

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

State Complaint SC2025-528

Weld RE-5J

DECISION

INTRODUCTION

On March 4, 2025, a third party (“Complainant”) filed a state complaint (“Complaint”) on behalf of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ against Weld RE-5J (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to its jurisdiction for the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153.

On March 7, 2025, upon agreement of the parties, the CDE extended the 60-day investigation timeline to allow the parties to participate in mediation consistent with 34 C.F.R. § 300.152(b)(1). Mediation resulted in impasse and the CDE resumed the investigation on April 9, 2025.

The CDE’s goal in state complaint investigations is to improve outcomes for students with disabilities and promote positive parent-school partnerships. A written final decision serves to identify areas for professional growth, provide guidance for implementing IDEA requirements, and draw on all available resources to enhance the quality and effectiveness of special education services.

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 March 4, 2024. Information prior to March 4, 2024 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

The Complaint raises the following allegations subject to the CDE’s jurisdiction under 34 C.F.R. § 300.153(b)² of the IDEA:

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

² The CDE’s state complaint investigation determines if District complied with the IDEA, and if not, whether the noncompliance results in a denial of a free appropriate public education (“FAPE”). 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

1. The District improperly changed Student’s placement in or around April 2024, when it placed Student in an online program, because it:
 - a. Did not ensure the placement decision was made by a group of persons that included Parent and others with knowledge of Student, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. §§ 300.116, 300.321, 300.322, 300.327, and 300.501(c) and ECEA Rule 4.03(8);
 - b. Did not determine educational placement based on Student’s IEP, as required by 34 C.F.R. 300.116(b) and ECEA Rule 4.03(8); and
 - c. Made a significant change to Student’s placement without consideration of reevaluation, as required by ECEA Rule 4.03(8).
2. The District did not fully implement Student’s Individualized Education Program (“IEP”) from March 2024 to present because it:
 - a. Did not make the IEP accessible to teachers or service providers responsible for its implementation, as required by 34 C.F.R. § 300.323(d);
 - b. Did not provide the accommodations listed in the IEP—specifically, small group and 1:1 instruction, additional adult assistance for behavioral and academic needs, modeling expectations, and providing frequent check-ins—as required by 34 C.F.R. § 300.323(c);
 - c. Did not provide the direct and indirect specialized instruction listed in the IEP, as required by 34 C.F.R. § 300.323(c);
 - d. Did not provide the related services listed in the IEP—specifically, transportation services—as required by 34 C.F.R. § 300.323(c); and
 - e. Did not educate Student in the least restrictive environment (“LRE”) listed in the IEP—specifically by making available a separate school placement—as required by 34 C.F.R. §§ 300.320(a)(5), 300.323(c), 300.114(a)(2), and 300.115.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,³ the CDE makes the following findings of fact (“FF”):

³ The appendix, attached and incorporated by reference, details the entire Record.

A. Background

3. Student is 14 years old and has been enrolled in District since the start of the 2023-2024 school year. *Exhibit A*, p. 20; *Response*, p. 2.
4. Student is eligible for special education services as a child with an other health impairment and a specific learning disability. *Exhibit A*, p. 52. Student is kind and enjoys helping others. *Id.* at p. 20; *Interview with Student's parents ("Mother" and "Father")*. He loves riding and doing tricks on his scooter. *Interviews with Complainant, Mother, Father and a District bus driver ("Driver")*.
5. Student struggles with self-regulation and impulsivity. *Exhibit A*, p. 22; *Exhibit F*, p. 26. He also struggles with executive functioning, including starting, continuing and finishing work. *Exhibit F*, p. 10. He struggles to build and maintain relationships with peers and is easily pulled into disruptive behaviors with peers. *Exhibit F*, p. 27; *Interview with Mother and Father*. Student is missing numerous basic academic and life skills, including basic addition and how to use email. *Interview with Student's special education teacher ("Teacher")*.

B. November 2023 IEP

6. In November 2023, District developed an IEP ("2023 IEP") for Student after completing a reevaluation. *Exhibit A*, p. 20. The IEP team included Student's Father and Mother, Complainant, a school psychologist from District, a general education teacher, Teacher, and other individuals who worked with Student outside of school. *Id.* at p. 16.
7. The 2023 IEP reviewed District's first evaluation ("2023 Evaluation") of Student as well as his progress in online classes to date. *Id.* at pp. 20-21. It noted that Student was "willing to follow along with the work with guided support" and that he "need[ed] support to comprehend instructions and follow through." *Id.* at p. 20. It could take two to three prompts for Student to recall an answer, and he struggled with extended writing assignments. *Id.*
8. Due to Student's disability, he required special education support to access the general education curriculum. *Id.* at p. 22. This included support with self-regulation and "dedicated adult support" for "appropriate participation in the classroom." *Id.* The 2023 IEP did not indicate that Student required special transportation. *Id.*
9. The 2023 IEP included one goal each in the areas of reading, writing, math, self-determination and social emotional wellness. *Id.* at pp. 22-25. It also includes 25 accommodations, including four relevant here: (1) "provide frequent check ins to ensure [Student] is on task/on topic;" (2) "[s]mall group or 1:1 instruction/assessment when appropriate;" (3) "[a]dditional adult assistance for behavioral and academic needs;" and (4) "[m]odel expectation[s]." *Id.* at p. 25.
10. Student's LRE was a separate school where he could receive the specialized instruction he required in a therapeutic setting. *Id.* at p. 29. However, the services described in the service delivery statement ("SDS") were the "interim services" he would receive while District was

“in the process of looking for a separate school placement.” *Id.* at p. 28. “Direct services outside the general education setting [would] be provided through virtual learning.” *Id.* This included 90 minutes per week (“MPW”) of math instruction, 180 MPW of language arts instruction and 30 MPW of social emotional support, for a total of five instruction hours. *Id.*

11. The prior written notice (“PWN”) noted that Student would receive “online schooling,” and District was “working to find a separate school placement so [Student could] attend in-person.” *Id.* at p. 30. After the meeting, IEP team members understood Student’s placement to be a separate school, with interim services to be provided online until an appropriate school could be identified. *Interviews with Teacher, Complainant, Mother, and Father.*

C. Student’s Attendance at Facility School

12. On February 20, 2024, Student began attending a separate school (“Facility School”) identified by District. *Response*, p. 3. While there, he failed five classes and earned one “A” and one “C.” *Exhibit H*, p. 6.
13. A transfer IEP from February 12, 2024 noted that Student would receive “comparable service[s]” of 1,800 MPW of specialized instruction from a special education teacher in a “therapeutic day treatment school” while enrolled at Facility School. *Exhibit A*, p. 34. Student would also receive one or two sessions of individual or family therapy each week, as well as weekly group therapy. *Id.* This transfer IEP was created by Facility School, and the IEP in District’s system was never replaced with an IEP from Facility School. *Interview with District’s Director of Special Education (“Director”).*
14. On April 10, 2024, an IEP team at Facility School determined that Student would not be eligible for extended school year services. *Exhibit A*, pp. 35-36. This change was reflected in Student’s IEP which was updated April 17, 2024. *Id.* at pp. 37-51. No other changes were made to the 2023 IEP at that time. *Id.*
15. On April 22, 2024, Student had an altercation with a peer that resulted in a “school lockdown and police response.” *Response*, p. 3; *Exhibit M*, p. 14. As a result, he was administratively discharged from Facility School on Wednesday, April 24, 2024. *Id.*; *Exhibit G*, p. 1.
16. After his discharge, District again enrolled him in online classes with virtual support from Teacher. *Exhibit I*, p. 1. However, Student was out of town with family on a trip that started Monday April 29 and lasted until after the end of the school year. *Exhibit M*, p. 4; *Exhibit A*, p. 36; *Exhibit K*, p. 1. This trip was planned when Student was still enrolled at Facility School. *Exhibit A*, p. 36. The family never picked up a computer from District, and Student did not participate in the available virtual services. *Id.* Meanwhile, District continued to look for a separate school placement. *Interview with Director.*

D. Start of the 2024-2025 School Year

17. District convened an IEP team meeting on August 12, 2024—the first day of the school year—to discuss existing data, “review parent concerns with the online-only” services, and provide updates on separate school waitlists. *Exhibit C*, p. 1; *Exhibit K*, p. 2. No changes were made to Student’s IEP, and District continued with the interim plan from the 2023 IEP, which included five hours per week of virtual instruction. *Interview with Director; Exhibit A; Exhibit I*, p. 8.
18. The parties agreed to conduct a reevaluation (“2024 Evaluation”) to consider LRE and the steps to reintegrate Student, as a separate school remained unavailable. *Exhibit D*, p. 1. The IEP Team planned to review “prior information, school records, data, observations, interviews and work samples” as a recent reevaluation had just been completed. *Id.* Consent for reevaluation was signed on August 15, 2024. *Id.*
19. On October 8, 2024, the IEP team, including Father, met to review the reevaluation. *Response*, p. 5; *Exhibit F*, pp. 15-23. As of October 2, Student had spent almost 17 hours working in online courses and was several assignments behind in all of them, having completed 0-10% of the coursework in each class. *Exhibit F*, p. 18. Student was not completing any work outside of the in-person sessions. *Id.* at p. 17. He also never initiated tasks independently. *Id.* at p. 19. After reviewing the 2024 Evaluation, Student’s placement did not change. *Exhibit A*, p. 56.

E. November 2024 IEP

20. An IEP team, including Teacher and Father, met on November 6, 2024 to review and update Student’s IEP (“2024 IEP.”) *Exhibit C*, p. 6; *Exhibit A*, p. 54. According to the 2024 IEP, District was providing Student with an online program and “6 hours a week of in-person sessions as a trial of opportunity” while District continued to search for a facility school that could best meet his needs. *Exhibit A*, p. 56. At that point, seven programs had denied the referral. *Id.*
21. Student continued to struggle to log onto and access the virtual sessions and online program from home. *Id.* He was doing well when services were provided in person. *Id.* at p. 57. However, he was frustrated when he was not able to work in person. *Id.* District wanted Student to “show growth, stamina, and tolerance” by working independently from home to “gradually transition him into more contact with others.” *Id.* Student also continued to struggle with peer interactions. *Id.* at p. 59.
22. Driver, who had had established a rapport with and helped another student the prior year, agreed to drive Student to the high school and sit with him for two hours, three times per week, while he completed online classes. *Interview with Driver*. Driver noted that he required tasks broken down into simpler steps and significant repetition. *Exhibit A*, p. 61. Student struggled to remember how to do basic math problems and was only able to do well because they took the time to “practice it until he got it.” *Id.* With reading, Student did not seem to remember what he just read. *Id.*

23. Driver was also working with Student on basic hygiene and social interactions like eye contact and greetings. *Id.* Student needed more time to work on how to “socially communicate and interact with his peers.” *Id.*
24. The Student Needs and Impact of Disability statement was the same as the 2023 IEP, with the additional note that Student required a “therapeutic level of care in a separate school setting” to support his behavior and therapeutic needs. *Id.* at pp. 62-63. Student required special transportation to access in-person support. *Id.* at p. 64.
25. The 2024 IEP included four goals, in reading, writing, math and self-determination. *Id.* at pp. 66-68. It also included the same accommodations as the 2023 IEP. *Id.* at p. 68.
26. Student’s LRE remained a separate school where he would have specialized instruction in academic and social emotional skills, with “smaller class size[s], a higher staff to student ratio, and access to a therapeutic component.” *Id.* at p. 72. The placement “began last year and [was] still relevant.” *Id.*
27. The SDS described the services Student would receive while “an out of district day treatment/residential setting” was explored. *Id.* at p. 71. Student would receive 420 MPW of direct instruction from a special education teacher or paraprofessional. *Id.* Services would be provided virtually and in-person, with Student spending up to nine hours per week in person if staff was available. *Id.*

F. March 2025 IEP Amendment

28. An IEP meeting was held virtually on March 13, 2025 to review data and consider increasing Student’s time in-person. *Exhibit A*, p. 78; *Exhibit C*, p. 8; *Interview with Director*. Father, Student’s stepmother, Teacher, a school psychologist and Director attended. *Exhibit A*, p. 78.
29. The IEP team updated the present levels statement to reflect Student’s progress in online courses. *Id.* at p. 77. Student had completed one physical education class and was completing work in science and math classes. *Id.* However, he required constant supervision and the team discussed the need to “ween off the 1:1 support to build in more independence.” *Id.*
30. With the amendment, Student would begin receiving 12 hours per week of 1:1 instruction with a special education teacher or paraprofessional at the District’s administrative building. *Id.* This would include 120 MPW of math, 180 MPW of reading and writing and 120 MPW of behavior management. *Id.* To better accommodate their schedule, the family asked that Student’s services start at 8 a.m. instead of 9 a.m. *Id.* at p. 77. With the new start time, Father agreed to drop Student off in the morning while District would continue to transport Student home at the end of the session. *Id.*
31. This instruction would continue while an out of district “treatment/residential setting” was explored. *Id.* Student’s LRE remained “separate school.” *Id.* at p. 101. The remainder of the

2024 IEP, including student needs, the need for specialized transportation and the list of accommodations remained unchanged. *Id.* at pp. 83-103.

G. Interim Services

Fall 2024

32. District's special education handbook details its special education procedures. *Exhibit L*, pp. 161-284. District requires all providers to maintain logs of the services provided to all students on IEPs. *Id.* at p. 235. These logs must include the date and location of the service as well as the length. *Id.* They can also include notes and data, and a service description. *Id.*
33. Paraprofessional and Teacher keep daily notes on their time with Student on weekly sheets designed for that purpose. *Interviews with Teacher and Paraprofessional; Exhibit J*, pp. 19-66. Teacher also periodically enters a record of her services in a computer system. *Interview with Teacher; Exhibit J*, pp. 1-11. Driver did not keep records of his time with Student. *Interview with Driver.*
34. Starting August 22, 2024, Driver transported Student to a conference room at a District high school three times per week for two hours per day. *Response*, p. 4; *Exhibit F*, pp. 15-16; *Interview with Driver.* Driver stayed with Student while he completed online classes. *Id.* Teacher guided Driver on how to support Student and provided worksheets to supplement the online learning. *Id.; Exhibit P*, pp. 16, 18. On three or four occasions, Driver was unable to pick Student up because he had to fill in for other bus drivers. *Interview with Driver; Exhibit P*, pp. 16, 18. However, on some of those days he worked in-person with Teacher instead. *Id.*
35. Student needed breaks to get through the two-hour sessions, but he was cooperative about returning to work. *Exhibit A*, p. 58. On September 10, 2024, District declined to increase Student's in-person services because he was not completing work independently at home. *Id.*
36. While working with Driver, Student met virtually with Teacher a few times. *Interview with Driver.* Teacher would give them a time and they would all get on and go over a few things before signing off and returning to their work. *Id.*
37. During October 2024, Student worked with Teacher for 22 hours. *Exhibit J*, pp. 9-11. He struggled to stay focused, required breaks and was reluctant to work on some classes. *Id.* He was also missing several basic skills, so he struggled to understand grade-level math and English. *Id.*
38. In November 2024 Student worked with Teacher for a total of 16 hours. *Id.* at pp. 7-9. This includes crediting District for two hours of instruction on November 19 because Teacher recorded detailed notes on their work on academic and life skills even though Student was marked absent. *Id.* at p. 7. On November 20, no services were provided because transportation was unavailable, and Student did not log on independently from home. *Id.*

39. Early in November, Student started working at the administrative building where Teacher is based, instead of meeting with her virtually from High School. *Id.* at p. 8; *Response*, p. 4. Throughout the month, they worked on social emotional lessons as well as academic classes. *Exhibit J*, pp. 7-9.
40. On December 3, 2024, Student missed two hours of direct instruction because he was sick. *Id.* at p. 7. In total, District offered Student 12 hours of in-person direct instruction from a special education teacher in December 2024. *Id.* at pp. 5-7. Ultimately, Student earned a D in math, Cs in life science and academic success, an A in physical education and a pass in “resource.” *Exhibit H*, p. 8. He failed three other courses. *Id.*

Spring 2025

41. On January 8, 2025, transportation did not pick up Student. *Exhibit J*, p. 5. On January 9, transportation did not pick up Student again, so Father brought Student to the building. *Id.* Student worked with Teacher for two hours, trying to complete first semester classes. *Id.*
42. On January 10, Student worked with Teacher for four and a half hours, to make up time for January 8. *Id.* at p. 4. They completed progress monitoring and a social emotional lesson, in addition to work for first semester classes. *Id.* Student was also notified that he would be working with Teacher and her paraprofessionals moving forward, instead of Driver. *Id.*
43. Staff was unavailable for Student’s session on January 14. *Id.* On January 15, Student worked on a reading benchmark test for 135 minutes. *Id.* On January 17, he worked on his new classes with Teacher for three hours. *Id.*
44. Student missed all three sessions the week of January 21 because he was sick. *Id.* at p. 3. He also missed all three sessions the following week for a family vacation. *Id.* at p. 2. Thus, the CDE credits District with 12 hours of instruction for this time. In total, the CDE finds that District provided 23.75 hours of direct instruction in January 2025.
45. In February 2025, District provided 35 hours of instruction. *Exhibit J*, pp. 1-2. During that time Student worked on English, science, math, gym and social emotional lessons. *Id.* Student continued to struggle with basic addition and subtraction, and money was “a definite area of struggle.” *Id.* at p. 2.
46. Student was suspended from in person services the week of March 3, 2025. *Exhibit J*, p. 57. There was no school March 14, but Student worked with staff for six hours that week. *Exhibit P*, p. 25. He continued to work with Teacher and Paraprofessional approximately three days per week, four hours per day, for the rest of the year. *Id.* at pp. 25-57. In total, the CDE finds that District provided 18 hours of direct instruction in March, 56 hours in April and 28 hours in May. *Exhibit P*, pp. 25-57.

47. Ultimately, Student is on track to earn five credits this year, as compared to a typical freshman's 8.25 credits. *Interview with Teacher and Director*. Student did not meet with a mental health provider during the 2024-2025 school year. *Id.*

H. IEP Accessibility to Providers

48. In District, case managers are responsible for ensuring that everyone working with an IDEA-eligible student is aware of their responsibilities under the student's IEP. *Interviews with Director and a special education paraprofessional with District's online programming ("Paraprofessional")*. Before working with students, Paraprofessional reviews their IEPs with Teacher. *Interview with Paraprofessional*.
49. Driver reviewed the 2023 IEP at the start of the school year before working with Student. *Interview with Driver*. He also met with Teacher to talk about how to support Student, including breaking down academic assignments and helping manage Student's frustration with strategies like breaks and snacks. *Id.* This was Driver's first time reviewing an IEP. *Id.*
50. Paraprofessional started working with Student around January 2025. *Id.* Before that, she sat down with Teacher to review his IEP, including accommodations. *Id.* They also discussed how to help him and what they would be doing to work on his goals. *Id.*
51. Paraprofessional has access to a paper copy of Student's IEP in a folder in their classroom. *Id.* She and Teacher also connect daily about their shared students and discuss Student a minimum of three times per week. *Id.*

I. IEP Implementation: Accommodations

First Accommodation

52. Student's IEPs all required "small group or 1:1 instruction/assessment when appropriate." *Exhibit A*, pp. 25, 68, 97.
53. While Student was in person, he received instruction from Teacher or an adult under her supervision. *Interviews with Teacher, Driver and Paraprofessional*. Although other students were sometimes present, Student always received 1:1 instruction from an adult. *Id.*

Second Accommodation

54. Student's IEPs all required "[a]dditional adult assistance for behavioral and academic needs." *Exhibit A*, pp. 25, 68, 97.
55. Driver created flashcards to work on math with Student and used the whiteboard to expand on the online lessons. *Interview with Driver*. Driver also worked with Student on coming to School prepared to learn and staying on task during lessons. *Id.*

56. At the start of each session, Paraprofessional checked in with Student, as his mood could really impact the work he would accomplish. *Interview with Paraprofessional*. If he came in upset or angry, she prioritized preferred tasks like science. *Id.* If he was in a better mood, he could push through more assignments and tests. *Id.*
57. Teacher continually monitored Student's behaviors and emotions to prompt breaks and align coursework to his current abilities. *Interview with Teacher*. Staff also help him process challenging situations, including brainstorming different approaches for the future. *Id.*

Third Accommodation

58. Student's IEPs all required staff to "model expectation[s]." *Exhibit A*, pp. 25, 68, 97.
59. Driver modeled expectations for what coming to school ready to learn would look like, e.g. clean clothes and face and brushed hair. *Interview with Driver*. He also modeled appropriate interactions with office staff, like saying hi or thank you. *Id.*
60. Teacher frequently models expectations for Student, as it is "good teaching." *Interview with Teacher*. This might look like providing a sample of the end product, as she did for a skeleton project earlier this year. *Id.* Other times she explains what the result will look like. *Id.* She also often employs the "I do, we do, you do" model, where she shows him how to complete a problem, then they complete one together and then finally Student completes a problem. *Id.*
61. Paraprofessional talks Student through what to expect and what he needs to do before having him complete online assignments. *Interview with Paraprofessional*. With paper assignments, she might offer a sample of the end product or do an example problem for him. *Id.*

Fourth Accommodation

62. Student's IEPs all required staff to "provide frequent check ins to ensure [Student] is on task/on topic." *Exhibit A*, pp. 25, 68, 97.
63. Student always required prompts to get started with work. *Interview with Driver*. He was also easily distracted but responsive to redirection to the assignment. *Id.*
64. Because they always have eyes on him, they can see when Student is off task. *Interview with Paraprofessional*. Staff sits strategically to be able to see Student's screen. *Interview with Teacher*. They also check in with Student, asking to see what he is working on or if he wants any help. *Interviews with Teacher and Paraprofessional*. If Student is having a good day and working on a preferred activity, he might only require one or two prompts. *Id.* However, getting through nonpreferred tasks sometimes requires up to five prompts. *Id.*
65. Based on these findings—to include the credible descriptions of the providers as to how these four accommodations were delivered—the CDE finds that while Student was in person,

District made these four accommodations available to Student consistent with his IEPs from August 2024 to present.

J. IEP Implementation: LRE

66. As of November 7, 2024, District had contacted seven facility schools. *Exhibit M*, p. 8. Four denied the referral based on safety concerns, one indicated its facility did not have an appropriate focus, one was not accepting any referrals and another indicated it could not meet Student's needs. *Id.* at pp. 8-9.
67. In December, District explored the possibility of returning Student to Facility School. *Id.* at pp. 10- 27. Ultimately, Facility School declined to readmit Student for safety reasons. *Id.* at p. 14. In January 2025, District contacted five additional facility schools but had not heard back from any of them. *Id.* at p. 31.
68. By the end of February, three more facility schools had declined to accept Student for varying reasons. *Id.* at pp. 39-40. Meanwhile, District was still waiting to hear back from eight facility schools, including six who had been newly contacted based on an increased search radius. *Id.* District also contacted the two other facility schools that had previously discharged Student. *Id.* at p. 40. Both denied the referral. *Id.*
69. At the end of March, Student was on waitlists for two facility schools. *Id.* at p. 46. Four additional facility schools had denied the referral based on Student's age and/or the severity of his behaviors. *Id.*
70. The family also toured one of the facilities ("Potential Placement") that put Student on a waitlist. *Id.* at p. 47. Student remains on the waitlist at Potential Placement, which expects to have a spot for him in August 2025. *Interview with Director*. Potential Placement will require a 90–120-minute commute each way. *Interviews with Complainant, Mother and Father*.

K. Progress on 2023 IEP Goals

71. Student's reading goal was to increase his reading skills by reading a grade-level passage and answer "wh" questions with 70% accuracy. *Exhibit A*, p. 23. There was no baseline for this goal, but it had three objectives. *Id.* (1) From a baseline of 5/10, Student would use decoding strategies to sound out words 70% of the time; (2) from a baseline of 10%, Student would "identify word chunks or word families to break down the word with 70% accuracy; and (3) from a baseline of "say[ing] some sounds and forget[ing] the rest" Student would go back and reread sentences to increase understanding in 2/3 opportunities when faced with unknown words or reading that does not make sense. *Id.*
72. As of November 2024, Student was correctly reading 7/10 grade-level words and answering 60% of questions correctly. *Id.* at p. 60. Nothing is reported on the other two objectives. *Id.* This is a slight improvement on his progress as of December 2023, when he "[had] 60% accuracy on short sentences." *Exhibit I*, p. 1.

73. Student's math goal was to solve basic math problems with 60% accuracy in 2/3 assignments, from a baseline of 40% accuracy on single digit addition/subtraction. *Exhibit A*, p. 23. The goal had two objectives: (1) identify the correct operation (addition, subtraction, multiplication or division) with 80% accuracy; and (2) complete basic addition and subtraction using two digits with 60% accuracy. *Id.* There was no baseline for the objectives. *Id.*
74. No quantitative data is reported in the progress report, but as of December 2023 he could "work through math problems with support and modeling the steps." *Exhibit I*, p. 2. Per the 2024 IEP, Student was averaging 50% accuracy on basic addition and subtraction. *Exhibit A*, p. 60.
75. Student's writing goal was to "write a complete sentence with correct grammar, capitalization, and spelling" with 75% accuracy, from a baseline of 10% accuracy. *Id.* at p. 24.
76. As of December 2023, Student "was open to correcting his sentence" and was putting "capitals and periods in the right spots." *Exhibit I*, p. 3. As of November 2024, Student was averaging 30% accuracy and remained inconsistent with "capitalizing, punctuation and spelling." *Exhibit A*, p. 60.
77. Student's self-determination goal was to initiate and complete a given task with 70% accuracy in 2/3 assignments, from a baseline of "0% initiating on his own." *Id.* at p. 24.
78. As of December 2023, Student required support with what to do, "even if it is laid out like the online program." *Exhibit I*, p. 3. In November 2024, Student still did not initiate any tasks on his own. *Exhibit A*, p. 60.
79. Student's social emotional wellness goal was to identify his feelings and read the body language and possible feelings of others with 75% accuracy from a baseline of 20% accuracy in guided activities. *Id.* at p. 25
80. As of December 2023, Student had "learned about body language and reading other peoples as well as being more aware of his own body language," but it is not clear what his accuracy was at that time. *Exhibit I*, p. 4. As of November 2024, Student was "beginning to show growth on this goal" as he was working on a "program called, 'Big Problem, Little Problem'" and had openly discussed his feelings on 2/3 days. *Exhibit A*, p. 60. However, he was quick to adjust his answers based on what he thought the other person wanted to hear. *Id.* Student was engaged with the program, but it is unclear if his accuracy improved. *Id.*

L. Progress on 2024 IEP Goals

81. Student's reading goal was to increase his reading comprehension by reading a grade-level passage and answering mastery questions with 60% accuracy in 2/3 lessons, from a baseline of 40% when working independently or 70% with support. *Id.* at p. 66.

82. In December of 2024, when working with an adult “who prompts him to slow down and read the questions and choices as well as slow down through the lesson” Student was averaging 80% accuracy on mastery questions for science content. *Exhibit I*, p. 5. Student was more reluctant with non-preferred subjects like math. *Id.* Student could “decode 80-90% of the grade level words within the course content, but he [was] not able to recall or verbally explain what he just read 2/3 times.” *Id.* at p. 5. As of May 2025, Student has shown growth with decoding but continues to struggle with reading comprehension. *Interview with Teacher.*
83. Student’s writing goal was to independently write a “developed 5-sentence paragraph using a template/example...with 70% accuracy in 2/3 trials.” *Exhibit A*, p. 66. His baseline was 40% accuracy when working independently. *Id.* As of December 2024, Student was averaging 0% for punctuation and 60% for capitalization. *Exhibit I*, p. 6.
84. Student’s math goal was to demonstrate calculator skills “by solving 10 basic calculation problems using money/budgeting with 60% accuracy,” from a baseline of 10%. *Exhibit A*, p. 67. In December 2024, Student was working on “identifying money and the value of money” and learning how to use a calculator. *Exhibit I*, p. 6. He did not consistently know how to input the correct operations on the calculator and got all four problems he completed wrong. *Id.* As of May 2025, Student was still working on how to use a calculator, so they had not yet started talking about money. *Interview with Teacher.*
85. Student’s self-determination goal was to increase his work completion to complete 70% of his work using to do lists and other strategies, with less than three prompts. *Exhibit A*, p. 67. Student’s baseline was completing two assignments per week with 1:1 support. *Id.* In December 2024, Student was getting started on work with two adult prompts and could be redirected back to work with one prompt. *Exhibit I*, p. 6. He did not log into his classes without prompting, although they were working on self-initiating. *Id.* Student consistently asked for help when an adult was sitting at the table with him but never asked for help if an adult was not sitting with him. *Id.*
86. Recently, Teacher has been trying to see if Student can get his computer out without prompting at the start of their sessions. *Interview with Teacher.* He has not been able to do so once in a month. *Id.* Student also continues to need up to five prompts to complete an assignment. *Interviews with Teacher and Paraprofessional.*
87. Although the service logs Teacher and Paraprofessional completed each week ask about Student’s progress on his four goals, those pages were blank. *Exhibit J*, pp. 21-66. The next progress report is expected after May 22, 2025. *Id.* at pp. 5-7.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: No change of placement occurred. District complied with the requirements of 34 C.F.R. §§ 300.116, 300.322, 300.327, and 300.501 and ECEA Rule 4.03(8).

Complainant's concern is that District improperly changed Student's placement in April 2024, after he was discharged from Facility School.

A. Placement Determinations under IDEA

A child's placement—a term used to denote the provision of special education and related services—must be determined by the IEP Team, including parents, and must be individualized, as well as based on the student's IEP. 34 C.F.R. §§ 300.116, 300.322, 300.327; ECEA Rule 4.03(8)(a); *Questions and Answers on Endrew F. v. Douglas Cnty. Sch. Dist.*, 71 IDELR 68 (OSERS Dec. 7, 2017). Specifically, school districts must ensure that the placement decision is made by a group of persons including parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 300.116(a); *see also id.* §§ 300.321(a)(1), 300.322, 300.324, 300.327, 300.501(c). Under the IDEA, placement means the services described in a student's IEP and does “not mean a specific place, such as a specific classroom or specific school.” ECEA Rule 4.03(8)(a).

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). This means that children with disabilities receive their education in the general education setting with typical peers to the maximum extent appropriate, and that they attend the school they would if not disabled. 34 C.F.R. §§ 300.114 and 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2)(ii).

Accordingly, an IEP must include “an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class.” 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the LRE. *Id.* Students with disabilities must be educated pursuant to the placement described in their IEPs. *Id.* at § 300.116(b)(2). In addition, an IEP must identify the special education and related services necessary to allow the student to advance appropriately towards annual goals, to be involved in the general education curriculum, and to be educated and participate with other nondisabled children. *Id.* at § 300.320(a)(4).

B. Did a Placement Change Occur?

The CDE must determine whether a placement change occurred. In April 2024, under the 2023 IEP, Student's LRE was a separate school, where Student would receive specialized instruction in a therapeutic setting. (FF # 10.) Rather than describing the services that would be provided in a therapeutic setting, the SDS in the 2023 IEP described the interim services Student would receive

while District located a separate school. (*Id.*) The 2023 IEP is clear that the services described are interim services only. (FF #s 10, 11.) When Student started at Facility School, its transfer IEP describes “comparable services” including 1,800 MPW of specialized instruction from a special education teacher and weekly therapy. (FF # 13.)

Thus, the CDE finds that Student’s placement in the 2023 IEP was a separate school with a therapeutic setting and that the failure to describe the services that would be provided in that setting amounts to a clerical error. Indeed, IEP teams are not required to include information “under one component of a child’s IEP that is already contained under another component of the child’s IEP.” 34 C.F.R. § 300.320(d)(2). IEPs must be read as a whole when assessing clerical errors. *See, e.g., Los Angeles Unified Sch. Dist.*, 60 IDELR 29 (SEA CA 2012) (holding that a Student’s IEP required the provision of one-to-one assistance where it was mentioned at least once in the document.)

After Student was discharged from Facility School, Student’s IEP did not change, and District continued to look for a separate school placement. (FF # 16.) At an IEP team meeting in August 2024, no changes were made to the 2023 IEP, although District had not found another facility school. (FF #s 17, 18.) After a reevaluation in October 2024, an IEP team, including Father, did not change Student’s placement. (FF # 19.) In the 2024 IEP, developed by a team including Father in November 2024, Student’s placement which “began last year and [was] still relevant” remained a separate school with a therapeutic component. (FF #s 20, 26, 27.) Finally, after an amendment meeting including Father in March 2025, Student’s LRE remained “separate school.” (FF #s 28, 31.) Throughout that time, District continued to search for an appropriate school for Student. (FF #s 66-70.)⁴

Thus, the CDE finds and concludes that Student’s placement did not change in April 2024 and Father participated in the IEP team meetings that determined Student’s placement. District complied with the requirements of 34 C.F.R. §§ 300.116, 300.322, 300.327, and 300.501 and ECEA Rule 4.03(8).

Conclusion to Allegation No. 2: District did not implement the special education and related services and LRE in Student’s 2023 and 2024 IEPs from August 2024 to present, as required by 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE.

Complainant’s concern is that District did not consistently implement Student’s IEP after he was discharged from Facility School in April 2024.

⁴ However, the CDE notes that not specifying a facility in a student’s IEP can result in a denial of FAPE when no suitable option exists. *C.W. by & through B.W. v. Denver Cnty. Sch. Dist. No. 1*, 2019 WL 4674331, at *5 (D. Colo. Sept. 25, 2019), *appeal dismissed and remanded*, 994 F.3d 1215 (10th Cir. 2021) (holding that the failure to designate any facility was akin “to an IEP stating that a student cannot attend any school in the District but providing no other alternative” and placed an undue burden on the parents.) *See also, A.K. v. Alexandria City Sch. Bd.*, 484 F.3d 672, 681 (4th Cir. 2007).

A. District's Responsibility to Implement Student's IEP

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.” *Endrew F. ex rel. Joseph F. v. Douglas Cnty. 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 parent whose actions prevent a school district's ability to fully implement an IEP cannot complain that the IEP has not been implemented as written. *Boulder Valley School District RE-2*, 124 LRP 34351, (CO SEA 2023). *See also, Montgomery County Public Sch.*, 111 LRP 54915, (Md. SEA 2011). A school district can be held to implement only so much of the IEP as it reasonably can within the constraints imposed by the parent's actions. *Id.*; *accord D.O. v. Escondido Union Sch. Dist.*, 59 F.4th 394, 412-13 (9th Cir. 2023); *Dougall v. Copley-Fairlawn City Sch. Dist. Bd. of Educ.*, 2020 WL 435385, at *28 (N.D. Ohio Jan. 28, 2020).

Here, Student was out of town on a preplanned family trip from April 29, 2024 until after the end of the 2023-2024 school year. (FF # 16.) They never picked up the computer offered by District, and Student did not participate in any of the virtual services offered by District. (*Id.*) This trip was planned before Student was discharged from Facility School. (*Id.*) Since Student was unavailable because of parent choices, the CDE finds and concludes that District was not obligated to implement his IEP from April 29, 2024 through the end of that school year. Thus, the remaining analysis will focus on the period from August 12, 2024, to present.

B. Accessibility of and Responsibilities for Student's IEP

A district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP.” *Id.* To satisfy this obligation, a district must ensure that each teacher and related services provider has access to the IEP and 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).

Here, Teacher helped develop Student's 2023 and 2024 IEPs. (FF #s 6, 20.) She also reviewed the IEP with Driver and Paraprofessional before they started working with Student. (FF #s 49, 50.) Teacher and Driver talked about how to support Student. (FF # 34.) Teacher and Paraprofessional discussed how to best support Student and they touched base about Student several times per week. (FF #s 50, 51.)

Thus, the CDE finds and concludes that from August 12, 2024 to present, District ensured Student's providers had access to and were informed of their responsibilities under his IEPs, consistent with 34 C.F.R. § 300.323(d).

C. Implementation of the Accommodations in Student's IEP

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2). Here, implementation of four accommodations are disputed: (1) "provide frequent check ins to ensure [Student] is on task/on topic;" (2) "[s]mall group or 1:1 instruction/assessment when appropriate;" (3) "[a]dditional adult assistance for behavioral and academic needs;" and (4) "[m]odel expectation[s]." (FF # 9.) These accommodations did not change with any amendments or annual IEP reviews. (FF #s 13, 14, 17, 25, 31.)

From August 2024 to present, while Student was receiving interim, in-person services, the CDE finds and concludes that District provided these four accommodations, consistent with the 2023 and 2024 IEPs. (FF #s 52-65.)

D. Implementation of the Specialized Instruction in Student's IEP

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2). Here, Student's LRE under the 2023 and 2024 IEPs was a therapeutic separate school; however, the services described in those IEPs were interim services, not a reflection of the services that would be provided in a separate school setting. (FF #s 10, 17, 20, 26.) For Allegation No. 1, the CDE concluded that not describing the services to be provided in Student's LRE amounted to a clerical error. IEPs must be read as a whole when assessing clerical errors. *See, e.g., Los Angeles Unified Sch. Dist.*, 60 IDELR 29 (SEA CA 2012) (holding that a Student's IEP required the provision of one-to-one assistance where it was mentioned at least once in the document.) Thus, the CDE will determine whether District implemented the services described by Student's LRE. In a separate school setting, Student would receive 1,800 MPW, or 30 hours, of specialized instruction from a special education teacher and two or three therapy sessions weekly. (FF # 13.)

Since August 2024, Student has not been enrolled in a separate school setting. (FF #s 66-70.) The CDE recognizes the substantial efforts District has undertaken to identify a school for Student as well as the challenges posed by its rural location and Student's prior discharges. (*Id.*) However, just as IDEA does not excuse a district's obligation to implement an IEP based on staff shortages, it also does not excuse a district's obligation to implement based on a shortage of facility schools. *See, 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).

District has been providing Student four to 12 hours a week of in-person services for a total of 210.75 hours or 12,645 minutes of direct instruction from a special education teacher. (FF #s 32-46.) While interim service plans of this nature can help mitigate the impact of a district's inability to implement a student's IEP, it is not the same as providing the services the IEP team determined were required to provide the student with a FAPE. In this case, the interim services did not amount to the 30 hours a week of direct instruction required by Student's IEP.

Although Student may have had access to his online courses continually and the option for additional virtual sessions with Teacher, he could not get his computer out independently while working in person. (FF #s 37, 63, 64, 78, 85, 86.) He also required frequent prompts to stay on track. (FF #s 37, 63, 64, 78, 85.) He needed support to understand instructions, break down tasks, adjust workload based on his mood, and initiate work. (FF #s 7, 19, 22, 56, 57.) The CDE finds Student does not have the ability to access instruction independently, without the additional support provided by in-person instruction.

Although Teacher sometimes worked with Student on social emotional skills, Student also did not meet with a mental health provider during the 2024-2025 school year. (FF #s 39, 45, 47.) The CDE recognizes that special education teachers, in addition to mental health providers, can provide instruction on social emotional goals. However, here the IEP team determined that Student required instruction in a separate school with a *therapeutic* component. (FF #s 10, 26.) Given that level of need, consistent with the IEP developed by Facility School, the CDE finds that Student's 2023 and 2024 IEPs also required direct instruction from a mental health provider. (FF # 13.)

Thus, the CDE finds and concludes that from August 2024 to present, District did not implement the special education and related services in Student's 2023 and 2024 IEPs, as required by 34 C.F.R. § 300.323.

E. Implementation of Transportation Services in Student's IEP

Complainant's concern is that District did not consistently make transportation services available to Student. The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2).

Here, the 2023 IEP did not require special transportation. (FF # 8.) However, the 2024 IEP did. (FF # 24.) Thus, the CDE finds that Student was not entitled to special transportation until November 6, 2024. (FF # 20.) On three occasions, November 20, 2024 and January 8 and 9, 2025, transportation was not available to drive Student to in-person services. (FF #s 38, 41, 42.) Thus, the CDE finds and concludes that District did not implement the special transportation in the 2024 IEP on these occasions, as required by 34 C.F.R. § 300.323(c)(2).

F. Implementation of the LRE in Student's IEP

The CDE must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(c)(2). Under the 2023 and 2024 IEPs, Student's LRE was a separate school with a therapeutic setting. (FF # 10, 17, 19, 26.) Since Student was discharged from Facility School in April 2024, District has contacted over 20 facility schools about enrolling Student. (FF #s 15, 66-70.) Two schools placed Student on a waitlist, while the rest denied the referral. (FF #s 66-70.) In the meantime, District provided Student with interim services in a 1:1 setting. (FF #s 34-47.) The CDE recognizes the challenges created by the shortage of facility schools in Colorado. These difficulties are only exacerbated by Student's more rural location and unsuccessful discharge from prior facilities.

However, Student has not attended a separate school during the 2024-2025 school year. (FF #s 35-47, 67-71.) Although it is beyond the one-year statute of limitations in this investigation, the CDE also acknowledges that Student was only enrolled in a separate school for two months during the 2023-2024 school year. (FF #s 11, 12, 15.) The IDEA does not excuse a district's obligation to implement a student's IEP based on a shortage of facility schools. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22). Thus, the CDE finds and concludes that District did not educate Student in the LRE described in his IEPs from August 12, 2024 to present, as required by 34 C.F.R. § 300.323(c)(2).

G. Materiality of Noncompliance

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, not implementing an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not implementing 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 not implementing 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 not implementing 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*, 502 F.3d at 822. The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. However, the child's educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided." *Id.*

However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App'x 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, the CDE "must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. App'x 202, 205 (2d Cir. 2010).

Here, from August 2024 to present, District did not educate Student in his LRE, provided four to 12 hours a week of direct instruction from a special education teacher instead of the 30 hours per week and therapy services required by Student's 2023 and 2024 IEPs, and did not provide the

special transportation required by the 2024 IEP on three occasions, limiting his access to the in-person services they were providing. Student's LRE and need for more intensive services was a core component of his IEPs and need for specialized instruction. Thus, the CDE finds and concludes that District's noncompliance was material and resulted in a denial of FAPE.

C. Compensatory Services

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for noncompliance. *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 Educ.*, 118 LRP 43765 (SEA CO 06/22/18). 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 Phila.*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the CDE recognizes that direct 1:1 instruction like Student was receiving might allow for more targeted lessons as compared to instruction in a classroom setting. However, this is substantially less instruction than he would have received in a separate school. Further, Student, who was already substantially behind in all academic areas, made very limited progress on his reading, writing and math goals. (FF #s 71-76, 81-84.) He also did not improve on his ability to initiate and complete tasks independently, as he continued to require frequent prompting (FF #s 77, 78, 85, 86.) Student was beginning to make progress on his social emotional goal in November 2024, but no social emotional goal was included in the 2024 IEP. (FF #s 25, 79, 80.) Online and 1:1 instruction also did not offer Student an opportunity to work on peer interactions. (FF # 21.)

The CDE finds that an award of all the minutes required to put Student in the position he should have been in would be overly burdensome for Student, especially considering his lengthy commute next year if he attends Potential Placement. (FF # 70.) Thus, the CDE finds and concludes that Student is entitled to the following: (1) 30 hours of therapeutic social emotional instruction from a licensed provider to include a social worker, school psychologist or board certified behavior analyst ("BCBA") or registered behavior technician ("RBT") supervised by a BCBA; (2) 30 hours of direct instruction on self-determination to be provided by a licensed provider such as a special education teacher, social worker, school psychologist or BCBA/RBT; and (3) 100 hours of direct instruction on academics from a special education teacher. These compensatory services shall be designed to support Student's progress on his IEP goals as well as the development of the skills required to return to a less restrictive setting.

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

Pursuant to its general supervisory authorities, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state

complaint procedures are “critical” to the State Enforcement Agency’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, District has continuously worked to identify a separate school placement for Student. (FF # 66-70.) The effort to locate an appropriate placement has been complicated by his prior unsuccessful discharge from several facilities. (FF # 67-68.) Nothing in the Record suggests that the noncompliance has impacted other students in District. Thus, the CDE finds and concludes that the noncompliance is not systemic.

REMEDIES

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

1. Implementing the IEP, as required by 34 C.F.R. § 300.323.

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

1. **Corrective Action Plan**

- a. By **Monday, July 7, 2025**, 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 and Teacher must read this Decision in its entirety, as well as review the requirements of 34 C.F.R. § 300.323, by **Friday, July 25, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Friday, August 1, 2025**.

3. **Compensatory Education Services**

- a. Student shall receive **30 hours of direct specialized instruction from an appropriately licensed therapeutic provider such as a social worker, school psychologist or BCBA/RBT selected by District.**

- b. Student shall receive **30 hours of direct specialized instruction on self-determination from an appropriately licensed provider such as a special education teacher, social worker, school psychologist or BCBA/RBT selected by District.**
- c. Student shall receive **100 hours of direct specialized instruction on academics from an appropriately licensed special education teacher selected by District.**
- d. All compensatory services must be provided to Student no later than **May 1, 2026.** These services must be designed to advance Student toward his annual IEP goals as well as the development of the skills required to return Student to a less restrictive setting.
- e. By **Thursday, June 19, 2025,** a Parent, either Mother or Father, shall provide written consent for the provision of compensatory services to the CDE and District. If Parent does not provide written consent for services by this date, District will be excused from providing compensatory services to Student. Unless otherwise specified by the District, this written consent shall be provided by Parent to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- f. If written consent for the provision of compensatory services is received by **Thursday, June 19, 2025,** District shall schedule compensatory services in collaboration with Parents. District shall submit the schedule of compensatory services to the CDE by **Thursday, June 19, 2025.** A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
 - i. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - ii. If the District and Parents cannot agree to a schedule by **Thursday, June 19, 2025,** District and Parents must meet either in-person or via video conference to resolve scheduling complications by **Thursday, June 26, 2025** and submit the schedule by **Monday, June 30, 2025.**
 - iii. While determining the schedule, Parents may opt out of some of the compensatory services. In that case, along with the schedule of services, District shall submit evidence of Parents written request to opt out of a specific amount of compensatory services.

- iv. If the District and Parents cannot agree to a schedule by **Thursday, June 30, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parents, including but not limited to, copies of correspondence sent to the Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Thursday, July 3, 2025**.
- v. By **Friday, July 18, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services.
- g. 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 District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents and should thus be excused from providing compensatory services to Students, rests solely with the CDE.
- h. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- i. To verify that Student has 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.
- j. These compensatory services will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. 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 to which he is entitled (including time in general education). If Student enrolls at Potential Placement in Fall 2025, the parties are encouraged to consider creative arrangements, such as providing services during Student's commute, if feasible.

- k. If for any reason, including illness, Student is 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.

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 District's annual determination under the IDEA and subject District to enforcement action by the CDE.

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE's State Complaint Procedures*, Section E, ¶ 2. 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. *Id.*; 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").

Dated this 5th day of June, 2025.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-17

- Exhibit 1: Service Logs
- Exhibit 2: IEP
- Exhibit 3: IEP
- Exhibit 4: Correspondence
- Exhibit 5: IEP
- Exhibit 6: Eligibility
- Exhibit 7: Evaluation
- Exhibit 8: IEP
- Exhibit 9: IEP
- Exhibit 10: IEP
- Exhibit 11: IEP
- Exhibit 12: IEP
- Exhibit 13: Activity Logs
- Exhibit 14: Evaluation
- Exhibit 15: IEP

Response, pages 1-12

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Notices of Meeting
- Exhibit D: PWNs
- Exhibit E: Meeting Documentation
- Exhibit F: Evaluations
- Exhibit G: Disciplinary Records
- Exhibit H: Student Schedule
- Exhibit I: Progress Monitoring
- Exhibit J: Service Logs
- Exhibit K: District Calendar
- Exhibit L: Policies and Procedures
- Exhibit M: Correspondence
- Exhibit N: None
- Exhibit O: Verification of Delivery
- Exhibit P: Service Logs

Reply, pages 1-2

Telephone Interviews

- Paraprofessional: May 6, 2025
- Teacher: May 6, 2025
- Director: May 6, 2025
- Complainant: May 7, 2025
- Mother and Father: May 8, 2025
- Driver: May 20, 2025