

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

State-Level Complaint 2024:597
Denver Public Schools

DECISION

INTRODUCTION

On September 27, 2024, the Parents (“Parents”) of three students (“Student A,” “Student B,” and “Student C,” collectively, “Named Students”) identified as children with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Denver Public Schools (“District”). The Complaint also concerned the provision of special education services to sixth, seventh and eighth grade students with Individualized Education Programs (“IEPs”) at a District school (“School”) (collectively with Named Students, “Students”). The Colorado Department of Education (“CDE”) determined that the Complaint identified two allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the CDE has jurisdiction to resolve the Complaint.

The CDE extended the 60-day investigation due to exceptional circumstances on November 25, 2024, December 20, 2024, and January 7, 2025, consistent with 34 C.F.R. § 300.152(b)(1).

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

RELEVANT TIME PERIOD

The CDE has the authority to investigate alleged noncompliance that occurred no earlier than one year before the date the Complaint was filed. 34 C.F.R. § 300.153(c). Accordingly, findings of noncompliance shall be limited to events occurring after September 27, 2023. Information prior to September 27, 2023 may be considered to fully investigate all allegations.

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.

SUMMARY OF COMPLAINT ALLEGATIONS

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

1. District did not fully implement Students’ IEPs from August 19, 2024 to present, because it:
 - a. Did not make Students’ IEPs accessible to the teachers or service providers responsible for their implementation, as required by 34 C.F.R. § 300.323(d); and
 - b. Did not provide the specialized instruction from a special education teacher listed in Students’ IEPs, as required by 34 C.F.R. § 300.323(c).
2. District did not fully implement the IEPs of Named Students from August 19, 2024 to present, because it:
 - a. Did not provide the mental health services from a school psychologist listed in their IEPs, as required by 34 C.F.R. § 300.323(c);
 - b. Did not provide certain accommodations listed in their IEPs, as required by 34 C.F.R. § 300.323(c), specifically by:
 - i. Not providing Student A with extra time, predictive text, chunking of instructions, or access to breaks listed in his IEP;
 - ii. Not providing Student B with extra time, one-on-one or small group instruction, or clear step-by-step instructions listed in her IEP; and
 - iii. Not providing Student C with extra time, predictive text, chunking of instructions or the support of a mental health provider when speaking with adults in the school building listed in his IEP.

FINDINGS OF FACT

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

² The CDE’s state complaint investigation will determine if [District] complied with the IDEA, and if not, whether the noncompliance resulted in a denial of a FAPE. 34 C.F.R. §§ 300.17, 300.101, 300.151-300.153.

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

A. Background

1. At the start of the 2024-2025 school year, Students A, B and C attended sixth, seventh and eighth grade, respectively, at School. *Exhibit A*, p. 1; *Exhibit K*, p. 40; *Exhibit U*, p. 26. All three Named Students are eligible for special education services. *Id.*
2. In addition to Named Students, nineteen other Students were enrolled in middle school at School and entitled to instruction from a special education teacher at some point during the fall of 2024. *Exhibit KK*.

B. District's Approach to Special Education Teacher Vacancies

3. District has a standard operating procedure for tracking and responding to special education staffing vacancies ("Staffing SOP"). *Response*, p. 3; *Exhibit HH*, pp. 1-8. Under the Staffing SOP, building administrators must notify District of any vacancy expected to last more than 11 school days, by the 5th day. *Exhibit HH*, p. 3. District's human resources and talent acquisition teams then support building administrators in its efforts to hire replacements and procure coverage solutions such as long-term substitutes. *Id.*
4. Within 48 hours of receiving notice of a vacancy, District administrators send an email describing next steps, including scheduling a meeting with building administrators, District administrators and the school's special education instructional specialist ("SEIS"). *Id.* at p. 4; *Interview with District's Special Education Compliance Specialist ("SECS")*. The purpose of the meeting is to identify potential solutions to continue providing a free appropriate public education ("FAPE") or reduce the educational impact of the vacancy. *Id.*
5. The expectation is that a meeting date is identified within 48 hours and held within two weeks of when the school notified District of the vacancy. *Id.* Once an interim plan has been created, it should be reviewed every 30 days "to ensure fidelity and discuss potential need for revision." *Exhibit HH*, p. 5. All providers are required to maintain a service log throughout the staffing gap. *Id.*
6. District also has a Process for Determining Compensatory Services ("Compensatory SOP"). *Id.* at pp. 69-79. Once the staffing gap has been resolved, either through a full-time hire or the return of a teacher from leave, staff will consider the need for compensatory services. *Id.* at pp. 5-6. If the provisional plan was not an offer of FAPE, within two months of resolution, District will follow the Compensatory SOP to determine any awards. *Id.* at pp. 6, 69-79.

C. Special Education Teachers at School

7. On August 9, 2024, School's middle school special education teacher resigned. *Response*, p. 1. School started 10 days later, on August 19, 2024. *Exhibit GG*, p. 1. School also includes elementary school students. *Interview with principal of School ("Principal")*. School has one full-time special education teacher ("Special Education Teacher") and one part-time special education teacher for elementary school students. *Id.*

8. School reported the vacancy to District right away, and District responded with the standard next steps email. *Interview with SECS*. Due to delays in the coordination of the meeting, it was not held until September 25, 2024. *Id.* Schools and SEISs share responsibility for getting a meeting scheduled promptly. *Id.* However, this is a new SOP, so District is continually refining the process to ensure that everyone understands their responsibilities. *Id.* District has since adjusted some language in the guidance and initial emails to ensure that this type of delay does not recur. *Id.*
9. In the meantime, the vacancy was immediately posted. *Response*, p. 1; *Interview with Principal*. School tried contacting individuals on a District list of candidates and hiring through an agency, without success. *Id.* Principal invited numerous candidates for interviews, some of whom never responded and was not able to identify a qualified candidate until November 2024. *Interview with Principal*. The new, full-time, special education teacher will start by January 2025. *Id.*
10. From August 19 through October 2, 2024, a period of one and a half months or six and a half weeks, Students did not receive any direct special education instruction. *Interviews with Principal and Special Education Teacher; Exhibit GG*, p. 1.
11. After the meeting, on October 2, 2024, a District float special education teacher (“Float Teacher”) began providing instruction at School three days per week. *Id.* at p. 3; *Interview with Float Teacher*. During this time, she provided services as she was able, tracking them in District’s data management system, as required by Staffing SOP. *Interview with Float Teacher; Exhibit MM*. October 2 through October 28, 2024 is one month or three and a half weeks of school. *Exhibit GG*, p. 1.
12. As of October 28, 2024, Float Teacher is teaching full time at school, at least through the end of the semester. *Id.* Using a schedule created by School, she has been providing Students with all the specialized instruction required by their IEPs. *Interview with Float Teacher; Exhibit RR*.
13. As of November 15, 2024, Float Teacher had not done any progress monitoring for Students. *Interview with Float Teacher*. Instead, she was focused on providing as much support as possible. *Id.*

D. Teachers’ Awareness of Students’ IEPs

14. At School, special education teachers are responsible for ensuring that staff are aware of their responsibilities under students’ IEPs. *Interviews with Principal, Special Education Teacher and an English language arts (“ELA”) teacher (“ELA Teacher”) at School*.
15. Teachers receive copies of students’ IEPs or “IEP snapshots” at the start of the year. *Id.* IEP snapshots are an abbreviated form containing the most relevant information for general education teachers, including a student’s primary disability, goals and accommodations. *Interview with Special Education Teachers*. Staff also review and discuss the IEPs and how to

support students at meetings at the start of the year. *Interviews with Principal and ELA Teacher*.

16. This year, Special Education Teacher sent staff copies of the IEP snapshots for Students on the first day of school. *Exhibit PP*, pp. 1-4. Principal is a former special education teacher. *Interview with Principal*. During staff meetings at the start of the year, she reviewed Students' IEPs with all staff to talk about how to support everyone. *Interviews with Principal, ELA Teacher and a social studies teacher at school ("Social Studies Teacher")*; *Exhibit EE*, pp. 98, 101-102.
17. Teachers also received a spreadsheet that listed all Students and 27 common accommodations like speech-to-text, text-to-speech, extended time, graphic organizers, etc. *Interview with Principal*; *Exhibit PP*, p. 5. The spreadsheet indicated which Students required which accommodations. *Id.*
18. On October 3, 2024, Named Students' teachers received another copy of their IEP snapshots from an assistant principal ("Assistant Principal"). *Exhibit EE*, p. 16.

E. Mental Health Providers at School

19. District's IEP management system requires the IEP to specify that services will be provided by either a social worker or a school psychologist and does not allow for staff to select both or a more generic "mental health provider." *Interview with District's senior manager of elementary special education ("Senior Manager")*. If there is a staffing change, from one type of professional to another, staff are expected to amend the IEPs, using District's amendment procedures. *Id.*; *Exhibit HH*, p. 64, 80-83. Amendments must be made by the IEP team or via a written agreement between the parents and district. *Exhibit HH*, pp. 63, 82. Once open, amendments must be completed in two weeks. *Id.* at p. 83.
20. The mental health provider at School used to be a school psychologist ("School Psychologist"). *Response*, p. 3. However, School now employs a social worker ("Social Worker") instead. *Id.* Both professions are licensed mental health providers capable of providing counseling services. *Id.* at pp. 3-4; 34 C.F.R. § 300.34(c)(2), (10), (14); ECEA Rule 2.37(3)(b).
21. On August 19, 2024, Social Worker contacted Parents about modifying Named Students' IEPs to list social worker instead of school psychologist. *Exhibit QQ*, pp. 1-3; *Interviews with Parents and Social Worker*. Parents did not have a problem with this change. *Interview with Parents*. However, in her first year as a District employee, rather than a contractor, Social Worker was not exactly sure how to go about amending the IEPs after contacting Parents. *Interview with Social Worker*. She did not actually change the IEPs of Named Students until October 2024. *Id.*; *Exhibits E, O and Y*.
22. Social Worker tracks all her service minutes in a data management system. *Interview with Social Worker*. At the beginning of the year, because her schedule was shifting some, she took

notes by hand instead. *Id.* She eventually added the notes to the data management system, but still had some trouble adjusting entries to reflect schedule changes, so she clearly marked any resulting double entries. *Id.*

F. School's Late Work Policy

23. During and after Covid, School had been allowing all students to turn in assignments any time before the end of the grading period. *Interview with School's senior lead teacher ("Team Lead")*. However, this was causing a lot of stress for teachers and students, because students would wait till the end of the term to do all their work. *Id.*
24. To help students build work completion skills, for the 2024-2025 school year, School changed the universal policy to require that all work be submitted by the end of the grading unit, which is approximately four to six weeks. *Id.* School also added a new social emotional learning period each day. *Interview with Principal*. Three days per week, that time was used as a targeted study hall where students could complete work and get help as needed from any teacher in the building. *Id.*
25. This policy allowed for teacher discretion to adjust deadlines for individual circumstances like IEPs or attendance. *Interview with Team Lead*. In addition, after some students struggled with the first unit deadlines, School made adjustments on an as needed basis and gave some students, especially those on IEPs, extended deadlines through the end of the grading period. *Interview with Principal*.

G. Student A's IEP

26. At the start of the 2024-2025 school year, Student A's IEP was from November 8, 2023 ("Student A's IEP"). *Exhibit A*, p. 31.
27. Student A's IEP included a reading goal, a writing goal, a communication goal, a social and emotional wellness goal and a self-determination goal. *Id.* at pp. 43-45. It also included 28 accommodations. *Id.* at p. 46.
28. To address his social emotional needs, his IEP required 120 minutes per month ("MPM") of direct mental health services provided by a school psychologist to work on unspecified skills. *Id.* at pp. 49-50. Student A's IEP also required 30 MPM of indirect support from a school psychologist. *Id.* at p. 50.
29. To address his literacy needs, for the 2024-2025 school year, Student A's IEP required 300 minutes per week ("MPW") of direct services from a special education teacher inside of the general education classroom to work on "Functional Reading (Word recognition and comprehension) and Writing (formatting and spelling). *Id.* at pp. 49-50.

H. Implementation of Student A's Special Education Instruction

30. Float Teacher pushed into Student A's reading intervention class on October 2, 3 and 4, 2024, for a total of 175 minutes. *Exhibit G*, p. 3; *Exhibit I*, p. 2. She pushed in again on October 9, 17, and 18, for a total of 180 more minutes. *Id.*
31. Between the start of the school year and October 18, 2024, there were two months, or 9 weeks, of school. *Exhibit GG*, p. 1. At 300 MPW, Student A's IEP required 2,700 minutes of direct instruction in literacy inside general education. *Exhibit A*, p. 50.
32. The state complaints officer ("SCO") finds that Student A received a total of 355 minutes of direct instruction from a special education teacher between August and October 2024, or 13% of the services to which he was entitled.
33. There is no progress monitoring data for Student A from fall of 2024. *Exhibit J*, pp. 1-18.

I. Implementation of Student A's Mental Health Services

34. Social Worker first met with Student A as part of a 30-minute group on August 19, 2024. *Exhibit G*, p. 1. They began by talking about School Psychologist leaving without warning and getting to know each other. *Id.* Social Worker continued to meet with a group of students, including Student A, for 30 minutes each Monday. *Id.* On August 26 and September 9, 2024, the group worked on building trust. *Id.* They did not meet the week of September 2, 2024, because of Labor Day. *Id.*
35. It is important for a new mental health provider to spend time building rapport with students, because if they do not have a relationship with the student, nothing they teach later will have an impact. *Interview with CDE Content Specialist*. When services are provided in a group setting, it can also be important to teach them how to be part of the group, including how to be respectful and learn from each other. *Id.*
36. On September 16, 2024, the group spent 30 minutes reviewing and practicing social skills. *Id.* Over 30 minutes on September 23, 2024, Social Worker introduced a new curriculum focused on executive functioning that works on self-awareness, self-determination, teaching coping skills, breaking down how to set and achieve goals, increasing independence, changing behaviors in a prosocial way, problem solving and self-advocacy. *Id.*
37. On September 30, the 30-minute group lesson focused on flexible thinking and the impact of behavior on others. *Id.* They returned to the executive functioning curriculum on October 7, 2024, with a lesson on goal setting and flexible thinking. *Id.* at p. 2.
38. On October 17, 2024, Social Worker met with Student A and his siblings for 30 minutes to discuss anxiety and related coping strategies such as deep breathing. *Id.*

39. At 120 MPM, Student A's IEP required 240 minutes of direct instruction from a school psychologist in the first two months of school. *Exhibit A*, p. 50. The SCO finds that Student A received 60 minutes in August, 120 minutes in September and 60 minutes in October of direct instruction from a Social Worker, or a total of 240 minutes.

J. Implementation of Student A's Accommodations

Extended Time on Assessments and Assignments

40. Student A's IEP required "extended time on assessments and assignments." *Exhibit A*, p. 46.

41. Student A had extra time to turn in assignments in all his classes. *Interviews with ELA Teacher, Social Studies Teacher, and Team Lead*. If he did not complete an assignment before the end of a unit, it would be marked as incomplete, giving him the opportunity to submit the assignment later. *Interview with Social Studies Teacher*. Although he was permitted extra time in science, he did not always need it, and never needed past the end of a unit. *Interview with Team Lead*.

42. Parents did not know how to help Student A complete ELA or math assignments at home. *Interview with Parents*. They also observed Student A to be failing math assignments with a score of 2/5 because he did nothing more than put his name on the page. *Id.*

43. At the beginning of the year, Student A was failing math and ELA due to missing assignments. *Exhibit EE*, pp. 42-43. By the time Parents connected with his teacher for both classes ("Sixth Grade Teacher"), she had helped Student A find and submit multiple assignments, several of which were incomplete. *Id.* at p. 42. She offered to work with him during study hall to complete the work and gave him a folder to keep track of his assignments going forward. *Id.*

44. On October 3, 2024, Parents emailed Sixth Grade Teacher about two missing assignments. *Id.* at pp. 62-63. Principal advised Sixth Grade Teacher to tell Parents that students have until the end of a unit to turn in assignments, with no mention of an exception to that policy. *Id.* at pp. 62-64. However, Sixth Grade Teacher did provide Parents with information to help Student A complete one missing assignment. *Id.*

45. At the end of the quarter, Student A did not have any missing or incomplete assignments in ELA. *Exhibit 3*, pp. 1-2. His only missing assignments were from social studies. *Id.* at pp. 1-8. Ultimately, Student A only had a 2/5 on one math assignment. *Id.* at p. 3.

Word Prediction on the Computer to Support Written Expression

46. Student A's IEP required "word prediction on the computer to support written expression." *Exhibit A*, p. 46. The IEP team included "word prediction" in fourth grade when they were trying to get him access to a specific program. *Interview with Parents*. However, the intent was to ensure that Student A had access to speech-to-text. *Id.*

47. School got Chromebooks by September 3, 2024, but initially only had them in classes as needed. *Exhibit PP*, p. 21. On September 9, a Chromebook was assigned to each student. *Id.* at p. 19. Most students were not permitted to take them home this year because District would not be replacing lost or damaged devices. *Exhibit EE*, p. 101.
48. Starting in mid-September, all students at School had access to Chromebooks which provided access to speech-to-text, text-to-speech and word prediction. *Interview with ELA Teacher*. Student A's ELA assignments were often completed through a special curriculum program that also supported those accommodations. *Interviews with ELA Teacher and Sixth Grade Teacher*.
49. When they were completing paper assignments in reading intervention, ELA Teacher supported Student A with spelling and other writing supports as needed. *Interview with ELA Teacher*. Student A also had access to word prediction in science and social studies. *Id.*
50. From what Parents could see, Student A did not know how to use the speech-to-text support in the ELA program students were using. *Interview with Parents*.

Chunking of Large Writing and Reading Tasks

51. Student A's IEP required chunking of "large writing and reading tasks." *Exhibit A*, p. 46.
52. School's ELA program has chunking built into all lessons in a very structured manner. *Interview with Sixth Grade Teacher*. For instance, each unit ended with a three to five paragraph essay, and the ELA program walks students, including Student A, through a step-by-step process over five days to eventually create that essay. *Id.* Sixth Grade Teacher also provided Student A with support and guidance throughout that essay writing process. *Id.*
53. Social Studies Teacher would show Student A a priority list of tasks to complete and walk him through how to engage with assignments during their 1:1 check-ins. *Interview with Social Studies Teacher*. This included showing him the important parts to complete. *Id.*
54. Team Lead chunked all assignments based on her prior teaching experience. *Interview with Team Lead*. She would clearly direct students to the correct sections, telling them to ignore the rest. *Id.* She would also cross things off on Student A's assignments as needed. *Id.*

Opportunities for Physical and Cognitive Rest Breaks

55. Student A's IEP required "opportunities for physical and cognitive rest breaks." *Exhibit A*, p. 46. Previously, Student A had a pass to go to School Psychologist's office for breaks as needed. *Interview with Parents*. This year, he did not have anywhere to go for breaks. *Id.* Without breaks, Student A becomes distracted or unfocused in class. *Id.*

56. In his reading intervention class, Student A rarely sat at his desk. *Interview with ELA Teacher*. Instead, he stood or took movement breaks throughout the classroom. *Id.* All students in the class could also use a classroom pass to access breaks outside the classroom. *Id.*
57. Student A came to science from recess and was always focused. *Interview with Team Lead*. He never asked for breaks. *Id.* In social studies he would ask to get water or take breaks in the “cozy corner,” a break space in the classroom. *Interview with Social Studies Teacher*. He never struggled with emotional regulation in that class. *Id.*
58. Student A could take breaks in math and ELA by going to the bathroom, taking a walk or going next door to the special education classroom. *Interview with Sixth Grade Teacher*.

Avoiding Consequences that Remove Physical Activity

59. Student A’s IEP required “accountability/consequence practices that do not include removal of physical education or recess when possible.” *Exhibit A*, p. 46.
60. To comply with the READ Act, School created a reading intervention class to help students with read plans bridge the learning gap. *Interview with ELA Teacher*. Students reading significantly below grade level were placed in a class (“Intervention Reading”) with ELA Teacher to work on foundational skills. *Id.* Students in Intervention Reading work in small groups on various reading and writing projects. *Id.*
61. School has a block schedule where core classes meet daily, but electives meet every other day. *Id.*; *Exhibit I*, p. 2. There is one Intervention Reading class on both days of the block schedule, with students from all grades. *Interview with ELA Teacher*. Students were placed in a Reading Intervention class that did not conflict with band or a core subject. *Id.*
62. Student A was placed in an Intervention Reading class on September 23, 2024. *Exhibit I*, p. 2. This required him to miss physical education (“PE”) every other day. *Id.* Parents were not made aware of this schedule change. *Interviews with Parents and ELA Teacher*.
63. On October 2, 2024, Student A got in trouble with some peers over lunch. *Exhibit EE*, p. 93. As a result, Assistant Principal took away recess for all involved students, including Student A. *Id.* Principal addressed the matter with Assistant Principal, who had just returned from leave. *Exhibit EE*, pp. 29, 93. Nothing in the Record suggests that this ever happened again.

K. Student B’s IEP

64. At the start of the 2024-2025 school year, Student B’s IEP was from April 10, 2024, and had been amended June 5, 2024 (“Student B’s IEP”). *Exhibit K*, p. 20. Student B is “a very motivated student who has some perfectionist tendencies” resulting in anxiety and difficulties with behavior regulation across settings.” *Id.* at p. 24.

65. Student B's IEP included one reading goal and one social emotional goal. *Id.* at pp. 32-33. Her IEP also included 41 accommodations. *Id.* at pp. 33-34. Student B's accommodations did not require one-on-one or small group instruction. *Id.*
66. Student B's IEP required 30 MPW of direct mental health services from a school psychologist outside of general education. *Id.* at p. 36. These services would work on "problem solving skills, role-play scenarios around seeking assistance...and check in's (sic) around anxiety in the classroom." *Id.* Her IEP also required 30 minutes per quarter of indirect support from a school psychologist to consult with teachers and Parents and monitor her goals. *Id.*
67. To address her SLD, Student B's IEP required 150 MPW of direct specialized reading instruction in "phonological awareness, phonemic awareness, phonics, and decoding/encoding unknown words." *Id.* The service delivery statement ("SDS") indicated those minutes would be provided outside of general education, while the grid indicated that they would be provided inside of general education. *Id.*
68. Student B does not like feeling singled out, so she prefers to receive support outside of the classroom. *Interview with Parents.* During the 2023-2024 school year, Student B spent about 30 minutes per day with the former special education teacher, outside of general education. *Id.* She was always one of the first students to ask to go complete her ELA assignments in the special education teacher's classroom. *Interview with ELA Teacher.* The prior written notice ("PWN") in Student B's IEP did not indicate an intent to change her services to be provided inside of general education, and the least restrictive environment section indicated that the IEP team determined that Student B would benefit from academic support outside the general education classroom. *Exhibit K*, pp. 37-38.
69. Because Student B historically received academic instruction outside of general education and the IEP team intended for her to continue receiving that instruction, the SCO finds that the service grid in Student B's IEP reflects a clerical error while the SDS was correct. *Id.* at pp. 36-38. As such, the SCO finds that Student B was entitled to 150 MPW of direct instruction from a special education teacher outside of general education.

L. Implementation of Student B's Special Education Instruction

70. On October 2, 3, and 4, 2024, Float Teacher pushed into Student B's ELA class for three 30 minutes sessions, or a total of 90 minutes. *Exhibit Q*, p. 3. She provided 30 more minutes of direct instruction each day on October 9, 17, and 18, 2024. *Id.*
71. At 150 MPW, Student B's IEP required 1,350 minutes of direct instruction in literacy outside of general education between the start of the school year and October 18, 2024. *Exhibit K*, p. 36. The SCO finds that Student B received a total of 180 minutes of direct instruction from a special education teacher inside of general education between August and October 2024. *Exhibit Q*, p. 3. This amounts to 13% of the minutes to which she was entitled, albeit in the wrong location.

72. There is no progress monitoring data for Student B from the 2024-2025 school year. *Exhibit T*, pp. 1-11.

M. Implementation of Student B's Mental Health Services

73. Social Worker first met with Student B for 30 minutes as part of a group on August 21, 2024. *Exhibit Q*, p. 1. They began by talking about the School Psychologist leaving without warning and getting to know each other. *Id.* She was unable to meet with Student B on August 28, 2024, because Student B was out sick. *Id.*; *Exhibit S*, p. 1.

74. On September 4, 2024, Student B was part of another 30-minute group where participants played games and got to know one another. *Exhibit Q*, p. 1. During a 30-minute session on September 11, 2024, they continued to play games while reviewing coping skills. *Id.*

75. On September 18, 2024, the group met for 30 minutes and started a new executive functioning curriculum to improve self-awareness, self-determination, coping skills, goal setting, independence, problem-solving and seeking out help. *Id.* Social Worker missed the session on September 25, 2024. *Id.*

76. On October 2, 2024, the group spent 30 minutes watching videos and discussing flexible thinking and the impact of behavior on others. *Id.* On October 9, 2024, the 30-minute group started focusing on their primary skills around flexible thinking, kindness to self and others, goal setting and compromise. *Id.* at pp. 1-2.

77. On October 17, 2024, Social Worker met with Student B and her siblings for 30 minutes to discuss anxiety and related coping strategies such as deep breathing. *Id.* at p. 2.

78. At 30 MPW, in the first nine weeks of school, Student B's IEP required 270 minutes of direct instruction from a school psychologist. *Exhibit K*, p. 36. Overall, the SCO finds that Social Worker met with Student for 30 minutes in August, 90 minutes in September and 90 minutes in October. The SCO also credits Social Worker with an additional 30 minutes for the session Student B missed due to illness. Thus, the SCO finds that Student B received 240 minutes with Social Worker.

N. Implementation of Student B's Accommodations

Extended Time

79. Student B's IEP required extended time. *Exhibit K*, p. 33.

80. Student B generally submitted her ELA work on time. *Interview with ELA Teacher*. Whenever she fell behind, she was quick to get caught up. *Id.* She never submitted work after the end of a unit. *Id.* Student B went from loving to hating ELA this year because she never understood what she was supposed to be doing. *Interview with Parents*. Although she did not have any

missing assignments at the end of the term, she failed several. *Exhibit 3*, pp. 17-18. This resulted in Student B earning an A on ELA assessments but a D on assignments. *Id.*

81. Student B got extra time in social studies, including past the end of a unit when needed. *Interview with Social Studies Teacher*. Student B was generally doing very well on the assignments she completed and had few, if any, missing assignments at the end of the trimester. *Interview with Social Studies Teacher*.
82. Student B struggled more in math, earning a D on the assignments she submitted. *Interview with Team Lead*. School has struggled to hire and retain math teachers, leading to some vacancies. *Id.* Student B was missing some foundational skills, but her performance was comparable to that of her peers. *Id.*
83. On October 16, 2024, Student B had one outstanding assignment in an unspecified class and Parents wanted her to be able to retake a math test from early September. *Exhibit EE*, p. 233. Across all her classes, she had two missing assignments and one exempt assignment for the quarter. *Exhibit 3*, pp. 17-24.

Short and Simple Directions with Examples

84. Student B's IEP required "short and simple directions with examples" to address her social and emotional needs. *Exhibit K*, p. 34.
85. ELA Teacher provided shortened directions for the whole class and repeated them back. *Interview with ELA Teacher*. The online curriculum also provided simple directions. *Id.* After providing instructions, ELA Teacher would check in on Student B to ensure her understanding of assignments or provide corrections as needed. *Id.*
86. Social Studies Teacher provided clear directions on a slide deck that students could access after the lesson. *Interview with Social Studies Teacher*. Social Studies Teacher would also check in with Student B to see if she needed help. *Id.* In most cases, she had already finished the assignment, so he would help her with edits instead. *Id.*
87. Team Lead provided Student B with simplified verbal instructions in math. *Interview with Team Lead*. She walked students through multiple ways to solve a problem before giving them time to work independently. *Id.* During that time, she would go around to support students and cross off questions they did not need to complete. *Id.* Then they would come back together to review the questions and correct misconceptions. *Id.*

O. Student C's IEP

88. At the start of the 2024-2025 school year, Student C's IEP was from April 24, 2024 ("Student C's IEP"). *Exhibit U*, p. 1. Student C's IEP noted he struggled with positive peer interactions and with differentiating between peers laughing with him versus at him. *Id.* at p. 13. Student C required consistent support and redirection to stay focused on academic tasks. *Id.*

89. Student C's IEP included one math goal, one reading goal, one writing goal, one social emotional goal and one self-determination goal. *Id.* at pp. 16-18. His IEP included 40 accommodations. *Id.* at pp. 18-19.
90. Student C's IEP required 180 MPM of direct mental health services from a school psychologist outside of general education. *Id.* at pp. 22-23. His IEP also required 30 minutes per quarter of indirect support from a school psychologist to consult with teachers and Parents and monitor his goals. *Id.*
91. To address his SLD, Student C's IEP required 150 MPW of direct specialized literacy instruction in reading comprehension, fluency, word analysis and vocabulary inside the general education setting *Id.* His IEP also required 150 MPW of direct specialized math instruction in word problems, critical thinking and multi-step processes, to be provided inside the general education setting. *Id.*

P. Implementation of Student C's Special Education Instruction

92. On October 2, 2024, Float Teacher pushed in to Student C's ELA and STEAM classes for 30 minutes each. *Exhibit AA*, p. 6; *Exhibit CC*, p. 2. She did the same on October 3 and 4. *Exhibit AA*, pp. 5-6. All three hours were recorded as literacy instruction. *Id.*
93. On October 9, 2024, Float Teacher spent 35 minutes in Student C's ELA class working on literacy instruction. *Exhibit AA*, p. 5. That same day, she spent 30 minutes in his STEAM class working on math. *Id.* On October 17 and 18, she again spent 30 minutes each in Student C's ELA and STEAM classes, all of which were recorded as direct literacy instruction. *Id.*
94. At 150 MPW each, between the start of the school year and October 18, 2024, Student C's IEP required 1,350 minutes of specialized instruction in literacy and 1350 minutes of specialized instruction in math. *Exhibit U*, p. 23. The SCO finds that Student C received a total of 335 minutes of direct literacy instruction and 30 minutes of direct math instruction from a special education teacher between August and October 2024, or 14% of the services to which he was entitled.
95. There is no progress monitoring data for Student C from the 2024-2025 school year. *Exhibit DD*, pp. 1-14.

Q. Implementation of Student C's Mental Health Services

96. Social Worker first met with Student C for 30 minutes as part of a group on August 20, 2024. *Exhibit AA*, p. 1. They began by talking about School Psychologist leaving without warning and getting to know each other. *Id.* On August 22, 2024, Student C participated in a 30-minute group with Social Worker, where they talked about the loss of the prior school psychologist and worked on building trust. *Id.* On August 27, 2024, Student C was part of another 30-minute group where participants played games and got to know one another. *Id.* During a 30-

minute session on August 29, 2024, they continued to play games while getting to know other group members. *Id.*

97. Between September 3 and September 10, 2024, Student C participated in three more 30-minute groups spent getting to know each other. *Id.* He missed a group on September 12, 2024, because he was absent. *Id.* at pp. 1-2; *Exhibit CC*, p. 1. On September 17, 2024, the group met for 30 minutes and played a game to practice coping skills. *Exhibit AA*, p. 2.
98. On September 19, Student C's 30-minute group started working on a new executive functioning curriculum. *Id.* On September 24, 2024, the 30-minute group watched videos and discussed their message around flexible thinking and the impact of behavior on others. *Id.* Social Worker missed the session on September 26. *Id.*
99. Student C missed the session on October 1 because he was absent. *Id.*; *Exhibit CC*, p. 1. Student C's 30-minute group on October 3, 2024, started with the first lesson on goal setting and discussed the primary skills on which the group would work. *Exhibit AA*, p. 3. This lesson continued on October 8, where they discussed the importance of flexibility. *Id.* There was no school on October 10 and Social Worker was absent on October 15. *Id.*
100. On October 17, 2024, Social Worker met with Student C and his siblings for 30 minutes to discuss anxiety and related coping strategies such as deep breathing. *Id.* at p. 3. Student C also participated in a 30-minute group where they talked more about flexible thinking and specifically the use of plan A/plan B to be flexible. *Id.*
101. At 180 MPM, Student C's IEP required 360 minutes of direct instruction from a school psychologist. *Exhibit U*, p. 23. Student C's IEP required 45 MPW and another Student's IEP required 60 MPW, so Social Worker created a second weekly group with the two of them to meet their needs. *Interview with Social Worker*. To meet the minutes in the other Student's IEP, the two groups totaled 60 MPW. *Id.*
102. Overall, the SCO finds that Social Worker met with Student for 120 minutes in August, 180 minutes in September and 120 minutes in October. The SCO also credits Social Worker with an additional 60 minutes for the two sessions Student C missed due to absences. Thus, the SCO finds that Social Worker provided Student C with 480 minutes of direct instruction.

R. Implementation of Student C's Accommodations

Extra Time to Complete Assignments and Tests

103. Student C's IEP required "extra time to process information" and "extra time to complete assignments and tests." *Exhibit U*, pp. 18-19.
104. Student C struggled to keep up with his assignments without the support of a special education teacher. *Interview with Parents*. In science and social studies, he was allowed extra

time to finish assignments, including past the end of the unit on occasion. *Interviews with Parents, Social Studies Teacher, and Team Lead.*

105. However, in ELA especially, Student C never seemed to know what assignments he had or when they were due. *Interview with Parents.* Parents also could not find any due dates or other information in School's online system. *Id.*
106. Student C had extra time, until the end of a unit, to submit assignments in ELA. *Interview with ELA Teacher.* ELA Teacher would not accept and grade any work from Student C if it was submitted after the end of the unit. *Interviews with Parents and ELA Teacher; Exhibit 4, p. 2.* Rather than grading them, at the end of the term ELA Teacher excused three assignments Student C had turned in after the end of a unit. *Exhibit 3, p. 9; Exhibit 9, p. 1.*

Speech-to-Text

107. Student C's IEP required speech-to-text and text-to-speech but did not require "predictive text." *Exhibit U, pp. 18-19.* Student C needed speech-to-text, or what Parents thought of as "predictive text," to help with written expression and particularly his spelling. *Interview with Parents.*
108. Once they got Chromebooks, Student C had access to speech-to-text and text-to-speech on his device. *Interview with ELA Teacher.* Student C would sometimes decline to use his headphones, and thus text-to-speech. *Id.* However, during whole class reading, ELA Teacher would play the book for the whole class, including Student C. *Id.*
109. Student C's ELA class involved several assignments on paper. *Interview with Parents and ELA Teacher.* When students were working on handwritten assignments, including before they got Chromebooks, ELA Teacher would sit with Student C to provide support with writing and spelling. *Id.*
110. Parents did not have concerns about Student C's access to this accommodation in any other classes. *Interview with Parents.* Social Studies Teacher sometimes had to prompt Student C to use this accommodation, but doing so seemed to reduce Student C's stress. *Interview with Social Studies Teacher.*

Break Tasks and Activities into Smaller Parts

111. Student C's IEP required breaking down complex tasks into simpler ones to help him "process and retain information," and "break[ing] tasks and activities into smaller parts with feedback before moving on to new parts." *Exhibit U, p. 19.* School's former special education teacher would breakdown all of Student C's assignments into smaller parts and then help him complete them in her classroom. *Interview with Parents.*
112. This year, both Social Studies Teacher and Student C's science teacher chunked assignments for Student C. *Interviews with Parents and Social Studies Teacher.* For instance,

Social Studies Teacher would check in with him and tell him what to complete within a given period of time. *Interview with Social Studies Teacher.*

113. Student C's ELA class used an online program that automatically chunked assignments for all students. *Interview with ELA Teacher.* ELA Teacher also turned on an additional setting that provided more chunking and other accommodations for Student C. *Id.*
114. Student C's math class involved a mix of instruction followed by independent work. *Interview with Team Lead.* During independent work, Team Lead would move through the classroom telling Student C, and others, which parts of the assignment to work on. *Id.* They also came back together as a class periodically to review the work they had completed. *Id.*

Mental Health Support for Conversations about Behavior Issues or Consequences

115. Student C can have difficulty telling a story coherently from start to finish. *Interview with Parents.* He also tends to agree to anything if he thinks he is in trouble. *Id.* With "access to his social/emotional accommodations" he was able to reflect on his actions and how he could approach scenarios differently in the future. *Exhibit U*, p. 13. When frustrated or angry, without his social/emotional supports, Student C would shut down. *Id.* at p. 14. He also struggled when approached by more than one adult when he thinks he is in trouble. *Id.* As a result, his IEP required that a mental health support be present for any conversations "dealing with any behavior issues or consequences/punishment." *Id.* at pp. 14, 19.
116. On September 10, 2024, Student C was "pantsexed" by a peer at the end of math class. *Exhibit EE*, p. 40. In response, Principal and School's school resource officer ("SRO") spoke with both Student C and the other student about the incident. *Exhibit EE*, pp. 38-39; *Interview with Principal.* Student C was not in trouble. *Interview with Principal.*
117. Principal thought that SRO was a safe person for Student C. *Id.* After learning from Parents that SRO was not a safe person for Student C in that context, she always made sure to have Social Worker or other mental health support present for any future conversations with Student C, even if he was not in trouble. *Id.*

S. Named Students' Grades

118. Parents indicate Named Students were not receiving their accommodations because they were failing their general education classes. *Reply*, p. 8. Parents expected that Named Students be given unlimited time to redo any assignment on which they had "received a grade below a C." *Exhibit EE*, 164. Parents told Principal they did not want Named Students to have any final grades lower than a C, which they said was "completely the fault of the school." *Id.* Principal responded that School had agreed not to give any Students an "F" for any first-quarter classes. *Id.* at p. 163.
119. Throughout the first quarter, Student A was coming home and having meltdowns from the stress of keeping up in school. *Interviews with Parents and Student A's private therapist*

(“Therapist”). Student A was very stressed about his bad grades throughout the term. *Interview with Therapist*. He was concerned he would not be eligible for sports, which are an important release for him. *Id.* Even since enrolling at a new school, his anxiety remains high because of the stress he experienced at School. *Id.*

120. Student A ended the quarter with an A in science, a C in social studies and Ds in math and ELA. *Exhibit 3*, p. 1-8.
121. Student B is hardworking but gets very anxious if she does not know what to do or how to complete the work. *Interview with Parents*. Throughout the first term, she felt like she was failing and was very stressed. *Id.* She broke out in hives for several weeks this fall, which Parents attribute to stress. *Id.*
122. At the end of the term, Student B had a C in ELA after getting an A on exams and a D for coursework, with no missing assignments. *Id.* at pp. 17-18. She also had a C in math, where she failed the exam but earned a B for coursework. *Id.* at pp. 18-19. She had an A in science and a B in social studies. *Id.* at pp. 19-22.
123. Student C ended the quarter with a D in math, including a failed test and five missing assignments, three of which were exempted. *Exhibit 3*, p. 9. He also had a D in ELA, with several failed tests and assignments as well as three exempted missing assignments. *Id.* at p. 10. He earned a C in science, with one exempted and one still missing assignment. *Id.* at pp. 11-12. He had a B in social studies, with one missing assessment and one missing assignment. *Id.* at pp. 12-13.
124. Parents asked that Named Students receive no grade for their core subjects, so that failing grades would not hinder their ability to enroll elsewhere. *Reply*, p. 10. Named Students’ final grades reflected “no grade” in all core classes and a “pass” on any electives that remained on their report card. *Id.*
125. Both “no grade” and “pass” means that a student took the class and got credit, but the class will not impact their GPA. *Interview with Principal*. However, students can still get “no grade” on a report card for a class they would have otherwise failed. *Id.*
126. Shortly after, the family moved and enrolled Named Students in another district, withdrawing from District effective October 28, 2024. *Response*, p. 2; *Interview with Parents*. However, Named Students stopped attending School after the morning of October 21, 2024. *Interview with Parents*.

T. Other Students at School

127. At the start of the school year, 19 other Students, in addition to Named Students, were entitled to instruction from a special education teacher. *Exhibit KK*. Student D was withdrawn in the first week. *Id.* Between August 19 and October 1, 2024, the other 18 Students (“Other

Students”) did not receive any direct instruction from a special education teacher, inside or outside of the general education setting. *Response*, p. 3.

128. Other Students’ IEPs required anywhere from 260 MPM to 900 MPW of direct instruction from a special education teacher, either inside or outside the general education setting to work on a variety of academic and self-determination goals. *Exhibit LL*, pp. 1-489. For instance, Student F required 200 MPM of direct instruction inside the general education setting to work on three academic goals and 60 MPM of direct instruction outside of general education to “support his goals and executive functioning skills.” *Id.* at p. 48. Several Students required 120-150 MPW of specialized instruction in math and/or literacy. *See, e.g., Id.* at pp. 63, 82, 99, 117, 467. Student G required 300 MPW each of direct instruction in reading, writing and math. *Id.* at p. 250.

129. Student E and Student F were withdrawn on September 26 and October 2, 2024, respectively. *Id.* From October 2 through October 28, 2024, the sixteen remaining Students (i.e., Students G-V, or “Remaining Students”), received some instruction from Float Teacher. *Exhibit MM*, pp. 1-42. During that time, Float Teacher was part-time and could not provide all the service minutes required by Remaining Students’ IEPs. *Response*, p. 3; *Interview with Float Teacher*.

130. Thus, the SCO finds that Other Students, did not receive direct instruction from a special education teacher consistent with their IEPs between August 19 and October 28, 2024. Overall, the SCO finds that Other Students received anywhere from 0-40% of the direct instruction from a special education teacher that was required by their IEPs.

131. Float Teacher has not conducted any progress monitoring for these Remaining Students. *Interview with Float Teacher*. School hopes to get some progress monitoring out by winter break. *Interview with Principal*. In addition, District updated the IEPs of six Remaining Students during this time. *Exhibit KK*. To do so, Special Education Teacher got progress monitoring data for those Students. *Interview with Special Education Teacher, See, e.g., Exhibit LL*, pp. 258-259. Of those six Students, two regressed on at least one goal, relative to June 2024. *Compare, Exhibit LL*, pp. 111, 319, 320 and *Exhibit OO*, pp. 40-45, 170. Three had not made any measurable progress on goals. *Compare, Exhibit LL*, pp. 74-76, 361, 397-398 and *Exhibit OO*, pp. 26-32, 179-181, 186-189. One, Student G, made progress on some objectives, but not the overall goals or several other objectives. *Exhibit OO*, pp. 119-127.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1(a): District made Students’ IEPs accessible to their teachers and service providers, as required by 34 C.F.R. § 300.323(d). District complied with the law.

Parents' concern is that without a special education teacher, District did not ensure that teachers and other service providers were aware of their responsibilities under Students' IEPs.

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

Here, Special Education Teacher sent snapshots of each Students' IEP to all their teachers on the first day of school. (FF # 16.) These "snapshots" included Students' goals and accommodations. (FF # 15.) Principal also reviewed Students' IEP supports with middle school teachers during staff meetings. (FF # 16.) Finally, teachers also received a spreadsheet that listed which Students required 27 of the most common accommodations, like speech-to-text and text-to-speech. (FF # 17.) Thus, the SCO finds and concludes that District ensured teachers were aware of their responsibilities under Students' IEPs, consistent with the requirements of 34 C.F.R. § 300.323(d).

Conclusion to Allegation No. 1(b): District did not properly implement the special education instruction listed in Students' IEPs from August 19 through October 28, 2024, as required by 34 C.F.R. § 300.323(c). This resulted in a denial of FAPE.

Parents' concern is that District did not provide Named Students, or the other Students at School, with direct instruction from a special education teacher.

A. Implementation of Named Students' Specialized Instruction

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." 34 C.F.R. § 300.323(c)(2). A student's IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). *Id.* The CDE recognizes the challenges districts are facing due to nationwide staffing shortages which are largely outside of their control. However, the IDEA does not excuse a district's obligation to implement an IEP based on staff shortages. *E.g., El Paso County School District 20*, 122 LRP 39732 (SEA CO 6/5/22) (finding an ongoing obligation to provide FAPE pursuant to a student's IEP during a staffing shortage); *See also In re: Student with a Disability*,

121 LRP 38674 (SEA KS 10/20/21) (finding an ongoing obligation to provide FAPE pursuant to a student’s IEP during a staffing shortage).

Here, Student A’s IEP required 300 MPW of direct instruction in reading and writing. (FF # 29.) Student B’s IEP required 150 MPW of direct instruction in reading outside of general education. (FF # 69.) Student C’s IEP required 150 MPW of direct instruction in reading and 150 MPW of direct instruction in math. (FF # 91.) From August 19 through October 2, 2024, these Students did not receive any direct instruction from a special education teacher. (FF # 10.) From October 2 through October 18, Students A, B and C respectively received 355, 180 and 365 minutes of direct instruction from Float Teacher, inside of general education. (FF #s 32, 71, 94.) Student B received services inside the general education setting, when they were required to be provided outside of general education. (FF #s 67-71.) However, given the confusing clerical error in Student B’s IEP and the short period of time Float Teacher was implementing it, the SCO still credits District with the 180 minutes provided by Float Teacher. (*Id.*)

After October 21, Named Students stopped attending School and were then withdrawn from District. (FF # 126.) Overall, the SCO finds that Named Students received 13 (Students A and B) or 14% (Student C) of the direct instruction from a special education teacher that was required by their IEPs. (FF #s 32, 71, 94.) Thus, the SCO finds and concludes that from August 19 through October 18, 2024, District did not implement the specialized instruction from a special education teacher listed in Named Students’ IEPs, as required by 34 C.F.R. § 300.323(c).

B. Materiality of Noncompliance for Named Students

Where the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, not implementing an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19. Not implementing a “material”, “essential”, or “significant” provision of a student’s IEP amounts to a denial of a FAPE. *See, e.g., Van Duyn ex rel. Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007) (concluding consistent with “sister courts . . . that a material failure to implement an IEP violates the IDEA”); *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022, 1027 (8th Cir. 2003) (holding that not implementing an “essential element of the IEP” denies a FAPE); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) (ruling that not implementing the “significant provisions of the IEP” denies a FAPE).

“A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.” *Van Duyn ex rel. Van Duyn*, 502 F.3d at 822. The materiality standard “does not require that the child suffer demonstrable educational harm in order to prevail. However, the child’s educational progress, or lack of it, may be probative of whether there has been more than a minor shortfall in the services provided.” *Id.*

However, not every deviation from an IEP’s requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. App’x 252, 260 (10th Cir. 2005) (holding that

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

Here, for six and a half weeks (almost two months) in a nine-month school year, Named Students did not receive any specialized instruction from a special education teacher. (FF # 10.) Then, for two and a half weeks they received less than half of the minutes to which they were entitled, and Student B received them in the wrong setting. (FF #s 30-32, 70, 71, 92-94.) Overall, in two months of school, they received just 13 or 14% of the special education instruction required by their IEPs. (FF #s 32, 71, 94.) There is no progress monitoring data for Named Students from this time. (FF #s 33, 72, 95.) However, Student A struggled with work completion throughout the term. (FF # 42-44.) This contributed to persistent high levels of stress and anxiety. (FF # 119.) He also earned D's in two core classes, including ELA. (FF # 120.) Student B was also struggling with stress, especially related to ELA coursework. (FF # 121.) She earned a D for ELA coursework and failed math exams. (FF # 122.) Student C ended the term with several failed or missing tests or assignments. (FF # 123.) Given the amount of missed specialized instruction, as well as Named Students' high levels of stress and their challenges in general education classes, particularly those in which they should have been receiving specialized instruction, the SCO finds and concludes that District's noncompliance was material and resulted in a denial of FAPE.

C. Other Students

i. Implementation of Special Education Instruction

Here, the IEPs of 18 Other Students required direct instruction from a special education teacher. (FF # 127.) However, without a licensed special education teacher, these Other Students also did not receive any direct instruction from a special education teacher from August 19 through October 2, 2024. (FF # 127.) Students E and F withdrew from School in the week leading up to October 2, 2024. (FF # 129.) Then, from October 2 through October 28, 2024, the 16 Remaining Students received some instruction from Float Teacher, but not all the services to which they were entitled. (FF # 129.) Other Students required anywhere from 260 MPM to 900 MPW of direct instruction from a special education teacher. (FF # 128.) The SCO finds that Other Students received 0-40% of the direct instruction from a special education teacher to which they were entitled. (FF # 130.) Thus, the SCO finds and concludes that District did not implement the IEPs of 18 Other Students, between August 19 and October 28, 2024, as required by 34 C.F.R. § 300.323(c)(2).

ii. Materiality of Noncompliance

The SCO must now determine whether this noncompliance was “material” and thus resulted in a denial of FAPE. *Woodstock Bd. of Educ.*, 370 Fed. App’x at 205. A student’s progress toward achieving annual IEP goals can show that an IEP implementation failure was not “material.” *Id.* Also, a minor discrepancy between the services provided and services required under an IEP is not enough to amount to a denial of FAPE. *T.M. v. Dist. of Columbia*, 64 IDELR 197 (D.D.C. 2014).

Here, the noncompliance lasted for two and a half months of a nine-month school year and involved an “essential element” of the IEPs of these Students. (FF # 127-130.); *See Neosho R-V Sch. Dist.*, 315 F.3d at 1027. Float Teacher did not conduct any progress monitoring for the 16 Remaining Students. (FF # 131.) However, Special Education Teacher conducted progress monitoring for six Remaining Students who required updated IEPs. (*Id.*) Of those six Students, two regressed, while three did not make any measurable progress and the last made limited progress on some objectives, without progressing on the annual goals. (*Id.*) Thus, the SCO finds and concludes that the noncompliance was material and resulted in a denial of FAPE for Other Students.

D. Compensatory Services for Named Students and Other Students

Compensatory services are an equitable remedy intended to place a student in the same position he would have been if not for noncompliance. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory services need not be an “hour-for-hour calculation.” *Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child, and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010).

Here, the SCO finds and concludes that an award of compensatory services is necessary to place Named Students and Other Students in the positions they would have been if not for noncompliance. In determining each award, the SCO considered the services required by each Students’ IEP, as well as the services provided by Float Teacher in the month of October. The SCO finds and concludes that Named Students and Other Students are entitled to direct instruction from a special education teacher to address progress on academic and/or self-determination goals, in the following amounts:

Student	Hours	Student	Hours
Student A	13	Student M	38
Student B	6.5	Student N	4.5
Student C	13	Student O	3
Student E	11.5	Student P	29.5
Student F	2	Student Q	15.5

Student G	37	Student R	12.5
Student H	16.5	Student S	8.5
Student I	7.5	Student T	17
Student J	14	Student U	31
Student K	14	Student V	14.5
Student L	5		

Conclusion to Allegation No. 2(a): District did not properly implement the instruction from a school psychologist listed in Named Students’ IEPs from August 19 through October 18, 2024, as required by 34 C.F.R. § 300.323(c). This did not result in a denial of FAPE.

Parents’ concern is that Named Students have been receiving services from a social worker, instead of a school psychologist.

A. Mental Health Provider Licensure

An IEP must include the special education and related services and supplementary aids and services that will be provided to allow the child to (1) attain the annual goals, (2) be involved and make progress in the general education curriculum and (3) participate in nonacademic activities. 34 C.F.R. § 300.320(a)(4). It must “include information about the services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46667 (August 14, 2006).

This statement, commonly known as a service delivery statement, must be sufficiently detailed for parents to understand what specific services and supports the school district is offering to provide. *Tamalpais Union Sch. Dist. v. D.W.*, 70 IDELR 230 (N.D. Cal. 2017) (noting that “Parents can’t make an informed decision on whether to accept a proposed IEP if the document includes only a vague description of the student’s services”); *see also Douglas Cnty. Sch. Dist.*, 118 LRP 35788 (SEA CO 7/6/18). The service delivery statement must clearly specify the amount and type of services that will be provided to a student. *Adams 12 Five Star Schs.*, 75 IDELR 86 (SEA CO 2019). This includes describing the setting in which a particular service will be provided. *See, e.g., S.H. v. Mount Diablo Unified Sch. Dist.*, 70 IDELR 98 (N.D. Cal. 2017) (finding that the district violated the IDEA when it failed to spell out whether the 40 minutes of speech and language services would be delivered to the student individually or in a group setting).

Here, Named Students’ IEPs required that they receive direct and indirect instruction from a school psychologist. (FF #s 28, 66, 90.) Instead, Named Students received services from Social Worker. (FF #s 20, 38, 78, 102.) Because Named Students’ IEPs required the provision of services from a school psychologist and they did not receive services from a school psychologist, the SCO finds and concludes that District did not implement the direct and indirect mental health services listed by Named Students’ IEPs, as required by 34 C.F.R. § 300.323.

B. Materiality of Noncompliance

The SCO must now determine whether this noncompliance was “material” and thus resulted in a denial of FAPE. *Woodstock Bd. of Educ.*, 370 Fed. App’x at 205. Counseling services are those provided “by qualified social workers, psychologists, guidance counselors, or other qualified personnel.” 34 C.F.R. § 300.34(c)(2); ECEA Rule 2.37. While there are differences in their ability to administer evaluations, there is no material difference in a qualified social worker or school psychologist’s ability to provide counseling services.

Here, Social Worker provided all the mental health services required by the IEPs for Student A and Student C. (FF #s 38, 102.) She also provided 240 of the 270 minutes (or 89%) required by Student B’s IEP. (FF # 78.)

The SCO finds and concludes that having a social worker, rather than a school psychologist, provide Named Students’ mental health services is a minor discrepancy and therefore not material. The SCO further finds and concludes that Student B not receiving 11% of her mental health services in two months was not material. Thus, the SCO finds and concludes that no denial of FAPE occurred.

The SCO recognizes that a lot of that time was spent on games and “getting to know you” exercises. (FF #s 34, 73, 74, 96, 97.) However, these exercises are important, to allow a new mental health provider to establish trust with students and to allow students to participate effectively in services that are provided in a group setting. (FF # 35.)

Conclusion to Allegation No. 2(b): District did not properly implement one of Student A’s accommodations on October 2, 2024, as required by 34 C.F.R. § 300.323(c). This did not result in a denial of FAPE.

Parents’ concern is that Named Students were not receiving certain accommodations. 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.” 34 C.F.R. § 300.323(c)(2). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2). *Id.*

A. Student’s A’s Accommodations

Student A’s IEP required extended time on assessments and assignments, word prediction to support written expression, chunking of large reading and writing tasks, opportunities for physical and cognitive rest breaks and avoiding consequences that remove physical activity. (FF #s 40, 46, 51, 55, 59.)

i. Extended Time on Assessments and Assignments

Student A's IEP did not specify how much extra time he required. (FF # 40.) Parents wanted Student A, and his siblings, to have unlimited time to complete assignments and the option to redo any assignment they failed. (FF # 118.) It is best practice for IEP teams to specify with accommodations like extended time, to avoid this type of confusion. However, allowing a student unlimited time to finish assignments can lead to a mounting pile of work the student can never keep up with. Thus, even in the absence of such specificity, the SCO finds that extended time does not mean unlimited time. Similarly, requiring that work be submitted by the end of a unit can be consistent with allowing extended time.

Student A got extra time in all his classes, completed all his ELA assignments and only failed one math assignment for the term. (FF #s 41-45.) Thus, the SCO finds and concludes that Student A received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

ii. Word Prediction on the Computer to Support Written Expression

Students at School had access to Chromebooks as needed on September 3, 2024, the third week of school. (FF #s 7, 47.) Student A had an assigned Chromebook for all classes by the middle of that month. (FF #s 47, 48.) It is normal to take a little time to organize and distribute resources at the start of the semester, especially as schedules may be adjusted frequently at that time.

Through the Chromebook, Student A had access to word prediction in all his classes. (FF #s 48, 49.) In reading intervention, when they worked on hardcopy assignments, ELA Teacher supported Student A with writing and spelling. (FF # 49.) Just as a human reader can be a reasonable implementation of text-to-speech, the SCO finds that this support from ELA Teacher was a reasonable alternative to speech-to-text and Student A's need for support with spelling. To the extent that Student A had trouble using the supports available on his Chromebook, that does not mean that he did not have access to them. (FF # 50.) This was likely another unfortunate consequence of the lack of direct special education instruction, which has already been addressed in Allegation No. 1(b).

Because Student A had access to word prediction on a computer for all but the first two weeks of school, the SCO finds and concludes that Student A received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

iii. Chunking of Large Writing and Reading Tasks

School's ELA program chunked reading and writing assignments in a consistent and structured manner for Student A. (FF # 52.) Team Lead and Social Studies Teacher also chunked assignments for Student A in their classes. (FF # 53, 54.) Thus, the SCO finds and concludes that Student A received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

iv. Opportunities for Physical and Cognitive Rest Breaks

Student A had access to breaks either inside or outside of all his classes. (FF #s 56-58.) Student A's IEP does not specify what his breaks will look like or indicate that they should be taken with a mental health provider. (FF # 55.) Just because he used to take his breaks with School Psychologist does not mean that his breaks could only be taken in that manner. (*Id.*) The SCO finds and concludes Student A received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

v. Avoiding Consequences that Remove Physical Activity

On September 23, 2024, Student A was placed in a reading intervention class that required him to miss PE every other day. (FF #s 60-62.) Student A's IEP does not require that he participate in PE every day. (FF # 59.) It just specifies that PE should not be taken away as a consequence for behavior. (*Id.*) Taking away PE to allow for additional reading instruction was not a consequence for behavior. Thus, the SCO finds and concludes that enrolling Student A in the reading intervention class was not inconsistent with his IEP.

On October 2, Student A lost recess as part of a group of students who got in trouble. (FF # 63.) Principal addressed this with Assistant Principal, and District has not suggested that an alternate consequence was not possible. (*Id.*) As such, the SCO finds and concludes that taking away Student A's recess on October 2 was not consistent with Student A's IEP, and thus results in noncompliance with 34 C.F.R. § 300.323.

vi. Materiality of Noncompliance

The SCO must now determine whether this noncompliance was "material" and thus resulted in a denial of FAPE. *Woodstock Bd. of Educ.*, 370 Fed. App'x at 205.

In this case, District did not implement one of Student A's accommodations on one day. (FF # 63.) Nothing in the Record suggests that it ever happened again. Thus, the SCO finds and concludes that this amounts to only a minor deviation from the requirements of Student A's IEP, and no denial of FAPE occurred.

B. Student B's Accommodations

Student B's IEP required extended time and "short and simple directions with examples." (FF #s 79, 84.) Her accommodations did not require one-on-one or small group instruction. (FF # 65.) To the extent that she should have been receiving direct instruction outside of general education, that concern has been addressed in Allegation No. 1(b).

i. Extended Time

Student B received extended time in all her classes. (FF #s 80-83.) Especially in the absence of special education instruction, the SCO finds that low grades and missing assignments are not necessarily evidence that a student is not receiving their accommodations. The fact that Student B earned a D on ELA course work and had a lot of stress about keeping up with her ELA assignments is likely a further consequence of the lack of direct special education instruction, which was addressed in Allegation No. 1(b). Because Student B received extended time, if not unlimited time, the SCO finds and concludes that Student B received this accommodation consistent with her IEP, as required by 34 C.F.R. § 300.323.

ii. Short and Simple Directions with Examples

Student received simplified directions in all her classes. (FF #s 85-87.) Considering this support, the SCO finds and concludes that Student B received this accommodation consistent with her IEP, as required by 34 C.F.R. § 300.323.

C. Student C's Accommodations

Student C's IEP required extra time for assignments and assessments, speech-to-text, breaking down complex tasks into smaller ones and mental health support for any conversations when dealing with behavior issues or consequences. (FF #s 103, 107, 111, 115.)

i. Extra Time

Student C received extra time, including occasionally past the end of a unit, in all of his classes. (FF #s 104-106.) Accordingly, the SCO finds and concludes that Student C received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

ii. Speech-to-Text

From the second week of school, Student C had access to a Chromebook which provided speech-to-text for written assignments in all his classes. (FF #s 7, 47, 48, 108-110.) When completing paper assignments, ELA Teacher provided Student C with comparable support for writing and spelling. (FF # 109.) Thus, the SCO finds and concludes that Student C received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

iii. Breaking Down Tasks

All of Student C's teachers, including Team Lead, Social Studies Teacher and ELA Teacher, broke down Student C's assignments into smaller parts. (FF #s 112-114.) Thus, the SCO finds and concludes that Student C received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

iv. Mental Health Support for Consequences

Parents' concern is that Principal did not have a mental health support person present when she talked with Student C about being "pantsed" by a peer. (FF # 116.) Student C was not in trouble, and there was no conversation about consequences for him. (*Id.*) Because Student C was not in trouble during that conversation, the SCO finds that this accommodation did not apply. In future conversations, even when Student C was not in trouble, Principal made sure to have Social Worker present, just in case. (FF # 117.) Thus, the SCO finds and concludes that Student C received this accommodation consistent with his IEP, as required by 34 C.F.R. § 300.323.

Systemic IDEA Noncompliance: This investigation does not demonstrate noncompliance that 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, as addressed in Allegation No. 1(b), due to a staffing shortage, the noncompliance with IEP implementation impacted Other Students and thus the SCO finds and concludes that it was systemic. (FF #s 127-131.) However, District has procedures for tracking and addressing staffing vacancies that impact the implementation of IEPs. (FF #s 3-6.) To the extent that there were delays in implementing those procedures in this case, District has already adjusted their practices. (FF # 8.) District also has written procedures to address any need for compensatory services after such a vacancy has been permanently resolved. (FF # 6.) Since District has written practices and procedures that they were following before this Complaint was filed—and the noncompliance for Other Students is addressed in this Decision—no further remedy is required.

REMEDIES

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

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

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

1. Corrective Action Plan

- a. By **Friday, February 14, 2025**, District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the noncompliance noted in this Decision.

The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Students and all other students with disabilities for whom District is responsible. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Final Decision Review

- a. District's Director of Special Education ("Director"), all Senior Managers, all SECSs, all SEISs, Principal, Assistant Principal and Social Worker must each read this Decision in its entirety, as well as review the requirements of 34 C.F.R. §§ 300.323 by **Friday, February 28, 2025**. If these individuals are no longer employed by the District, the District may substitute individuals occupying identical roles to demonstrate compliance with this remedy. A signed assurance that this information has been read and reviewed must be provided to the CDE by **Tuesday, March 4, 2025**.

3. Compensatory Services – Named Students

- a. Student A shall receive **13 hours of direct specialized instruction from an appropriately licensed special education teacher selected by District**. These services must be designed to advance Student A toward current annual IEP goals.
- b. Student B shall receive **six and a half hours of direct specialized instruction from an appropriately licensed special education teacher selected by District**. These services must be designed to advance Student B toward current annual IEP goals.
- c. Student C shall receive **13 hours of direct specialized instruction from an appropriately licensed special education teacher selected by District**. These services must be designed to advance Student C toward current annual IEP goals.
- d. All compensatory services must be provided to Named Students no later than **December 1, 2025**.
- e. By **Monday, February 17, 2025**, Parents shall provide written consent for the provision of compensatory services to the CDE and District. If Parents do not provide written consent for services by this date, District will be excused from providing compensatory services to Named Students. Unless otherwise specified by the District, this written consent shall be provided by Parents to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- f. If written consent for the provision of compensatory services is received by **Monday, February 17, 2025**, District shall schedule compensatory services in

collaboration with Parents. District shall submit the schedule of compensatory services to the CDE by **Friday, March 7, 2025**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.

- i. The parties shall cooperate in determining how compensatory services will be provided. If Parents refuse to meet with the District within this time, the District will be excused from delivering compensatory services, provided that District diligently attempts to meet with Parents and documents such efforts. A determination that District diligently attempted to meet with Parents and should thus be excused from providing compensatory services to Named Students, rests solely with the CDE.
 - ii. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - iii. While determining the schedule, Parents may opt out of some of the compensatory services. In that case, along with the schedule of services, District shall submit evidence of Parents written request to opt out of a specific amount of compensatory services.
 - iv. If the District and Parents cannot agree to a schedule by **Friday, March 7, 2025**, District and Parents must meet either in-person or via video conference to resolve scheduling complications by **Friday, March 14, 2025** and submit the schedule by **Wednesday, March 19, 2025**.
 - v. If the District and Parents cannot agree to a schedule by **Friday, March 14, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with Parents, including but not limited to, copies of correspondence sent to the Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Wednesday, March 19, 2025**.
 - vi. By **Friday, April 4, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services.
- g. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Named Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and

delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.

- h. To verify that Named Students have received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- i. These compensatory services will be in addition to any services Named Students currently receive, or will receive, that are designed to advance Named Students toward IEP goals and objectives. These compensatory services must be provided to Named Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Named Students are not deprived of the instruction to which they are entitled (including time in general education).
- j. If for any reason, including illness, Named Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parents, as well as notify the CDE of the change in the appropriate service log.

4. Compensatory Services for Other Students

- a. The following Students shall receive direct specialized instruction from an appropriately licensed special education teacher selected by District in these amounts: **Student E** (11.5 hours); **Student F** (2 hours); **Student G** (37 hours); **Student H** (16.5 hours); **Student I** (7.5 hours); **Student J** (14 hours); **Student K** (14 hours); **Student L** (5 hours); **Student M** (38 hours); **Student N** (4.5 hours); **Student O** (3 hours); **Student P** (29.5 hours); **Student Q** (15.5 hours); **Student R** (12.5 hours); **Student S** (8.5 hours); **Student T** (17 hours); **Student U** (31 hours); and **Student V** (14.5 hours). These services must be designed to advance Students toward current annual IEP goals.
- b. All compensatory services must be provided to Students no later than **December 1, 2025**.

- c. By **Friday, February 14, 2025**, District shall submit to CDE for review a draft letter to be sent to the parents of Students E through V (“Other Parents”). This letter shall notify Other Parents that their Student was identified in a recent state complaint decision (with information on where to find the decision) as a student who requires compensatory services as a result of a staffing vacancy, as identified in the decision.
 - i. This can be a form letter, but it must include an individualized section indicating the amount of compensatory services the Student was awarded in this decision.
 - ii. The letter must include a section requiring Other Parents to sign, acknowledging their receipt of the letter and understanding of its contents.
 - iii. The letter must include a section requiring Other Parents to consent to or opt out of the compensatory education services.
 - iv. CDE will approve the draft letter, approve it with modifications, or reject it by **Friday, February 21, 2025**.

- d. By **Friday, February 28, 2025**, District must send the approved letter to the Other Parents.
 - i. District must translate the approved letter as necessary to provide it to parents with limited English proficiency in their native language.
 - ii. District must send the letter via both email (if the parent has an email address) and postal mail.
 - iii. District must simultaneously submit a signed assurance to CDE that the approved letters were sent to Other Parents, along with a list of the parents’ names, students’ names, addresses, and the date that the letter was sent to each.
 - iv. If the Student no longer attends School but still attends school in the District, the letter must be sent to the parents by February 28, 2025.
 - v. If the Student no longer attends any school in the District, the letter must be sent to the parents’ last known address and email address and District must make reasonable attempts to reach them, including calling any last known numbers and contacting the Student’s last known AU of residence.
 - vi. If District is unable to reach parents whose Student no longer attends a school in the District, District will be excused from delivering

compensatory services for that Student, provided that District diligently attempts to reach parents and documents such efforts. A determination that District diligently attempted to contact parents of Students E through V, and should thus be excused from providing compensatory services, rests solely with the CDE.

- e. By **Friday, March 28, 2025**, Other Parents shall provide written consent for the provision of compensatory services to the CDE and the District. If Other Parents do not provide written consent for services by this date, the District will be excused from providing compensatory services. Unless otherwise specified by the District, this written consent shall be provided by parents to Director. District must then provide the written consent to CDE Special Education Monitoring and Technical Assistance Consultant.
- f. If written consent for the provision of compensatory services is received by **Friday, March 28, 2025**, District shall schedule compensatory services in collaboration with Other Parents. District shall submit the schedule of compensatory services to the CDE by **Friday, April 25, 2025**. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The schedule shall include the dates, times, and durations of planned sessions.
 - i. The parties shall cooperate in determining how compensatory services will be provided. If any Other Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services to that Student, provided that District diligently attempts to meet with Other Parents and documents such efforts. A determination that District diligently attempted to meet with Other Parents and should thus be excused from providing compensatory services to a specific Student, rests solely with the CDE.
 - ii. Any delay in beginning the provision of compensatory services must be approved by the CDE.
 - iii. While determining the schedule, Other Parents may opt out of some of the compensatory services. In that case, along with the schedule of services, District shall submit evidence of the Other Parents written request to opt out of a specific amount of compensatory services.
 - iv. If the District and Other Parents cannot agree to a schedule by **Friday, April 25, 2025**, District and Other Parents must meet either in-person or via video conference to resolve scheduling complications by **Friday, May 9, 2025** and submit the schedule by **Wednesday, May 14, 2025**.

- v. If the District and Other Parents cannot agree to a schedule by **Friday, May 9, 2025**, the District must submit to the CDE all documentation evidencing diligent attempts to schedule the compensatory services in collaboration with those Other Parents, including but not limited to, copies of correspondence sent to the Other Parents and any responses received (such as e-mails), contact logs (such as records of telephone calls made or attempted and the results of those calls), and meeting notes, by **Wednesday, May 14, 2025**.
- vi. By **Wednesday, May 28, 2025**, the CDE will, in its sole discretion, either determine the schedule for compensatory services or determine that District is excused from providing the compensatory services to that Student.
- g. Monthly consultation between the provider(s) delivering compensatory services and Director or the Director's Designee shall occur to evaluate Students' progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until all compensatory services have been furnished. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- h. To verify that Students have received the services required by this Decision, District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service must be included in the service log.
- i. These compensatory services will be in addition to any services Students currently receive, or will receive, that are designed to advance them toward IEP goals and objectives. These compensatory services must be provided to Students outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Students are not deprived of the instruction they are entitled to (including time in general education).
- j. If for any reason, including illness, Students are not available for any scheduled compensatory services, District will be excused from providing the service scheduled for that session. If for any reason District fails to provide a scheduled compensatory session, District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Other Parents, as well as notify the CDE of the change in the appropriate service log.

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

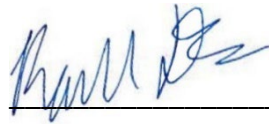
Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
201 E. Colfax Avenue
Denver, CO 80203

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

CONCLUSION

The Decision of the CDE is final and is not subject to appeal. *CDE 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 14th day of January, 2025.



Rachel Dore
Senior State Complaints Officer

APPENDIX

Complaint, pages 1-21

Response, pages 1-6

- Exhibit A: IEPs
- Exhibit B: None
- Exhibit C: Evaluation
- Exhibit D: None
- Exhibit E: Amendment
- Exhibit F: None
- Exhibit G: Service Logs
- Exhibit H: None
- Exhibit I: Student Detail
- Exhibit J: Progress Reports
- Exhibit K: IEPs
- Exhibit L: None
- Exhibit M: Evaluation
- Exhibit N: None
- Exhibit O: Amendment
- Exhibit P: None
- Exhibit Q: Service Logs
- Exhibit R: None
- Exhibit S: Student Detail
- Exhibit T: Progress Reports
- Exhibit U: IEPs
- Exhibit V: None
- Exhibit W: Evaluation
- Exhibit X: None
- Exhibit Y: Amendment
- Exhibit Z: None
- Exhibit AA: Service Logs
- Exhibit BB: None
- Exhibit CC: Student Detail
- Exhibit DD: Progress Reports
- Exhibit EE: Correspondence
- Exhibit FF: Providers
- Exhibit GG: District Calendar
- Exhibit HH: District Procedures
- Exhibit II: Contacts
- Exhibit JJ: Verification of Delivery to Parents
- Exhibit KK: List of Students

- Exhibit LL: IEPs
- Exhibit MM: Service Logs
- Exhibit NN: Attendance
- Exhibit OO: Progress Reports
- Exhibit PP: Accommodations
- Exhibit QQ: Contact Logs
- Exhibit RR: Float Teacher Schedule

Reply, pages 1-11

- Exhibit 1: Doctor's Notes
- Exhibit 2: Correspondence
- Exhibit 3: Grades
- Exhibit 4: Correspondence
- Exhibit 5: Correspondence
- Exhibit 6: Correspondence
- Exhibit 7: Warning
- Exhibit 8: Correspondence
- Exhibit 9: Correspondence
- Exhibit 10: Grades
- Exhibit 11: Verification of Delivery to District

Telephone Interviews

- Parents: November 14, 2024
- ELA Teacher: November 15, 2024
- Social Studies Teacher: November 15, 2024
- Team Lead: November 15, 2024
- Float Teacher: November 15, 2024
- Social Worker: November 15, 2024
- Special Education Teacher: November 15, 2024
- Senior Manager: November 18, 2024
- Principal: November 18, 2024
- SECS: November 18, 2024
- Other Parent: December 12, 2024
- Therapist: December 13, 2024
- Sixth Grade Teacher: December 18, 2024