

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

State-Level Complaint 2024:548

Weld RE-5J

DECISION

INTRODUCTION

On May 1, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Weld RE-5J (“District”). The Colorado Department of Education (“CDE”) determined that the Complaint identified 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, CDE has jurisdiction to resolve the Complaint.

CDE extended the 60-day investigation due to exceptional circumstances on June 28, 2024, consistent with 34 C.F.R. § 300.152(b)(1).

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the complaint was filed. Accordingly, findings of noncompliance shall be limited to events occurring after May 1, 2023. Information prior to May 1, 2023 may be considered to fully investigate all allegations.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. Failed to develop an IEP that was tailored to Student’s individualized needs from May 1, 2023 through February 25, 2024, specifically by:
 - a. Failing to include measurable annual goals—specifically, in the areas of reading, social-emotional learning, and mathematics—designed to meet Student’s needs to enable to him to be involved in and make progress in the general education curriculum, in violation of 34 C.F.R. § 300.320(a)(2).

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

2. Deprived Parent of meaningful participation in the development, review, and revision of Student’s IEP, including determining Student’s placement, in the meeting held on or about January 25, 2024, in violation of 34 C.F.R. §§ 300.116, 300.324(a)(1)(ii), and 300.501(b)(1).
3. Failed to educate Student in the Least Restrictive Environment (“LRE”) from the beginning of the 2023-2024 school year to May 1, 2024 by failing to ensure Student was educated to the maximum extent possible with students who are nondisabled, in violation of 34 C.F.R. § 300.114.
4. Failed to monitor Student’s progress and provide Parent with periodic reports on progress from May 1, 2023 to May 1, 2024, in violation of 34 C.F.R. § 300.320(a)(3).

FINDINGS OF FACT

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

A. Background

1. Student is an eight-year-old boy who enjoys forming relationships, gets along with most people, and loves to engage everyone in play. *Interviews with Parent, Executive Director of Student Services (“Director”), and School Psychologist; Exhibit A*, p. 4.
2. He is eligible for special education and related services under the disability category of Multiple Disabilities because he is eligible under the categories of Autism Spectrum Disorder, Intellectual Disability, and Speech or Language Impairment. *Exhibit A*, p. 43.³
3. Parent’s concerns arise primarily from the District’s decision to move Student from the affective needs (“AN”) program at one school, where Student attended from preschool up through first grade in the 2022-2023 year, to the significant support needs (“SSN”) program at a new school, where Student attended second grade in the 2023-2024 year. *See Complaint; Interview with Parent*. Parent alleges that the more restrictive LRE imposed as part of the change in placement is inappropriate. *Complaint*, p. 12. Student spent 78% of his time in the general education environment at the AN program versus only 44% in the SSN program. *Exhibit A*, pp. 38, 73.
4. Parent also alleges that she was not allowed to participate in four meetings regarding Student’s education in January and February 2024. *Complaint*, p. 11. She further alleges that

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

³ To be eligible under the Multiple Disabilities category, a child must be eligible under the Intellectual Disability category in addition to at least one other area of significant impairment. CDE, *Multiple Disabilities* (Dec. 7, 2022) available at <https://www.cde.state.co.us/cdesped/sd-multiple>.

Student's 2023 IEP goals were insufficiently clear, specific, and measurable, and that the District has not fulfilled its duty to monitor and report Student's progress. *Complaint*, p. 10.

5. The District, in response, states that changing Student's LRE was necessary to enable Student to make academic progress, which could be accomplished only in a small group or one-on-one setting using a separate, specialized curriculum modified for the Extended Evidence Outcomes (alternate academic standards referred to as "EEOs"). *Response*, pp. 11-12. It also responds that Parent participated extensively over the January and February 2024 meetings because she, her advocate, and her private BCBA spoke and asked questions, and the IEP Team discussed those questions and Parent's position at length. *Id.* at p. 11. Finally, it asserts that Student's 2023 IEP goals met the requirements of the IDEA and that Student's progress was appropriately monitored and reported. *Id.* at p. 12.

B. The 2022-2023 School Year: First Grade in the AN Program

6. Student attended the AN program at his home school for kindergarten and first grade. *Interviews with Parent, Director, and School Psychologist; Exhibit A*, pp. 4, 14, 21, 38.
7. Although Student was enrolled in the AN program, he rarely if ever exhibited aggressive or disruptive behaviors. *Interviews with Director, School Psychologist, and SSN Teacher*. He had no behavior intervention plan. *Exhibit A*, p. 7.
8. His enrollment in the AN program was intended to address those areas where he needed additional support to access his education. *Id.* at p. 6. He had a language impairment that negatively impacted his ability to understand and respond to academic instruction. *Id.* at pp. 6, 11. He also needed supports for social-emotional deficits that negatively impacted his ability to transition between activities and stay on task. *Id.* at pp. 7-8. Finally, delays in his fine motor and visual motor skills meant he needed support in learning to write. *Id.* at pp. 6, 11.
9. His annual IEP goals targeted those needs. *Id.* at pp. 7-11. He had two social-emotional goals to transition between tasks and attend to his work; he had two reading goals to identify high-frequency words and to identify letter sounds; he had two mathematics goals to properly arrange the numbers 1-20 and to add up to 20; he had a language goal to work with a speech-language pathologist to expand his ability to express himself, including by using an assistive technology device; and he had a goal to improve his handwriting. *Id.*
10. To allow him to access the general education curriculum, he was provided fourteen accommodations targeting his needs for repeated teaching through various modalities, for staying on task, and for transitioning between tasks. *Id.* at pp. 11-12.
11. To enable him to achieve his goals, his IEP required that he receive specialized instruction both inside and outside of the general education classroom, and that he receive direct therapy from a speech-language pathologist and an occupational therapist. *Id.* at pp. 14-15.

12. As was common for students in the AN program, he spent most of his time—specifically, 78% of his time—in the general education environment with close paraprofessional support. *Id.* at p. 16; *Interview with AN Program Coverage Teacher (“AN Teacher”)*. Every day, he spent an hour in a small group setting outside of the general education environment to work on reading and math. *Interviews with AN Teacher and First Grade Gen Ed Teacher (“First Grade Teacher”)*. A special education teacher and paraprofessional would scaffold his work and otherwise provide support to allow him to access the general education curriculum. *Interview with AN Teacher*.
13. The three IEPs in effect for Student from kindergarten through first grade stated that his curriculum was “modified to meet his educational needs,” and he had goals requiring that he would be taught in accordance with the EEOs. *Exhibit A*, pp. 8, 10, 12, 27-32; *Supp. Reply Exhibit 4*, pp. 8-12. In a meeting with Parent, Director stated that Student’s curriculum in the AN program, in kindergarten, had been modified for the EEOs by his teacher, but this modification was impermissible. *Interview with Director; Exhibit K-1* at 29:00 to 31:00. The teacher who modified his curriculum was reassigned to the preschool classroom. *Exhibit K-1* at 29:00 to 31:00. Director told Parent that, although this showed that it was possible to modify a student’s curriculum in the AN program, it was not “feasible given the caseloads,” as determined by the District’s workload calculations. *Exhibit K-1* at 29:30-31:30.
14. Contradicting Director and all three IEPs, AN Teacher—a resource teacher who partially covered for the AN program in Student’s first-grade year, school year 2022-2023, by supervising a long-term substitute teacher but did not herself provide direct services to Student—stated that Student’s curriculum was not modified for the EEOs. *Interview with AN Teacher*.
15. The inconsistency arises because District staff have different definitions for “modified curriculum.” *Interview with Kindergarten Case Manager*. Student’s general education and special education teachers in the AN program collaborated to alter Student’s assignments to allow him to access the general education curriculum at some level. *Interviews with Kindergarten Case Manager, Kindergarten Gen Ed Teacher, and First Grade Teacher*. Kindergarten Case Manager viewed these alterations as a “modified curriculum.” *Interview with Kindergarten Case Manager*. However, Student’s other teachers and the Director generally define “modified curriculum” to mean a wholly separate, specially designed curriculum targeting the EEOs. *Interviews with Kindergarten Case Manager, SSN Teacher, and Second Grade Gen Ed Teacher*.
16. Considering these facts, the state complaints officer (“SCO”) makes three findings: First, it was possible to alter the general education curriculum to enable a student on the EEOs to access that curriculum at some level. Second, Student’s instruction and work were altered to allow him to access the general education curriculum at some level while he was in the AN program, with goals on the EEOs, for at least some period of time. Third, the District disallowed this practice for reasons of teacher workload.

C. March 2023 Evaluation and Eligibility Determination

17. Partway through first grade, School Psychologist and First Grade Teacher observed that Student lagged academically behind his peers and had difficulty retaining information. *Interviews with School Psychologist and First Grade Teacher; Exhibit C*, p. 8. At School Psychologist's suggestion, the IEP Team referred him for an evaluation to determine if he required different supports than he was receiving and whether he was eligible for EEOs. *Interview with School Psychologist; Exhibit C*, p. 6.
18. The evaluation assessments found that Student's cognitive ability was in the extremely low range, with a nonverbal IQ of 55; his verbal comprehension score was also in the extremely low range, as was his visual spatial index, fluid reasoning index, working memory index, and processing speed index. *Id.* at pp. 8-10. He was found to have severe impairments in his abilities related to receptive and expressive language, and these impairments were not related to any impairment with articulation, vocal quality, or stuttering. *Id.* at p. 30.
19. Based on this evaluation, on March 9, 2023, Student—who had previously been eligible for special education services under the category of Autism Spectrum Disorder, with recognized needs for speech-language therapy services—was found eligible for special education services under the additional categories of Intellectual Disability and Speech or Language Impairment. *Exhibit C*, pp. 1-5.

D. Student's April 2023 IEP

20. Following Student's evaluation and new determination of eligibility, his IEP Team met on April 6, 2023, to revise his IEP. *Exhibit A*, pp. 21-39.
21. The April 2023 IEP is directly relevant to two of Parent's allegations:
22. First, Parent has alleged that four goals—the social-emotional, reading, and mathematics goals—were vague and unmeasurable. *Complaint*, p. 10.
23. Second, this IEP marked the IEP Team's decision to move Student from the AN program to the SSN program, with its more restrictive LRE, over Parent's disagreement. *Id.* at p. 12.

April 2023 IEP Goals

24. To address Parent's concern that the four social-emotional, reading, and mathematics goals were inappropriately vague and could not be measured, those goals are described in full:
25. Goal 1 (Social-Emotional), targeting Student's ability to transition from a preferred to a non-preferred activity: The unit of measurement was "3/5 of opportunities, measured monthly." The baseline data point was that he was "able to transition in school environment, but 2/5 [opportunities] with preferred to non-preferred." The evaluation method was to monitor and chart progress by teacher report. The measurable goal was that "[i]n one year's time,

[Student] will be able to transition from a preferred to non-preferred activity with less than 5 adult prompts in 3/5 opportunities measured monthly.” The specific objectives were for him to, after six months, be able to transition with fewer than 10 adult prompts in 3/5 opportunities measured monthly, and then, after ten months, to do so with fewer than 8 adult prompts. *Id.* at pp. 27-28.

26. Goal 2 (Social-Emotional), targeting Student’s ability to work with a teacher for a period of time: The unit of measurement was “80% of a 15 min opportunity.” The baseline data point was that he “require[d] an average of 7 prompts for every 15 minutes when presented material.” The evaluation method was to monitor and chart progress by teacher report. The measurable goal was that, after a year, he would be able to “actively participate with a teacher for 15 minutes with less than 3 prompts in 3/5 opportunities as measured monthly.” The specific objectives were for him to, after six months, actively participate for 5 minutes with fewer than 3 prompts “in 3/5 opportunities as measured monthly,” and then, after ten months, participate for 10 minutes with fewer than 3 prompts. *Id.* at pp. 27-28.
27. Goal 3 (Reading), targeting Student’s ability to identify sight words: The unit of measurement was “# of opportunities.” The baseline data point was “16 sight words in 6/10 opportunities.” The evaluation method was to monitor and chart progress by teacher report. The measurable goal was: “When given a choice of 3 words, [Student] will demonstrate the ability to identify 30 previously learned sight words in 6 out of 10 opportunities given a verbal and visual model, as measured over one year’s time.” The specific objective was: “Over one year’s time, given a visual and/or verbal model, [Student] will demonstrate the ability to identify letter names and their corresponding sounds in 7/10 opportunities.” *Id.* at pp. 28-29.
28. Goal 4 (Mathematics), targeting Student’s ability to count: The unit of measurement was “# of opportunities.” There was no baseline data point because this was a new goal. The evaluation method was to monitor and chart progress by teacher report. The measurable goal was: “When presented with quantities up to 20, in 3 out of 5 opportunities, [Student] will represent the given quantity by counting and labeling with a written numeral, as measured monthly over one year’s time.” The specific objective was: “When presented with visual models, [Student] will demonstrate the ability to identify less than and greater than concepts in 3 out of 5 opportunities, as measured monthly over one year’s time.” *Id.* at pp. 29-30. A new baseline was established at the end of the fourth quarter, when it was reported that Student could represent quantities using numerals for 1-10 but not at all for quantities and numbers 11-20, and he could identify “greater than” correctly 42% of the time and “less than” only 2% of the time. *Exhibit I*, p. 23.

Transfer to the SSN Program with Reduced LRE

29. As noted, Student was found eligible under the category of Intellectual Disability in the March 2023 evaluation, and his IEP Team met on April 6, 2023 to revise his IEP to accommodate that change. *Exhibit A*, p. 23; *Response*, p. 3.

30. In Student’s April 2023 IEP, five of his seven goals—reading, math, two in language, and motor skills—were revised to require instruction and assessment according to the EEOs. *Exhibit A*, pp. 27-32. The prior IEP had two goals targeting the EEOs. *Id.* at pp. 8-10.
31. In District, all elementary school children assessed on EEOs are assigned, like Student, to the same SSN program. *Interview with Director; Exhibit N*, p. 417.
32. In District, all elementary school children who are eligible under the category of Intellectual Disability are also assigned to that SSN program. *Interview with Director; Exhibits R, R.1, and R.2*.
33. All the children in the SSN program are instructed according to the EEOs. *Response*, p. 5.
34. It follows, then, that all District elementary school children who are eligible under the category of Intellectual Disability are instructed according to the EEOs. *See also Exhibits R, R.1, and R.2*. School Psychologist said as much to Parent in an email, writing, “As stated in our prior meeting, the only way to have [Student] work on grade level standards [i.e., not EEOs] is an evaluation that determines he doesn’t qualify as a student with an Intellectual Disability.” *Exhibit N*, p. 98.
35. Accordingly, the SCO finds that all District elementary school children who are eligible under the categories of Intellectual Disability or Multiple Disabilities are placed on the EEOs and transferred to the SSN program. The SCO confirmed this by requesting a list of all elementary school students who were eligible under the categories of Intellectual Disability or Multiple Disabilities at the beginning of the 2023-2024 school year, their school, their program, and whether they were on the EEOs. The District’s documents show that, indeed, all students eligible under those categories are assigned to the same SSN program and assessed on the EEOs. *See Exhibits R, R.1, and R.2*.⁴
36. The IEP Team noted that Student would be moving from the AN program to the SSN program, rejected the AN program because “[Student] requires additional service support to meet his academic and behavior needs,” and adopted the SSN program because “it was appropriate to meet his current academic and social emotional needs.” *Exhibit A*, pp. 38-39.
37. With the transfer, Student’s LRE was reduced from 78% of the time in the general education environment to 44%. *Id.* at pp. 16, 38, 73.

⁴ Although several students on the District’s list did not fit the exact criteria of the SCO’s request, the data supports the SCO’s finding. Specifically, five students were not eligible under the Intellectual Disability or Multiple Disabilities categories prior to the 2023-2024 school year; however, these students became eligible during the 2023-2024 school year and were assigned to the SSN program for the 2024-2025 school year. *Id.* at pp. 69, 450, 892, 1506, 1841. Two students were homebound but assigned to the SSN program for services. *Id.* at pp. 413, 431, 971, 1004. One student did not meet the criteria at all—the student was in high school and not eligible under the Intellectual Disability or Multiple Disabilities categories—and was excluded from this analysis. *Exhibit R*, p. 383.

38. The IEP Team wrote in the IEP that the more restrictive LRE was necessary so Student could have “intensive, specialized instruction in a small group or one on one setting.” *Id.* at p. 73; *accord Response*, p. 12.
39. District and School staff have also stated elsewhere that the more restrictive LRE was necessary to meet Student’s learning needs:
- a. SSN Teacher said that Student’s academic needs could be met only with instruction tailored to his ability, which could not be accomplished in the general education classroom with one-to-one paraprofessional support. *Interview with SSN Teacher.*
 - b. The District maintains that only Student’s teacher in the SSN program—who was teaching on a Temporary Educator Eligibility Authorization and received mentorship and coaching—had the qualifications to modify Student’s curriculum for the EEOs. *Exhibit K-1*, 5:30-8:00, 19:00-20:00; *Exhibit N*, p. 379; *Interview with SSN Teacher; accord Colorado Online Licensing Lookup; cf. Response*, p. 5.
 - c. SSN Teacher received training in a licensed curriculum called the Unique Learning System tied to Colorado’s EEOs, used by all District’s SSN programs and the only method by which the District teaches to the EEOs. *Exhibit K-1* at 6:00 to 8:00. Director told Parent and her advocate that this training constituted SSN Teacher’s particular expertise that allowed her, and not other teachers, to teach a modified curriculum for EEOs to Student. *Id.* The two SSN teachers in the SSN program were both the only elementary school teachers trained to teach to the EEOs in this fashion and the only elementary school teachers who could teach to the EEOs. *Id.*; *accord Response*, p. 5. Student’s daily class schedule, then, was built around getting academic instruction from SSN Teacher in the SSN program environment. *Exhibit Q; Interview with SSN Teacher.*
 - d. When asked whether Student’s EEO-modified instruction could be provided through the collaborative development of schoolwork with the general education teacher, SSN Teacher said that the program is “just not worked that way” because Student receives his services in the SSN classroom. *Id.*
 - e. Separately, School Psychologist noted that Student has a short attention span and requires frequent breaks, including sensory breaks, which would be disruptive or difficult to provide in the general education classroom. *Interview with School Psychologist.*

E. January 2024 Reevaluation, Eligibility Determination, and IEP Team Meetings

January 2024 Reevaluation

40. As Student attended second grade in the SSN program at his new school in the 2023-2024 year, Parent felt that her fears about the change were justified. *Interview with Parent; Complaint*, p. 9. Parent believed that Student's mood and behavior were regressing, she did not see proof that Student was doing any better academically, and she felt that the District's offer of FAPE was driven wholly by the determination that Student met the criteria for Intellectual Disability rather than Student's individual needs. *Interview with Parent*.
41. Near the end of November 2023, Parent requested and received a forty-five minute meeting with SSN Teacher, School Psychologist, and Student's private BCBA. *See Exhibit N*, p. 445; *Exhibit K-2*. At that meeting, she expressed her concerns about the transfer of Student to the SSN program; the participants discussed Student's behavior and progress; and School Psychologist informed Parent that Student could not attend any other school or program than the SSN program unless and until he was evaluated and *not* found eligible under the category of Intellectual Disability. *Id.*
42. Shortly after that meeting, Parent asked that Student be reevaluated by a different psychologist to confirm whether he should really qualify under the eligibility category of Intellectual Disability. *Exhibit C*, p. 39.
43. The District granted Parent's request and provided a second evaluation from a different psychologist. *See id.* The second psychologist agreed with the first. *See id.* at pp. 76-77.

January 2024 Eligibility Determination Meetings

44. Following the evaluation, meetings occurred in January 2024 and February 2024 to redetermine the categories under which Student was eligible for special education and to review and revise his IEP in accordance with the new information. *See Exhibit C*, p. 38; *Exhibit A Part 2*, pp. 1-2. Parent has alleged that she was denied participation in these meetings. *Complaint*, pp. 11-12.
45. Student's multidisciplinary team met twice to discuss the evaluation results and to determine the categories under which Student could qualify for special education services. *See id.* at pp. 34-38. They met on January 25, 2024 for one hour and thirty-six minutes. *See Exhibit C-1*. They met again on January 29, 2024 for an additional thirty-six minutes. *See Exhibit C-2*. Thirteen individuals participated, including Director, School Psychologist, the psychologist who conducted the new evaluation, both Parents, Parents' advocate, and Student's private BCBA. *Exhibit C*, p. 38.
46. Parent originally alleged in her Complaint that she was denied participation in these meetings; however, in her Reply and in an interview, she clarified that she had the

opportunity to speak, ask questions, and discuss her concerns. *Reply*, p. 6; *Interview with Parent*.

47. The audio recordings across the two meetings show that the conversation was primarily a walkthrough of Student's evaluation, and there was discussion that included Parent regarding Student, his strengths, and needs. *See Exhibits C-1, C-2*. Parent was able to interject, ask questions, and be answered. *See id*.

February 2024 IEP Team Meetings

48. Following the eligibility determination meetings, Student's IEP Team met twice to revise Student's IEP. *See Exhibit A part 2*, pp. 1-2. They met on February 15, 2024 for two hours and eleven minutes. *See Exhibit A-1*. They met again on February 26, 2024 for an additional one hour and twenty-eight minutes. *See Exhibit A-2*. Parent's advocate and Student's private BCBA again participated. *Exhibit A*, pp. 44, 75.
49. As with the eligibility determination meetings, Parent has clarified that she was able to be heard and ask questions. *Reply*, p. 6; *Interview with Parent*.
50. The audio recordings show that the conversation was primarily a walkthrough of Student's IEP and suggested revisions, and there was discussion that included Parent regarding the justification for each section as well as shared observations of Student at school and home. *See Exhibits A-1, A-2*.
51. Parent succeeded in keeping, in the IEP, a version of Student's reading goal related to sight words, letter names, and letter sounds; school staff wanted to remove it in favor of advancing to a new goal, but Parent thought it was important to retain the goal in some form. *Interviews with SSN Teacher, School Psychologist, and Parent*. It was retained. *See Exhibit A*, pp. 63-64.
52. There was also discussion concerning the measurability of goals. *See, e.g., Exhibit A-1*. The IEP Team wrote the February 2024 IEP goals with greater specificity; for example, whereas his prior social-emotional goal measured his ability to "actively participate with a teacher" on schoolwork, the new goal measured his ability to "sustain attention (e.g., eyes on the task, focusing on activity, responding via any form of communication)." *Compare Exhibit A*, p. 28 with p. 62. It appears that Parent's concerns were heard: Although Parent's Complaint raises a concern about the April 2023 goals, it does not raise a concern about the February 2024 goals. *See Complaint*, p. 10.
53. Following the February IEP Team meetings, Director, Parent, and Parent's advocate agreed that none of the attendees, including Parent and her advocate, raised a concern about Student's LRE, placement, and the location of his services at the IEP meetings, although the IEP Team briefly touched on each of these topics, with some disagreement about whose responsibility it had been to raise a concern about those issues and whether it would have mattered. *Exhibit A*, pp. 61, 74; *Exhibit N*, pp. 411-12; *Exhibit K-1* at 00:00 to 03:30. A follow-

up meeting was held to discuss these issues, but it was not an IEP Team meeting. *See Exhibit E; Exhibit N, p. 407; Exhibit K-1.*

F. Progress Monitoring and Reporting from May 2023 through May 2024

54. Parent has alleged that Student’s progress was not properly monitored and reported from May 1, 2023 (the earliest date allowed for this state complaint) until the filing of her complaint on May 1, 2024. *See Complaint, p. 10.*
55. Both the April 2023 and the February 2024 IEPs required the District to monitor Student’s progress on his IEP goals and inform Parent of that progress every quarter and at the annual IEP review meeting. *Exhibit A, pp. 27-32, 61-67.*
56. From May 1, 2023 to May 1, 2024, the District provided reports as required for each quarter: On June 2, 2023 (quarter four of first grade), October 12, 2023 (quarter one of second grade), December 19, 2023 (quarter two), and March 14, 2024 (quarter three). *Exhibit I, pp. 20-34.*
57. The reporting for the April 2023 IEP goals contained several inconsistencies or absences:
- a. Goal 2 (Social-Emotional), regarding Student’s ability to stay on task, was not reported using the required metric—i.e., the length of time he could stay on task and the number of required prompts—in the first quarter of the 2023-2024 school year. *Exhibit I, p. 21.* The report for the second quarter did not state the number of required prompts except for going to recess. *Id.*
 - b. Goal 3 (Reading), regarding Student’s identification of sight words, did not report using the correct metric—his ability to identify thirty words in six out of ten opportunities—in the fourth quarter of the 2022-2023 school year or the first, second, or third quarter of the 2023-2024 year. *Id.* at p. 22. For the first quarter, the report stated “Progress Made” but the narrative explained that no progress data was available. *Id.*
 - c. Goal 4 (Mathematics), regarding Student’s ability to quantify and use the correct numeral, did not provide a report for the first semester of the 2023-2024 school year. *Id.* at p. 23.
 - d. Goal 6 (Language), regarding Student’s ability to identify colors and body parts, stated only that “Student has been working on this goal indirectly” in the first quarter of the 2023-2024 school year. *Id.* at p. 25.
58. The reporting for the February 2024 IEP goals was consistent with the required monitoring and metrics. *See Reply Exhibit 3, pp. 1-9.*

G. Student's 2023-2024 School Year Performance in the New LRE

59. Both parties believe that Student's performance on his IEP goals in the 2023-2024 year supports their position as to whether his LRE is appropriate:
60. The District states that placing Student in a more restrictive LRE was and is necessary to enable him to make progress on his social-emotional and academic IEP goals. *FF #s 38-41*. The District, including School Psychologist and SSN Teacher, point to Student's progress on his goals in the 2023-2024 school year in support of the LRE. *Response*, pp. 6, 9; *Interviews with School Psychologist and SSN Teacher*; see *Interview with Director*.
61. Parent makes the exact opposite argument, stating that Student's lack of progress in those same goals over the course of the 2023-2024 school year demonstrates that the new LRE was and is inappropriate. *Reply*, p. 1; *Interview with Parent*.
62. The Record provides assessments for sufficiently similar tasks on four goals, from the end of the 2022-2023 school year through part or all of the 2023-2024 school year, to allow the SCO to consider whether the more restrictive LRE has enabled Student to make progress. See *Exhibit I*, pp. 20-26, *Reply Exhibit 3*, pp. 1-9, *Exhibit A* pp. 51-58.
63. First, the Record provides assessments regarding Student's social-emotional goal to transition from a preferred to a non-preferred activity (Goal 1 on the 2023 IEP, not included on the 2024 IEP, and monitored through January 25, 2024):
- a. June 2023 (end of first grade—this goal was not monitored in ESY): Student could transition with fewer than ten prompts in two out of five opportunities, with a range of three to ten prompts. *Exhibit I*, p. 20.
 - b. October 2023 (first quarter): School Psychologist reported that he “displayed some regression” and “requires more than 10 prompts.” *Id.*
 - c. December 2023 (second quarter): SSN Teacher reported that Student required four prompts or less in ten out of ten opportunities and that “over 10 opportunities, he required 20 prompts total . . . meeting this goal.” *Id.*; *Exhibit A*, p. 56.
 - d. January 25, 2024 (partial third quarter): SSN Teacher reported that, from January 18 through January 25, over six opportunities, he successfully transitioned four out of six times with fewer than ten prompts but required a total of thirty-two prompts across the opportunities, with a range of one to ten prompts. *Exhibit A*, p. 56.
 - e. The SCO finds that Student made progress in his overall rate of successfully transitioning but regressed in the number of prompts it took to achieve those transitions. Comparing June to January, he improved from 40% successful

transitions (2/5) to 66% successful transition (4/6). However, comparing the average-number-of-prompts metric used by SSN Teacher in December and January, he regressed from needing an average of 2 prompts per opportunity (20/10) in December to needing an average of 5.3 prompts per opportunity (32/6) in January.

64. Second, the Record provides assessments regarding Student's social-emotional goal to maintain attention on his task or actively participate with a teacher working on his task (Goal 2 on the 2023 IEP and Goal 1 on the 2024 IEP):

- a. July 2023 (ESY): Student could "participat[e] in teacher directed table activities for 15 min[utes] with unlimited adult prompting" before needing a two-minute break. *Exhibit I*, p. 21.
- b. October 2023 (first quarter): SSN Teacher had Student for only ten days when she reported first quarter progress on October 12, and she reported that he "show[ed] more on task behavior within the new SSN setting although he requires several prompts" and "does well most days with a verbal redirection and the use of his first/next visual schedule." *Exhibit I*, p. 21.
- c. December 2023 (second quarter): Student's "attentiveness" had "increased from 5 minutes to 30 minutes in one sitting, with a scheduled movement break in between." *Id.* at p. 21.
- d. March 2024 (third quarter): Student could "sustain attention on a task [for] a range of 2-3 minutes with adult assistance in 2 out of 10 tasks." *Reply Exhibit 3*, p. 1.
- e. May 2024 (fourth quarter): Student could "sustain attention on a task for a range of 2-5 minutes with adult assistance in 4 out of 10 tasks." *Id.*
- f. The SCO finds that Student did not progress meaningfully in his ability to stay on task from July 2023, when he could work on a task for fifteen minutes with unlimited prompting, to the end of the 2023-2024 school year, when he could work on a task for between two and five minutes with an unspecified amount of assistance.

65. Third, the Record provides assessments regarding Student's reading goal to identify letters and sight words (Goal 3 on both the 2023 and the 2024 IEPs):

- a. July 2023 (ESY): Student could "identify 26/26 letters in 4/6 opportunities measured" and "consisten[tly] identify 4/9 sight words when given two choices." *Exhibit I*, p. 22.

- b. October 2023 (first quarter): SSN Teacher did not report first-quarter progress because the report was issued only ten calendar days after Student joined her room. *Id.*
- c. December 2023 (second quarter): Student could identify “three word-choice sight words” 52% of the time and read those words during the reading group. *Id.* He could identify 26/26 letters of the alphabet, and he knew their sounds. *Id.*
- d. March 2024 (third quarter): Student could pair visuals with fourteen letters of the alphabet but not the rest. *Reply Exhibit 3*, p. 4. He could pair visuals with seven out of twenty sight words in eight out of ten trials. *Id.*
- e. May 2024 (fourth quarter): Student could pair visuals with fourteen letters of the alphabet, although he showed occasional success with five additional letters. *Id.* He could pair visuals with nine out of twenty sight words in eight out of ten trials. *Id.*
- f. The SCO finds that Student regressed in his ability to pair visuals with letters of the alphabet because he went from identifying all letters to consistently identifying only fourteen letters with occasional success on five letters, and he did not meaningfully progress in his ability to identify sight words because he scored 4/9 (44%) in his ESY assessment and 9/20 (45%) at the end of the 2023-2024 school year.

66. Finally, the Record provides assessments regarding Student’s mathematics goal to identify printed numbers and quantify numbers of objects (monitored as part of Goal 4 in both the 2023 and the 2024 IEPs):

- a. July 2023 (ESY): Student could identify printed numbers 1-10 and quantify objects to 30 with accuracy of 90%; although the ESY teacher did not report on his ability to identify numbers 11-20, he had just ended the school year completely unable to identify those numbers. *Exhibit 1*, p. 23.
- b. October 2023 (first quarter): SSN Teacher did not report first-quarter progress because the report was issued only ten calendar days after Student joined her room. *Id.*
- c. December 2023 (second quarter): Student could identify printed numbers 1-20 and quantify objects to 20 with 50% accuracy, although he required prompting and occasionally had to start over again. *Id.*
- d. March 2024 (third quarter): Student could identify nineteen of the numbers 1-20 when given two choices with prompting. *Reply Exhibit 3*, p. 5. He could quantify objects up to 10 with 70% accuracy. *Id.*

- e. May 2024 (fourth quarter): Student could identify nineteen of the numbers 1-20 when given two choices, with 86% accuracy. *Id.* He could quantify objects up to 10 with 75% accuracy. *Id.*
- f. The SCO finds that, on this goal, Student progressed with identifying numbers and regressed with quantifying objects. The metrics that were monitored—number of trials, number of choices, and accuracy—were inconsistent and inconsistently monitored, but the evidence strongly supports the conclusion that he began with no knowledge of the numbers 11-20 in July 2023 and had some grasp of those numbers at the end of the 2023-2024 school year. On the other hand, his ability to count appears to have regressed from quantifying up to 30 objects, then quantifying 20, and then quantifying only 10.

67. In light of this information, the SCO finds that Student’s performance does not support the District’s position that Student’s more restrictive LRE is necessary for him to progress. In the two areas where he did make progress relative to a known baseline—transitioning to non-preferred tasks and identifying numbers 11-20—the progress was offset by regression in related assessments, specifically by his need for an increased number of prompts to successfully transition and his gradual loss of the ability to quantify more than 10 objects.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District developed measurable annual goals for Student’s April 2023 IEP in the areas of reading, social-emotional learning, and mathematics, as required by 34 C.F.R. § 300.320.

Parent has alleged that Student’s April 2023 IEP was inadequate because his IEP goals were not sufficiently measurable. Parent has not stated a concern regarding Student’s February 2024 goals, which have superseded the April 2023 goals.

An IEP is “the means by which special education and related services are tailored to the unique needs of a particular child.” *Andrew F.*, 580 U.S. at 399 (2017). A substantively adequate IEP must be reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Id.*

Every IEP must include, as relevant here, measurable annual goals, including academic and functional goals, designed to meet the child’s needs that result from the child’s disability and thereby enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. § 300.320(a)(2). The goals must be clear and objectively measurable to allow for the evaluation of a student’s progress. *Kuszewski v. Chippewa Valley Schs.*, 131 F. Supp. 2d 926 (E.D. Mich. 2001), *aff’d*, 56 Fed. Appx. 655 (6th Cir. 2003) (unpublished).

The SCO finds and concludes that the April 2023 IEP goals comply with the law.

Each goal provides an auditable unit of measurement: Student was to be assessed on a number of occasions (“opportunities”), and the number of occasions on which he was assessed would be used as the denominator in calculating his success rate. (FF #s 25-28.) For example, in Goal 1, the teacher would pick five occasions each month when Student would transition, and the teacher would track Student on those occasions to see if he was able to successfully transition with fewer than ten, eight, or five prompts—with the expectation growing more difficult over twelve months. (*Id.*) If he was able to transition with fewer than that many prompts on three of the five occasions, he met his goal. (*Id.*) The other goals similarly provided auditable units of measurement and clearly stated skills that would be tested. (*Id.*) Further, each goal except for the fourth provided a baseline. (*Id.*) The fourth, a mathematics goal, was a new goal representing a new skill for Student; accordingly, the baseline was established with the first progress report. (*Id.*) Finally, the data monitoring required by the goals is sufficient to evaluate Student’s progress, as evidenced by the SCO’s use of the progress monitoring reports for each of these four goals to determine whether Student progressed or regressed in the more restrictive LRE of the SSN program. (See FF #s 59-67.)

For these reasons, the SCO finds and concludes that the District provided measurable annual goals for Student’s April 2023 in as required by 34 C.F.R. § 300.320.

Conclusion to Allegation No. 2: The District provided Parent with a meaningful opportunity to participate in the development, review, and revision of Student’s IEP in meetings on January 25, 2024, January 29, 2024, February 15, 2024, and February 26, 2024, as required by 34 C.F.R. §§ 300.116, 300.324, and 300.501.

Parent has alleged that the District did not allow her to meaningfully participate in the eligibility and IEP development meetings in January and February 2024.

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.” *Sytsema v. Acad. Sch. Dist. 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 District Schools Unified School District 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 School District RE-1*, 118 LRP 28108 (Colo. SEA March 22, 2018). But 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 (Calif. SEA May 5, 2015). “The IEP Team should work towards a general agreement, but . . . [i]f the team cannot reach agreement,” then “the public agency must determine the appropriate services.” *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

Here, the District provided over two hours across two meetings to discuss Student’s evaluation and eligibility, and the meetings involved thirteen individuals, including both Parents, Parents’ advocate, and Student’s private BCBA. (FF #s 45-47.) At these meetings, Parent had the opportunity to speak, ask questions, discuss her concerns, and the District and school staff answered her questions. (*Id.*)

The District provided over three-and-a-half hours across two meetings to discuss Student’s IEP with Parent as well as Parent’s advocate and Student’s private BCBA. (FF #s 48-53.) At these meetings, Parent again had the opportunity to speak, ask questions, and provide input, and the District and school staff responded to her questions. (*Id.*) On at least two issues, Parent’s view prevailed: Student’s sight-word reading goal, which the District and staff members of the IEP Team wanted to remove, was kept in the IEP; and the IEP goals were improved with longer, more specific definitions of terms compared to the prior IEP’s goals. (*Id.*) The issues of LRE, placement, and the location of Student’s services were not raised by Parent or her advocate. (FF # 53.)

In sum, the Record reflects that the District “was receptive and responsive” to Parent at the meetings. *R.L. v. Miami-Dade*, 757 F.3d at 1188. Although, as discussed below, it appears that the District restricted Student’s LRE because of his category of eligibility, Parent did not raise concerns about the issue of LRE at the IEP Team meetings, although the IEP Team did touch briefly on the topic in its review of Student’s IEP. (FF # 53.)

Accordingly, the SCO finds and concludes that the District provided Parent meaningful participation in the development, review, and revision of Student’s IEP in meetings on January 25, 2024, January 29, 2024, February 15, 2024, and February 26, 2024, as required by 34 C.F.R. §§ 300.116, 300.324, and 300.501.

Conclusion to Allegation No. 3: The District did not educate Student in his LRE in the 2023-2024 school year, because it did not ensure Student was educated to the maximum extent appropriate with students who are nondisabled, in noncompliance with 34 C.F.R. §§ 300.114 and 300.116. This resulted in a denial of FAPE.

Parent has alleged that the District’s movement of Student from the AN program to the SSN program resulted in an LRE that was more restrictive than appropriate for Student.

A. Legal Requirements for Determining LRE

“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). A child’s placement must be determined by the IEP Team (including parents), must be individualized, and must be based on the IEP. *Id.* § 300.116; ECEA Rule 4.03(8)(a); U.S. Dept. of Ed., *Questions and Answers (Q&A) on Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (Dec. 7, 2017). The IEP must include evidence that supports the student’s LRE placement. *See H.L. v. Downingtown Area Sch. Dist.*, 624 Fed. Appx. 64, 68-69 (3d Cir. 2015) (mem.).

The IEP Team must first consider placing a student with disabilities in the regular classroom. *Letter to Cohen*, 25 IDELR 516 (OSEP 1996). Before a student’s LRE may be changed to a more restrictive setting, the IEP Team must consider any supplemental aids and services that could facilitate the student’s placement in a less restrictive setting. *Id.* Any significant change in placement—such as the addition or termination of services, or a changed opportunity to participate in nonacademic activities—must be made upon consideration of reevaluation. ECEA Rule 4.03(8)(b)(ii)(B). Children with disabilities should be placed in separate schooling, or otherwise removed from the regular educational environment, only “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).

“In all cases, placement decisions,” which include determining a Student’s LRE, “must be individually determined on the basis of each child’s abilities and needs, and not solely on factors such as category of disability, significance of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience.” *Assistance to States for the Education of Children With Disabilities and the Early Intervention Program for Infants and Toddlers With Disabilities (“Assistance”)*, 64 Fed. Reg. 12472 (March 12, 1999); *see also Educating Blind and Visually Impaired Students Policy Guidance*, 116 LRP 26254 (OSEP 2000) (observing that this rule applies to all students with disabilities); *Letter to Williams*, 21 LRP 2751 (OSEP 1994). A student may not be “removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.” 34 C.F.R. § 300.116(e).

Here, although Student’s LRE was first determined at the April 2023 IEP Team meeting, this issue is within the Complaint’s one-year time limitation because, first, a deficient IEP continues to violate the IDEA each day that a school district implements the IEP, allowing the one-year time limitation to begin as late as the final day the IEP is in effect, and, second, the LRE continued to be implemented with Student’s February 2024 IEP. *Weld County Sch. Dist. 6*, 81 IDELR 239 (Colo. SEA April 24, 2022).

B. The Determination of Student's LRE

When Student was transferred from the AN program to the SSN program, his LRE was reduced from 78% of his time in the general education environment to 44%. (FF # 39.)

The Record reflects that Student's LRE was reduced for reasons other than his individualized needs. (FF #s 13-18, 31-41, 43.)

The District proposes four reasons for restricting Student's LRE, but they are not supported by the Record:

First, the non-Parent members of the IEP Team decided to reduce Student's LRE because, in their view, he could be instructed under the EEOs only outside of the general education classroom, with SSN Teacher in the SSN classroom. (*Id.*) However, this is incorrect. Student had been instructed when he was in the AN program, with goals on the EEOs, through collaboration of the general education and special education teachers, who modified the general education curriculum to make it accessible to him. (*Id.*) General education and special education teachers may collaborate to modify a curriculum for the EEOs while tracking the topics of the general education curriculum. Although this may not be appropriate for every student, the determination must be made on an individualized basis.

Second, the IEP Team's determination that Student should be instructed and assessed according to the EEOs may not have been a decision based on Student's individual circumstances because, as discussed further below, the District places *all* children who are eligible under the Intellectual Disability category on the EEOs. (*Id.*) Contrary to what School Psychologist told Parent, the standard for being instructed under the EEOs is not the same standard as eligibility under the category of Intellectual Disability. See CDE, *Participation Guidelines: Alternate Academic Achievement Standards for Instruction and Alternate Assessment ("EEO Guidelines")* (Aug. 2015).⁵ Student may qualify for the EEOs, but the District must make that determination on an individualized basis rather than relying on Student's category of disability.

Third, the District has stated that removing Student from the general education classroom for instruction in the SSN classroom was necessary to enable him to make progress on his IEP goals. (FF #s 61-69.) However, Student's progress reports show that he did not make progress in the SSN classroom. (*See id.*)

Finally, School Psychologist stated that Student's short attention span and need for breaks meant he could not be instructed in the general education classroom. (*Id.*) But nothing explains why this should be so, given that he was in the general education classroom 78% of the time while attending the AN program. The District has not argued, and nothing in the Record suggests, that his attention span or need for breaks caused issues with that arrangement.

⁵ Available at <https://www.cde.state.co.us/cdesped/altstandsassessparticipationguidelines>.

The Record suggests that Student was removed from the general education environment solely for two reasons that were not based on Student’s individualized needs: workload and curriculum modifications. First, Director explained to Parent that, although it was possible to teach to the EEOs in the AN program, it was not “feasible given the caseloads.” (FF # 16.) The move to the SSN program allowed the work of curriculum modification to be centralized more efficiently. (*Id.*) The decision to restrict a student’s LRE cannot, however, be determined solely on the basis of the availability of the service, the configuration of the service delivery system, or administrative convenience. *Assistance*, 64 Fed. Reg. 12472. Second, all elementary school students who were to be instructed under the EEOs were placed in the same SSN program where they would all receive specialized instruction outside of the general education environment from one of the two SSN teachers, who were the only elementary school teachers in the District who could provide a curriculum modified for the EEOs. (FF #s 31-41.) But the IDEA does not allow a student to be placed in a more restrictive LRE solely to provide modifications to the general education curriculum. 34 C.F.R. § 300.116(e).

Although the District’s endeavors to allocate teaching resources efficiently are understandable, and CDE recognizes the challenges of staffing shortages that may be out of the District’s control, the IDEA has no exceptions to the core principle of individualization.

Accordingly, the SCO finds and concludes that the District did not ensure Student was educated to the maximum extent possible with students who are nondisabled, as required by 34 C.F.R. § 300.114.

C. Denial of FAPE

Procedural noncompliance of the IDEA may result in a denial of FAPE only to the extent that it (1) impeded the child’s right to a FAPE, (2) significantly impeded the parent’s opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *see Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 765-66 (6th Cir. 2001).

Here, removing Student from the general education classroom without proper justification impeded his right to a FAPE and caused a deprivation of educational benefit because he lost the ability to learn and socialize alongside his same-age, nondisabled peers. It also impeded Parent’s opportunity to participate in the decision-making process. Although Parent did not raise a concern about Student’s LRE at the IEP Team meetings within the complaint’s timeframe, Parent’s attempts to change Student’s placement outside of those meetings were foreclosed because of the District’s one-size-fits-all policy for students eligible under the category of Intellectual Disability. Accordingly, this noncompliance resulted in a denial of FAPE.

As a remedy, the SCO will order Student’s IEP Team to convene and reconsider Student’s correct placement, including his LRE, along with consideration of reevaluation, consistent with 34 C.F.R. §§ 300.114-117 and ECEA Rule 4.03(8).

Conclusion to Allegation No. 4: The District did not properly monitor Student’s progress and provide Parent with periodic reports on Student’s progress from May 1, 2023 to May 1, 2024, as required by 34 C.F.R. § 300.320(a)(3). This did not result in a denial of FAPE.

A parent’s right to participate in the development of their child’s educational program requires that they be regularly informed of progress toward IEP goals. *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1198 (9th Cir. 2017). For that reason, school districts must monitor students’ progress and periodically give parents a report of their student’s progress toward meeting annual goals, in accordance with the schedule described in the IEP. 34 C.F.R. § 300.320(a)(3).

Here, as the findings of fact show, the District did not fully monitor and report Student’s progress. (FF #s 56-60.) For four of the April 2023 goals, progress was not monitored, it was not reported, or it was not monitored and reported using the correct metrics. (*See id.*) Thus, the SCO finds and concludes that the District did not comply with 34 C.F.R. § 300.320(a)(3).

As noted above, procedural noncompliance of the IDEA may result in a denial of FAPE only to the extent that it (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); *Knable*, 238 F.3d at 765-66.

The Record does not show that the District’s noncompliance impeded Student’s right to a FAPE, significantly impeded Parent’s opportunity to participate in the decision-making process, or caused a deprivation of educational benefit. Parent met with school and District staff and discussed Student’s education extensively in meetings and emails throughout the semester. (*See, e.g.*, FF #s 43, 46, 50, 55.) Although the SCO has found that Student made little or no progress on several of his IEP goals, there is no evidence that this lack of progress was related to the lack of proper progress monitoring and reporting.

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

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

The District, as a systemic practice, determines that all elementary school children who are eligible under the category of Intellectual Disability will be instructed under the EEOs. (FF #s 16, 31-41.) However, a child’s placement, which includes their specialized instruction and curriculum,

must be individualized. 34 C.F.R. §§ 300.114-117, 300.320, ECEA Rule 4.03(8). The standard for placing a child on the EEOs is that the child must be eligible for special education under the category of Intellectual Disability and have a “significant cognitive disability,” which is not identical to the criteria for being eligible under the category of Intellectual Disability. *See EEO Guidelines*, pp. 1-2; *see also* CDE, *Guidelines for the Determination of Eligibility for a Child with an Intellectual Disability or Multiple Disabilities* (Sept. 2013).⁶

Given that the District provides instruction under the EEOs to elementary school children only in the SSN program, and only through the SSN teachers’ use of the Unique Learning System curriculum in a pull-out setting, the District is also systemically placing an upper limit on these students’ LREs solely to provide curriculum modifications, which is specifically prohibited by 34 C.F.R. § 300.116(e). (*See* FF #s 16, 31-41.) Some students eligible under the category of Intellectual Disability may need to learn in the SSN program using the Unique Learning System curriculum in a pull-out setting, but that determination must be made on an individual basis by asking whether “any supplemental aids and services . . . could facilitate the student’s placement in a less restrictive setting.” *Letter to Cohen*, 25 IDELR 516.

For these reasons, the SCO finds and concludes that the District systemically determines the placement of elementary school students who are eligible under the Intellectual Disability or Multiple Disabilities categories on the basis of those categories and not through considerations of those students’ individualized needs as required by 34 C.F.R. §§ 300.114-117, 300.320-324, and ECEA Rule 4.03(8).

REMEDIES

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

- a. Educating Student in his LRE in the 2023-2024 school year, as required by 34 C.F.R. § 300.114.
- b. Properly monitoring and reporting Student’s progress, as required by 34 C.F.R. § 300.320(a)(3).
- c. Systemically determining the placement of students who are eligible under the categories of Intellectual Disability or Multiple Disabilities based on those eligibility categories rather than those students’ individual circumstances, inconsistent with 34 C.F.R. §§ 300.114-117, 300.320, and ECEA Rule 4.03(8).

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

⁶ Available at https://www.cde.state.co.us/cdesped/guideliensfordeterminationeligibility_id_md.

1. Corrective Action Plan

- a. By **Friday, August 23, 2024**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the noncompliance noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the 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. Director, SSN Teacher, School Psychologist, and all case managers for all District elementary school students eligible for special education under the categories of Intellectual Disability or Multiple Disabilities must review this Decision. These same individuals must also review CDE’s guidance pertaining to the EEOs.⁷ The review of these documents must occur no later than **Friday, August 23, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, August 30, 2024**.
- b. If these individuals are no longer employed by the District, the District must substitute individuals occupying identical roles to demonstrate compliance with this remedy. If District no longer has any of these roles, District may substitute the individual occupying the role with similar responsibilities.

3. Reevaluation and Review of Students’ IEPs

- a. By **Friday, August 23, 2024**, the District must give CDE a draft of a letter. The letter will be sent to the parents of each elementary school student who (1) was eligible for special education under the categories of Intellectual Disability or Multiple Disabilities in the 2023-2024 school year, including students who have graduated to middle school for the 2024-2025 school year; or who (2) will be eligible under either of these categories and enrolled in elementary school in the 2024-2025 school year. These students are referred to as the “Affected Students.”
 - i. The letter will be sent along with a form seeking consent to reevaluate the Affected Students, and the letter will explain that the parents must provide their consent within 10 days.

⁷ *The Alternate Academic Achievement Standards and Alternate Assessment Participation Guidelines Worksheet* (Sept. 2015) and its companion document, *Participation Guidelines: Alternate Academic Achievement Standards for Instruction and Alternate Assessment* (Aug. 2015), both available at <https://www.cde.state.co.us/cdesped/instructionalstandards>. Both documents are attached to the transmittal letter conveying this Decision to the parties.

- ii. The letter will note that the reevaluation may be a review of existing evaluation data if the parents agree no further assessments are necessary.
 - iii. The letter shall notify the parents that their student was identified in a recent state complaint decision (with information on where to find the decision) as a student whose placement—including the student’s eligibility for the EEO academic standards, curriculum, program, and LRE—may not have been determined in accordance with the procedural requirements of the IDEA.
 - iv. The letter shall explain that the District is asking to reevaluate the Affected Student in preparation for an IEP Team meeting where the IEP Team will discuss whether the Affected Student’s placement—including the Affected Student’s academic standards, curriculum, program, and LRE—is appropriate for that Affected Student’s individualized needs, with consideration of the supplementary aids and services that might permit education in the regular classroom.
 - v. CDE will approve the draft letter, approve it with modifications, or reject it by **Friday, August 30, 2024**.
- b. By **Friday, September 6, 2024**, the District must send the approved letter to the parents of each Affected Student along with a form seeking consent to reevaluate the Affected Student.
- i. The District must translate the approved letter as necessary to provide it to parents with limited English proficiency in their native language.
 - ii. The District must send the letter via both email (if the parent has an email address) and postal mail.
 - iii. The District must simultaneously submit a signed assurance to CDE that the approved letters and consent forms were sent to the parents, along with a list of the parents’ names, students’ names, addresses, and the date that the letter and form was sent to each.
 - iv. If any parents refuse to sign the consent for evaluation within 10 days of receipt, the District will be excused from conducting the reevaluation or convening the Affected Student’s IEP Team in accordance with § 3(c), below, provided the District diligently attempts to resolve disagreements about the scope of the evaluation and to secure signatures, and documents such efforts. A determination that the District diligently attempted to secure consent for the reevaluation, and should thus be excused from evaluating an Affected Student, rests solely with CDE.

- v. For parents who sign the consent, the District must submit a copy of the signed consent to CDE within 7 days of receiving the signed consent.
- c. Each Affected Student’s reevaluation—which may be a record review if the parents agree no further assessments are necessary—must be completed, and the Affected Student’s IEP Teams must thereafter convene, at a mutually agreeable date and time, no earlier than the date of the trainings required by § 4, below, except as noted in § 3(c)(ii), and no later than **Friday, November 1, 2024**.
 - i. In consideration of the concerns identified in this Decision, the Affected Students’ IEP Teams must review and, as appropriate, revise the Affected Students’ IEPs to determine whether each Affected Student’s placement—including the Affected Student’s academic standards, curriculum, program, and LRE—was appropriate for that Affected Student’s individualized needs, with consideration of the supplementary aids and services that might permit education in the regular classroom.
 - ii. If an Affected Student’s reevaluation and review is due to occur prior to the date of the trainings required by § 4, below, then the reevaluation and review will fulfill this reevaluation-and-review remedy so long as the IEP Team documents that it considered whether the Affected Student’s placement—including the Affected Student’s academic standards, curriculum, program, and LRE—was appropriate for that Affected Student’s individualized needs, with consideration of the supplementary aids and services that might permit education in the regular classroom.
- d. A copy of each Affected Student’s evaluation, IEP, any notes from the IEP meeting, and any PWNs issued must be provided to CDE no later than **Friday, November 15, 2024**. CDE will determine, in its sole discretion, whether each IEP meeting complied with these requirements and whether the submitted IEP adequately addresses the Affected Student’s LRE and, if still determined to be eligible for the EEOs, the reason for this eligibility.
- e. If any parent has disenrolled their Affected Student from the District, then the District will be excused from completing the requirements of this section, Remedies § 3, for that Affected Student. The District must provide written documentation of the Affected Student’s disenrollment to CDE no later than **Friday, November 15, 2024**.

4. Training

- a. Director, SSN Teacher, School Psychologist, all members of Student’s IEP Team, and all case managers for all District elementary school students eligible for special

education under the categories of Intellectual Disability or Multiple Disabilities must complete training provided by CDE regarding LRE requirements. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy.

- b. Director, School Psychologist, all other school psychologists directly involved in determining eligibility for the Extended Evidence Outcome standards, and all elementary school special education case managers must complete training provided by CDE regarding eligibility for the Extended Evidence Outcome standards for instruction and assessment.
- c. Both trainings must be completed by **Wednesday, August 28, 2024**. 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 **Wednesday, September 4, 2024**.

5. **Procedure**

- a. By **Friday, November 8, 2024**, the District must submit a written procedure or guidance for determining whether students are eligible for the Extended Evidence Outcome standards. This guidance must comply with the IDEA's requirements that special education must be tailored to the individual student, as discussed in this Decision.
- b. The District can submit an existing procedure—such as an existing procedure within the District or one available from CDE—that meets these requirements, but it must be submitted to CDE Special Education Monitoring and Technical Assistance Consultant for review and approval prior to being finalized.
- c. By **Friday, November 22, 2024**, CDE will approve the District's draft procedure, approve it contingent upon the District's adopting CDE's revisions, or reject the procedure with guidance to the District on how they must be corrected.
- d. By **Friday, December 13, 2024**, the District must ensure that a copy of the approved procedures have been given to Director and all elementary school special education case managers.
- e. If CDE has not approved the District's draft procedures by November 22, 2024, CDE will order any further corrective actions that it deems necessary to fulfill the purposes of this section, Remedies § 5.

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

Colorado Department of Education

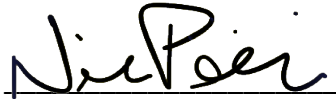
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

NOTE: If District does not meet any of the timelines set forth above, it may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE.

CONCLUSION

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

Dated this 30th day of July, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-12

- Exhibit 1: Progress Report
- Exhibit 2: Progress Report
- Exhibit 3: Various Documents

Response, pages 1-15

- Exhibit A: IEPs and Meeting Notes
- Exhibit A-1: Meeting Recording
- Exhibit A-2: Meeting Recording
- Exhibit C: Evaluations and Assessments
- Exhibit C-1: Meeting Recording
- Exhibit C-2: Meeting Recording
- Exhibit E: Documentation from IEP Team Meetings
- Exhibit F: Service Logs
- Exhibit G: Attendance Records
- Exhibit H: Behavior and Discipline Records
- Exhibit I: Report Cards and Progress Monitoring
- Exhibit I-1: Student Data
- Exhibit I-2: Student Data
- Exhibit I-3: Student Data
- Exhibit J: School Calendars
- Exhibit K: Communication Logs, Etc.
- Exhibit K-1: Meeting Recording
- Exhibit K-2: Meeting Recording
- Exhibit K-3: Meeting Recording
- Exhibit M: Policies and Procedures
- Exhibit N: Correspondence
- Exhibit Q: Class Schedules

Reply, pages 1-9

- Exhibit 1: Correspondence
- Exhibit 2: Correspondence
- Exhibit 3: Student Data

Telephone Interviews

- SSN Teacher: May 16, 2024
- School Psychologist: May 17, 2024

- Director: May 17, 2024
- AN Teacher: June 4, 2024
- Parent: June 10, 2024
- Kindergarten Teacher: June 28, 2024
- Kindergarten Case Manager: June 28, 2024
- First Grade Teacher: July 11, 2024
- Second Grade Teacher: July 11, 2024