

**State-Level Complaint 2024:527  
Weld County RE-5 School District**

**DECISION**

**INTRODUCTION**

On March 4, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against Weld County RE-5 School District (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified one allegation subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 CFR §§ 300.151 through 300.153. On March 6, 2024, the SCO added one subpart to the accepted allegation based on additional information submitted by Parent. 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 March 4, 2023 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 District denied Student a Free Appropriate Public Education (“FAPE”) because District:

1. Failed to implement Student’s IEP from the beginning of the 2023-2024 school year through March 4, 2024, in violation of 34 C.F.R. §§ 300.34 and 300.323, specifically by:
  - a. Failing to communicate with Parent as required by Student’s BIP, including failing to communicate Student’s changes to schedule, sleeping patterns, sickness, and changes to medication, as well as failing to communicate Student’s progress through daily communication;

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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.

- b. Failing to provide Parent with periodic reports on Student’s progress as required by her IEP;
- c. Failing to provide transportation to and from School as required by Student’s IEP; and
- d. Failing to provide paraprofessional support during transportation to and from School as required by Student’s IEP.

### **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 is fifteen years old and attended a District high school (“School”) in eighth grade. *Exhibit A-2*, p. 1. She qualifies for special education under the disability categories of Multiple Disabilities, Autism Spectrum Disorder, Intellectual Disability, Orthopedic Impairment, Other Health impairment, Speech or Language Impairment, and Visual Impairment. *Id.* On February 6, 2024, Parent withdrew Student from District, and has home-schooled her since then. *Interview with Parent; Exhibit J-89.*
2. Student is friendly, smart, and willing to try new things. Interviews with Parent, Student’s Bus Driver (“Driver”), School Nurse (“Nurse”) and Special Education Teacher (“Teacher”). She has a great sense of humor and enjoys physical activity. *Interviews with Teacher and Nurse.* She also enjoys music, science and playing basketball with items on hand. *Interviews with Parent and Teacher.*
3. Student is a medically complex child affected by multiple conditions, including but not limited to autism, cerebral palsy, an intellectual disability, and genetic disorders. *Interview with Parent; Exhibit I-1.* Relevant to this investigation, she uses a wheelchair, communicates nonverbally, and receives assistance at school with activities of daily living including eating and toileting. *Interviews with Parents and Nurse.*
4. This investigation involves implementation of services and accommodations from IEPs dated March 6, 2023 (“IEP 1”) and December 15, 2023 (“IEP 2”), which were in effect during the 2023-2024 academic year. *Exhibit A.* IEP 1 was developed after an initial evaluation completed in November 2019. *Exhibit A-2* at p. 1.

#### **B. The IEPs**

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

5. The IEPs document Student's strengths in nonverbal communication, her sense of humor, and her ability to navigate the school environment with the use of her wheelchair. *Exhibit A-1*, p. 4; *Exhibit A-2*, p. 4.
6. The Present Levels of Educational Performance Summary section of both IEPs describes the outcomes of evaluations, and documents progress on Student's previous IEP goals. *Exhibit A-1*, pp. 4-9; *Exhibit A-2*, pp. 4-10. IEP 2 notes that due to Student's absences, insufficient progress has been made toward each previous IEP goal. *Exhibit A-2*, pp. 6-7.
7. According to both IEPs, Student's multiple disabilities affect her progress and participation in the general curriculum in the areas of communication, social interactions, and functional academics. *Exhibit A-1*, p. 9; *Exhibit A-2*, p. 12. The IEPs note that her disabilities lead to "frustration and occasional maladaptive behaviors due to an inability to express what she wants/needs, likes/dislikes." *Id.*
8. Each IEP documents Parent and Student input. *Exhibit A-1*, p. 10; *Exhibit A-2*, p. 13.
9. Both IEPs' Consideration of Special Factors sections note that Student exhibits behavior that requires a Behavior Intervention Plan, that she is blind or visually impaired, that she has unique communication needs, that she needs assistive technology devices or services, that she requires a Health Care Plan, and that she requires Special Transportation. *Exhibit A-1*, p. 11; *Exhibit A-2*, p. 14. With respect to Special Transportation, the IEPs state that "Curb-to-curb specialized transportation with supervision for safety is required, including the use of a wheelchair lift." *Id.*
10. The IEPs each contain a section describing Student's postsecondary transition plan, which involves supported employment and continued work on daily living skills. *Exhibit A-1*, pp. 11-12; *Exhibit A-2*; pp. 14-15.
11. Each IEP documents twelve annual goals, in the areas of Reading, Mathematics, Independent Living Skills, Communication, Physical Motor, and Social/Emotional Wellness. *Exhibit A-1*, pp. 12-20; *Exhibit A-2*, pp. 15-23. The IEPs describe that Parent will be informed of Student's progress "annually at IEP meetings and as often as same age peers through conferencing, progress reports, and/or informal contact as needed." *Id.*
12. The IEPs document numerous accommodations, with IEP 1 containing 58 accommodations and IEP 2 containing 56. *Exhibit A-1*, pp. 20-22; *Exhibit A-2*, pp. 23-25.
13. The IEPs document the services Student would receive, including specialized instruction, vision services, physical therapy, occupational therapy, communication services, behavior support, and adaptive physical education. *Exhibit A-1*, pp. 25-26; *Exhibit A-2*, pp. 27-28.

14. Each IEP team determined that it was appropriate for Student to be in the general education classroom less than 40% of the time. *Exhibit A-1, p. 27; Exhibit A-2, p. 29.*

### **C. District's Policies, Practices and Procedures**

15. District's Special Education Director ("Director") stated that it is the District's responsibility under IDEA to implement students' IEPs with fidelity. *Interview with Director.*

16. District provides regular training to both special education and other staff regarding the needs of students receiving special education. *Id.*

17. District staff responsible for delivering special education and related services are made aware of those responsibilities in different manners depending upon their role. *Id.* A student's case manager or special education teacher will have access to the IEP through District's data management system and may also keep physical copies of IEPs so long as they are kept in a secure environment to protect student privacy. *Id.*

18. Staff such as paraprofessionals and bus drivers would be advised of their responsibilities by the student's case manager or by the Director of Transportation, respectively. *Interviews with Director and District's Director of Transportation ("Transportation Director").*

19. Staff members with questions or concerns regarding their responsibilities are encouraged to consult with their supervisors or with special education staff for guidance, and Director is available as a resource when such questions arise. *Interview with Director.*

20. Director described District's responsibility to provide progress monitoring as mandating that District comply with the progress monitoring requirements of the IEP document, but that IEP goal progress should be reported at least as often as their peers receive grades. *Id.* She stated that District staff are explicitly trained in progress monitoring. *Id.*

21. Director stated that District has a responsibility to provide specialized transportation for any student in special education who cannot access generalized transportation without support. *Id.*

### **D. Staff's Knowledge of Responsibilities under Student's IEP**

22. Teacher reported that she was very familiar with Student's IEP. *Interview with Teacher.* During the 2022-2023 academic year, Teacher visited Student's middle school to observe Student and consult with Student's teachers regarding Student's IEP. *Id.* Teacher also participated in the transition IEP meeting and helped develop the plan in effect when Student began high school. *Id.*

23. Teacher stated that while Student was attending School, she had access to and understanding of the IEP, and was responsible for ensuring that other school staff were aware of their responsibilities. *Id.*
24. Nurse participated in the development of Student's IEPs over the course of the 2023-2024 academic year. *Interview with Nurse.* On a day-to-day basis, Nurse only maintained access to those portions of the IEP pertaining to Student's healthcare and medical needs. *Id.*
25. Student's bus driver ("Bus Driver") indicated that he was informed of his responsibilities with respect to Student's IEP by Transportation Director. *Interview with Bus Driver.*
26. The paraprofessional assigned to ride with Student on the school bus ("Paraprofessional") stated that she was informed of her responsibilities with respect to Student's IEP by Teacher. *Interview with Paraprofessional.*
27. District and School staff members credibly and accurately described their responsibilities with respect to the implementation of Student's IEP. *Interviews with Teacher, Nurse, Bus Driver, Paraprofessional, Director, and Transportation Director.*
28. The SCO finds that the staff members responsible for implementing Student's IEP were knowledgeable of their respective responsibilities under the IEP.

#### **E. Student Attendance and Performance**

29. Between the start of the 2023-2024 academic year and February 6, 2024, the date on which Parent withdrew Student from the District, School was open for 104 instructional days. *Exhibit K.*
30. Of these days, Student was marked absent for at least one class period on 76 school days and absent for three or more class periods on 66 school days, representing an absence from substantially more than half of instruction time during the relevant period. See *Exhibit G-2.*
31. Parent and Nurse both attributed most of these absences to Student's need for medical care and a short hospitalization. *Interviews with Parent and Nurse.*
32. An IEP dated March 6, 2024 ("IEP 3")<sup>3</sup> describes Student's progress toward each of the 12 IEP goals described in IEP 2 during the 2023-2024 academic year. *Exhibit A-3*, pp. 29-35. Student met both Physical Motor goals but made insufficient progress on other goals. *Id.*

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<sup>3</sup> IEP 3 was established March 6, 2024, but because Student was withdrawn from the District prior to the establishment of this IEP, its requirements are not applicable to the allegation accepted for investigation here.

33. Both Teacher and the progress report for IEP 3 attribute Student's lack of progress toward her IEP goals to attendance issues, noting "[Student] has only attended a few class sessions." *Exhibit A-3; Interview with Teacher.*

#### **F. Student's Behavior Plan**

34. Over the course the 2023-2024 academic year, Student's IEP incorporated two Behavior Intervention Plans – one dated March 22, 2023 and one dated December 18, 2023. *Exhibits B-1 and B-2.*
35. Both behavior plans describe identical requirements for communication between School and Parent, listed under the "Setting Event Strategies" column: "Communication between parents, home therapies and school regarding changes to schedule, sleeping patterns, sickness, and changes to medication." *Id.* Both behavior plans additionally state that "Parents will be informed of progress through daily communication, and quarterly reports will be sent home via email or USPS based on parent preference." *Id.*
36. Communication on these matters typically took place via a pre-printed sheet titled "[Student's] Daily Communication Log." *CDE Exhibit 2.* This sheet would be completed by Parent and School each day and sent to and from School with Student. *Interviews with Parent, Teacher, and Nurse.*
37. The communication log sheet includes fields for Parent to describe Student's sleep patterns, any changes to routine, any needed medications, and any miscellaneous comments. *CDE Exhibit 2.* Additionally, the sheet includes fields for School staff to describe Student's activities in school, her food and water intake, information regarding toileting, information regarding medication administered, any therapies Student participated in at School, and any supplies needed from home. *Id.*
38. On January 11, 2024, Parent's advocate ("Advocate") sent an email to Nurse and Teacher, asking for a meeting to discuss additional information Parent would like to receive in the daily communication logs, including weight and calorie count of food intake and weight or volume of waste elimination. *Exhibits J-11 and J-33.* Following this communication, Teacher redesigned the daily communication log to include fields for that information. *Interview with Teacher.*
39. Teacher stated that she was primarily responsible for ensuring that these communication logs were completed and sent home with Student, and that they were consistently completed. *Interview with Teacher.* In addition, Paraprofessional would often assist Student in eating lunch, and stated that she would regularly record Student's food intake onto the logs. *Interview with Paraprofessional.*

40. Parent provided 13 daily communication log sheets, representing a portion of Student's days of school attendance. *Complaint*, pp. 12-24. On 11 of the 13 sheets provided, School staff provided feedback on Student's day, discussing Student's medical needs, her progress in therapies, and other relevant information. *Id.*
41. On two sheets, dated October 18, 2023 and October 19, 2023, Parent completed her fields but the fields for School input were blank. *Id.* at pp. 18-19. Parent's input on both of these sheets indicated that Parent would be picking Student up from school at around 12:10 p.m. *Id.*
42. Teacher did not recall whether the daily communication logs for these two dates had been completed. *Interview with Teacher.*
43. District stated that School staff did not maintain additional copies of the daily communication logs outside of the original copies residing in Student's binder, and thus was not able to provide any logs outside of the 13 sheets Parent submitted with her Complaint. *Response*, pp. 2-3. Teacher stated that the logs not submitted by Parent were completed. *Interview with Teacher.*
44. In addition to the daily communication logs, Teacher stated that she would occasionally email Parent or send text messages via a school communication app when more time-sensitive communication occurred. *Interview with Teacher.* Additionally, Nurse communicated with Parent via phone and email to discuss Student's medical needs in greater detail. *Interview with Nurse*; see, e.g., *Exhibits J-36, J-47, J-50, et al.*
45. Teacher stated that she tracked Student's behaviors of concern daily, and upon SCO's request, provided a copy of the behavior tracking sheet used for this purpose. *Interview with Teacher*; *CDE Exhibit 3*. District was unable to provide copies of any quarterly behavioral reports sent to Parent. *Interviews with Teacher and Director.*
46. The SCO finds that District implemented the daily communication requirements outlined in Student's behavior plan with fidelity. To the extent the communication logs dated October 18 and 19 were not completed by School staff, the SCO finds that this is the result of a change to Student's schedule in which Parent removed Student from school early and does not represent a violation of the requirements of Student's behavior plan. The SCO finds, however, that District failed to provide quarterly reports on Student behavior via email or USPS as required by Student's behavior plan.

### **G. Progress Reporting**

47. Student's IEPs required that Student's progress be reported "annually at IEP meetings and as often as same age peers through conferencing, progress reports, and/or informal contact as needed." *Exhibit A-1*, p. 12; *Exhibit A-2*, p. 15.

48. High School students in District receive grade reports on a semesterly basis. *Interviews with Teacher and Director.*
49. IEP meetings for Student were held on September 19, 2023, November 2, 2023, December 15, 2023, February 5, 2024, and March 6, 2024. *Exhibit E.* The December 15, 2023 and March 6, 2024 IEP meetings resulted in the creation of new IEPs. *Exhibits A-2 and A-3.*
50. Teacher states that Parent was given a copy of the IEP draft prior to each meeting. *Interview with Teacher.* On March 1, 2024, Teacher sent Parent an email including the draft IEP for the March 6 meeting. *Exhibit J-3.* In a response to this email on March 6, Parent indicated that she had been provided IEP drafts before all previous meetings. *Id.*
51. Meeting notes prepared by a CDE facilitator indicate that Student’s progress toward IEP goals was reviewed and discussed in detail at the March 6, 2024 IEP meeting. *Id.* at 15, 17.
52. Each of these IEPs’ Present Levels of Academic Achievement and Functional Performance section included a subsection labeled “Goal Progress,” which presents detailed progress reporting on all IEP goals, as well as Student’s behaviors of concern. *Exhibit A-2*, pp. 6-10; *Exhibit A-3*, pp. 29-35.
53. The contents of these “Goal Progress” subsections, by measuring and describing Student’s progress toward her IEP goals, fulfills the requirements for progress monitoring described in Student’s IEPs. *Consultation with CDE Content Specialist.*
54. The SCO finds that these progress reports, issued in December at the end of the first semester and in March after Student had been withdrawn from school for the remainder of the second semester, were provided to Parent at least as frequently as Student’s same-age peers. The SCO therefore finds, in consultation with a CDE content specialist, that District implemented Student’s IEP with respect to progress monitoring with fidelity.

#### **H. Provision of Specialized Transportation**

55. Student qualifies for specialized transportation because she requires the use of a wheelchair, which limits her ability to access a typical school bus. *Interview with Transportation Director.*
56. Student’s IEPs state that “Curb-to-curb specialized transportation with supervision for safety is required, including the use of a wheelchair lift.” *Exhibit A-1*, p. 11; *Exhibit A-2*, p. 14.
57. According to Bus Driver, Student’s bus would typically transport approximately 20 students. *Interview with Bus Driver.*



58. District provided transportation logs documenting the bus route, including a stop at Student’s home, on each day Student rode the bus to or from School. *Exhibit G-1*, pp. 5-53.
59. Student did not ride the bus to school every day – on many occasions Student was absent from school or Parent chose to transport Student to or from School. *Interviews with Bus Driver and Paraprofessional; Exhibit G-2*.
60. On two days in January 2024, Student was unable to ride the bus home in the afternoon at the end of the school day due to circumstances at School. *Interviews with Parent, Teacher, Paraprofessional, Bus Driver, and Transportation Director*.
61. On these days, Student engaged in refusal behavior regarding a change into new clothing after a toileting incident at the end of the school day. *Interviews with Parent, Teacher, and Paraprofessional*.
62. Teacher stated that on January 12, 2024, she and Nurse worked with Student for at least an hour to attempt to clean and change her. *Interviews with Teacher and Nurse*. Due to this delay, as well as the hygiene issues related to the incident, there was not a way that Student could ride the bus on time. *Id.*
63. Transportation Director stated that that afternoon, he asked Bus Driver to delay his departure, but when it came to his attention that Student’s delay would be significant, he made the call to instruct Bus Driver to take the other students home. *Interview with Transportation Director*.
64. Teacher contacted Parent to ask her to pick up Student from School. *Interviews with Teacher and Parent*. Parent stated that due to this, Student missed an outside therapy appointment. *Interview with Parent*.
65. On January 17, 2024, a similar incident caused Student to miss the bus again, and Parent was again called to pick up Student. *Interviews with Teacher and Parent*.
66. Based on these facts, the SCO finds that specialized transportation was not provided to Student on two occasions during the 2023-2024 academic year. The SCO finds that on all other dates, District implemented Student’s IEP with respect to provision of transportation with fidelity.

### **I. Student Supervision on Specialized Transportation**

67. Student’s IEP called for Student to receive “supervision for safety” while riding specialized transportation. *Exhibit A-1*, p. 11.

68. Student's home address is located 0.9 miles, or a three-minute drive, away from School. *CDE Exhibit 1*. Student is the last individual picked up on her bus route in the morning, and the first individual dropped off in the evening. *Interview with Paraprofessional*.
69. During a meeting between Parent and Teacher prior to the 2023-2024 academic year, Teacher states that Parent indicated that because Student's bus ride would be so short in comparison to a 15-minute ride the previous school year, it would not be necessary for a paraprofessional to supervise Student. *Interview with Teacher*.
70. On August 14, 2024, District issued a Prior Written Notice ("PWN") noting this alleged verbal request and proposing that paraprofessional support no longer be provided on the bus. *Exhibit D-2*.
71. A few minutes after Teacher emailed Parent the PWN, Parent responded, stating that she did wish for a paraprofessional to ride the bus with Student. *Exhibit J-24*. In a later response on the email chain that afternoon, Parent clarified: "I said if the para is absent for some reason, I would feel comfortable with her riding straight to highschool without para." *Id.*
72. Based upon this clarification, District staff determined that paraprofessional support would continue to be provided. *Interviews with Teacher and Director*.
73. At the beginning of the 2023-2024 academic year, Paraprofessional was assigned to ride with Student on the bus. *Interview with Paraprofessional*. Paraprofessional stated that her responsibility was to sit next to Student and monitor her for any medical or behavioral issue. *Id.*
74. Parent states that there were four or five days on which a paraprofessional was not available. *Interview with Parent*. District acknowledges five days on which the Paraprofessional was not available. *Response*, pp. 4-5.
75. On three days when Paraprofessional was not available to ride the bus with Student, Teacher did so in her place. *Interview with Teacher; Exhibit J-82*.
76. On December 6, 2023, both Paraprofessional and Teacher were unable to ride with Student on the bus due to illness. *Exhibit J-65*.
77. Nurse stated that she did not believe there was a need for paraprofessional support for Student on the bus, due to the short length of the bus ride. *Interview with Nurse*. She stated that while Parent's rationale for the support was due to concern over the potential for an allergic reaction or a seizure, Student's medical records did not support that either was an acute and present concern for Student. *Id.* She stated that in the event such an incident were to occur on the bus, the best course of action would be to bring Student to School so that she could provide first aid. *Id.*

78. As part of IEP 2, developed on December 15, 2023, the IEP team noted in the Prior Written Notice section that: “The IEP team considered the need for a para educator for [Student] while accessing district transportation. The team agreed the medical and informal observational data did not demonstrate the need for an adult riding with [Student] while she is secure in her wheelchair while riding the bus to and from school.” *Exhibit A-2*, p. 29.
79. On days when no adult supervision was provided on the bus, no medical or behavioral incidents occurred. *Interviews with Bus Driver, Transportation Director, and Nurse*.
80. Based on these facts, the SCO finds that on two days District did not provide an adult to supervise Student on the bus. The SCO finds that on three days, District provided an adult other than Paraprofessional, which fulfills the requirements of IEP 1. Finally, the SCO finds that on all other days, District implemented Student’s IEP with respect to supervision during transportation with fidelity.

### **CONCLUSIONS OF LAW**

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

**Conclusion to Allegation No. 1: District failed to properly implement Student’s IEP during the 2023-2024 academic year, in violation of 34 C.F.R. § 300.323. However, these failures to implement were not material and did not result in a denial of FAPE.**

Parent’s concern is that the District failed to implement the Behavior Intervention Plan, progress reporting, and specialized transportation components of Student’s IEP.

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

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 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 district must ensure that each teacher and related services provider has access to the IEP and is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d).

## **B. IEP Accessibility and Responsibilities**

The SCO must determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, Teacher had access to Student's IEP throughout the 2023-2024 academic year. (FF # 23). Related service providers, including Nurse, Bus Driver and Paraprofessional were made aware of their individual responsibilities under the IEP. (FF #s 24-26). District staff were trained on their responsibilities with respect to IEP implementation. (FF # 16). When interviewed, District staff credibly described their responsibilities with respect to Student's IEP. (FF # 27). For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student during the 2023-2024 academic year were informed of their responsibilities under the IEP, consistent with 34 C.F.R. § 300.323(d).

## **C. Implementation of the Behavior Intervention Plan**

The SCO must determine whether District implemented Student's Behavior Intervention Plan in accordance with the IEP for the 2022-2023 academic year. 34 C.F.R. § 300.323(c)(2).

Here, Student's Behavior Intervention Plan required Parent-School communication in three respects: (1) Parent and School would communicate regarding changes to schedule, sleeping patterns, sickness, and changes to medication; (2) Parent would be informed of Student progress via daily communication; and (3) School would provide quarterly reports via USPS or email. (FF # 35).

With respect to the first two items, this communication was largely accomplished through the exchange of a daily communication log conveyed between home and School in Student's binder. (FF # 36). This log contained information regarding Student's progress during the school day, her sleeping patterns, food and water intake and waste elimination, medications administered, health concerns and any changes to routine. (FF # 37). When Parent expressed concern about the sufficiency of the information communicated through these logs, Teacher updated the log sheet to capture the requested information. (FF # 38).

Based upon the selection of 13 communication logs provided by Parent, all but two were completed by School staff. (FF # 40). Those two log sheets indicated that on the days in question, Student was to be picked up from School midway through the day, limiting School's ability to report the requested information. (FF # 41). Parent did not provide, and District did not have physical access to, the remainder of the daily communication logs, but Teacher credibly reports that logs were consistently completed. (FF # 43). In addition to the daily communication logs, both Teacher and Nurse communicated with Parent via email and a communication app. (FF # 44).

With respect to the requirement for quarterly communication, Teacher indicates that she collected behavioral data for reporting, but no evidence in the Record shows that formal

quarterly reports were sent to Parent. (FF # 45). Information regarding Student behavior was included with IEP drafts provided to Parent in December 2023 and March 2024, roughly in line with the end of the second and third quarters of the school year. (FF # 52). However, no evidence in the Record indicates that a first-quarter behavioral report was provided to Parent.

Accordingly, the SCO finds that although daily communication regarding Student's Behavior Intervention Plan was provided to Parent, District failed to provide a quarterly behavior report as required.

#### **D. Implementation of Progress Reporting**

The SCO must determine whether District implemented progress reporting in accordance with the IEP for the 2022-2023 academic year. 34 C.F.R. § 300.323(c)(2).

Here, Student's IEP required that Student's progress on IEP goals be reported to Parent at IEP meetings, and no less frequently than semesterly, the frequency at which same-grade peers received grades. (FF #s 47-48).

Prior to IEP meetings on December 15, 2023 and March 6, 2024, District provided Parent with draft IEPs which included detailed reporting on Student's IEP goals. (FF #s 49-50). Although these progress reports were not provided in a separately printed document, the progress reporting sections of the IEPs described Student's performance with respect to IEP goals with sufficient detail to allow Parent to understand Student's progress. (FF # 53). Moreover, these reports were provided at the end of the first semester and after Parent had withdrawn Student from District, aligning with the semesterly frequency required by Student's IEP. (FF #s 49-50).

Accordingly, the SCO finds and concludes that District implemented progress reporting in accordance with Student's IEP.

#### **E. Implementation of Specialized Transportation**

The SCO must determine whether District implemented Student's specialized transportation in accordance with the IEP for the 2022-2023 academic year. 34 C.F.R. § 300.323(c)(2).

Here, Student's IEP required that she be provided specialized transportation. (FF # 56). Transportation records and the interviews of all parties indicate that with two exceptions, specialized transportation was provided to Student on each day Parent chose to send her to school on the bus. (FF #s 58, 60). On those two days, behavioral and toileting issues at the end of the school day prevented Student from being able to access the bus home and caused Parent to be called to pick her up. (FF #s 61-64). This delay resulted in Student missing outside therapies. (FF # 64).

On these two days, the parties agree that specialized transportation was not provided to Student. However, the Record shows that specialized transportation could not have been provided to Student on the typical transportation schedule without posing a serious hygiene risk to Student and other students on the bus. (FF # 62). Moreover, these incidents took an hour to resolve. *Id.* If the school bus had delayed its departure until Student was ready to board, the other students on the specialized transportation bus (presumably also students receiving special education services) would have been substantially impacted.

The SCO, recognizing the significant competing interests, finds that District acted appropriately in its decision-making regarding this matter. Nevertheless, on these two occasions, Student was not provided specialized transportation as required by her IEP. Accordingly, the SCO finds that District failed to implement Student’s IEP with respect to provision of specialized transportation.

#### **F. Implementation of Supervision on Transportation**

The SCO must determine whether District implemented supervision of Student on specialized transportation in accordance with the IEP for the 2022-2023 academic year. 34 C.F.R. § 300.323(c)(2).

Here, Student’s IEP requires that district provide “supervision for safety” while Student is riding on specialized transportation. (FF # 67). From the start of the school year through the IEP team’s determination on December 15, 2023 that this service would no longer be provided, Paraprofessional was assigned to accompany Student on her bus rides to supervise for medical or behavioral issues. (FF # 73). Parent alleges, and District concedes, that Paraprofessional was not available to ride with Student on five occasions. (FF # 74). On three such occasions, Teacher rode with Student in Paraprofessional’s stead. (FF # 75).

With respect to the two occasions on which neither Paraprofessional nor Teacher were available for Student’s bus ride, Student rode the bus without adult supervision aside from Bus Driver. (FF # 76). The rides were approximately three minutes long, and no evidence in the Record indicates that any behavioral or medical incident took place during either ride. (FF #s 68, 79). Parent had previously expressed in writing that in instances in which an adult was not available to ride with Student, she was comfortable sending Student without an adult beside her. (FF # 71).

Despite Parent’s stated willingness for Student to ride the bus without one-on-one adult supervision in circumstances like those encountered when Paraprofessional and Teacher were unavailable, Student’s IEP did not carve out an exception for such circumstances. Thus, District remained obligated to provide that support until such point as the service was discontinued via the December 15, 2023 IEP.<sup>4</sup> Accordingly, the SCO finds and concludes that on two days during

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<sup>4</sup> District acceded to Parent’s request despite its apparent determination that this supervision was not required to provide Student a FAPE. While District’s intention in doing so may have been to promote Parent’s comfort, IEP teams must not agree to include services in an IEP that are not required to provide FAPE.

the 2023-2024 academic year, District failed to implement Student's IEP with respect to supervision on specialized transportation.

### **G. Materiality of the Failure to Implement the IEP**

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

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

Here, District failed to implement the IEP in three respects: (1) District failed to provide a quarterly behavioral report for the first quarter of the 2023-2024 academic year, (2) District failed to provide specialized transportation on two occasions during the 2023-2024 academic year, and (3) District failed to provide direct adult supervision on specialized transportation on two occasions.

In all three instances, these failures represent minor discrepancies between the services provided by the District and those required by the text of Student's IEP. With respect to the behavior plan, District provided consistent daily communication, addressing all matters identified in the behavior plan, as well as additional information requested by Parent. That District did not provide a formal first-quarter report on Student's behaviors did not deny Parent the opportunity to have knowledge regarding Student's behaviors at school – Parent was apprised of behavior daily via the daily communication log.

With respect to the provision of specialized transportation, District provided transportation for Student on each day Parent chose to send her to School, excepting the two occasions in which extraordinary circumstances forced District to choose between violating the strict requirements

of Student's IEP and complying with those obligations at risk to Student's hygiene and the transportation of other students. Moreover, on those two days, the failure to provide transportation took place in the afternoon, at the end of the school day. Although Student missed outside therapies, she was not denied access to any in-school instruction or related services.

Finally, with respect to provision of supervision on specialized transportation, District provided such supervision on all but two occasions, including providing another adult on three days on which Paraprofessional was unavailable. Although Parent's agreement that Student could ride without supervision when no adult was available does not invalidate District's obligation to provide the services outlined in the IEP, it does speak to the materiality of this provision to the overall purpose of the IEP – Parent herself recognized that Student could safely make the three-minute ride to School.

In addition, in determining the materiality of a failure to implement a student's IEP, the student's academic and goal progress must be considered. Here, Student made insufficient progress on most of her IEP goals during the 2023-2024 academic year. While a failure to make expected progress on goals might be helpful in determining whether a failure to implement is material, it does not end the analysis.

There is an additional confounding factor: Student's attendance. Student was enrolled in School for 104 instructional days prior to Parent withdrawing her from the District in February 2024. (FF # 29). Of those, Student missed at least one class session 76 times and missed three or more class periods 66 times – Student missed substantially more than half of the instructional time offered by District. (FF # 30). School staff reported that these absences were a significant barrier to Student's ability to progress on her IEP goals. (FF # 33).

The SCO finds and concludes that Student's absences negatively impacted her ability to make progress on her IEP goals. In finding this, the SCO recognizes that many of Student's absences were the result of extraordinary circumstances, including Student's health concerns. But the District cannot be expected to produce a year of progress when it has significantly less than a year of instructional time with Student. *El Paso County School District 20*, 120 LRP 29265 (SEA CO 9/3/20).

In comparing the minimal discrepancies between the services provided by District and those outlined in the IEP against Student's significant number of absences, SCO finds, in consultation with a CDE content specialist, that Student's absences were a much greater contributing factor to Student's lack of expected progress.

Accordingly, and for the reasons stated above, the SCO finds and concludes that the District's failures to implement the IEP were immaterial. Therefore, the SCO concludes that these failures did not result in a denial of FAPE.



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

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

Here, nothing in the Record indicates that District’s violation is systemic in nature. District provides staff with guidance regarding IEP implementation, and all staff involved were knowledgeable about their responsibilities with respect to Student’s IEP. (FF #s 15-28). District implemented Student’s IEP with fidelity in all respects aside from the narrow violations identified above. Moreover, Student’s IEP, even among exceptional students, is unique in its complexity due to Student’s substantial medical, behavioral, educational, and other needs. (FF #s 3, 9). Specifically with respect to the transportation-related violations, where District did narrowly fail to implement the IEP with fidelity, it did so under extraordinary circumstances unlikely to recur with other students. For these reasons, the SCO finds and concludes that District’s failure to implement the IEP is not systemic in nature.

### **REMEDIES**

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

- a. Failing to properly implement Student’s IEP during the 2023-2024 academic year, in violation of 34 C.F.R. § 300.323.

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

1. Corrective Action Plan

- a. By **Friday, May 31, 2024**, District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District timely correction of the areas of noncompliance.

2. Final Decision Review

- a. Special Education Director and Special Education Teacher must review this Decision. This review must occur no later than **Friday, May 31, 2024**. A signed assurance that this Decision has been reviewed must be completed and provided to the CDE no later than **Friday, June 7, 2024**.

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 April, 2024.



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Nick Butler  
State Complaints Officer

## **APPENDIX**

### **Complaint, pages 1-28**

#### **Response, pages 1-7**

- Exhibit A: IEPs
- Exhibit B: Behavior Intervention Plans
- Exhibit C: Evaluation Reports
- Exhibit D: Prior Written Notices
- Exhibit E: Notices of Meetings
- Exhibit F: Emails regarding transportation
- Exhibit G: Transportation logs and Student attendance records
- Exhibit H: Service logs
- Exhibit I: Documentation of Student health records
- Exhibit J: Correspondence
- Exhibit K: District calendar
- Exhibit L: District policies
- Exhibit M: List of District personnel with relevant knowledge
- Exhibit N: Documentation of delivery of Response

#### **Reply, n/a**

- Exhibit 1: Email regarding transportation
- Exhibit 2: Text messages between Parent and Bus Driver

#### **CDE Exhibits**

- CDE Exhibit 1: Map from Student's address to School
- CDE Exhibit 2: Daily Communication Log
- CDE Exhibit 3: Behavior Tracking Sheet

#### **Telephone Interviews**

- Parent: April 3, 2024
- Bus Driver: April 5, 2024
- Director of Transportation: April 5, 2024
- Nurse: April 5, 2024
- Teacher: April 8, 2024
- Paraprofessional: April 10, 2024
- Special Education Director: April 11, 2024