

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

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**State-Level Complaint 2023:563**  
**Pueblo School District 60**

**DECISION**

**INTRODUCTION**

On August 1, 2023, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Pueblo School District 60 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified six allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

**RELEVANT TIME PERIOD**

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from August 1, 2022 to the present for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF COMPLAINT ALLEGATIONS**

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

1. Failed to develop, review, and revise an Individualized Education Program (“IEP”) that was tailored to meet Student’s individualized needs, from August 2022 to present, specifically by:

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

- a. Failing to include measurable annual goals designed to enable Student to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2);
  - b. Failing to consider Student’s academic, developmental, and functional needs—specifically speech-language and occupational therapy services—in violation of 34 C.F.R. §§ 300.320 and 300.324; and
  - c. Failing to include behavioral strategies and supports, specifically a behavioral intervention plan, that adequately addressed Student’s behavioral needs, in violation of 34 C.F.R. § 300.324(a)(2)(i).
2. Convened IEP Team meetings on November 10, 2022 and May 31, 2023 without all required IEP Team members, specifically a general education teacher, in violation of 34 C.F.R. § 300.321.
3. Deprived Parents of meaningful participation in the IEP Team meeting held on November 10, 2022 by not considering their concerns, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1)(ii).
4. Failed to properly implement Student’s IEP from August 1, 2022 to present, specifically by:
  - a. Failing to make Student’s IEP accessible to teachers or service providers responsible for its implementation, in violation of 34 C.F.R. § 300.323(d);
  - b. Failing to provide Student with the required assistive technology, specifically an augmentative and alternative communication (“AAC”) device, in violation of 34 C.F.R. § 300.323; and
  - c. Failing to educate Student in the required least restrictive environment (“LRE”), in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323.
5. Failed to provide an Independent Educational Evaluation (“IEE”) at public expense without unnecessary delay, or file a due process complaint to show District’s evaluation was appropriate, following Parents’ requests for an IEE on or about November 10 and December 5, 2022, in violation of 34 C.F.R. § 300.502(b)(1)-(2).
6. Failed to permit Parents to inspect and review education records relating to Student after Parents’ request on May 16, 2023, in violation of 34 C.F.R. § 300.613.

## **FINDINGS OF FACT**

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

### **A. Background**

1. Student began the 2022-2023 school year as a ninth grader at a District high school (“School #1”). *Interview with Parents*. In January 2023, he transferred to another District high school (“School #2”) for the remainder of the school year. *Id.* Student currently attends tenth grade at a high school in a different school district. *Id.*
2. During the 2022-2023 school year, Student was eligible for special education and related services under the disability categories of Multiple Disabilities and Speech or Language Impairment. *Exhibit A*, p. 23. Student has Angelman Syndrome, a rare neuro-genetic disorder that shares symptoms and characteristics with other disorders including autism, cerebral palsy, and Prader-Willi syndrome. *Interview with Parents; CDE Exhibit 1*. Individuals with Angelman Syndrome have developmental problems, such as walking and balance disorders, gastrointestinal problems, seizures, and little to no speech. *CDE Exhibit 1*.
3. Student loves being around people and connects quickly with new people. *Interview with Parents*. His only words are “mama”—which he uses to get attention—and “hi”—which he uses to greet others. *Id.* At home, Student communicates using his AAC device, grunts, and his own signs. *Id.* Student is ambulatory but walks with an unsteady gait. *Id.* Outside of school, Student enjoys watching movies and live music. *Id.* Student functions at a pre-kindergarten level. *Exhibit A*, p. 4.

### **B. Dispute Following Student’s Reevaluation**

4. In Spring 2022, the District completed Student’s triennial reevaluation. *Exhibit 1*, pp. 259-65. The reevaluation included, in part, assessments of Student’s motor skills completed in April 2021 and updated in May 2022. *Id.* at pp. 264-65. Though the reevaluation assessed Student’s abilities in other areas, those assessments are not relevant to this investigation and have not been detailed in this decision. *See id.*
5. In April 2021, Physical Therapist #1 assessed Student’s motor skills using the School Function Assessment (“SFA”), a review of records, and observations. *Id.* at p. 264. The SFA “evaluate[s] a student’s participation in and performance of school-related functional activities.” *Id.* The SFA indicated that Student was “able to ambulate independently throughout the school environment.” *Id.* As a result, Physical Therapist #1 concluded that Student’s “gross motor skills [did] not limit his access to the school environment or the curriculum.” *Id.*

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

6. Physical Therapist #1 updated her evaluation in May 2022. *Id.* The updated assessment evidenced some difficulty with recreational movement. *Id.* However, overall, the results led Physical Therapist #1 to find again that Student's "gross motor skills [did] not limit or interfere with his education in any way." *Id.*
7. Occupational Therapist #1 used the SFA, a review of records, range of motion assessments, and observations to assess Student's motor skills. *Id.* at p. 264-65. On the SFA, Occupational Therapist #1 found Student's fine motor functioning to be "within expected performance levels given his overall developmental level" and stable over time. *Id.* According to Occupational Therapist #1, Student's fine motor skills were "not a barrier to his ability to access his academics." *Id.* Student could work on developing his fine motor skills with special education staff members through his curriculum and did not need services from an occupational therapist. *Id.*
8. The District convened Student's IEP Team on June 1 and 7, 2022 to consider Student's reevaluation and develop his IEP. *Response*, p. 2. Parents disagreed with the results of the evaluations completed by Physical Therapist #1 and Occupational Therapist #1. *Interviews with Exceptional Student Services Coordinator ("Coordinator") and Parents.* Parents asserted that Student's motor skills impacted his ability to access his education and that he needed physical and occupational therapy. *Id.*
9. Over Parents' objection, the IEP Team determined that Student did not require occupational therapy or physical therapy to access his education. *Id.*; *Exhibit A*, pp. 19-20.

### **C. Student's 2022 IEP**

10. The June 2022 IEP Team meetings resulted in an IEP dated June 1, 2022 ("2022 IEP"). *Exhibit A*, pp. 1-22.
11. The 2022 IEP reviewed Student's present levels of performance, noting that Student had learned to match shapes and colors. *Id.* at p. 4. Student used an iPad to work on tracing numbers and letters, though Student could not identify numbers or letters. *Id.* At the end of his eighth-grade year, Student was performing at a pre-kindergarten level. *Id.*
12. As noted in the 2022 IEP, Student's disabilities significantly impacted his ability to access the general education curriculum. *Id.* The IEP acknowledged that Student was "predominantly non-verbal," though he used gestures and could produce some "beginning sounds." *Id.* Student could navigate the classroom and building but needed safety monitoring and assistance with toileting. *Id.*
13. Under Consideration of Special Factors, the 2022 IEP specified that Student had "just received AAC device (NovaChat)" and that he worked with an AAC device. *Id.* at p. 10. The IEP did not state that Student needed an AAC device to receive FAPE. *Id.*

14. The 2022 IEP contained five annual goals in the areas of daily living skills, reading, and communication. *Id.* at pp. p. 13-17.

15. The 2022 IEP identified nine accommodations, such as hand-over-hand support with his AAC device, a visual schedule, repeated instruction, and assistance with toileting. *Id.* at p. 17. Per the IEP, Student's work was modified using extended evidence outcomes. *Id.*

16. Under the 2022 IEP, Student received the following special education and related services:

- Specialized Instruction

- 1,764 minutes per week of direct instruction provided by a special education teacher in a self-contained classroom outside of the general education environment. Student was to eat lunch with other students in the school lunch room and be "accompanied by certified or classified staff to this location for an additional 144 minutes per week."

- Speech/Language Therapy

- 90 minutes per month of direct speech/language therapy provided by a speech language pathologist outside the general education setting.

*Id.* at pp. 19-20.

17. Per the 2022 IEP, Student spent less than 40% of his time in the general education classroom. *Id.* at p. 15. The advantages of this placement included "more individualized and adaptive support that [was] better differentiated and modified to his educational, functional, and social needs." *Id.* at p. 20. The disadvantage of this placement was less time with non-disabled peers. *Id.* In middle school, Student spent 40-79% of his time in the general education classroom. *Interview with Parents.* District members of the IEP Team felt the transition to high school would be significant for Student. *Interview with Case Manager #1.* Spending more time in the self-contained classroom would give Student time to adjust to School #1 and hopefully avoid the aggressive outbursts Student had in the past when he was not understood. *Id.*

18. The IEP contained an embedded behavior intervention plan ("BIP"). *Id.* at p. 11-13. The BIP was based on a prior functional behavior assessment, as well as Student observations and consultations with Parents and Student's teachers. *Id.* at p. 11.

19. The BIP targeted Student's physical aggression and resistant behaviors. *Id.* At times, Student became upset and physically aggressive when asked to complete a non-preferred task,

including toileting. *Id.* Student also ran away from staff members and refused to follow their directions. *Id.*

20. Setting event strategies outlined by the BIP included, in part, use of a visual schedule and preparation for transitions. *Id.*
21. Listed antecedent strategies designed to reduce the target behavior included, in part, use of a simple reinforcement system, such as a token board, and access to breaks with sensory items. *Id.*
22. The BIP also included behavior teaching strategies, such as modeling appropriate behavior and boundaries and teaching functional life skills. *Id.*
23. As reinforcement strategies, the BIP identified providing immediate reinforcement for completing tasks identified on Student's visual schedule. *Id.*

#### **D. Beginning of Ninth Grade**

24. The 2022-2023 school year started on August 16, 2022. *Response*, p. 3. At the time, the 2022 IEP was in effect. *Exhibit A*, pp. 1-22. Before the school year began, Case Manager #1 provided a snapshot of the 2022 IEP to Student's service providers and paraprofessionals. *Interview with Case Manager #1*. Case Manager #1 also met with the paraprofessionals to review the requirements of Student's IEP. *Id.*
25. Student was in a classroom for students with multiple disabilities or autism ("MD classroom") at School #1. *Id.* Case Manager #1 and four paraprofessionals staffed the MD classroom. *Id.*
26. Throughout the fall semester, Student spent almost his entire day in the MD classroom. *Id.* Student left the MD classroom to attend a life skills class and adaptive P.E. with his classmates; no general education students attended either of those classes. *Id.* Additionally, Student went to the cafeteria to pick up his lunch but ate his lunch in the MD classroom. *Id.*
27. In late October, Student displayed aggression during two behavioral incidents. *Exhibit J*, p. 6.; *Interview with Case Manager #1*. In both instances, Student refused to comply with directions and kicked a staff member in the MD classroom. *Exhibit J*, p. 6; *Interview with Case Manager #1*. Student was not removed from the MD classroom or otherwise disciplined for either incident. *Interview with Case Manager #1*. Student did not have any other behavioral incidents for the remainder of the school year (either at School #1 or School #2). *Id.*; *Response*, p. 13.

### **E. Additional Motor Evaluations**

28. In Fall 2022, Parents continued to express disagreement with the Spring 2022 reevaluation of Student's motor skills and advocated for him to receive occupational and physical therapy. *Interviews with Coordinator and Parents*. In response to Parents' concerns, the District agreed to assess Student's motor skills again. *Interview with Coordinator*.
29. Based on their distrust of the District, Parents requested to observe any assessments. *Interviews with Coordinator and Parents*. The District considered Parents observing out of Student's sight, but District staff were concerned that Parents' presence could impact the outcome of the assessments. *Interview with Coordinator*. In the end, the District chose to videorecord portions of the assessments instead of allowing Parents to observe the assessments in person. *Id.* Parents were not notified of the District's decision until after the evaluations had been completed. *Interview with Parents*. However, the District provided Parents the video recordings along with the evaluation report. *Interview with Coordinator; see Exhibit J-1, Video recordings*.
30. The revised evaluation report was completed November 6, 2022. *Exhibit 1*, pp. 142-46. Physical Therapist #2 assessed Student using the SFA, observations, and staff interviews. *Id.* at p. 145. Physical Therapist #2 found that:

[Student] is able to walk throughout the classroom, halls, and cafeteria independently demonstrating adequate safety awareness and proficiently navigating obstacles, including desks, chair, tables, carts, and people. He does require occasional verbal cuing for direction. . . . Staff report no concerns at this time. [Student] is able to negotiate inclines and declines, even demonstrating an ability to maneuver and control a rolling cart with some assistance. He ascends and descends two flights of stairs with a reciprocal stepping pattern and holding on to one handrail.

*Id.* Ultimately, Physical Therapist #2 concluded that Student was "able to perform all school-related functional activities with only supervision required for safety." *Id.*

31. Occupational Therapist #2 also used the SFA to evaluate Student's motor skills. *Id.* Student's scores on the SFA placed him in the fifth percentile or below on the scales for Using Materials, Eating and Drinking, and Hygiene. *Id.* He scored above the fifth percentile on the scales for Manipulation with Movement and Setup and Cleanup. *Id.* Despite his scores on the SFA, Occupational Therapist #2 concluded that Student's self-contained classroom was "well-equipped to support and accommodate for his fine motor needs." *Id.* Special education staff in his classroom could support his fine motor skill development and, therefore, Student did not require specialized occupational therapy services. *Id.*

## F. November 2022 IEP Team Meeting

32. On October 20, Case Manager #1 sent Parents notice of an IEP Team meeting scheduled for November 10 to discuss the recent evaluations and develop Student's transition plan. *Exhibit H*, p. 1. A draft IEP was provided to Parents before the meeting. *Exhibit 1*, pp. 115-133. The District asserted that this meeting was a continuation of Student's eligibility meeting from Spring 2022, but the notice of meeting and the draft IEP contradict this characterization. *Id.* The SCO finds that the November 10 meeting was an IEP Team meeting, not an eligibility determination meeting.
33. In advance of the November 10 IEP Team meeting, Parents sent an email to District staff outlining their concerns. *Exhibit J*, p. 39-40. In particular, Parents highlighted their exclusion from Student's recent evaluations and their desire for Student to have increased access to the general education environment. *Id.* Parents also expressed their expectation that Student's IEP be left open following IEP Team meetings: "Also know that even if agreement is reached following this meeting, [Student's] IEP will remain left open, and we will have time to further review." *Id.* at p. 39.
34. On November 10, 2022, the District convened Student's IEP Team to discuss the new evaluations and develop Student's transition plan. *Exhibit H*, p. 1. A general education teacher was not invited to the IEP Team meeting, because Student was not attending any general education classes at that time. *Interviews with Case Manager #1 and Coordinator*. When Parents expressed concern about this at the beginning of the meeting, a general education teacher was brought into the meeting, though he had no knowledge of Student. *Id.*
35. Parents, two advocates, and two of Student's medical providers attended the IEP Team meeting. *Interview with Parents*. During the meeting, the IEP Team reviewed the new evaluations. *Interviews with Case Manager #1, Coordinator, and Parents*. Parents were frustrated that the District did not allow them to observe the evaluation and expressed their disagreement with the outcome. *Id.* In particular, Parents felt the video recordings were full of "holes" and did not show all of the skills the evaluators claimed to have observed. *Interview with Parents*. For example, the videos did not show how much food Student ate at lunch or depict how long it took him to eat his lunch. *Id.* Additionally, though the videos showed Student going up and down the stairs, the video was taken when the stairs were empty and did not show how Student would do when it was crowded. *Id.*
36. Parents brought Student to the IEP Team meeting and asked him to demonstrate tasks (like cutting out a circle) that District staff said he could complete but that Parents questioned. *Interviews with Case Manager #1, Coordinator, and Parents*. When Student was unable to cut out the circle with the accuracy described by District staff, Parents felt the whole evaluation was a lie. *Interview with Parents*.



37. In addition to the evaluations, the IEP Team also discussed increasing Student’s access to nondisabled peers. *Interviews with Case Manager #1, Coordinator, and Parents.*
38. Ultimately, no decisions were made during the November IEP Team meeting; the meeting adjourned, and the IEP Team agreed to reconvene at a later date. *Id.*
39. In their Complaint, Parents assert that they were not allowed to participate as “full and equal” members of the IEP Team in the November meeting. *Complaint*, pp. 9-11. Parents felt the “door was slammed” on every concern that they shared during the meeting. *Interview with Parents.* However, District staff recalled the meeting differently. *Interviews with Case Manager #1 and Coordinator.* Coordinator recalled Parents sharing their thoughts and having a dialogue with District staff about those concerns. *Interview with Coordinator.* Instead of dismissing Parents’ concerns, District staff were questioning Parents to try to gather more information so they could problem solve. *Id.* If anything, District staff felt that Parents’ advocates controlled the discussion. *Interviews with Case Manager #1 and Coordinator.*
40. Parents asked the District to provide draft IEPs at least 48 hours before scheduled IEP Team meetings. *Interview with Parents.* The District has not consistently met this expectation. *Id.*; *Exhibit J*, p. 39.

#### G. IEE

41. On December 5, 2022, Parents emailed Executive Director of Exceptional Student Services (“Executive Director”) to request an IEE in the areas of “occupational and physical therapy.” *Exhibit J*, p. 41. As support for their request, Parents indicated the District’s evaluations did “not accurately reflect the unique needs” of Student. *Id.* Parents did “not agree that his fine and gross motor skills are not a barrier to access the educational environment” or that he did not need the expertise of an occupational or physical therapist. *Id.*
42. The following day Executive Director responded to Parents’ email, as follows:
- You may certainly have an IEE completed for your student. Please let this office know of your chosen evaluator. Once the assessment is completed this office will require a copy of the evaluation as well as the invoice to pay the evaluator and associated costs.
- Id.* at p. 42. No other information was provided to Parents. *Id.*
43. On January 26, 2023, Parents contacted the District regarding their inability to locate an evaluator:

We have been unsuccessful at finding an evaluator for the IEE. At this time we would like to request that the administration would provide the information about

where we may obtain an IEE. Also, please provide the criteria that the district requires so that we may pass that on to them.

*Id.* Executive Director declined to provide the requested information; instead, she indicated the District “remains neutral on IEE companies in order to refrain from appearing to select one organization over another.” *Id.* Parents responded by copying and pasting a portion of the procedural safeguards relating to IEEs and asking Executive Director if Parents were misunderstanding their right to such information. *Id.* at p. 43.

44. Executive Director reiterated that the District “has always remained neutral and allowed parents to select an agency for an IEE.” *Id.* at p. 44. Nonetheless, Executive Director agreed to help find an available evaluator. *Id.*
45. On January 31—nearly two months after Parents requested an IEE—Executive Director sent Parents a letter detailing the District’s criteria for IEEs. *Exhibit F*, pp. 1-2. The District still did not provide Parents a list of providers. *Id.* Executive Director sent this letter the day after she contacted the District’s “legal team for guidance.” *Id.* at p. 8. At the time of this investigation, the District provided a draft letter for parents who request an IEE, written criteria for IEEs, and a list of potential providers by evaluation area that the District currently uses when a parent requests an IEE. *Exhibit M*, pp. 5-26.
46. Following its letter, the District and Parents worked independently to identify potential evaluators. *Id.*; *Interview with Parents*. Eventually, in early March, a private therapy clinic agreed to perform Student’s IEE. *Exhibit F*, p. 8; *Interview with Parents*. The IEE was completed on March 27, 2023. *Exhibit J*, p. 46.
47. An occupational therapist at the clinic used the Bruinks-Oseretsky Test of Motor Proficiency (“BOT-2”) and the Beery Buktenica Developmental Test of Visual-Motor Integration to assess Student’s motor skills. *Exhibit F*, pp. 3-4. The therapist found that Student demonstrated “significant deficits” in the areas of fine motor precision, visual-motor integration, and motor coordination skills. *Id.* She suggested Student would benefit from working with a skilled occupational therapist to improve his “performance/independence in . . . essential tasks at school including using the restroom in a timely manner, using age-appropriate grasp on writing and feeding utensils, and maintaining hygiene and sequencing through lunchtime tasks independently.” *Id.* The therapist recommended Student receive occupational therapy 1-2 times per week for a total of one to two hours. *Id.*
48. One of the clinic’s physical therapists also evaluated Student’s range of motion and strength. *Id.* at pp. 6-7. The therapist concluded as follows:

[Student] is able to safely ambulate throughout a hallway or room with supervision and with no loss in balance, he can ascend/descend a 7” curb with

supervision, he is able to squat and pick objects up off the floor, and he can transition from sitting in a chair to standing independently.

*Id.* at p. 6. Based on this information, the therapist concluded that Student could safely maneuver in his school environment and did not recommend school-based physical therapy. *Id.*

#### **H. Student's Transfer to School #2**

49. In January 2023, Parents decided to move Student to School #2. *Interview with Parents.* Upon his arrival, Case Manager #2 provided a copy of the 2022 IEP to Student's service providers and the paraprofessionals working with him, and school staff began implementing Student's IEP. *Interview with Case Manager #2; Response, p. 5; Exhibit D, p. 6.*

50. Like School #1, Student was in a self-contained classroom for students with multiple disabilities. *Interview with Case Manager #2.* When Student arrived at School #2, he ate lunch in the classroom. *Interviews with Case Manager #2 and Parents.* Upon Parents' urging, eventually Student and his classmates were able to eat lunch in the cafeteria. *Interview with Case Manager #2.*

51. At School #2, Student was enrolled in three general education electives: choir, drawing, and JROTC. *Response, p. 5; Interview with Parents.* While JROTC offered an inclusive environment, the same cannot be said for choir and drawing. *Interviews with Case Manager #2 and Parents.* In choir and drawing, the students with disabilities were segregated to a separate area of the classroom or a separate table away from general education peers. *Id.* Though a paraprofessional accompanied Student to the general education electives, the paraprofessionals did little to ensure the students were included. *Interview with Case Manager #2.*

#### **I. Student's AAC Device**

52. Beginning in Spring 2022, Student started using the NovaChat 10 ("NovaChat") as his AAC device. *Interview with Parents.* The NovaChat is a speech-generating device with a large screen that displays approximately 60 pictures at once. *Id.* Student selects the word(s) he wants to communicate, and the NovaChat audibly speaks those words for him. *Id.* Parents obtained the device for Student through his medical providers. *Id.*

53. Though Parents sent the NovaChat to school with Student, Parents expressed concern about whether District staff were using the device with Student at school. *Id.* Case Manager #1 and School #2's Speech Language Pathologist ("SLP") reported that Student preferred to communicate using gestures or grunts instead of the NovaChat; Student enjoyed using his device to make silly sounds for his classmates. *Interviews with Case Manager #1 and SLP.* However, Case Manager #2 felt that Student's preference was based on his lack of familiarity

or skill with the NovaChat. *Interview with Case Manager #2*. Regardless, staff worked to incorporate Student's device into the classroom and, at times, his speech services. *Interviews with Case Manager #1, Case Manager #2, and SLP*.

54. On March 2, 2023, after Student forgot his NovaChat device in art class, it was vandalized and left inoperable. *Interviews with Parents and SLP*. The manufacturer repaired the device and returned it on April 21, 2023. *Response*, p. 7. In the interim, Student used other means to communicate, including a loaner device from the manufacturer (which broke soon after delivery) and a picture exchange communication system ("PECS"). *Interview with SLP*. SLP had previously worked with Student on PECS, so he already had familiarity with that means of communication. *Id.* PECS is a low-tech AAC system similar to the high-tech system offered by Student's NovaChat device. *Id.* Student was also still able to communicate using gestures and grunts, which were his preferred means of communication even before his device broke. *Interviews with Case Manager #2 and SLP*. The District provided him an iPad with appropriate software; however, Student did not use the iPad because Parents were concerned that it did not have the appropriate case and that Student could not be locked into the communication app to prevent him from using the iPad for other purposes. *Interview with Parents and SLP*.

#### **J. March 2023 IEP**

55. On March 15, 2023, the District convened Student's IEP Team to review his IEP. *Interviews with Coordinator and Parents; Response*, p. 6. The IEE was not completed at the time of the March meeting. *Interview with Parents*. Student's JROTC instructor attended the meeting as a general education teacher. *Response*, p. 6; *Exhibit A*, p. 43. The IEP Team meeting resulted in an IEP dated March 15, 2023 ("March 2023 IEP"). *Exhibit A*, pp. 23-42.
56. The March 2023 IEP reviewed Student's present levels of performance, noting that Student had no formal academic testing due to his intellectual disability. *Id.* at p. 26. The IEP summarized the results of Student's reevaluation and acknowledged that Student would "benefit from continued instruction in functional academics and life skills from [special education] teachers and staff to help him become more independent." *Id.* at pp. 26-28.
57. As noted in the March 2023 IEP, Student's disabilities significantly impacted his ability to access the general education curriculum. *Id.* at p. 29. Student's cognitive abilities, communication, and dexterity specifically affected his ability to access the general education curriculum. *Id.* As a result of his disabilities, Student needed work modified to his level and broken down into short segments. *Id.*
58. Under Consideration of Special Factors, the March 2023 IEP specified that Student did not require a BIP. *Id.* at pp. 30-31. While acknowledging the two behavior incidents in Fall 2022, the IEP indicated that "[s]ince there have [sic] been no consistent aggression a behavior plan is not needed." *Id.* at p. 29. The embedded BIP was removed from the 2023 IEP. *Id.* Additionally, the March 2023 IEP stated that Student used a "personal" AAC. *Id.* at p. 31.

59. The March 2023 IEP included a post-secondary transition plan. *Id.* at pp. 32-33.
60. The March 2023 IEP contained seven annual goals in the areas of community safety, math, life skills, and communication. *Id.* at pp. 33-37.
61. The March 2023 IEP identified fifteen accommodations, such as use of his personal AAC device for communication, visual schedules, manipulatives for math and writing, and bathroom assistance. *Id.* at p. 38. Per the IEP, Student's work was modified to a pre-kindergarten level using extended evidence outcomes. *Id.*
62. Under the March 2023 IEP, Student received the following special education and related services:
- Specialized Instruction
    - 750 minutes per week of direct instruction provided by a special education teacher or a paraprofessional in a self-contained classroom outside of the general education environment.
  - Speech/Language Therapy
    - 60 minutes per month of direct speech/language therapy provided by a speech language pathologist outside the general education setting.
  - Occupational Therapy
    - From March 16, 2023 to August 31, 2023: 30 minutes per week of direct occupational therapy provided by an occupational therapist or a certified occupational therapist assistant under the supervision of an occupational therapist outside the general education setting.
    - From September 1, 2023 to March 15, 2024: 15 minutes per month of indirect occupational therapy provided by an occupational therapist or a certified occupational therapist assistant under the supervision of an occupational therapist outside the general education setting.

*Id.* at pp. 19-20. The transition from direct occupational therapy to consultative services was based solely on the calendar and not on Student's progress on his related annual goals. *Id.* According to Parents to Case Manager #2, Student's IEP Team agreed to provide Student direct services and review his need at a later date, not that the services would automatically transition to consultative services. *Interviews with Case Manager #2 and Parents.*

63. Per the March 2023 IEP, Student spent 40% to 79% of his time in the general education classroom. *Id.* at p. 41. The advantages of this placement included Student being able to receive small group instruction in the self-contained classroom at his ability level. *Id.* This placement afforded Student more access to general education, where he could have access to non-disabled peers and modeling for age-appropriate social behavior. *Id.*

#### **K. May 2023 IEP**

64. On May 31, 2022, Student's IEP Team met to consider the results of the IEE. *See id.* at pp. 45-67. Student's JROTC instructor attended the IEP Team meeting. *Exhibit A*, p. 68. This meeting resulted in an IEP dated May 31, 2023 ("May 2023 IEP"). *Id.* This was Student's third IEP in 12 months. *See id.* at pp. 1-67.

65. The May 2023 IEP was nearly identical to the March 2023 IEP with few exceptions:

- Student's speech/language therapy was increased from 60 minutes per month to 90 minutes per month.
- One of Student's life skills goals was amended to include additional objectives targeting Student's ability to engage clean up and complete dressing tasks.

*Id.* at pp. 60, 64-65. Student's occupational therapy services were not changed, even though the IEP Team considered the IEE. *Id.* Parents requested the references to the behavioral incidents in October 2022 be removed from the IEP. *Interview with Parents.*

#### **L. Student's Annual IEP Goals and Lack of Progress Reporting**

66. In their Complaint, Parents contend Student's annual goals have been similar for years and not appropriate for Student's educational needs. *Complaint*, p. 16; *Interview with Parents.*

67. The majority of the goals in Student's 2022 and 2023 IEPs were task-driven (i.e., having Student complete a task) and not based on academic learning. *Interview with CDE Content Specialist.* For example, zipping clothes, fitting manipulatives together, and operating everyday appliances are all tasks and not learning. *Id.*; *Exhibit A*, pp. 35-37. Learning to identify signs in the community for safety (such as crosswalk or restroom signs) simply required Student to memorize the signs. *Interview with CDE Content Specialist; Exhibit A*, pp. 35-37. Even though Case Manager #1 said Student made some progress toward letter recognition in Fall 2022, the 2023 IEPs contained no goals targeting letter or identification, reading, or writing. *Id.*; *Interviews with Case Manager #1 and CDE Content Specialist.*

68. Under the May 2023 IEP, Student had several communication goals; however, none of those goals required any communication related to academics. *Interview with CDE Content*

*Specialist; Exhibit A*, pp. 35-37. Instead, the goals ask Student to answer questions about his daily routine or his preferences or to greet peers. *Id.*

69. Though the District has not repeated any of Student’s annual goals verbatim, Student’s goals have, at times, targeted the same skills. *See Exhibit 1*, pp. 1-738. For example, Student has had a goal related to sorting in every IEP since, at least, 2019. *Id.*
70. Parents attributed the problems in Student’s annual goals to poor progress monitoring. *Interview with Parents*. Student’s progress report for the 2022-2023 school year contains no data points or any other information that would allow Parents (or a District staff member) to identify the nature of Student’s progress on his annual goals. *Exhibit E*, pp. 4-6. Parents report that Student’s progress monitoring has been inadequate for several school years. *Interview with Parents; Complaint*, p. 16.
71. For example, one of the goals in the 2022 IEP provided as follows:

During structured language activities, Student will use his speech generating device for 3 different functions per activity (request repetition, comment, label, request an item, refuse, request assistance, greet, ask a question, request clarification, etc.) with two verbal or gestural prompts, with 75% accuracy measured through observation [on] 3 data collection opportunities.

*Id.* at p. 5. The progress report form has three checkboxes for Student’s progress: adequate progress, insufficient progress, or goal met. *Id.* Case Manager #1 checked the box for adequate progress but listed no comments. *Id.* There are no datapoints to indicate whether Student is using his speech generating device at all, whether he is using it for some functions, or whether his accuracy is improving (though less than 75%). *Id.*

72. The remainder of Student’s progress reports for Fall 2022 school year are the same. *Id.* at pp. 4-6. Even where the comment field contains information, the information does not provide any insight as to the nature of Student’s progress or lack thereof. *Id.* One of the comment fields simply says, “He is doing his best.” *Id.* at p. 4. The District did not produce any progress monitoring reports or data for Spring 2022. *Id.* at pp. 4-6. Though the District’s IEP forms contain a space for progress monitoring, no additional information was entered into Student’s IEPs. *Exhibit A*, pp. 14-17.

### **M. Parents’ Request for Student’s Records**

73. On May 16, 2023, Parents requested in writing Student’s educational records from May 2012 to May 2023. *Exhibit 1*, p. 18. Parents’ letter specifically requested Student’s cumulative file, as well as his special education records. *Id.*

74. The District responded to Parents’ request on May 26, 2023, by producing 738 pages of documents from Student’s special education file. *Response*, p. 19; *Exhibit 1*, pp. 1-738. These records were produced in advance of the IEP Team meeting scheduled on May 31, 2023. *Response*, p. 19. The signature pages for IEP Team meetings held during the 2022-2023 school year were omitted from Student’s special education file. *Id.*
75. The District did not produce Student’s cumulative file—which included his general education records and behavior records—until August 18, 2023, nearly one month after this Complaint was filed. *Id.* The missing signature pages were provided to Parents with the District’s Response on August 21, 2023. *Id.* In its Response, the District concedes that these documents were produced beyond the timeframe permitted by the IDEA. *Id.* The District did not offer any explanation as to why these documents were not timely produced. *See Response*, p. 19; *Interview with Coordinator*.
76. The District does not ordinarily maintain email correspondence as part of a student’s record, either electronically or in hard copy. *Response*, p. 19. As a result, only the email correspondence specifically added to Student’s record was produced in response to Parents’ request. *Id.*
77. The District has policies outlining the content and custody of student education records, as well as parents’ access to student records. *See Exhibit 1*, pp. 1-6. Though the policies acknowledge a parents’ right to review a student’s records, the policy does not outline the steps the District will take to ensure all relevant records are gathered. *Id.*

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: The District failed to develop an IEP that was tailored to Student’s individualized needs during the 2022-2023 school year, in violation of 34 C.F.R. §§ 300.320(a)(2) and 300.324. Additionally, the District failed to adequately monitor Student’s progress on his annual goals during the 2022-2023 school year, in violation of 34 C.F.R. § 300.320(a)(3). Both violations resulted in a denial of FAPE.**

The first allegation in Parents’ Complaint relates to the development of Student’s IEPs. Parents contend the IEPs were not tailored to Student’s individualized needs because the IEPs did not include measurable annual goals, speech-language and occupational therapy services, and behavioral strategies and supports.

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 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)). The IDEA requires districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F.*, 137 S. Ct. at 999.

An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA's procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 207. Taken together, these two prongs assess whether an IEP is procedurally and substantively sound. *Id.* If the answer to the question under each prong is yes, then the IEP is appropriate under the law. *Id.*

Under the first prong of *Rowley*, the SCO finds that the development of Student's IEPs complied with the IDEA's procedures. His IEPs contained the required content and were developed at properly convened IEP Team meetings. (FF #s 8, 10-23, 55-65.) For these reasons, the SCO finds and concludes that the IEPs complied with the IDEA's procedural requirements. Parents' allegation concerns the substantive nature of the IEPs, not the process by which they were developed. The SCO will address each of Parents' substantive concerns below.

#### **A. Annual Goals**

Among other required components, an IEP must contain measurable annual goals designed to: (1) meet the needs that result from the student's disability to enable him or her to be involved in and make progress in the general education curriculum, and (2) meet each of the student's other educational needs that result from his or her disability. 34 C.F.R. § 300.320(a)(2). Parents assert that Student's annual goals were not tailored to Student's individual needs and, instead, were repeated from year-to-year. (FF # 66.)

The SCO, in consultation with CDE Content Specialist, finds that Student's annual goals were not appropriately ambitious to allow Student to make progress in the general education curriculum or meet his educational needs resulting from his disability. Student's goals—in both the 2022 and 2023 IEPs—focus on rote tasks and memorization, not any academic learning. (FF # 67, 68.) For example, Student's goals tasked him with zipping clothes and operating appliances. (FF # 67.) Even though Case Manager #1 indicated Student made some progress toward letter recognition in Fall 2022, no related goal was included in Student's 2023 IEPs. (*Id.*) In fact, those IEPs contained no goals whatsoever regarding letters or reading. (*Id.*)

IEP goals should be developed using a presumption of competence. Unfortunately, Student's goals—especially those developed during the 2022-2023 school year by staff who were new to Student—appear to have been created under the opposite mindset. Staff presumed Student could not complete any academic learning and, therefore, did not include any in his annual goals. For these reasons, the SCO finds and concludes that the goals in Student's 2022 and 2023 IEPs were not tailored to his educational needs, in violation of 34 C.F.R. § 300.320(a)(2). The goals

were not reasonably calculated to allow Student to receive an educational benefit and violated the IDEA's substantive requirements related to IEP development, resulting in a denial of FAPE. *See D.S. v. Bayonne Bd. of Ed.*, 602 F.3d 553, 565 (3d. Cir. 2010) (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

The IEP Team's ability to develop annual goals tailored to Student's needs was impacted by the District's failure to appropriately monitor Student's progress, which is closely related to Allegation No. 1 and results in an additional IDEA violation. Under the IDEA, school districts must provide periodic reports on the progress a student is making toward the student's annual goals. 34 C.F.R. § 300.320(a)(3). Here, the District failed to monitor Student's progress during the 2022-2023 school year. (FF #s 70-72.) District staff completed Student's progress report by merely checking a box to indicate he was making "adequate progress" on his goals. (FF # 71.) The progress reports contain absolutely no data points or other information that would allow Parents (or even District staff) to know what that purported progress even looked like. (*Id.*) The SCO agrees with Parents that it is difficult to develop annual goals without knowing what progress Student made on his prior goals. (FF # 70.) For these reasons, the SCO finds and concludes that the District failed to provide Parents with adequate reports on Student's progress, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(3).

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if the violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001). The District's failure to adequately monitor Student's progress on all of his annual goals over an entire school year significantly impeded Parents' opportunity to participate in the decision-making process when developing Student's IEPs. Without information on how Student was performing on his current annual goals, Parents could not provide constructive input on development of future goals or service needs. For this reason, the SCO finds and concludes that the District's procedural violation resulted in a denial of FAPE.

## **B. Related Services**

An IEP must identify the special education and related services that will be provided to the child to allow the child to make progress on his or her annual goals and to be involved and make progress in the general education curriculum. 34 C.F.R. § 300.320(4). The IDEA only requires related services to be provided to "assist a child with a disability to benefit from special education." *Id.* § 300.34(a). Here, Parents contend the District failed to offer Student speech-language services and occupational therapy as related services in Student's IEPs. Throughout this investigation period, Student's IEPs required speech-language services. (FF #s 16, 62, 65.) Parents' concern regarding speech-language services relates to IEPs developed and in effect outside the relevant time frame of this investigation.

With regard to occupational therapy, the District evaluated Student's motor skills in Spring and Fall 2022 to determine whether Student needed occupational therapy. (FF #s 4-7, 28-31.) Both evaluations concluded that Student did not need occupational therapy but, instead, could benefit from instruction provided by special education staff inside the MD classroom. (*Id.*) In March 2023, the IEP Team included direct occupational therapy services in the March 2023 IEP. (FF # 62.) Those services were retained in the May 2023 IEP after the IEP Team reviewed the IEE. (FF # 65.)

Both the March 2023 and May 2023 IEPs indicated Student would receive direct occupational therapy from March 16, 2023 until August 31, 2023. (FF #s 62, 65.) In essence, this provided Student only three months of occupational therapy services. At that point, Student's occupational therapy would transition to an indirect service, based solely on the date and without any consideration of Student's progress on his annual goal. (FF # 62.) The change in Student's services should have been based on his needs, not the passage of time. The SCO finds and concludes that this limitation was not tailored to Student's developmental and functional needs, in violation of 34 C.F.R. § 300.324(a)(1)(iv). This violation also resulted in a denial of FAPE. *See D.S.*, 602 F.3d at 565 (finding that the content of an IEP relates to its substance, not to the IDEA's procedural requirements).

### **C. Behavioral Strategies and Supports**

For students whose behavior impedes their learning or the learning of others, the IDEA requires IEP Teams to consider the use of positive behavioral strategies and supports. 34 C.F.R. § 300.324(a)(2). Though the 2022 IEP included a BIP, Student's IEP Team removed the BIP from the March 2023 IEP and the May 2023 IEP. (FF #s 18-23, 58, 65.) Aside from two incidents of aggression in October 2022, Student had no other behavioral issues during the 2022-2023 school year, so staff determined the BIP was no longer necessary. (FF #s 27, 58.) At the time, Parents even requested the references to the behavior incidents be removed from Student's IEPs, though Parents did not assert that the District improperly removed Student's BIP without an evaluation or FBA indicating it was no longer necessary. (FF # 65.)

No evidence in the record suggests that Student needed a BIP to be able to receive a FAPE. (FF #s 27, 58.) No facts suggest that Student's behavior impacted his learning or his classmates' learning. (*Id.*) The IDEA did not obligate the District to complete an FBA or other evaluation to show the lack of a behavioral issue. For these reasons, the SCO finds and concludes that no BIP or additional behavioral strategies and supports were required for Student's IEPs to meet his educational needs. No violation of 34 C.F.R. § 300.324(a)(2) occurred.

### **D. LRE**

Under the IDEA, 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 consistent with the LRE described in their IEP. *Id.*

The IDEA mandates that students with disabilities receive their education in the general education environment with typical peers to the maximum extent possible. 34 C.F.R. § 300.114. “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). Students with disabilities should only be 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). If a more restrictive program is likely to provide a child with a meaningful benefit while a less restrictive program does not, the child is entitled to be placed in the more restrictive setting. *P. v. Newington Bd. of Educ.*, 51 IDELR 2 (2d Cir. 2008).

A child need not fail in general education before moving to a more restrictive program; however, more restrictive settings should only be considered after the IEP Team contemplates placement in general education, including the supplemental aids and services required to make that setting successful. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). IEPs must include evidence to support LRE placement decisions. See *H.L. v. Downingtown Area Sch. Dist.*, 65 IDELR 223 (3d Cir. 2015) (unpublished) (finding that a district had not considered the full range of supplemental aids and services where the IEP and placement notice relied on general statements of need to support 90 minutes a day of pull-out services); *Yonkers (NY) Pub. Schs.*, 69 IDELR 18 (OCR 2016) (using boilerplate language in the LRE section evidences failure to make individualized determination of student’s ability to participate in general education). A child’s placement must be based on his or her IEP and be made by the IEP Team. 34 C.F.R. § 300.116; ECEA Rule 4.03(8)(a).

In this case, before the 2022-2023 school year began, Case Manager #1 urged Parents to let Student spend the majority of his day in the MD classroom as he transitioned from middle school to high school. (FF # 17.) Parents obliged; once Student was settled, Parents repeatedly requested Student spend more time in general education, to no avail. (FF #s 33, 37.) The IEP Team did not contemplate—either in the 2022 IEP or at the November 2022 IEP Team meeting—what supplementary aids and services would allow Student to be successful in the general education environment, resulting in a violation of 34 C.F.R. § 300.320(a)(5). (FF #s 17, 37.) This substantive violation resulted in a denial of FAPE.

**Conclusion to Allegation No. 2: The District convened properly composed IEP Teams on November 10, 2022 and May 31, 2023, consistent with 34 C.F.R. § 300.321(a). No IDEA violation occurred.**

The second allegation in Parents’ Complaint concerns the composition of the Student’s IEP Team at meetings held on November 10, 2022 and May 31, 2023. Parents contend the District failed to invite a general education teacher to the IEP Team meetings.

Under the IDEA, an IEP Team must include:

- (1) the parents of the child;
- (2) at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) at least one special education teacher of the child;
- (4) a representative of the school district who:
  - i. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - ii. is knowledgeable about the general education curriculum; and
  - iii. is knowledgeable about the availability of resources of the public agency;
- (5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (2) through (6); and
- (6) at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- (7) whenever appropriate, the child with a disability.

34 C.F.R. § 300.321(a). As such, the IDEA differentiates between mandatory and discretionary members of an IEP Team. *See* Pikes Peak BOCES, 68 IDELR 149 (SEA CO 4/19/16).

Here, the District conceded that it did not invite a general education teacher to the November 10, 2022 IEP Team meeting. (FF # 34.) The District rationalized this decision by characterizing the meeting as an eligibility determination meeting; however, as noted in the Findings of Fact, the SCO found this representation to be unsupported by the evidence in the record. (FF # 32.) Prior to the IEP Team meeting, Parents notified the District that increasing Student's time in general education was one of their primary goals for the meeting. (FF # 33.) That email put the District on notice that Student *may be* participating in general education and that a general education teacher should be invited to the IEP Team meeting. (*See id.*) If a child participates in general education or may be participating in general education, a general education teacher is a mandatory member of the IEP Team. 34 C.F.R. § 300.321(a).

When the meeting started, Parents recognized the absence of a general education teacher. (FF # 34.) In response, the District located an available general education teacher, who attended the IEP Team meeting. (*Id.*) This teacher did not have any familiarity with Student, but neither did any other general education teacher. (*Id.*) But for Parents' observation and the District's response, the District would have violated the IDEA by convening an IEP Team meeting without the required IEP Team members. Student's JROTC instructor attended the May 31, 2023 IEP Team

meeting. (FF # 64.) As a result, the SCO finds and concludes that the IEP Team was properly composed on November 10, 2022 and May 31, 2023 (even if not as a result of the District's planning), consistent with 34 C.F.R. § 300.321(a). No violation of the IDEA occurred.

**Conclusion to Allegation No. 3: Parents meaningfully participated in the November 10, 2022 IEP Team meeting, consistent with 34 C.F.R. § 300.324(a)(1)(ii). No IDEA violation occurred.**

In their Complaint, Parents expressed concern about the District's refusal to allow Parents to participate fully in the November 10, 2022 IEP Team meeting.

The IDEA's procedural requirements for developing a child's IEP are designed to provide a collaborative process that "places special emphasis on parental involvement." *Systema v. Academy School District No. 20*, 538 F.3d 1306, 1312 (10th Cir. 2008). To that end, the IDEA requires that parental participation be meaningful, to include carefully considering a parent's concerns for enhancing the education of his or her child in the development of the child's IEP. 34 C.F.R. §§ 300.321(a)(1), 300.322, and 300.324(a)(1)(ii).

Meaningful parent participation occurs where the IEP Team listens to parental concerns with an open mind, exemplified by answering questions, incorporating some requests into the IEP, and discussing privately obtained evaluations, preferred methodologies, and placement options, based on the individual needs of the student. *O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233*, 144 F.3d 692, 703 (10th Cir. 1998). Meaningful participation does not require that a district simply agree to whatever a parent has requested. *Jefferson County Sch. Dist. RE-1*, 118 LRP 28108 (SEA CO 3/22/18). However, parental participation must be more than "mere form." *R.L. v. Miami-Dade Cnty. Sch. Bd.*, 757 F.3d 1173, 1188 (11th Cir. 2014). "It is not enough that the parents are present and given an opportunity to speak at an IEP meeting." *Id.* Evidence that a district "was receptive and responsive at all stages" to the parents' position, even if it was ultimately rejected, is illustrative of parental participation. *Id.*

Parents do not have "veto power" over IEP Team decisions. *Garden Grove Unified Sch. Dist.*, 115 LRP 20924 (SEA CA 05/05/15). An IEP meeting "serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint informed decisions regarding the services that are necessary to meet the unique needs of the child." *Letter to Richards*, 55 IDELR 107 (OSEP 2010). "The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement, the public agency must determine the appropriate services . . ." *Id.*

In this case, Parents, two advocates, and two of Student's medical providers attended the November IEP Team meeting. (FF # 35.) District staff recalled the IEP Team engaging in a dialogue with Parents regarding their concerns. (*Id.*) The IEP Team asked Parents questions to try to understand and address those concerns. (*Id.*) Finally—and, perhaps, most importantly—the IEP Team adjourned without making any decisions regarding the provision of FAPE to Student. (FF # 38.) As noted above, the IDEA does not give parents veto power over IEP Team decisions. If the

IEP Team had truly dismissed Parents' concerns, the IEP Team would have made a decision in spite of those concerns and against Parents' wishes. The IEP Team did not do so but simply agreed to reconvene at another time. (*Id.*) Taken together, these facts show that Parents meaningfully participated in the November IEP Team meeting. No violation of the IDEA occurred.

Relatedly, Parents' Complaint also expressed concern over the District's failure to provide draft IEPs at least 48 hours before IEP Team meetings and failed to allow Parents to observe the Fall 2022 evaluations. (FF # 40.) The SCO recognizes that draft IEPs allow Parents to prepare for IEP Team meetings (and consult with Student's medical providers); however, the IDEA does not require school districts to provide draft IEPs. Though Parents may request draft IEPs 48 hours in advance and the District may agree to provide them, no violation of the IDEA occurs if that expectation is not met.

Similarly, with regard to the evaluations, the IDEA does not require school districts to permit parents to observe or otherwise participate in the actual evaluation process. Here, the District considered Parents' request to be present for the evaluations but, ultimately, feared Parents' presence would alter the outcome of the evaluation. (FF # 29.) In lieu of the observation, the District recorded portions of the evaluation, which were provided to Parents. (*Id.*)

**Conclusion to Allegation No. 4: The District failed to implement Student's IEP from January 2023 to May 2023, by failing to educate Student in the required LRE, in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323. This violation resulted in a denial of FAPE.**

With this allegation, Parents assert that the District failed to properly implement Student's IEP during the 2022-2023 school year by not making his IEP accessible to his teachers or service providers, failing to provide Student with an AAC device, and failing to educate Student in the required LRE.

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

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

A school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of "his or her specific responsibilities related to

implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d).

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

The SCO first determines whether the District satisfied its obligation under 34 C.F.R. § 300.323(d), by ensuring appropriate staff were informed of their responsibilities under Student's IEP. Here, both of Student's case managers provided copies of his IEP snapshot to relevant staff members, including service providers and paraprofessionals. (FF #s 24, 49.) Additionally, Case Manager #1 met with the paraprofessionals in the MD classroom to review Student's IEP. (FF # 24.) As a result, the SCO finds and concludes that the District staff were informed of their responsibilities under Student's IEP, consistent with 34 C.F.R. § 300.323(d).

### **C. AAC Device**

Parents allege that the District failed to use Student's AAC device in the classroom and failed to provide an adequate loaner device after Student's device was vandalized.

The 2022 IEP acknowledged that Student had recently received his NovaChat device and that he communicated using an AAC device. (FF # 13.) SLP and classroom staff worked with Student on his AAC device, though staff indicated Student preferred to communicate using gestures and grunts. (FF # 53.) Student preferred using his AAC device to make silly sounds for his classmates. (*Id.*)

Parents obtained Student's NovaChat device through his medical providers, not through the District. (FF # 52.) Student's IEPs did not require him to have the NovaChat device or any other AAC device; no evidence in the Record suggests that his IEP Team determined that such a device was necessary for him to access his education. (FF # 13.) When Student's NovaChat was vandalized at School, the District ensured Student had other means of communicating. (FF # 54.) Student used PECS to communicate with staff and, indeed, Student still had his preferred methods of communicating available to him: gestures, signs, and grunts. (*Id.*) For this reason, the SCO finds and concludes that the District did not fail to implement Student's IEP while Student was without his NovaChat device.

### **D. LRE**

As noted above, 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 consistent with the LRE described in their IEP. *Id.*; 34 C.F.R. § 300.323. The 2022 IEP required Student to eat lunch with other students in the cafeteria. (FF # 16.) However, at both School #1 and School #2, Student ate lunch in his classroom without access to any general education peers until Spring 2022. (FF #s 26, 50.) This resulted in a failure to implement the 2022 IEP, in violation of 34 C.F.R. § 300.323.



The District similarly failed to implement the March 2023 IEP. Under the March 2023 IEP, Student spent 40-79% of his day in the general education environment. (FF # 63.) School #2 enrolled Student in three general education electives: choir, drawing, and JROTC. (FF # 51.) However, Student was separated from general education peers in both choir and drawing, defeating the change to his LRE and denying Student access to nondisabled peers. (*Id.*) In doing so, the District failed to implement the March 2023 IEP and violated 34 C.F.R. § 300.323.

#### **E. Materiality of Failure to Implement**

The failure to implement a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that failure to implement an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that failure to implement the “significant provisions of the IEP” denies a FAPE). “A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007). The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail.” *Id.* But a child’s educational progress, or lack thereof, may indicate whether there has been more than a “minor shortfall in the services provided.” *Id.*

Here, the District failed to educate Student in the LRE required by his IEP for the entirety of the school year. The SCO acknowledges that, during Fall 2022, his IEP required only that he eat lunch in the cafeteria. (FF # 16.) However, at the same time that Student was being excluded from the cafeteria, his IEP Team also refused to consider whether supplemental aids and supports would allow Student greater access to the general education environment. Together, these two violations deprived Student of all access to nondisabled students during the first half of the school year.

Though Student’s IEP Team increased his time in general education during the second semester, Student’s benefit, if any, was diminished by the lack of inclusion in two of the electives. (FF # 51.) Student technically attended general education classes, but students with disabilities were not integrated into the classes, undermining the entire intent behind the increase in Student’s LRE. (*Id.*) Student attended choir and drawing to have more time with non-disabled peers, not because of the subject matter. (FF # 33.) In one way or another, the District’s failure to educate Student

in the LRE spanned the entire school year. For that reason, the SCO finds and concludes that the District's failure to implement Student's IEP was material and resulted in a denial of FAPE.

**Conclusion to Allegation No. 5: The District failed to provide Parents information about where an IEE could be obtained and the District's criteria for IEEs, in violation of 34 C.F.R. § 300.302(a)(2). No denial of FAPE occurred.**

Parents have a right to seek an IEE at public expense if they disagree with an evaluation conducted by the school district. 34 C.F.R. § 300.502(b)(1). An IEE is an "evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." *Id.* § 300.502(a)(3)(i). After a parent requests an IEE, the school district must provide the parent "information about where an [IEE] can be obtained" and the district's "criteria applicable for [IEEs]." *Id.* § 300.502(a)(2). Such criteria must include the location of the evaluation and the qualifications of the examiner. *Id.* § 300.502(e).

Here, Parents requested an IEE on December 5. (FF # 41.) Executive Director replied the following day and agreed to the IEE. (FF # 42.) However, Executive Director did not offer Parents any information about where an IEE could be obtained or the District's criteria for IEEs. (*Id.*) Even after Parents requested a list of evaluators and the District's criteria for IEEs, Executive Director indicated that the District "remains neutral" on evaluators for IEEs. (FF # 43.) On January 31—nearly two months after Parents requested an IEE—Executive Director sent Parents a formal letter agreeing to the IEE and outlining the District's criteria. (FF # 45.) For these reasons, the SCO finds and concludes that the District failed to provide Parents with the information required by the IDEA, resulting in a procedural violation of 34 C.F.R. § 300.502(a)(2).

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if the violation (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

In this case, the District's failure impacted both Parents and Student. An IEE affords parents an opportunity to challenge an evaluation with which they disagree. Here, Parents sought an IEE because they believed Student needed occupational therapy and physical therapy to access his education. The District's violation may have delayed completion of the IEE process, but Student's IEP Team added occupational therapy to Student's IEP even before the IEE was completed. (FF #s 62, 64.) When the IEP Team considered the IEE in May 2023, it did not result in any changes to Student's services since he was already receiving occupational therapy. (FF # 65.) As a result, the SCO finds and concludes that the District's procedural violation did not result in a denial of FAPE.

**Conclusion to Allegation No. 6: The District failed to provide Parents access to all of Student’s education records following Parents’ request on May 16, 2023, in violation of 34 C.F.R. § 300.613. No denial of FAPE occurred.**

Parents’ final concern relates to the comprehensiveness of the records the District produced in response to Parents’ May 16, 2023 records request. Specifically, Parents contend the District failed to provide Student’s complete educational file.

**A. Parents’ Right to Inspect Records**

One of the procedural safeguards afforded to parents under the IDEA is the right to inspect and review their child’s education records. 34 C.F.R. § 300.613(a). Accordingly, a school district “must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency.” *Id.* A district must comply with a request from a parent to review his or her child’s education records “without unnecessary delay and before any meeting regarding an IEP,” and in no case more than 45 days after the request. *Id.* The right of parents to inspect education records includes a “right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.” 34 C.F.R. § 300.613(b).

The IDEA borrows the definition of “education records” from the Family Educational Rights and Privacy Act (“FERPA”). *Id.* § 300.611(b). Under FERPA, “education records” are “those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution . . . .” *Id.* § 99.3. Neither the IDEA nor FERPA indicate whether email correspondence about a student constitutes an education record. However, the U.S. Supreme Court has held that “[t]he word ‘maintain’ suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database, perhaps even after the student is no longer enrolled.” *Owasso Indep. Sch. Dist. No. 1-011 v. Falvo*, 534 U.S. 426 (2002). Lower courts that have considered the issue have found that ordinary emails are not education records. *See Burnett v. San Mateo-Foster City Sch. Dist.*, 739 F. App’x 870 (9th Cir. 2018) (holding that only emails that were printed and added to student’s physical file or maintained in a secure database constituted education records under FERPA); *S.A. v. Tulare Cnty. Office of Ed.*, 53 IDELR 143 (E.D. Cal. Oct. 6, 2009) (“[E]mails that are in not in Student’s permanent file are not ‘maintained’” by the school district for purposes of FERPA).

Based on these decisions, the SCO finds that email correspondence only constitutes an education record where the school district takes some action to maintain that record. An email left in the inbox of a recipient or sender has not been maintained for purposes of FERPA or the IDEA. Indeed, such an email could be deleted by a user in a cursory cleaning of their inbox unbeknownst to the district. However, if a district actively adds an email to a student’s file—either in hard copy or electronically—that email may constitute an education record under FERPA and the IDEA.

Here, Parents requested Student’s cumulative educational file on May 16, 2023. (FF # 73.) The District provided Student’s special education file (albeit without some signature pages from IEP Team meetings) in a timely manner on May 26, 2023. (FF # 74.) These records were produced within 10 days of Parents’ request *and* before the IEP Team meeting scheduled on May 31, 2023. (*Id.*)

However, the District did not produce email correspondence regarding Student. (FF # 76.) During this investigation, the District indicated it does not consider its email correspondence to have been maintained, as envisioned by FERPA. (*Id.*) The District has not actively added email correspondence to Student’s permanent file—either in hard copy or electronically—and, therefore, that email correspondence does not qualify as an education record under FERPA or the IDEA. (*Id.*) Accordingly, the District was not required to produce all email correspondence related to Student when it responded to Parents’ records request.

Separately, the District failed to produce Student’s general education file and his behavior records until after Parents filed this Complaint. (FF # 75.) Those documents were produced on August 18, while the missing signature pages were produced on August 21. (*Id.*) As the District concedes in its Response, these two productions occurred well beyond the IDEA’s 45-day requirement. (*Id.*) For this reason, the SCO finds and concludes that the District failed to provide Parents with access to Student’s educational records as required by the IDEA, resulting in a procedural violation of 34 C.F.R. § 300.613(a).

Failure to comply with a procedural requirement of the IDEA results in substantive harm supporting compensatory remedies if the violation (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

In this case, nothing in the record suggests that the District’s delay in providing the missing records had any impact on Student’s right to a FAPE or impeded Parents’ opportunity to participate in the decision-making process. Indeed, Parents had Student’s special education file before the IEP Team meeting scheduled for May 31, 2023. (FF # 74.) For these reasons, the SCO finds and concludes that the District’s procedural violation did not result in a denial of FAPE.

**Compensatory Education: This investigation demonstrates a need for compensatory services.**

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. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the District committed several violations when developing Student's IEP that impacted Student's ability to access his education. First, the District failed to include annual goals in Student's IEPs that addressed his academic needs and ensured he had an opportunity to make progress in the general education curriculum. At the same time, the District developed Student's IEP without considering the supplemental aids and services that would allow Student to participate in the general education environment. Nonetheless, the 2022 IEP required Student to eat lunch in the cafeteria, yet Student was not permitted to do so. Even after the IEP Team increased Student's LRE, Student was separated from nondisabled peers in the general education electives.

These violations deprived Student of access to the general education curriculum and time in the general education environment throughout the 2022-2023 school year. Thus, the SCO finds that Student is entitled to an award of compensatory services. As described in the Remedies section below, the SCO has ordered the provision of services through an enrichment program.

**Systemic Nature of Violations: Some of the violations in this decision were systemic in nature.**

Pursuant to its general supervisory authority, the CDE must consider and ensure the appropriate future provision of services for all IDEA-eligible students in District. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the state complaint procedures are "critical" to the SEA's "exercise of its general supervision responsibilities" and serve as a "powerful tool to identify and correct noncompliance with Part B." *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006).

The District's failure to implement Student's IEP at School #2, where he was segregated in general education electives, was systemic in nature. Based on the Findings of Fact, Student and his classmates with disabilities were placed at separate tables or separate sections in choir and drawing classes. (FF # 51.) This exclusion decreased or eliminated the students' opportunity to interact with general education students. Below, the SCO has outlined remedies to address this systemic violation.

Additionally, the SCO finds and concludes that this case raises concerns that the District's violation related to IEEs was systemic in nature. The Findings of Fact suggest that the District has not routinely provided parents who request IEEs the information required by 34 C.F.R. § 300.302(a)(2). For example, when Parents asked Executive Director for a list of providers and the District's IEE criteria, Executive Director replied that the District historically "remains neutral" in the selection of evaluators. (FF # 43, 44.) The day before Executive Director provided Parents the criteria for IEEs, she contacted the District's legal counsel for guidance on the issue. (FF # 45.) Together, these facts evidence the systemic nature of the violation. However, subsequent to this incident, the District worked to create draft letters for parents who request IEEs, as well as the District's criteria for IEEs and a list of providers by evaluation area. (*Id.*) For this reason, the SCO

finds that the District has already remedied the systemic violation and that no further remedy is necessary.

Finally, the SCO finds and concludes that the District's failure to provide Parents with periodic progress reports was systemic in nature. During the 2022-2023 school year, Student attended two separate high schools and had two separate case managers. The progress reports from School #1 lacked any data or other information to indicate whether Student was making progress on his IEP goals beyond a simple checkbox. (FF # 71.) And it appears that Case Manager #2 did not monitor Student's progress on his goals at all (or, at least no progress report was produced from Spring 2022). (FF # 72.) As a result, the SCO finds that the District's violation was systemic. The

Nothing in the Record indicates that the District's other violations—related to IEP development and responding to a records request—were systemic in nature. Those violations appear to have been specific to Student.

### **REMEDIES**

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

- a. Failed to develop an IEP that was tailored to meet Student's individualized needs, in violation of 34 C.F.R. § 300.324.
- b. Failed to implement Student's IEP, by failing to educate Student in the required LRE, in violation of 34 C.F.R. §§ 300.114, 300.117, and 300.323;
- c. Failed to provide Parents information about where an IEE could be obtained and the District's criteria for IEEs, in violation of 34 C.F.R. § 300.502(a)(2);
- d. Failed to provide Parents access to Student's education records, in violation of 34 C.F.R. § 300.613; and
- e. Failed to provide Parents periodic reports on Student's progress, in violation of 34 C.F.R. § 300.320(a)(3).

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

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

- a. By **Monday, October 30, 2023**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities

for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

## **2. Final Decision Review**

- a. Executive Director, all District's Exceptional Student Services Coordinators (including Coordinator), Case Manager #1, Case Manager #2's replacement, SLP and all other District coordinators must review this Decision, as well as the requirements of 34 C.F.R. §§ 300.314, 300.317, 300.320, 300.323, 300.324, 300.502, and 300.613. This review must occur no later than **Monday, November 13, 2023**. A signed assurance that these materials have been reviewed must be completed and provided to the CDE no later than **Friday, November 17, 2023**.

## **3. Training**

- a. Executive Director, all District's Exceptional Student Services Coordinator (including Coordinator), Case Manager #1, all case managers at School #2, and any general teachers at School #2 who teach an elective must attend and complete training provided by CDE on LRE in the context of IEP development and IEP implementation and inclusion. If these individuals are no longer employed by the District or School #1 or School #2, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.114, 300.117, 300.323, and 300.324, as well as the related concerns in this Decision.
- b. Program Manager and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast.
- a. Such training shall be completed no later than **Monday, December 4, 2023**. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to CDE no later than **Monday, December 11, 2023**.

## **4. Procedures**

- a. By **Monday, December 11, 2023**, the District must submit written procedures or guidance to ensure compliance with 34 C.F.R. § 300.320(a)(3).

- b. At a minimum, the procedures must describe how staff must document a student's progress on his or her annual goals, including the level of detail required. Additionally, the procedures must require progress reporting to be based on actual data, and the data used to measure progress must be based on the IEP goal. The procedures may include an updated progress report form that encourages more detail.
- c. The District can submit existing procedure(s) that meet these requirements, but they must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- d. The District must ensure that all special education teachers and related service providers in the District receive a copy of the procedure no later than **Monday, January 15, 2024**. Evidence that the procedure was shared with staff, such as a copy of the email notice sent, must be provided to CDE no later than **Friday, January 19, 2024**.

**5. Enrichment Program for Failure to Educate in the LRE**

- a. Student shall be enrolled in a **mutually agreed upon enrichment program** with nondisabled peers after school or over the summer. Enrollment in such a program shall support Student's progress on IEP or transition goals. If the District does not have an appropriate program, the District shall **pay up to \$600** to enroll Student in an appropriate program or activity in the community. This program must be completed by **Monday, August 12, 2024**, though Parents and Student may opt out if they wish.
- b. **By Monday, April 1, 2024**, the District and Parents shall agree upon an appropriate program or activity. A meeting is not required to arrange this program, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for this program. The District shall submit the plan for this program to the CDE no later than **Monday, April 8, 2024**. If District and Parents cannot agree to a program by April 1, 2024, the parties shall provide the CDE a description of the programs or activities they are considering and the CDE will determine the program by **Monday, April 15, 2024**.
  - i. The parties shall cooperate in selecting the program. If Parents refuse to meet with the District within this time, the District will be excused from paying for the program, provided that the District diligently attempts to meet with Parents and documents such efforts. A determination that the District diligently attempted to meet with Parents, and should thus be excused from paying for the program, rests solely with the CDE.



- c. To verify that Student has participated in the program required by this Decision, the District must submit proof of enrollment to CDE by **Monday, June 3, 2024** and proof of completion no later than **Monday, August 19, 2024**. Proof of completion must include the date and duration of any services.
- d. Services received through this program will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. If for any reason, including illness, Student is not available for the scheduled program or portion thereof, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide the program or funding or the program is cancelled and the District is reimbursed, the District and Parents must work together to identify another mutually agreed upon alternative. The District must immediately notify the CDE of the change.
- e. The services through the program must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education).

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 30th day of September, 2023.

*Ashley Schubert*

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Ashley E. Schubert  
State Complaints Officer

## APPENDIX

### Complaint, pages 1-20

- Exhibit 1: Files from Document Request

### Response, pages 1-22

- Exhibit A: IEPs
- Exhibit B: Meeting Documentation
- Exhibit C: Blank
- Exhibit D: Service Logs
- Exhibit E: Report Cards, Progress Monitoring Data, and Progress Reports
- Exhibit F: IEE Documentation
- Exhibit G: PWNs
- Exhibit H: Notices of Meeting
- Exhibit I: District Policies and Procedures
- Exhibit J: Email Correspondence
- Exhibit J-1: Video recordings
- Exhibit K: List of Witnesses
- Exhibit L: Verification of Delivery to Parent
- Exhibit M: Additional Documents

### CDE Exhibit 1: Angelman Syndrome Information

### Interviews

- Case Manager #1: September 13, 2023
- Case Manager #2: September 21, 2023
- Coordinator: September 13, 2023
- Occupational Therapist #3: September 12, 2023
- SLP: September 14, 2023
- Parents: September 18, 2023; September 20, 2023