

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

State-Level Complaint 2023:504
Denver Public Schools

DECISION

INTRODUCTION

On January 17, 2023, the Parents (“Parents”) of a student (“Student A”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”) on behalf of Student A and similarly situated elementary-school-aged students (“Students”) in the District. The State Complaints Officer (“SCO”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from January 17, 2022 through January 17, 2023 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether District denied Student A and other Students with services from a speech language pathologist (“SLP”) in their IEPs a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to implement Student A’s IEP from August of 2022 to present by failing to provide Student A with the SLP minutes required by his IEP, in violation of 34 C.F.R. § 300.323.

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. Failed to implement Students' IEPs from January 17, 2022 to present, by failing to provide Students with the SLP minutes required by their IEPs, in violation of 34 C.F.R. § 300.323.

FINDINGS OF FACT

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

A. Background

1. Student A is six years old and, during the 2022-2023 school year, is attending kindergarten at a District elementary school ("School 1"). *Exhibit 4*, p. 4. Student A and his family currently reside within the boundaries of District. *Id.*
2. Student A is currently identified as a child with a developmental delay and a speech or language impairment ("SLI"). *Id.*
3. Student A is happy and likes to be independent. *Interview with Parents*. Student A is funny and loves to interact with and be part of the classroom. *Interviews with Parents, private occupational therapy provider ("Private OT"), District SLP and Inclusion Specialist ("Inclusion SLP") and school psychology intern at School 1 ("School Psychologist")*. He is good at learning and adapting to classroom routines and is working on using his augmentative and alternative communication ("AAC") device to greet others and express his needs. *Exhibit 4*, p. 6.
4. Student A is non-speaking and uses an AAC device to communicate by pressing buttons to make the device say letters, words, or phrases. *Id.* He is bright, but often underestimated because he struggles to convey what he knows, which can frustrate him. *Interviews with Parents and Private OT*. Student A struggles with both fine and gross motor skills. *Interview with Parents; Exhibit 4*, pp. 10-11. In particular, Student A has trouble producing purposeful movements, which both makes it hard for him to do things he wants, like push buttons on his AAC device, and sometimes results in unintentional movements which may be perceived as lashing out. *Interview with Private OT*.

B. May IEP

5. Student A started kindergarten at School 1 in August of 2022. *Response*, p. 1. His then-current IEP had been written in May of 2022 ("May IEP") when he was in pre-kindergarten at another school in District. *Exhibit 4*, p. 4.
6. According to the May IEP, Student A has many strengths, including learning and following classroom routines and starting to use his AAC device to advocate for his needs. *Id.* at p. 6.

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

He is highly motivated by social interactions, which can be used to “target communication skills in a natural and highly motivating setting.” *Id.* at pp. 6-7.

7. After a reevaluation in April of 2022, a multidisciplinary team determined that Student A needed to increase his “receptive, expressive, and pragmatic language skills” and his “attention to preferred/nonpreferred tasks.” *Id.* at p. 7. Student A was reported to have made progress on all four of his prior goals. *Id.* at pp. 7-9.
8. The May IEP includes a summary of the evaluation results in the areas of academics, communication, social emotional, fine motor, gross motor, and adaptive skills. *Id.* at pp. 9-11. Student A had more than a 25% delay in his cognitive skills and social emotional development. *Id.* Both teacher and parent rating forms indicated that Student A’s adaptive skills were generally in the moderately low to low range, although socialization was a relative strength. *Id.* at p. 11.
9. Deficits in his motor skills impact his ability to hold writing tools, sit upright at a table and manage his clothing. *Id.* at pp. 10-11. However, he “demonstrates a strength in how he uses his fine motor skills for his preferred play and to access his AAC device.” *Id.* Student A’s gross motor skills generally allow him to “navigate the various surfaces within the school environment with no assistance or loss of balance.” *Id.* at p. 11.
10. Student A “recognizes words for objects and is able to respond to ‘no’” as well as follow single-step directions with cues. *Id.* at p. 9. He uses a combination of gestures (like pointing or shaking his head), vocalizations, signs and his AAC device to communicate. *Id.* He can use gestures, signs and his AAC device to “label, comment, answer simple questions, make requests, and greet others.” *Id.* He can answer yes/no or “what” questions but does not “ask for clarification when he does not understand” or “attempt to narrate past events.” *Id.*
11. The Student Needs and Impact of Disability statement describes the skills he should have at five years old and indicates that his delays in literacy and math skills are “impacting his ability to participate in the general education curriculum.” *Id.* at p. 12. His “language delays impact his ability to communicate his wants and needs at school, to express his ideas, and to demonstrate his knowledge within the classroom,” as well as his ability “to participate effectively in conversations and learning activities.” *Id.* “[D]elays in pragmatic/social language skills impact his ability to use communication for the range of necessary functions” in the classroom, like asking and answering questions, and to engage in social interactions with peers. *Id.* Student A requires support to use gestures, words, or language instead of physical contact to initiate interactions with peers. *Id.*
12. Parents want Student A to be happy and increase his independence so that he does not need constant support to get what he needs. *Id.* Parents want to make sure that he is noticed and heard in the classroom, even though he is very easy going, and Student A’s father is concerned that he may fall further and further behind his peers. *Id.*

13. He has unique communication needs related to delays which “require his communication partner to interpret his intentions much of the time.” *Id.* at p. 13. While he is able to use his AAC device to make comments and requests, he requires “instruction and support with finding new vocabulary and with combining words/symbols to produce phrases.” *Id.*
14. Student A requires assistive technology and brings a personal speech-generating AAC device to school. *Id.* The school based SLP, with support from District staff, will need to help him with learning new vocabulary, learning to combine symbols, and adding new buttons or messages as needed. *Id.* The SLP will also need to help him with additional AAC strategies including low-tech communication boards, visual supports and support and modeling with using the device. *Id.*
15. The May IEP includes six annual goals: two reading goals, one math goal, one independent living skills goal and, relevant here, one communication goal and one social emotional wellness goal. *Id.* at pp. 13-18. Progress updates are to be provided to Parents every trimester. *Id.* at p. 13. The relevant goals and objectives are:
- Communication: By May 5, 2023, from a baselines of zero to one, “[g]iven access to his AAC system, as well as visual, gestural, and verbal prompting, [Student A] will demonstrate increased expressive communication skills by gaining the attention of others, expressing his needs, participating in discussions, and combining words to form phrases/sentences in 4 out of 5 opportunities during structured and unstructured activities.”
 - Objective 1: “Given access to his AAC system, [Student A] will use conventional gestures or language in order to gain the attention of a teacher or peer during structured or unstructured activities, in 4 of 5 observed opportunities, which may occur across multiple data collection sessions. (Baseline: 1/5; typically uses vocalizations to gain attention)”
 - Objective 2: “Given access to his AAC system and up to 2 gestural or verbal prompts, [Student A] will demonstrate self advocacy (sic) skills by expressing his needs in the classroom (ask for help, a break, clarification of task, etc.), in 4 of 5 observed opportunities, which may occur across multiple data collection sessions. (Baseline: 1/5)”
 - Objective 3: “Given access to his AAC system, visual or gestural prompts, and minimal verbal reminders, [Student A] minimal verbal reminders, (sic) [Student A] will participate in small- and large-group discussions using words or pre-recorded messages 3 times during 4 of 5 structured group discussions, which may occur across multiple data collection sessions. (Baseline: 0/5)”

- Objective 4: “Given access to his AAC system, modeling, gestural cues, and verbal cues, [Student A] will combine 3 words/symbols through any mode of communication to request, comment, or answer a question using a carrier phrase (I see, I want, I have, etc.) in 4/5 presented opportunities during a structured or unstructured activity. (Baseline: 1/5)”
- Social/Emotional Wellness: By May 5, 2023, “[g]iven an (sic) access to his AAC system, models, and visual/gestural/verbal prompting, [Student A] will use conventional communication (conventional gestures, language, etc.) to initiate and maintain social interactions with peers in 4 of 5 observed opportunities during structured or unstructured activities. (Baseline: 1/5)”
 - Objective 1: “Given an (sic) access to his AAC system, models, and visual/gestural/verbal prompting, [Student A] will use conventional communication (conventional gestures, language, etc.) to initiate a social interaction with a peer in 4 of 5 observed opportunities during structured or unstructured activities. (Baseline: 1/5)”
 - Objective 2: “Given an (sic) access to his AAC system, models, and visual/gestural/verbal prompting, [Student A] will use conventional communication (conventional gestures, language, etc.) to take 2 conversational turns in an interaction (of at least 4 total exchanges) with a peer in 4 of 5 observed opportunities during structured or unstructured activities. (Baseline: 0/5)”

Id. at pp. 16-18.

16. Student A had 15 accommodations to support his access to grade-level curriculum, including breaks to keep his attention, shortened assignments, use of natural peer supports and allowing him to show understanding in different ways to support access to academic work. *Id.* at p. 19. He had seven accommodations to address his communication needs, including visual supports, “pair verbal speech with signs or visual” and staff providing “language models on his AAC system, using aided language input strategies in order to support [him] in learning to use his AAC system.” *Id.* To address delays in motor skills, he had four accommodations, including adaptive classroom tools to support seating and writing and close supervision on the playground “especially when climbing a new structure, due to poor attention.” *Id.* Finally, he had three accommodations to address self-care needs, including a toileting schedule, adult support for toileting and visual supports “such as a visual schedule, visual task analysis.” *Id.*
17. There were no curricular modifications identified and Student A was not found to be eligible for extended school year services. *Id.* at pp. 19-20. The May IEP includes one accommodation for District reading assessments, one-on-one testing. *Id.* at p. 21.

18. Because Student A was preparing to transition from pre-kindergarten to kindergarten, the service delivery statement includes services for both the 2021-2022 school year and the 2022-2023 school year. *Id.* at pp. 22-24. Relevant to this investigation, Student A was to receive the following services during the 2022-2023 school year:

- Direct speech-language therapy: To “address communication delays in the area of language and speech sound production skills” he was to receive 240 minutes per month (“MPM”) of direct speech-language therapy services provided by an SLP or a speech-language pathology assistant (“SLPA”) under the supervision of an SLP. *Id.* at p. 22. For the current school year, the 240 MPM were to be delivered as follows:
 - 120 MPM of direct SLP services “inside the general education classroom in order to target communication skills in natural social settings with his peers in the classroom.” *Id.*
 - 120 MPM of direct SLP services “outside the general education classroom in order to provide a setting with reduced distractions,” although these services could also be provided “inside the classroom when determined appropriate by the SLP.” *Id.*
- Indirect speech-language therapy: six hours per year of indirect, consultative SLP services to allow for “team collaboration, creation of visual supports, implementation of all forms of assistive technology and programming, scheduling and coordinating services, team meetings, parent communication, IEP development, and trainings for team members with using [Student A’s] AAC system,” among other needs. *Id.*
- Psychological Services: Starting in kindergarten, 30 MPM of indirect services from a school psychologist “to support [his] social emotional goal and well being.” *Id.*
- Paraprofessional Support: To address concerns including delays in communication, Student A “will require the support of a dedicated paraprofessional throughout the school day.” *Id.* at p. 23. This person would “serve as a supplementary aid and may be substituted at any time with the general education teacher, special education teacher, special service provider, or other trained adult.” *Id.*

19. For the 2022-2023 school year, Student A’s least restrictive environment (“LRE”) was general education at least 80% of the time. *Id.* at 25. In that setting he would benefit from having typical peers as positive models, although he might have difficulty communicating and interacting in a larger class setting. *Id.*

20. According to the prior written notice (“PWN”), the IEP team decided that Student A needed SLP minutes outside of the general education classroom to be provided “individually or in a small group, in a setting with reduced distractions, in order to target discrete language skills

and skills with using his AAC device” while he still needed minutes inside the classroom to “target communication skills (especially social communication) in a natural setting.” *Id.* at p. 26. The IEP team also increased Student A’s indirect SLP services from four to six hours annually “to provide sufficient support to [Student A] and his team of teachers and service providers, regarding communication and AAC.” *Id.*

C. Student A’s SLP services

21. At the start of the 2022-2023 school year, School 1 did not have an SLP on staff. *Response*, p. 2. On October 7, 2022, Parents were notified, via letter, that School 1 did not yet have an SLP. *Complaint*, p. 3; *Exhibit 3*, p. 2. Without an SLP, Student A did not receive any SLP services during the fall semester of the 2022-2023 school year. *Response*, p. 2.
22. In early October of 2022, staff at School 1 reached out to Inclusion SLP for support. *Interview with Inclusion SLP*. On October 24, 2022, Inclusion SLP did a 45-minute training with staff at School 1 about AAC devices and best practices for being a “communication partner.” *Id.* Student A’s classroom teacher (“Teacher”) and special education teacher and case manager (“Case Manager”) could not attend the original training, so Inclusion SLP reviewed it with them at another time. *Id.*
23. Inclusion SLP then did several observations in Student A’s class to provide ongoing coaching to his team. *Id.* During these observations she provided Teacher and Student A’s one-on-one paraprofessional (“Dedicated Paraprofessional”) with tips and strategies for working with Student A, jumping in to model those strategies when needed. *Id.* She was consulting in Student A’s classroom for 45 minutes on November 1, 2022, 60 minutes on November 8, 2022, 60 minutes on November 22, 2022, 60 minutes on December 6, 2022 and 15 minutes on January 20, 2023. *Id.*
24. Inclusion SLP also consulted with Teacher in February and did a 60-minute lesson during morning meeting in Student A’s classroom on February 15, 2023. *Id.* During this session, she taught all the students in the classroom about communication devices, modeling how to use them and allowing peers to participate using a device. *Interviews with Parents and Inclusion SLP*. This was the best day Student A has had all year, and he even volunteered to participate in a lesson later that day. *Interview with Parents*.
25. Although no service logs were produced for Inclusion SLP, the SCO finds that she has provided 345 minutes of indirect, consultative services for Student A so far this school year. *Exhibit D*.
26. However, despite these consults, on November 27, 2022, Case Manager reached out to Student A’s outside SLP (“Private SLP”) about tips “for supporting [him] with his ACC (sic) device.” *Exhibit I*, p. 154. She noted that he was not getting any speech services and School 1 staff were not able to consult with a trained SLP because District had not found an SLP to support School 1. *Id.*

27. To address Student A's behaviors, Private SLP recommended creating social stories about "how to behave in certain social situations with safe hands" instead of just creating a safe hands social story. *Id.* at p. 11. He also recommended including interactive components where Student A could match pictures with Velcro. *Id.* Finally, Private SLP told Case Manager about Student A's AAC device and where to download new icons. *Id.* He also offered to provide extra AAC-specific training via a Zoom meeting. *Id.* at p. 154.
28. In January of 2023, Inclusion SLP started providing some direct services to Student A and two others at School 1. *Exhibit I*, p. 18. The goal was to provide these students with some minutes, with no expectation that she would be able to meet all of their required minutes. *Id.* Inclusion SLP was aware of the SLP services and goals in Student A's May IEP but did not have the capacity to provide him with all of his required minutes. *Interview with Inclusion SLP.*
29. Inclusion SLP provided Student A with direct services, inside the classroom, weekly from January 20, 2023 through February 20, 2023. *Id.* In total, she provided Student A with three hours of direct services inside the general education classroom. *Id.* She did not provide him with any direct services outside of the classroom. *Id.*
30. Starting the week of February 27, 2023, a new SLP will be providing direct services to Students at School 1 via teletherapy. *Id.* Students at School 1 will also be getting direct, in-person services from an SLPA, under the supervision of the new SLP. *Id.* Together, they are expected to fully implement Student A's May IEP. *Id.*
31. The SCO finds that Student A received only 180 minutes of direct SLP services, inside the general education setting, from August of 2022 through February of 2023. During that period, the SCO finds that there were approximately 24 weeks or six months of school. *Exhibit G*, p. 2. As such, the SCO finds, per the May IEP, that Student A should have received 720 minutes (12 hours) of direct SLP services inside the general education classroom and 720 minutes (12 hours) of direct SLP services outside of the general education classroom. *Exhibit 4*, p. 24.

D. Student A's Increasing Behavior

32. Throughout the semester, Student A began to exhibit increasing behaviors in the classroom. *Interview with Parents.* Historically, his behaviors often stem from frustration around communication. *Id.* His behaviors in the classroom included pulling hair and hitting. *Exhibit A*, p. 4.
33. On October 11, 2022, District issued a prior notice and consent for special evaluation ("Consent"), requesting permission to conduct a reevaluation, specifically a functional behavioral assessment ("FBA"). *Id.* Parent signed Consent the same day. *Exhibit D*, p. 23.

34. According to the Consent, the IEP team considered Student A's communication needs and planned to consider how to implement them within the FBA. *Exhibit A*, p. 4. However, School 1 did not have an SLP at the time and did not consult with Inclusion SLP about Student A's behavior. *Response*, p. 2; *Interview with Inclusion SLP*.
35. An FBA was completed November 15, 2022. *Exhibit D*, pp. 25-27. The FBA notes that the behaviors occurred most frequently during small group or [] in the bathroom. *Exhibit D*, p. 25. The behaviors were occurring an average of nine times per day. *Id.* The FBA included interviews, observations, a record review, and data collection. *Id.*
36. School Psychologist conducted two observations in Student A's special education classroom. *Id.* at pp. 26-27. The FBA concludes that he engages in behaviors when "presented with a nonpreferred task, hearing/doing something that overstimulates/excites him, or if his para is attending to others" because the behaviors lead to a "temporary escape from a nonpreferred task, sensory stimulation, and attention" from adults. *Id.* at p. 27. The behaviors were increasing in both frequency and intensity. *Id.*
37. Based on the FBA, Parents, Case Manager, School Psychologist and Dedicated Paraprofessional developed a behavioral intervention plan ("BIP"). *Id.* at p. 22.
38. School Psychologist indicated Student A's needs were primarily sensory. *Exhibit I*, p. 114; *Interview with School Psychologist*. As setting event strategies, the BIP includes heavy work and intermittent sensory reinforcement. *Exhibit D*, pp. 20-21. Antecedent strategies include frequent positive attention for on-task behavior, keeping a distance of two full arm lengths between Student A and Dedicated Paraprofessional, and []. *Id.*
39. The behavior teaching strategy is to prompt him to use his AAC device to communicate that he is overwhelmed and to ask for a break of no more than five minutes, during which he will have access to sensory stimuli. *Id.* Finally, as reinforcement, the BIP recommends not allowing him to escape undesirable assignments and using a chart to have him earn stars "for every 20 minutes that he maintains a calm body," with the time intervals increasing over time. *Id.*

E. November IEP Amendment

40. In response to the FBA and BIP, District proposed amending the May IEP on November 11, 2022. *Exhibit A*, p. 6.
41. District proposed amending the consideration of special factors to add the BIP into the May IEP. *Id.* District also wanted to consider adding social emotional goals and service time. *Id.* at p. 6.

42. The May IEP was amended to indicate that Student A required a BIP. *Id.* at p. 16. No other changes were made to the May IEP, and no social emotional goals or minutes were added. *Compare Exhibit 4, pp. 4-27 and Exhibit A, pp. 7-30.*
43. After the creation of the BIP, Student A's behavior continued to increase, including pushing peers and hitting adults in the hallway, seemingly at random. *Exhibit I, p. 40.* As of December 6, 2022, Case Manager was just getting ready to introduce the star chart contemplated in the BIP. *Id.*
44. Since winter break, Student A's behavior has improved, with no major incidents. *Interviews with Parents and School Psychologist.* Student A's behavior has historically ebbed and flowed, so it may recur. *Interview with School Psychologist.* Student A is less likely to display the concerning behaviors around adults he is not comfortable with, and he has been working with new adults while Dedicated Paraprofessional supports another student. *Id.*

F. Student A's Progress

45. As of November 11, 2022, Student A had not worked on his communication goal of increasing expressive communication, or any of its objectives. *Exhibit F, pp. 10-12.*
46. During her time with Student A, Inclusion SLP worked with him on using his AAC device to participate in small and large group discussions and generate longer utterances, correlating with objectives three and four. *Interview with Inclusion SLP.* Although she recorded some progress notes during her time with Student A, Inclusion SLP indicates the data is not an accurate representation of his abilities given the limited time she spent with him and the length of time he went without services. *Id.*
47. Inclusion SLP suspects Student A, as a nonverbal communicator who received no services, will require compensatory services for all, or nearly all, the services he missed. *Id.* An additional 30 minutes per week of services inside the classroom would likely be the most important for Student A, while additional time outside of the general education setting could be detrimental. *Id.* The SCO finds, in consultation with CDE Content Specialist, that it will be important for Student A to receive compensatory services inside the general education setting during the school year, while additional pull-out services might be better provided over the summer or at another time. *Interview with CDE Content Specialist.*
48. Student A's social emotional wellness goal also targets communication, specifically his ability to initiate and maintain social interactions. *Exhibit 4, p. 18.* School Psychologist has supported this goal by providing Dedicated Paraprofessional with strategies for helping Student A during their consults. *Interview with School Psychologist.*
49. School Psychologist conducts observations every 12 weeks, to gather data for progress monitoring. *Id.* She conducted three observations for the November progress report. *Id.*

50. Regarding objective 1, initiating social interactions with peers, School Psychologist noted that Student A was able to do so in 4/5 opportunities, indicating he had met this objective. *Exhibit F*, p. 15. Qualitatively, she noted that Student A is “most often successful” with prompting but has also initiated interactions with peers in “several instances,” without prompting. *Id.*
51. School Psychologist concluded that Student A made progress on the second objective, taking two conversational turns in an interaction with a peer, doing so in 3/5 opportunities. *Id.* Student A is able to take two conversational turns with prompting, but not independently. *Id.* The IEP team has not discussed revising the goal ahead of Student A’s next annual IEP team meeting. *Interview with School Psychologist.*
52. In addition to the services he receives at School 1, since August of 2022, Student A has worked weekly with Private OT. *Interviews with Parents and Private OT.* Private OT is working with him on developing his “brain-body connection” to increase purposeful movements, including precision, and decrease unintentional movements. *Interview with Private OT.* As part of these services, she has also worked with him on using his AAC device in different ways, using it to communicate more sophisticated concepts and developing alternative ways to communicate. *Id.*
53. Private OT also observed Student A in his classroom and has consulted with Dedicated Paraprofessional on strategies to support Student A. *Id.; Exhibit I*, pp. 42, 140 and 145. Private OT observed that he was working on materials well below his capacity and not really engaging with curriculum. *Id.* She “amped up” her services to help him demonstrate his knowledge and hopes that an SLP at School 1 would be able to design structured opportunities for him to engage with the curriculum. *Id.*

G. District-Wide SLP Shortage

54. District acknowledges that there have been gaps in the provision of SLP services at several schools. *Systemic Response*, p. 1. District attributes these gaps to a nationwide shortage of SLPs. *Id.* The SCO finds, in consultation with CDE Content Specialist, that there is a nationwide shortage of SLPs available to meet the needs of schools. *Interview with CDE Content Specialist.*
55. Unfortunately, School 1 was one of 13 District schools serving elementary-aged students that did not have an SLP providing any services for at least one full semester during the 2022-2023 school year. *Exhibit L.* Together, those 13 schools served 553 Students with SLP services in their IEPs. *Exhibit M.*
56. Another 432 Students attend 13 other schools in District that were without an SLP for weeks or months during the 2022-2023 school year. *Exhibit L; Exhibit M.*

57. Three schools were without an SLP for a period during the spring semester of the 2021-2022 school year. *Exhibit L*. Two schools had short vacancies in January of 2022. *Id*. A third school, which also had an extended vacancy this school year, was without an SLP for the final six weeks of the 2021-2022 school year. *Id*; *Exhibit G*, p. 1.
58. In all, more than 1,000 Students have been impacted by these vacancies. *Exhibit M*.
59. Currently, District is trying to hire SLPs to fill 6.05 full-time equivalent (“FTE”) positions and SLPAs to fill 1.0 FTE. *Interview with District’s manager of SLPs (“SLP Manager”)*. As of March 1, 2023, nine schools had open SLP positions. *Exhibit L*. This includes seven schools that have been without an SLP for all, or almost all, of the current school year. *Id*.
60. Although District has vacancies impacting all age groups, SLP vacancies are disproportionately impacting elementary schools. *Interview with SLP Manager*. District tries to offer new candidates a package that meets their geographic and age preferences. *Id*. District is not sure why SLPs currently seem to prefer working with secondary students. *Id*.

H. District’s Hiring Efforts

61. District has worked with its talent acquisition team to “develop media productions” to promote open positions. *Exhibit P*, p. 1. District is advertising its openings across various professional settings, including CDE’s SLP newsletters and symposiums and conferences. *Id*. District is also offering referral and sign on bonuses and reimbursement for licensure fees for new hires. *Id*.
62. District has reached out to retired SLPs to encourage them to return. *Id*. District is also considering compensation incentives for returning retirees. *Id*.
63. District has had some success hiring teletherapists to fill vacancies. *Interview with SLP Manager*. District first started hiring teletherapists in late November of 2022. *Id*. Teletherapy was initially implemented for some center-based Students, but District is expanding the program. *Exhibit P*, p. 2.
64. District has shifted to hire more SLPAs where appropriate to cover more Students. *Exhibit P*, p. 3. District increased SLPA pay by 18.5% this year. *Id*. District has had some success with this approach. *Interview with SLP Manager*.
65. Although there is a preference for direct hires, District has also been working with various agencies to hire contract SLPs to fill vacancies. *Id*.
66. District is also working to recruit recent graduates. *Exhibit P*, p. 2. District staff has presented at local programs about working as a school based SLP. *Id*. District has contracts with

universities around the country to provide intern supervision and offers incentives for SLPs willing to supervise SLP and SLPA interns. *Id.*

67. District is coordinating with outside agencies to understand hiring trends nationwide. *Exhibit P*, p. 3. This has led to an adjustment in hiring practices to help prevent shortages in the future. *Id.* For instance, instead of waiting until summer, District is already offering many contract SLPs and teletherapy SLPs contracts for the upcoming school year. *Interview with SLP Manager.*

I. District's Coverage Efforts

68. District uses a workload calculator to assess the caseloads of SLPs based on their specific roles and responsibilities. *Exhibit P*, p. 1. District has had a calculator since 2008, when caseloads were calculated using paper and pencil. *Interview with SLP Manager.* The calculator has since been updated and refined. *Id.* Data is now entered into an electronic form that generates a spreadsheet that managers can easily review. *Id.* The calculator factors in direct and indirect services, evaluations and screenings, and complicating factors that increase workload such as the number of center-based students, multilingual students, AAC users, and case management. *Id.*

69. Average caseloads are in the mid-fifties. *Id.* SLPs update the calculator at least three times a year, and anytime they raise concerns about their workload. *Id.* District is working to automate the process, in the hopes that it will be able to review caseloads monthly. *Id.*

70. SLPs in District are expected to act as service providers and case managers for students whose primary disability is SLI. *Id.* Case management is substantially more work, and elementary-school students are more likely to have SLI as a primary disability. *Id.* SLPs may need to case manage as many as one-third of their students at the elementary level. *Id.* SLPs at the elementary level generally also complete more screeners for students with a potential disability. *Id.* District has attempted to account for that in its caseload calculator. *Id.* However, these factors may be impacting interest in working with elementary school students. *Id.*

71. District has a small team of coverage SLPs who have worked to ensure IEPs and evaluations at schools without an SLP remain timely. *Id.* The intent is that keeping paperwork current will allow new hires to begin providing services more quickly. *Id.* For Students who would be case managed by an SLP, the coverage team is also responsible for handling communication to schedule meetings or get parental consent for evaluations. *Id.*

72. Generally, District SLPs have not had the capacity to provide any services to Students at impacted schools. *Id.* District also has not conducted any progress monitoring for those Students. *Id.*

73. In some circumstances, SLPs from special teams, like Inclusion SLP, have provided limited services to Students, often around AAC usage or supporting center-based staff on acting as a communication partner. *Id.* District has relaxed the rules to allow more outside providers to provide services at school. *Id.*

J. Compensatory Services

74. As part of individual agreements outside of this investigation, District has provided the families of some Students with funds to pursue outside services. *Id.*

75. As new SLPs have started, some IEP Teams have begun considering offers of compensatory services. *Id.* Where caseloads allow, a few SLPs have begun providing compensatory services. *Id.* However, in most cases, SLPs with time for compensatory services have instead been reassigned to provide services to more Students. *Id.*

76. In planning for next year, the speech department has requested additional FTEs to allow for the provision of compensatory services. *Id.* District has offered all SLPs, including contractors, the opportunity to work over the summer to provide compensatory services. *Id.* This process just started, so SLP Manager does not yet know how many will agree to do so. *Id.*

77. Finally, District is exploring some creative solutions, including working with private agencies, to find SLPs to provide compensatory services. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District failed to implement Student A’s IEP from August of 2022 until March of 2023, by failing to provide him with the direct SLP services required by the May IEP, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE.

Parents’ primary concern is that Student A did not receive any SLP services at School 1 during the 2022-2023 school year.

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

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). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). The IDEA does not excuse a district’s failure to implement an IEP based on staff shortages. *See, e.g., 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).

To satisfy its implementation obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d).

IEP Accessibility to Student A’s Teachers

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). There is no indication here that providers at School 1 were unaware of their responsibilities under Student A’s May IEP. They even sought consultations with Student A’s private providers to help fill the gaps. (FF #s 26 and 53.) The providers the SCO spoke with had copies of Student A’s May IEP and appeared to understand their responsibilities. (FF #s 28 and 48.) Instead, the issue is that School 1 did not have an SLP who could be informed of his or her responsibilities related to implementing Student A’s IEP. (FF # 21.) Thus, the SCO finds and concludes that District complied with the requirements of 34 C.F.R. § 300.323(d).

Implementation of Indirect SLP Services

Annually, Student A should receive six hours, or 360 minutes, of indirect, consultative support from an SLP. (FF # 18.) So far this year, Inclusion SLP has provided 345 minutes of indirect, consultative services for Student A’s team. (FF #s 22-25.) Despite these consultative services, staff at School 1 did not have adequate support and sought to consult with Private SLP. (FF #s 26 and 27.)

The SCO finds that Student A was provided with most of his annual indirect SLP services, or 345 of 360 minutes per year. (FF #s 18 and 25.) There is no reason to think he will not get the remaining minutes now that School 1 has an SLPA and SLP on staff. Thus, the SCO finds and concludes that District implemented Student A’s indirect SLP services. However, the SCO cautions District that Student A’s May IEP may not contain sufficient consultative services since staff at School 1 were still pursuing additional consultations. (FF # 26.)

Implementation of Direct SLP Services

During the 2022-2023 school year, Student A should have received 120 MPM of direct SLP services inside the general education classroom and 120 MPM of direct SLP services outside of the general education classroom. (FF # 18.)

Student A did not receive any direct SLP services from August 22, 2022 through January 19, 2023. (FF #s 21 and 28-31.) From January 20, 2023 through February 24, 2023, Inclusion SLP provided Student A with three hours (180 minutes) of direct SLP services inside the general education classroom, and no services outside of the classroom. (FF # 29.) Beginning February 27, 2023, an in-person SLPA and a teletherapy SLP started providing Student A, and other Students at School 1, with all of their SLP services. (FF # 30.)

The SCO finds that from August 22, 2022 through February 27, 2023, Student A was entitled to 720 minutes (12 hours) of direct SLP services inside the classroom and 720 minutes (12 hours) of direct SLP services outside of the general education setting. (FF # 31.) As Student A only received 180 minutes (3 hours) of direct SLP services inside the general education setting during this time, the SCO finds and concludes that District failed to implement 540 minutes (nine hours) of Student A's direct SLP services inside the general education classroom and 720 minutes (12 hours) of his direct SLP services outside the classroom. (FF # 29.)

For these reasons, the SCO finds and concludes that District failed to implement the direct SLP services in Student A's May IEP, in violation of 34 C.F.R. § 300.323.

Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. 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 SCO 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).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does

not require that the child suffer demonstrable educational harm in order to prevail. 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.*

In this case, District failed to provide Student A with a total of 1,260 minutes (21 hours) of direct SLP services: 540 minutes (nine hours) of direct services inside the general education classroom, and 720 minutes (12 hours) of direct services outside of the classroom. (FF #s 21, 29 and 31). Overall, Student received little to no SLP services for six months in a nine-month long school year. (*Id.*) This is more than a minor discrepancy from the services outlined in the May IEP. Thus, the SCO finds and concludes that this constitutes a material failure to implement Student A’s May IEP, resulting in a denial of FAPE.

Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory 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. School District of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package to help place Student in the same position with respect to making progress on IEP goals if not for the violation.

In this case, since there was no data collected on Student A’s communication goal and he receives substantial services outside of the school day, it is difficult to ascertain exactly how this lack of services has impacted him. (FF #s 45, 46, 52 and 53.) Inclusion SLP expects that as a nonverbal student, Student A is likely to require compensatory services for most, if not all of the services he missed. (FF # 47.) However, Student A has made some progress on a related social emotional goal. (FF #s 50-51.) Additionally, the SCO, in consultation with CDE Content Specialist, finds that an award of all the minutes he has missed would be overly burdensome, considering Student A’s already extensive schedule of daily intervention both inside and outside of school. Instead, the SCO finds and concludes that an award of 420 minutes (seven hours) of direct SLP services to be provided inside the general education setting and 540 minutes (nine hours) of direct SLP services to be provided outside of school hours to be appropriate.

Conclusion to Allegation No. 2: District failed to implement the IEPs of over 1,000 Students from January 17, 2022 to present, by failing to provide them with the SLP minutes required by their IEPs, in violation of 34 C.F.R. § 300.323. This violation resulted in denials of FAPE.

Parents’ other concern is that, due to a staffing shortage, Students (other similarly situated elementary school children) also were not receiving the SLP services included in their IEPs during the 2022-2023 school year.

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

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). A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* at § 300.323(c)(2). 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).

To satisfy its implementation obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” 34 C.F.R. § 300.323(d).

IEP Accessibility

As was the case for Student A, there is no reason to find that service providers for Students were unaware of their responsibilities related to implementing Students’ IEPs or the need to provide Students with SLP services. Instead, the issue has been that there is no SLP to provide those services. (FF #s 54-58.)

Implementation of SLP Services

In this case, District acknowledges that Students at 28 District schools serving elementary-aged students did not have SLPs for some period of weeks or months between January 17, 2022 and present. (FF #s 54-57.) This shortage has impacted over 1,000 Students. (FF # 58.) Several vacancies are ongoing, having already lasted over six months. (FF # 59.) District points to a nationwide shortage of SLPs to explain the gaps and has taken several steps to try and fill the vacancies. (FF #s 54, 61-67.) The SCO recognizes the challenging circumstances District is facing, including a nationwide shortage that is outside of its control. (FF # 54.) However, staff shortages, locally or nationwide, do not excuse a district from its obligations under the IDEA. *El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22).

Thus, the SCO finds and concludes that District has systematically failed to implement the SLP services in Students' IEPs.

Materiality of Failure to Implement

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. 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 SCO 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).

"A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard "does not require that the child suffer demonstrable educational harm in order to prevail. 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.*

In this case, with many vacancies lasting six months or more in a nine-month long school year, the SCO necessarily finds and concludes that many of these failures to implement were material, as was the case for Student A. However, determining the extent of the materiality will require an in-depth analysis of the length of each vacancy, along with the hours of SLP services each of the Students should have received. Where the failures were material, determining appropriate compensatory services will likewise require an in-depth analysis of Students' IEPs and their progress. Both processes will be more complicated due to the lack of progress reports. (FF # 72.) As such, the SCO will order District to work with the CDE to determine each Students' need, if any, for compensatory services.

REMEDIES

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

- a. Failing to implement Student A's May IEP, in violation of 34 C.F.R. § 300.323.

- b. Failing to implement Students' IEPs, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **April 18, 2023**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student A, Students, and all other students with disabilities for whom District is responsible. The CAP must, at a minimum, provide for the following:
 - i. Executive Director of Special Education, SLP Manager and Student A's current SLP must review this Decision, as well as the requirements of 34 C.F.R. § 300.323. This review must occur no later than **Thursday, May 18, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, May 26, 2023**.
- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Compensatory Education Services for Student A for Denial of a FAPE

- a. Student A shall receive **seven (7) hours of specialized speech/language services to be provided inside the general education classroom**. This instruction must be provided by an appropriately licensed SLP or an SLPA under the supervision of an appropriately licensed SLP. These services must be designed to support Student A's progress on his IEP goals.
 - i. These compensatory services must be provided inside the general education setting during the school year. These services must be spread over no fewer than 14 weeks, such that Student A does not receive more than 30 minutes of compensatory services during the school day in any given week. All seven (7) hours must be provided by **Friday, December 15, 2023**.
- b. Student A shall receive **nine (9) hours of specialized speech/language services to be provided outside the general education classroom**. This instruction must be provided by an appropriately licensed SLP or an SLPA under the supervision of an appropriately licensed SLP. These services must be designed to support Student A's progress on his IEP goals.

- i. These compensatory services must be provided to Student A outside of the regular school day to ensure he is not deprived of the instruction he is entitled to receive during the school day (including time in general education). Parties are encouraged to consider arranging for services over holidays and breaks from school to avoid overburdening Student A. At least five hours must be provided before **Monday, August 21, 2023**, and any remaining hours must be provided by **Friday, December 15, 2023**.

- c. **By Tuesday, April 25, 2023**, District shall schedule compensatory services in collaboration with Parents. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. District shall submit the schedule of compensatory services, to include the dates, times, and durations of planned sessions, to the CDE no later than **Friday, April 28, 2023**. If District and Parent cannot agree to a schedule by April 28, 2023, the CDE will determine the schedule for compensatory services by **Friday, May 26, 2023**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parents refuse to meet with District within this time, 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, rests solely with the CDE.
 - ii. Parents may opt out of some or all of the compensatory services if they wish.

- d. Monthly consultation between the provider(s) delivering compensatory services and SLP Manager or a an SLP who is also a team lead shall occur to evaluate Student A'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 compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- e. To verify that Student A 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 education services have been furnished. The name

and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.

- f. These compensatory services will be in addition to any services Student A currently receives, or will receive, that are designed to advance him toward IEP goals and objectives. If for any reason, including illness, Student A 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.

3. Technical Assistance

- a. SLP Manager shall participate in ongoing technical assistance (“TA”) with CDE Speech Language Specialist. This TA shall include, at a minimum, a review and revision of the content and use of District’s caseload calculator, a review of District’s current process for staffing positions and covering vacancies, and updates on the current status of District’s hiring efforts.
 - i. SLP Manager must engage in at least 30 minutes per month of TA during the school year.
 - ii. CDE Speech Language Specialist will keep a log of these sessions, including date, length, and subject of session, as well as any agreed upon action items.
 - iii. TA sessions will continue at least monthly through March 18, 2024 or until District has two straight months during the school year without an SLP or SLPA vacancy resulting in a loss of services for Students, whichever comes first.

4. Ongoing Hiring Efforts

- a. To verify ongoing hiring efforts, starting Tuesday, May 2, 2023, District shall submit SLP staffing logs to CDE by the **first Tuesday of every month**. These logs must contain:
 - i. The number of SLPs or SLPAs who left during the prior month, to include retirements, resignations, firings, extended leaves, or any other circumstances that have or are likely to cause a gap in services of more than two weeks.

- ii. The number of SLP or SLPA offers extended and the number of SLP or SLPAs hired in the prior month, including projected start dates. This includes both contractors and direct hires.
- iii. The current number of SLP or SLPA vacancies at District, including a breakdown of which schools or age groups are impacted by those vacancies.

5. Compensatory Education Services for Students to Address Systemic IDEA Violations

- a. By **Tuesday, April 25, 2023**, District shall submit a revised list of all Students at impacted schools who had SLP services in their IEPs at a time when the school did not have an SLP (“Exhibit M”) with an additional column or other format change which clearly identifies:
 - i. Any Students whose compensatory services have been or will be arranged through a complaint or settlement with District, to include Students who are the subject of state complaints, due process complaints, mediation agreements or other settlement agreements (“Settled Students”); and
 - ii. Any Students who have otherwise already agreed to compensatory service awards from District or rejected compensatory services (“Offered Students”).
 - iii. All other students (“Remaining Students”) who have not reached an agreement with District around compensatory services. In the event that District and a Student’s family were unable to reach an agreement on the amount of compensatory services required, that Student should be included in the category of Remaining Students.
- b. By **Friday April 28, 2023**, District shall submit to CDE for review, a draft letter to be sent to all Remaining Students. This letter shall notify parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student who might require compensatory services as a result of a failure to provide SLP services. The letter must invite parents to participate in the process to assess their student’s need for compensatory services and explain District’s process for determining compensatory services, including an explanation for where to access District’s CDE approved process (Standard Operating Procedure “Process for Determining Compensatory Services”, here after referred to as “Compensatory Services SOP”). The letter must be sent by District to parents no later than **Monday, May 22, 2023**. District must translate the letter as necessary to provide it to parents with limited English proficiency in their native language.

- c. By **Friday, September 29, 2023**, District must follow its Compensatory Services SOP to determine compensatory services for the Remaining Students. All offers of compensatory services, including determinations that no further compensation is necessary, must be clearly documented in a PWN issued to parents. District may not modify their Compensatory Services SOP without first getting approval from CDE.
- d. Nothing in this remedy shall be construed to prohibit District from providing compensatory services as soon as practicable, including during the summer of 2023, even if determinations of need have not been completed. In fact, where appropriate, District is encouraged to provide services over the summer so that Students can begin catching up as soon as possible.

6. Audit of Compensatory Service Offers

- a. By **Tuesday, May 30, 2023**, CDE shall randomly select not fewer than five (5) but not more than 10% of the Offered Students, identified in Remedy 5(a)(ii) above, to audit consistent with the procedures outlined in Remedy 6(c) below.
- b. By **Tuesday, October 31, 2023**, CDE shall randomly select approximately 200, or around 20% of, Remaining Students, identified in Remedy 5(a)(iii) above, to audit following the procedures outlined in Remedy 6(c) below.
- c. Within four weeks of receiving CDE's lists described in Remedy 6(a) and 6(b), District shall provide CDE with the following for all identified Students:
 - i. Any IEPs in effect from January 17, 2022 to the date of request;
 - ii. Any progress reports from January 17, 2022 to the date of request;
 - iii. SLP service logs, January 17, 2022 to the date of request, including compensatory services already provided, if applicable;
 - iv. Parent contact logs related to compensatory services;
 - v. PWNs detailing compensatory service determinations; and
 - vi. Any other records requested by CDE.
- d. Within ten weeks of receiving the records listed in Remedy 6(c), CDE shall conduct a review of compensatory service offers to ensure they are reasonably calculated to put the Student in the position he or she would have been in, if not for the District's violation.

7. Audit of Compensatory Service Delivery

- a. By the first Thursday of every month, starting on **Thursday, July 6, 2023**, CDE shall provide District with a list of 20 Students, randomly selected from among Offered Students and Remaining Students.
- b. By the third Thursday of every month, starting on **Thursday, July 20, 2023**, for each Student identified by CDE, District must provide CDE with:
 - i. The PWN documenting the agreed upon compensatory services; and
 - ii. A log of all compensatory services provided to the Student from March 18, 2023 until the date of the request, to include compensatory services provided directly by District as well as compensatory services provided by an agreed upon 3rd party.
- c. This process shall continue until March 18, 2024 or until all compensatory services have been provided, whichever comes first.

8. Other Remedies:

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

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

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

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13. If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 18th day of March, 2023.



Rachel Dore
State Complaints Officer

APPENDIX

Complaint, pages 1-6

- Exhibit 1: Release of Information
- Exhibit 2: IEP
- Exhibit 3: Letter
- Exhibit 4: IEP

Response, pages 1-3

Systemic Response, pages 1-2

- Exhibit A: IEPs
- Exhibit B: Consent for Evaluation
- Exhibit C: None
- Exhibit D: Service Logs
- Exhibit E: Attendance
- Exhibit F: Progress Reports
- Exhibit G: District Calendars
- Exhibit H: Policies and Procedures
- Exhibit I: Correspondence
- Exhibit J: District Contacts
- Exhibit K: Verification of Delivery
- Exhibit L: List of Impacted Schools
- Exhibit M: List of Impacted Students
- Exhibit N: Explanation of Exhibit M
- Exhibit O: Service Logs
- Exhibit P: Recruitment Efforts

Telephone Interviews

- Parents: February 17, 2023
- Private OT: February 24, 2023
- Inclusion SLP: February 27, 2023
- SLP Manager: February 28, 2023
- School Psychologist: March 2, 2023