FF # 2). Teacher 2 served as Students' special education teacher from January 2024 through May 2024. (FFs # 2, 9-10, 33). Teacher 2 was not licensed to teach special education in Colorado during the 2023-2024 school year. (FFs # 9-10). Nevertheless, Teacher 2 fulfilled the duties of an otherwise credentialed and licensed special education teacher, including the delivery of direct specialized instruction pursuant to Students' IEPs. (FFs # 9-10, 21-26, 32-36). Even assuming Teacher 2 received weekly coaching and guidance, the SCO cannot reconcile the fact that Special Education Teacher A and Special Education B had their own caseloads and classrooms, and thus could not provide the level of guidance and supervision needed to ensure Students were able to access their education. (FFs # 22-26). Per District's coaching logs, Teacher 2 felt overwhelmed with her role as the primary special education teacher in the Center Program. (FF # 35).

Accordingly, the SCO finds and concludes that District did not ensure Teacher 2 possessed the required certifications and licenses from January 2024 through May 2024, as required by 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

D. Teacher 3

Here, Complainant's concern is that Teacher 3, a paraprofessional, was hired to serve as a special education teacher in the SSN Program for the 2024-2025 school year. (FF # 12-13). Teacher 3 will not be serving as a special education teacher in the SSN Program for the 2024-2025 school year. (*Id.*). Moreover, Teacher 3 did not provide specialized instruction or otherwise perform the duties of an otherwise credentialed and licensed special education teacher while she served as a paraprofessional in the SSN Program during the 2023-2024 school year. (FF #s 11-13, 37-38).

Accordingly, the SCO finds and concludes that District ensured Teacher 3 possessed the required certifications and licenses from April 2024 to present, as required by 34 C.F.R. § 300.156 and ECEA Rule 3.04.

E. Procedural Noncompliance

Procedural noncompliance of the IDEA may result in compensatory remedies only to the extent that they (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); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, there were thirteen Students in School’s Center Program during the 2023-2024 school year. (FF # 15). Each Student had an IEP that entitled them to direct specialized instruction to be delivered by a special education teacher in the Center Program outside of the general education environment. (FFs # 15-17, 19). The individuals providing direct specialized instruction in the Center Program during the 2023-2024 school year—Teacher 1, Teacher 2, and a series of other substitute teachers—were not licensed to teach special education in Colorado. (FFs # 7, 10, 27-30, 33). Thus, the lack of a licensed special education teacher impacted implementation of Students’ IEPs and, in turn, Students’ abilities to make progress on their annual goals throughout the 2023-2024 school year. (FFs # 20, 31, 36). This impeded Students’ right to a FAPE and deprived Students of an educational benefit. For these reasons, the SCO finds and concludes that the procedural noncompliance resulted in a denial of FAPE. *See Knable*, 238 F.3d at 765-66.

F. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been in if not for the noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the SCO finds and concludes that an award of compensatory services is necessary to place Students in the positions they would have been in if not for noncompliance. Because Teacher 1 and Teacher 2, in addition to implementing Students’ IEPs, participated in the IEP process for Students as unlicensed special education teachers—and were partially responsible for writing draft IEPs and monitoring progress—it is difficult to assess a credible, individual impact for each Student. (FF #s 28-31, 33-36).

Since progress on annual IEP goals for Students was monitored by teachers who were not properly credentialed or licensed, and therefore is unreliable, the SCO will award a flat percentage based on the average 1,968 missed minutes per week for each Student. (FFs # 18,

19). Specifically, the SCO awards ten percent of the average weekly missed minutes for each Student (196.8 minutes x 36 weeks = **7,084 total minutes**) or five percent of the average weekly missed minutes if the services are provided on a one-to-one basis (98.4 minutes x 36 weeks = **3,542 total minutes**).

Systemic IDEA Noncompliance: This investigation demonstrates noncompliance that is systemic in nature and will likely impact the future provision of services for all children with disabilities in District if not corrected.

Pursuant to its general supervisory authority, CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in 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, the SCO recognizes Teacher 1 and Teacher 2 are no longer employed by District, that the circumstances surrounding their hirings were complicated by a shortage of credentialed and licensed special education teachers, and that the nationwide staffing shortage in education is out of its control. (FFs # 7, 10, 43-44). Nevertheless, thirteen Students in Center Program did not receive their direct specialized instruction from teachers who were licensed to provide special education services for an entire school year. (FF # 19, 28-31, 33-36). District conceded the need to memorialize its policies and practices as it pertains to hiring licensed and endorsed special education teachers. (FF # 41). It is precisely the lack of guidance regarding what is appropriate for a long-term substitute to engage in without the proper supports, and what the appropriate level of support is to ensure compliance under the IDEA, that makes noncompliance more likely in the future. It is for these reasons that the SCO finds that District’s noncompliance is systemic in nature and likely to impact the future provision of services to IDEA-eligible students in District.

REMEDIES

The CDE concludes that District did not comply with the following IDEA and ECEA Rule requirements:

1. Ensuring that Teacher 1 and Teacher 2 possessed the certifications and licenses as required by 34 C.F.R. §§ 300.156 and 300.207 and ECEA Rule 3.04.

To demonstrate compliance, District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Friday, August 30, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as

not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District’s timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Director, Assistant Director, HR Director, Principal, and all district special education teachers must review this decision, as well as the requirements of 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04. This review must occur no later than **Friday, September 6, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, September 13, 2024**. If the individuals identified in this paragraph are no longer employed by District when the review occurs, staff occupying identical roles must review the Decision. If District no longer has any of these roles, District may substitute the individual occupying the role with similar responsibilities.

3. Procedures

- a. By **Friday, September 27, 2024**, District must submit a written procedure or guidance to ensure compliance with 34 C.F.R. §§ 300.156, 300.207 and ECEA Rule 3.04. At a minimum, the procedure must offer clear guidance on the following:
 1. Which centralized District employee or team of employees (“Monitoring Team”) will be responsible for monitoring staffing gaps among staff members responsible for delivery of specialized instruction under an IEP (hereafter, “responsible staff member”);
 2. How Monitoring Team will be notified whenever a responsible staff member in the District—including charter schools—ceases providing special education for any reason, including taking leave, for longer than eleven consecutive school days, whether or not coverage is provided for that staff member;
 3. How the District will ensure that schools, including charter schools, comply with this notification requirement, such as by conducting a periodic audit of special education teacher FTEs across the District and comparing the results with Monitoring Team’s records;
 4. How Monitoring Team will receive accurate information regarding the identities of the students who received special education from the responsible staff member;

5. How Monitoring Team will receive accurate information regarding the subject matter, setting, and amount of special education services provided by the responsible staff member to each identified student;
 6. How Monitoring Team will be notified of any coverage provided by the school for the departed teacher, such that this notification will include each coverage teacher's identity, licensure, and credentials; the identities of the students taught by that coverage teacher; the subject matter, setting, and amount of specialized instruction provided by that coverage staff member to each identified student; and the beginning and end dates of the coverage staff member's provision of specialized instruction to the responsible staff member's students;
 7. How Monitoring Team will be notified when a resolution for the responsible staff member's absence is implemented, such as the return of that responsible staff member, the hiring of a new responsible staff member, or the permanent reallocation of the responsible staff member's students' services to other staff members;
 8. How Monitoring Team will ensure that the resolution complies with the ECEA and the IDEA, including compliance with licensure and credential requirements and the requirement that each student's IEP accurately reflect the student's education, services, and placement (including least restrictive environment) at all times;
 9. How Monitoring Team will ensure that, following resolution of the responsible staff member's absence, compensatory services are determined for each of the departed teacher's students;
 10. How Monitoring Team will track and ensure the provision of the compensatory services, similar to CDE's requirement for monthly updates from school districts regarding their provision of compensatory services pursuant to state complaint decisions; and
 11. How Monitoring Team will monitor the assignment of new students to an absent responsible staff member's caseload.
- b. District 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.
 - c. By **Friday, October 11, 2024**, CDE will review the District's draft procedures, approve them contingent upon the District's adopting CDE's revisions, or reject the procedures with guidance to the District on how they must be corrected.

- d. By **Friday, November 1, 2024**, the District must ensure that a copy of the approved procedures have been given to the individuals who must review this decision listed above in Remedies § 2(a); all school and charter school principals (or the school's equivalent of a principal); all special education teachers, including special education teachers in charter schools, all charter school network directors of special education, and each director of human resources within the District.
- e. If CDE has not approved the District's draft procedures by October 11, 2024, CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this subpart, Remedies § 3, in CDE's sole discretion and according to CDE's interpretation of the purposes of this subpart.
- f. To verify that the District has implemented and is following this procedure, Monitoring Team will, by the **second Monday of each month**—beginning December 2, 2024 and continuing to and including August 15, 2025—submit monthly reports containing the information required to be tracked by Remedy § 3.

4. Compensatory Services for Students

- a. Students 1 through 13 shall each receive no less than 7,084 minutes of direct specialized instruction services, or 3,542 minutes if those services are provided on a one-on-one basis. These compensatory services must be provided by a licensed special education teacher.
- b. These services must be designed to advance Students 1 through 13 toward current annual IEP goals.
- c. All compensatory services must be provided to Students 1 through 13 no later than **one year from the issue date of this Decision**.
- d. By **September 16, 2024**, District shall schedule compensatory services in collaboration with the parents of Students 1 through 13. A meeting is not required to arrange these schedules, and the parties may collaborate, for instance, via email, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedules of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **September 21, 2024**. If District and parents cannot agree to schedules by September 16, 2024, the CDE will determine the schedules for compensatory services by **September 26, 2024**.
 - i. The parties shall cooperate in determining how compensatory services will be provided. If parents refuse to meet with the District within this time, the District will be excused from delivering compensatory services,

provided that the District diligently attempted to meet with parents and documented such efforts. A determination that the District diligently attempted to meet with parents and, thus, should be excused from providing compensatory services, rests solely with the CDE.

- ii. The parents may opt out of some or all compensatory services.
- e. To verify that Students 1 through 13 received the services required by this Decision, District must submit records of service logs to the CDE **by the second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- f. These compensatory services will be in addition to any services Students 1 through 13 currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. These compensatory services must be provided to Students 1 through 13 outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure they are not deprived of the instruction they are entitled to (including time in general education). If for any reason, including illness, Students 1 through 13 are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District 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.
- g. If the CDE determines, in its sole discretion, that additional information or action is necessary to verify or ensure that Students 1 through 13 receive the compensatory services required by this Decision, it may require District to provide additional information—such as a Student’s IEP, class schedule, or other documentation—or take any additional actions deemed necessary by the CDE.

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
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet the timelines set forth above, it 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 CDE 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 State Complaints Officer (“SCO”).

This Decision, originally dated August 2, 2024, is hereby amended this 5th day of August, 2024.



Tiera Brown
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-8

- Exhibit A: Certifications and licenses held by Teacher 1
- Exhibit B: Certifications and licenses held by Teacher 2
- Exhibit C: Certifications and licenses held by Teacher 3
- Exhibit D: List of Classrooms and/or Programs
- Exhibit E: Policies and procedures
- Exhibit F: School calendar
- Exhibit H: Delivery Verification
- Exhibit I: Students' IEPs
- Exhibit J: Teacher 1 teaching log
- Exhibit K: Teacher 2 teaching log
- Exhibit L: Hiring procedures memo
- Exhibit K: Candidate reference memo

Telephone Interviews

- Complainant: July 10, 2024
- Assistant Special Education Director: July 11, 2024
- Special Education Director: July 11, 2024
- HR Director: July 12, 2024
- Principal: July 11, 2024
- Teacher 3: July 18, 2024