

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

State-Level Complaint 2021:532
Colorado Springs School District 11

DECISION

INTRODUCTION

On November 30, 2021, the parent (“Parent”) of two students (collectively, “Students”) identified as children with disabilities under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Colorado Springs School District 11 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified three allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153. Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. §300.153(c), the Colorado Department of Education (“CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. Accordingly, this investigation will be limited to the period of time from November 30, 2020 through November 30, 2021 for the purpose of determining if a violation of IDEA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District violated the IDEA and denied Students a free appropriate public education (“FAPE”) because the District:

1. Failed to develop, review, and revise IEPs tailored to the individualized needs of Student A and Student B from November 30, 2020 to present, in violation of 34 C.F.R. §§ 300.324(a)-(b), specifically as follows:

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.

- a. Students' annual goals did not adequately address Students' behavior that interfered with learning; and
 - b. Students' behavioral strategies and supports, specifically Students' behavior intervention plans, did not adequately address their behavioral needs.
2. Failed to properly implement the IEPs for Student A and Student B from August 16, 2021 to present, in violation of 34 C.F.R. § 300.323, specifically by:
 - a. Failing to provide Student A and Student B with the adult supervision and support required by their IEPs.
 3. Failed to educate Students in the Least Restrictive Environment ("LRE") from August 16, 2021 to present, in violation of 34 C.F.R. §§ 300.114(a) and 300.320(a)(5), specifically by:
 - a. Removing Students from the general education environment due to staffing issues.

FINDINGS OF FACT

After thorough and careful analysis of the entire record,² the SCO makes the following FINDINGS OF FACT ("FF"):

I. BACKGROUND

1. Both Students attend a District elementary school ("School"). *Interview with Parent*. Parent filed this Complaint on behalf of Students, who are siblings. *Id.*
2. Student A is in third grade at School and eligible for special education and related services under the disability category of Traumatic Brain Injury. *Exhibit A*, p. 49. He enjoys time with his peers and has a good sense of humor. *Interviews with Parent, Third-Grade Teacher, and Case Manager*. He is interested in trucks and the moon. *Id.* In the classroom, Student A has difficulty staying on task and struggles with work completion. *Id.* As a result of his disability, Student has physical limitations. *Id.* He often refuses to perform physical tasks (citing his physical limitations), even though he is capable of completing the task. *Id.*
3. Student B is in fifth grade at School and eligible for special education and related services under the Multiple Disabilities category. *Exhibit I*, p. 35. Student B is caring and enjoys making others laugh. *Interviews with Parent, Fifth-Grade Teacher, and Case Manager*. He likes

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

dinosaurs and animals. *Id.* In the classroom, Student B displays work avoidance behaviors and needs consistent enforcement of expectations. *Id.*

II. 2020-2021 SCHOOL YEAR

4. Student A and Student B attended School during the 2020-2021 school year. *Interview with Parent.*

A. Student A's 2020 IEP

5. Student A's IEP dated October 13, 2020 ("October 2020 IEP") was in effect for the majority of the 2020-2021 school year. *Exhibit A*, pp. 48-94.

6. The portion of the October 2020 IEP regarding present levels of performance indicated Student A was a "most willing student" with a positive attitude. *Id.* at p. 56. Compared to same-aged peers, Student A's academic performance was "low." *Id.*

7. The October 2020 IEP acknowledged that, as a result of his disabilities, Student A performed below grade-level expectations and struggled to stay on task. *Id.* at p. 58. His physical limitations impacted his ability to access his education and complete self-care tasks. *Id.*

8. The October 2020 IEP contained 15 annual goals in the areas of reading, writing, math, speech, mobility, handwriting, typing, access skills, and social-emotional skills. *Id.* at pp. 60-82. One of the annual goals targeted Student A's ability to independently complete tasks: "When given instruction to complete a task, [Student] will first attempt a task/demand before asking an adult for help to increase his self-care independence during eight out of ten opportunities, for three consecutive weeks." *Id.* at p. 74.

9. The October 2020 IEP identified extensive accommodations designed to help Student A access the curriculum. *Id.* at pp. 83-84. The accommodations were organized into four categories: environment, instruction/presentation, equipment/materials, and behavior/social. *Id.* The curriculum was modified to Student A's instructional level. *Id.*

10. Under the October 2020 IEP, Student A received the following special education and related services:

- Specialized Instruction:
 - Math: Three hours per week of direct specialized instruction in math provided by a special education teacher inside or outside the general education classroom; and
 - Reading and Writing: Five hours per week of direct specialized instruction in reading and writing provided by a special education teacher inside or outside the general education classroom.

- Speech: Two hours per month of direct speech services outside the general education classroom.
- Occupational Therapy: 1.6 hours per month of direct occupational therapy services outside the general education classroom.
- Physical Therapy: 0.75 minutes per month of direct physical therapy services outside the general education classroom.
- Social-Emotional Instruction: 0.50 minutes per week of direct social-emotional instruction provided by a counselor, social worker, or psychologist outside the general education classroom.

Id. at pp. 87-92. Additionally, Student A received indirect consultative services from a special education teacher, speech therapist, occupational therapist, teacher of the visually impaired, physical therapist, and social worker. *Id.*

11. The October 2020 IEP required Student A to have “[c]onstant adult supervision and support (bell to bell), provided by the special education team, across all educational settings, for safety, functional skills, educational support, social and behavioral support, and facilitation of independence and self-advocacy skills.” *Id.* at p. 87. The IEP detailed the IEP Team’s intent behind the adult supervision:

The adult will assist [Student A] with general education curriculum access and implement accommodations and modifications to activities to ensure [Student A] can fully participate alongside peers. Supporting adult will provide reinforcement of on-task behaviors, focus on instructional activities and lessons, encouragement and facilitation of participation in peer group activities.

Id.

12. Per the October 2020 IEP, Student A spent 40% to 79% of his time in the general education environment. *Id.* at p. 93.

13. At Student A’s annual review meeting in October 2020, the IEP Team—including Parent—agreed that Student A was not demonstrating any behaviors that necessitated a behavior intervention plan (“BIP”). *Interviews with Case Manager and Parent; see also Exhibit R*, pp. 2, 7. At that time, Student A had recently returned to in-person instruction after several months of remote instruction due to the COVID-19 pandemic. *Interview with Parent.*

14. Student A’s existing BIP was from 2018 when Student A transitioned from preschool to kindergarten. *Exhibit B*, pp. 2-5. That BIP targeted behaviors that Student A no longer displayed, such as putting his mouth on peers. *Id.* In 2019, Student A’s IEP Team updated the date on the BIP without making any substantive changes. *Interviews with Case Manager and Parent.*

15. Even though the IEP Team determined that Student A did not need a BIP, Case Manager updated the date on the BIP and left it in place as a “maintenance goal and plan.” *Interview with Case Manager; Exhibit R*, p. 7. Case Manager reasoned that leaving the BIP in place would prevent the need for completing a Functional Behavior Assessment (“FBA”) if Student needed a BIP in the future. *Interviews with Case Manager and Parent*.

B. Student B’s 2020 IEP

16. Student B’s IEP Team conducted his annual review in December 2020, resulting in an IEP dated December 17, 2020 (“December 2020 IEP”). *Exhibit I*, pp. 33-74.

17. The portion of the December 2020 IEP regarding present levels of performance indicated Student B had been “more motivated” to complete difficult tasks and had demonstrated less attention-seeking behaviors than in the past. *Id.* at pp. 38-39. Academically, Student B performed “well below” grade-level standards. *Id.*

18. The December 2020 IEP acknowledged that Student B’s disabilities resulted in language difficulties, cognitive delays, developmental delays, and sensory regulation difficulties, all of which impacted Student B’s educational performance. *Id.* At p. 42.

19. The December 2020 IEP contained 13 annual goals in the areas of reading, writing, math, speech, organization, academic access skills, and social-emotional skills. *Id.* At pp. 44-64. One of Student B’s annual goals targeted his independence when completing academic tasks by requiring him to complete a math task without a visual reminder to stay on task. *Id.* at p. 55.

20. The December 2020 IEP identified extensive accommodations designed to help Student B access the curriculum. *Id.* at p. 65. The accommodations were organized into four categories: environment, instruction/presentation, equipment/materials, and behavior/social. *Id.* The curriculum was modified to Student B’s instructional level. *Id.*

21. Under the December 2020 IEP, Student B received the following special education and related services:

- Specialized Instruction:
 - Math: Five hours per week of direct specialized instruction in math provided by a special education teacher inside or outside the general education classroom; and
 - Reading and Writing: Five hours per week of direct specialized instruction in reading and writing provided by a special education teacher inside or outside the general education classroom.
- Speech: Four hours per month of direct speech services outside the general education classroom.

- Occupational Therapy: 1/2 hour per month of direct occupational therapy services outside the general education classroom.
- Social-Emotional Instruction: Two hours per month of direct social-emotional instruction provided by a counselor, social worker, or psychologist outside the general education classroom.

Id. at pp. 68-72. Additionally, Student B received indirect consultative services from a special education teacher, speech therapist, and occupational therapist. *Id.*

22. The December 2020 IEP required Student B to receive “[c]onstant adult supervision and support (bell to bell), provided by the special education team, in the general education setting, throughout the school day.” *Id.* at p. 69. This support was designed to allow Student B to “access the general education curriculum and receive specialized instruction in the general education classroom, implement accommodations and modifications in order for [Student B] to fully participate with his same age peers.” *Id.* The support was to include “reinforcement of on-task behaviors” and “[p]rovision of behavioral supports.” *Id.*

23. Per the December 2020 IEP, Student B spent 40% to 79% of his time in the general education environment. *Id.* at p. 73.

24. As with Student A, Student B’s IEP Team, including Parent, decided at Student B’s annual review meeting in December 2020 that Student B was not demonstrating any behaviors that necessitated a BIP. *Interviews with Case Manager and Parent*. Student B’s existing BIP was developed in 2019. *Interview with Case Manager*.

25. Despite the IEP Team’s determination, Case Manager updated the date on the BIP without making any other substantive changes. *Id.* Again, Case Manager reasoned that leaving the BIP in place would eliminate the need to complete an FBA if Student B needed a BIP in the future. *Id.*

C. District Policy on BIPs

26. The District does not have a written policy regarding BIPs generally, including review of BIPs. *Interview with Special Education Facilitator (“Facilitator”)*. Under District procedure, IEP Teams review BIPs annually, along with a student’s IEP. *Id.* In reevaluation years, the District typically completes an FBA to determine whether the target behaviors have changed. *Id.*

27. When a student no longer requires a BIP, the BIP should be ended. *Interviews with Executive Director of Special Education (“Executive Director”) and Facilitator*. If a student needed a BIP at a later date, a new FBA would be completed to guide development of the BIP. *Id.*

D. Students' Behavior

28. During the 2020-2021 school year, neither Student A nor Student B had any major behavioral issues. *Interviews with Case Manager and Fifth-Grade Teacher.* Though Student A demonstrated some work avoidance behaviors, he was, generally, more successful at staying on task and being independent. *Interview with Case Manager.* None of Student A's behaviors interfered with his learning. *Id.*

29. Fifth-Grade Teacher—who also taught Student B for fourth grade—reported that Student B had a great fourth-grade year. *Interview with Fifth-Grade Teacher.* Student B refused to do his work from time-to-time but, overall, stayed focused and got his work done. *Id.* He also demonstrated less attention-seeking behaviors than he had in the past. *Id.* Student B's behaviors did not interfere with his learning. *Id.*

III. 2021-2022 SCHOOL YEAR

30. Case Manager acts as case manager for both Students and provides Students' specialized instruction. *Interview with Case Manager.* Before the 2021-2022 school year began, Case Manager gave a snapshot of Students' IEPs to their teachers and service providers. *Id.* Students' teachers and service providers were informed of their responsibilities under Students' IEPs. *Id.*; *Interviews with Third-Grade Teacher and Fifth-Grade Teacher.*

A. Paraprofessional Shortage

31. The District allocated five paraprofessionals to School for the 2021-2022 school year. *Interviews with Facilitator and Principal.* Even before the school year began, School had a shortage of paraprofessionals. *Interview with Principal.*

32. When school began on August 16, 2021, only two of the five paraprofessional positions were filled. *Id.* It is unclear why the District was unable to fill the remaining positions, though District staff attributed this difficulty to the COVID-19 pandemic and the low pay for paraprofessionals in the District. *Interviews with Executive Director and Principal.*

33. At the time, Student A's October 2020 IEP and Student B's December 2020 IEP were in effect. *Interview with Case Manager.* These IEPs required that Student A and Student B receive constant adult supervision by members of the School's special education team from bell-to-bell. *Id.*

34. Without additional paraprofessional support, School staff knew they could not meet all the needs of School's students. *Interviews with Case Manager and Principal.* Before the first day of School, the special education team met to determine how to allocate the available paraprofessional support. *Id.* The team prioritized safety, considering students who were medically fragile or required assistance in the bathroom. *Interview with Principal.* Next, the team considered students' annual IEP goals and where support was necessary for those goals.

Id. Finally, the team looked at schedules (of students, staff, and grades) to put the “puzzle pieces” together. *Id.*

35. Based on these considerations, the team decided to provide more paraprofessional support to Student A than to Student B. *Interviews with Case Manager and Principal.* Historically, Student B had been more difficult for paraprofessionals to manage than Student A. *Interview with Case Manager.* When Student B had a paraprofessional he did not know, his behaviors escalated. *Interviews with Case Manager and Fifth-Grade Teacher.* If the paraprofessional hesitated in holding Student B to his expectations, Student B seized the opportunity and the paraprofessional lost all credibility with him. *Id.* Staff hoped that Student B’s familiarity with his classroom and his teacher (which were the same as fourth grade) would help him succeed even without paraprofessional support. *Interview with Case Manager.*

B. Student A’s Schedule

36. In August, Student A’s schedule was as follows:

<u>Third Grade</u>	<u>Student A</u>
8:15-9:15 Intervention Time	8:00-8:15 Morning work with a paraprofessional
	8:15-9:15 Reading with Case Manager
9:15-10:00 Literacy	9:15-9:30 Snack/Bathroom with Case Manager
	9:30-10:00 In class with a paraprofessional
10:05-11:00 Specials	10:05-11:00 Specials with a paraprofessional
11:00-11:45 Science/Social Studies	11:00-11:30 Lunch with special education team
11:45-12:25 Lunch/Recess	11:30-12:00 Recess with special education team, break, free time, bathroom
	12:00-12:30 Recess with paraprofessional
12:25-2:50 Math	12:30-1:15 in class without a paraprofessional
	1:15-2:30 Math and writing with Case Manager, afternoon snack break

Exhibit R, p. 239. Student A was in general education without the support of a paraprofessional for 45 minutes each day. *Id.* Case Manager provided Student with specialized instruction for

approximately two hours a day (or 10 hours per week). *Id.* This was two hours more specialized instruction per week than required by Student A’s October 2020 IEP. *Exhibit A*, pp. 87-92.

37. Under this schedule, Student A ate lunch with other students with disabilities under the supervision of School’s special education teachers. *Interview with Case Manager*. Student A then had recess with the special education team, before joining his third-grade classmates for a second recess at 12:00. *Id.* As a result, Student A missed Science and Social Studies in the general education classroom. *Id.*

38. By mid-October, Student A requested to eat lunch with his class. *Id.*; *Exhibit R*, p. 25. Case Manager modified his schedule to accommodate this request. *Interview with Case Manager*. Under the new schedule, Student A was without paraprofessional support in the general education classroom from 9:20-9:30, 11:00-11:30, and 1:15-2:00, for a total of nearly one and a half hours per day. *Interview with Case Manager; Exhibit R*, p. 25.

39. In late-October or early-November, Paraprofessional—who was providing the majority of Student A’s support—resigned from her position. *Interview with Principal*. This departure left School scrambling to provide coverage to Student A. *Interviews with Case Manager and Principal*.

40. Eventually, the School was able to replace Paraprofessional’s support through a hodgepodge of support from substitute paraprofessionals, an English Language Learner paraprofessional, and other School staff. *Id.*

C. Student B’s Schedule

41. At the beginning of the 2021-2022 school year, Student B followed this schedule:

<u>Fifth Grade</u>	<u>Student B</u>
8:00-8:15 Morning Meeting	8:15-10:00 In class without a paraprofessional
8:15-9:10 Science/Social Studies	
9:10-10:05 Specials	
10:05-11:15 Math	10:00-11:00 Reading with Case Manager
11:15-11:35 Lunch	11:00-11:30 Lunch with special education team
11:35-11:55 Lunch Recess	11:30-12:00 Recess with special education team
11:55-12:15 Finish Math (or begin Literacy)	12:00-1:15 In Class without a paraprofessional

12:15-1:15 Reading and Writing (including a 10-minute recess)	
1:15-2:15 Intervention Time	1:15-2:30 Math and Writing with Case Manager, afternoon snack break

Exhibit R, p. 239. Under this schedule, Student B was in general education without the support of a paraprofessional for two and a half hours per day. *Id.* Student B received two hours and fifteen minutes of specialized instruction from Case Manager each day, for a total of 11 hours and fifteen minutes per week. *Id.* This was more than the 10 hours required by Student B’s IEP. *Exhibit A*, pp. 68-72.

42. Student B’s schedule remained unchanged throughout the fall, in that he was not receiving any support from the special education team in the general education classroom. *Interviews with Case Manager and Fifth-Grade Teacher.*

D. Escalating Behaviors

43. Meanwhile, in the midst of the ongoing (and worsening) paraprofessional shortage, Students’ behaviors began to escalate. *Interviews with Case Manager and Fifth-Grade Teacher.* Student A started avoiding his work with increasing frequency. *Interviews with Case Manager and Third-Grade Teacher.* Typically, Student A sat at his desk and gave the appearance that he was working. *Interview with Case Manager.* However, Student A was not actually engaged or completing any work. *Id.* Instead, Student A sat at his desk indefinitely, waiting on someone to prompt him to do his work. *Id.* At times, Student verbally refused to complete his work. *Id.* Student A also complained about illness as a way to avoid his work. *Id.; Interview with Third-Grade Teacher.*

44. At the same time, Student B started displaying work-avoidance behaviors and attention-seeking behaviors. *Interviews with Case Manager and Fifth-Grade Teacher.* These behaviors started smaller—such as running in the hallway when instructed to walk—and escalated to becoming physical with peers. *Interview with Parent.* In September, Student B hit another student during field day without any provocation. *Interview with Case Manager.* Among other incidents of physical aggression, Student B used behaviors to seek attention from his peers that interfered with his learning and that of his classmates. *Interview with Fifth-Grade Teacher.*

45. Later in the fall, Student B began to leave the classroom without permission. *Interview with Case Manager.* Fifth-Grade Teacher would not notice that Student B eloped, and he would later be found roaming the halls or in the library. *Interviews with Case Manager and Parent.* Later in the semester, Student B left the classroom and went to the bathroom. *Id.* In the bathroom, Student B dumped out bathroom cleaner, looked under a stall at a peer, and threw a library book in the toilet. *Id.* On one day, Student B eloped from the general education classroom three times before 9:10 a.m. *Exhibit R*, p. 113.

E. Parent's Request for Outside Support

46. As Students' behaviors escalated, Parent grew more and more concerned about the lack of support Students were receiving in their general education classrooms. *Interview with Parent*. In September 2021, Parent suggested the District bring Students' outside ABA-therapy provider ("Outside Therapist") into the School to support Students in the classroom. *Interviews with Parent and Principal*. Parent did not intend for Students to receive ABA-therapy at School. *Interview with Parent*. Instead, Parent thought that Outside Therapist—who was already familiar with Students' behavioral issues—might be able to temporarily provide the level of support offered by a paraprofessional. *Id.*

47. After much back and forth, the District ultimately denied Parent's request in November 2021. *Interviews with Executive Director, Parent, and Principal*. The District issued a Prior Written Notice indicating that:

[The District] does not contract with BCBA/ABA therapists/centers or other professional level service providers to act as [paraprofessionals] in schools, especially for specific students they service in a private setting. BCBA/ABA therapists are trained to perform a specific set of clinical services to address needs identified in a private therapy setting, not educational assistant duties.

Exhibit E, p. 4.

48. The District offered Parent no other alternatives to address the paraprofessional shortage and its impact on Students. *Interview with Parent*. School staff were constantly evaluating ways they could provide more support to their students. *Interviews with Principal, Case Manager, and Parent*. School staff and Parent felt that the District provided little, if any, assistance (such as by shifting a paraprofessional from another school). *Id.*

F. Student A's Annual IEP Review

49. On or around October 12, 2021, the District convened Student A's IEP Team for his annual review. *Interview with Case Manager*. The IEP Team agreed that Student A's special education and related services should remain mostly the same, including his need for constant adult supervision and support from a member the special education team. *Exhibit A, pp. 2-46.*

50. During the meeting, Parent expressed concerns about how the limited paraprofessional support had impacted Student A's ability to participate in the general education curriculum. *Id.* at p. 9. Parent renewed her request for the District to contract with Outside Therapist to provide support to Student A at School. *Interviews with Case Manager and Parent*.

51. Given Student A's escalating behavior, Parent also requested that the IEP Team develop a new BIP for Student A. *Interview with Parent; Exhibit A, p. 9.* The IEP Team agreed to conduct

a new FBA and develop a BIP for Student A. *Interview with Parent; Exhibit A*, p. 9. Parent provided consent for the FBA on October 26, 2021. *Exhibit E*, p. 2.

52. As late as mid-January 2022, Student A's IEP remained in draft form. *Interviews with Case Manager and Parent*. Case Manager did not finalize the IEP because Parent wanted clarification on what level of support the District was going to provide Student A (and whether that support would come from Outside Therapist). Given the District's denial of Parent's request in November, it is unclear why the IEP was not finalized.

53. Even though Student A's IEP has not been finalized, Student A's IEP Team began working on his new annual goals immediately following the October IEP Team meeting. *Interview with Case Manager*.

54. Upon the District's request, Parent agreed to provide the District additional time to complete Student A's FBA and BIP. *Interview with Parent*.

55. Behavior Interventionist completed Student A's FBA in early January 2022. *Interview with Behavior Interventionist*. A draft BIP had been prepared that was to be finalized in mid-January. *Id.*; *Interviews with Case Manager and Parent*. During her interview, Parent expressed her agreement with the proposed BIP (at least as a starting point). *Interview with Parent*.

G. Student B's Annual IEP Review

56. Student B's IEP Team convened on or around December 14, 2021 for his annual IEP review. *Interview with Case Manager; Exhibit I*, pp. 2-31. During the meeting, the IEP Team did not have enough time to complete Student B's annual review and was scheduled to reconvene in late January. *Interview with Parent*. Regardless, the IEP Team determined that Student B needed a new BIP and agreed to conduct an FBA for that purpose. *Id.*

57. To date, the FBA has not been completed and no BIP has been developed. *Interview with Case Manager*.

H. Students' Current Status

58. All staff agreed that the 2021-2022 school year has been a challenge—both academically and behaviorally—for Students. *Interviews with Case Manager, Fifth-Grade Teacher, and Third-Grade Teacher*.

59. Case Manager prepares material for Students to complete in the general education classroom. *Interview with Case Manager*. Due to the paraprofessional shortage, Case Manager intentionally selects work that is below Students' skill level so that they can do it "very quickly and with no help." *Id.*; *Exhibit R*, p. 27.

60. As of November 1, Third-Grade Teacher reported that Student A “ha[d] not done any work independently.” *Exhibit R*, p. 27. Third-Grade Teacher indicated that, during the fall, she was not familiar with Student A’s abilities and, as a result, unable to determine what work was appropriate for Student A. *Interview with Third-Grade Teacher*. She, therefore, relied on the work prepared by Case Manager, which did not always align with the material being taught in the general education classroom. *Id.*

61. According to Fifth-Grade Teacher, Student B rarely participates in class and “has not become a functioning member of our class.” *Interview with Fifth-Grade Teacher*. In comparison, during the 2020-2021 school year, Student B bonded with his classmates and willingly participated. *Id.* Last year, Fifth-Grade Teacher was able to modify the curriculum to Student B’s level, but she has not been able to do so as much this year, if any, due to the lack of paraprofessional support. *Id.* To date, Student B has not engaged with the fifth-grade curriculum at all. *Id.*

I. Impact of Shortage on Other Students

62. Case Manager acknowledged that the shortage of paraprofessionals has impacted other students on her caseload and other students at School. *Interview with Case Manager*. In addition to Students A and B, other students have not received the paraprofessional support required by their IEPs. *Id.* Executive Director estimated that as many as six students at School have been impacted by the shortage of paraprofessionals. *Interview with Executive Director*.

63. As of January 12, 2022, 18% of the paraprofessional positions in the District remained vacant. *Exhibit V*, p. 1. However, at least five schools in the District, including School, had more than one paraprofessional vacancy. *Id.*

64. As of mid-January, the District had not hired any additional paraprofessionals for School, though Executive Director indicated it was close to hiring at least one additional paraprofessional. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District failed to timely revise Students’ IEPs to address Students’ changed needs, in violation of 34 C.F.R. § 300.324(b). This violation resulted in a denial of FAPE to both Students.

The first allegation accepted for investigation concerns whether Students’ IEPs were tailored to their individualized needs. In particular, Parent suggested that Students’ annual goals did not address behavior that interfered with their learning and that Students’ BIPs did not address their behavior needs.

The IDEA requires a school to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). An analysis of the adequacy of an IEP begins with the two-prong standard established by the United States Supreme Court in *Board of Education v. Rowley*, 458 U.S. 176 (1982). The first prong determines whether the IEP development process complied with the IDEA’s procedures; the second prong considers whether the IEP was reasonably calculated to enable the child to receive an educational benefit. *Id.* at 206-207. If the question under each prong can be answered affirmatively, then the IEP is appropriate under the law. *Id.* at 207. The inadequacies alleged by Parent are now addressed below considering these legal standards.

A. Development of Students’ 2020 IEPs

An IEP must contain measurable goals designed to: 1) meet the needs that result from the student’s disability to enable him or her to be involved in and make progress in the general education curriculum, and 2) meet each of the student’s other educational needs that result from his or her disability. 34 C.F.R. § 300.320(a)(2). An IEP must also include—among other components—a “statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to a child.” *Id.* § 300.320(a)(4). In developing an IEP, the IEP Team must also consider the use of positive behavioral interventions and supports to address behavior for a student whose behavior impedes his or her ability to learn. *Id.* § 300.324(a)(2)(i).

Here, Students’ 2020 IEPs were developed at properly constituted IEP Team meetings held during the 2020-2021 school year. (FF #s 5, 16.) At the time, neither Student A nor Student B was exhibiting behavior that interfered with his learning. (FF #s 28, 29.) Nonetheless, each Student’s IEP contained positive behavioral interventions and supports. (FF #s 8, 9, 19, 20.) Both Students’ IEPs had measurable annual goals designed to increase independence when completing tasks. (FF # 8, 19.) Accordingly, the SCO finds and concludes that the 2020 IEP development process complied with IDEA’s procedures.³ *Rowley*, 458 U.S. at 206. The second question is whether these annual goals and positive behavioral supports were substantively appropriate. *Id.* at 207.

B. Students’ Annual Goals

Parent alleges Students’ IEPs did not meet their needs, because the IEPs had no behavioral goals.

³ However, the SCO cautions against the practice of leaving an unnecessary BIP in place. Here, even though the IEP Team determined that neither Student required a BIP, the existing BIPs were left in place as a matter of convenience. (FF #s 13-15, 24, 25.) This practice unnecessarily exposes the District to a violation of 34 C.F.R. §§ 300.323 and 300.324.

An IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F.*, 137 S. Ct. at 999. In essence, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” *Id.* at 1001. IEP goals must be based on a student’s unique needs. *Id.* at 999.

When the 2020 IEPs were developed, Students were not exhibiting any behaviors that interfered with their learning. (FF #s 28, 29.) Though both Students displayed work-avoidance behaviors from time-to-time, the behaviors did not rise to such a level that they impacted Students’ learning. (*Id.*) Still, the IEP Teams included annual goals in Students’ IEPs designed to increase their independence when asked to complete tasks in the classroom. (FF #s 8, 19.)

For these reasons, the SCO finds and concludes that the District included annual goals in the 2020 IEPs that were appropriate to address the behavioral needs of Students at the time the IEPs were written.

C. Behavioral Supports

Parent alleged the Students’ 2020 IEPs did not meet Students’ needs because they did not adequately address Students’ behavioral needs. Specifically, Parent had concerns about how the District responded to Students’ escalating behaviors during the 2021-2022 school year.

The IEP team must consider the use of positive behavioral interventions and supports whenever a behavior interferes with the student’s ability to benefit from educational programming. 34 C.F.R. § 300.324(a)(2)(i). A BIP can document the “use of positive behavior interventions, supports and other strategies to address the behavior of a child whose behavior impedes the child’s learning or that of others.” *CDE IEP Procedural Guidance Manual*, p. 121. To be effective, a BIP should detail the target behaviors and the motivation behind these behaviors. *Id.* If a student displays unsafe behaviors, a BIP should also include a crisis intervention plan to address positive intervention and de-escalation strategies. *Id.* IEP teams typically conduct an FBA prior to developing a BIP, but the IDEA does not require that positive behavioral supports be based on an FBA. *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46683 (Aug. 14, 2006).

In this case, the Findings of Fact demonstrate that, during the 2020-2021 school year, Students did not exhibit behaviors that impeded their learning or disrupted the learning of their classmates. (FF #s 28, 29.) In this regard, Students’ 2020 IEPs were tailored to Students’ needs at the time.

However, Students’ needs changed. From early in the 2021-2022 school year, Students’ behaviors have significantly impeded their learning. (FF #s 47-49.) These behaviors have escalated throughout the school year and have impacted Students’ ability to benefit from their education. (FF #s 47-49, 62-65.)

The IDEA specifies that school districts must review each child’s IEP “periodically, but not less than annually.” 34 C.F.R. § 300.324(b)(1)(i). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew*, 137 S. Ct. at 994.

Here, the District knew of Students’ concerning behaviors within the first few weeks of the 2021-2022 school year. (FF #s 47-49.) Yet, the District failed to timely address these behaviors by convening Students’ IEP Teams to review and revise Students’ IEPs (or develop BIPs). Instead, the District stayed the course and waited until Students’ annual reviews were conducted in October or December. (FF #s 55, 60.) Even then, the District failed to complete Student A’s FBA and BIP until mid-January 2022—more than three months after Student A’s IEP Team meeting. (FF # 59.) For these reasons, the SCO finds and concludes that the District failed to timely revise Students’ IEPs to address Students’ changed needs, resulting in a procedural violation of 34 C.F.R. § 300.324(b).

A procedural violation results in a denial of FAPE if it “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

Here, the SCO finds and concludes that the District’s failure caused a deprivation of educational benefit to Students. Throughout the 2021-2022 school year, Students’ behavior has impacted their ability to learn across all settings at School. (FF #s 47-49, 62-65.) Though the District was not expected or required to respond immediately upon any maladaptive behavior by Students, it was required to act within a reasonable time to the change in Students’ behavior to minimize the impact of that behavior on Students’ learning. The District failed to timely address Students’ behavior through new FBAs and, if necessary, BIPs. For these reasons, the SCO finds and concludes that the procedural violation resulted in a denial of FAPE.

However, the SCO must consider steps the District has already taken to remedy this violation. Student A’s IEP Team has reviewed his FBA and developed a draft BIP, which was to be implemented in mid-January. (FF # 55.) Parent indicated she agrees with the BIP (at least as a starting point). (*Id.*) Similarly, Student B’s IEP Team has agreed to conduct an FBA and develop a BIP for Student B. (FF #s 56, 57.) The action taken by the District mirrors what the SCO would have awarded to remedy this violation. As a result, the SCO has not directed the District to take any student-specific action to remedy this violation. However, as detailed below, the SCO has required the District to provide documentation of Students’ IEPs and BIPs to ensure they are finalized.

Conclusion to Allegation No. 2: The District failed to properly implement the IEPs for Student A and Student B from August 16, 2021 to present, in violation of 34 C.F.R. § 300.323. This violation resulted in a denial of FAPE to both Students.

The second allegation accepted for investigation relates to the implementation of Students' IEPs during the 2021-2022 school year. Specifically, Parent alleged the District failed to provide Students with the adult supervision required by their 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 school district must ensure that "as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child's IEP." *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of "his or her specific responsibilities related to implementing the child's IEP," as well as the specific "accommodations, modifications, and supports that must be provided for the child in accordance with the IEP." *Id.* § 300.323(d).

A. Knowledge of Students' IEPs

As a preliminary matter, the SCO must determine whether the District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, the findings demonstrate that Case Manager, Third-Grade Teacher, Fifth-Grade Teacher, and Students' service providers were aware of their responsibilities under Students' IEPs. (FF # 33.) Case Manager provided a snapshot of the IEPs to relevant School staff before the beginning of the school year. (*Id.*) As a result, the SCO finds and concludes that the District complied with 34 C.F.R. § 300.323(d).

B. Implementation of Students' IEPs

Parent has alleged that the District failed to properly implement Student's IEPs by failing to provide Students with bell-to-bell adult supervision and support by the special education team. The District conceded that it has not been able to provide Students with the level of support required by their IEPs due to an ongoing paraprofessional shortage. (FF #s 37-38.)

As the Findings of Fact evidence, Student A spent at least 45 minutes per day in the general education classroom without the support of a paraprofessional or other member of the special education team. (FF # 40.) According to Student A's schedule, at one point, Student was

without support for up to one and a half hours each day. (FF # 41.) This is a failure to implement Student A's IEP.

Student B received no support from a paraprofessional in the classroom for the entire fall semester. (FF #s 45, 46.) This left Student B without the required support for up to two and a half hours each day. (FF # 45.)

These failures by the District resulted in a violation of 34 C.F.R. § 300.323 for failure to properly implement Students' IEPs.

Materiality of Failure to Implement

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

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

Here, the District's failure to implement Students' IEPs resulted in material violations of the IDEA. In its Response, the District suggested the violation was immaterial as to Student A because Student A received all of his specialized instruction and related services. This argument, however, diminishes the value of the paraprofessional support required by Student A's IEP. His IEP Team determined that Student A *needs* constant support from a paraprofessional to access his education. (FF # 11.) Indeed, his IEP noted that the paraprofessional was intended to "assist with general education curriculum access and implement accommodations and modifications to activities to ensure [Student A] can fully

participate alongside peers.” (*Id.*) This year, without the support of a paraprofessional, Student A often completed work prepared in advance by Case Manager. (FF # 63.) This work did not necessarily align with any of the work being completed by his classmates.

Instead, Case Manager selected work below Student A’s skill level to ensure he could do it quickly and independently. (*Id.*) This strategy might ensure less disruption in the classroom, but it does not provide Student A with the level of education he deserves. This practice neither challenges Student A nor ensures that he can participate alongside his peers. As of November 1, Third-Grade Teacher indicated that Student A had not completed any work independently. (FF # 64.) For these reasons, the SCO finds and concludes that the District’s failure to implement Student A’s IEP was material and resulted in a denial of FAPE to Student A.

The District conceded that its failure to implement Student B’s IEP was material and resulted in a denial of FAPE to Student B. The SCO recognizes how difficult it has been for the District—as well as other school districts throughout the state—to hire and retain paraprofessionals. However, a shortage of paraprofessionals does not excuse the District from its obligations under Students’ IEPs. Given the degree to which a FAPE was denied, Students are entitled to compensatory services. *See Colo. Dep’t of Ed.*, 118 LRP 43765 (SEA CO 6/22/18).

Compensatory Education

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

This violation cannot be easily remedied. No remedy adequately compensates for the lost paraprofessional support in the general education classroom. The SCO acknowledges that no amount of one-on-one or small group instruction truly replaces Students’ ability to access the general education curriculum alongside their peers. However, any remedies ordered in a state-level complaint decision must be consistent with the IDEA and the SCO’s authority. Compensatory education, though not perfect, is the best remedy available under the SCO’s authority.

Here, the District failed to provide Students with the required paraprofessional support for the entirety of the Fall 2021 semester. By any measure, this violation impacted Students’ ability to

benefit from general education. Thus, the SCO finds an award of: (a) 510 minutes of direct specialized math instruction for Student A; (b) 510 minutes of direct specialized math instruction for Student B; and (c) 510 minutes of direct specialized reading and writing instruction for Student B to be appropriate.

Parent has requested the SCO order the District to contract with Outside Therapist to provide paraprofessional support to Students at School. Alternatively, Parent has requested the SCO order the District to hire paraprofessionals with specific certifications. Neither of these remedies is within the SCO's authority. Ordering a school district to employ a private provider to fill a vacancy during a paraprofessional shortage or directing a district to hire individuals with specific certifications is not consistent with CDE's authority under the IDEA.

Systemic IDEA Violation

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

The evidence in the record does not indicate that the District's violation resulted from improper procedure or a lack of knowledge by District or School staff. Instead, this violation is the result inadequate paraprofessional staffing. For these reasons, the SCO finds and concludes that the violation is not systemic.

Conclusion to Allegation No. 3: The District failed to educate Students in the LRE from August 16, 2021 to present, in violation of 34 C.F.R. §§ 300.114(a) and 300.320(a)(5).

The third allegation accepted for investigation relates to whether the District honored Students' placement in the LRE during the 2021-2022 school year. Specifically, Parent contended Students spent more time receiving specialized instruction from Case Manager than required due to the paraprofessional shortage.

The IDEA mandates that school districts must educate children with disabilities with nondisabled peers, to the maximum extent appropriate. 34 C.F.R. § 300.114. Indeed, "[e]ducating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). Accordingly, an IEP must include "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class." 34 C.F.R. § 300.320(a)(5). This statement describes a student's

recommended placement in the LRE. *Id.* The school district must educate a student in accordance with the LRE described in the IEP. *Id.*

Here, the IEPs for both Students placed them in the general education classroom from 40% to 79% of the time. (FF #s 12, 23.) Since the beginning of the 2021-2022 school year, Student A and Student B have received more specialized instruction from Case Manager than required by their IEPs. (FF #s 40, 45.) At times, Students had an additional one or two hours per week of specialized instruction. (*Id.*) Students spent more time in the special education classroom—often together—because paraprofessional support was not available. Though Students undoubtedly benefited from this extra instruction, it resulted in Students having less time with students without disabilities and less access to the general education curriculum.

When Students were in the general education classroom, they often lacked the paraprofessional support necessary for them to access the general education curriculum. The constant adult supervision required by Students' IEPs was more than simply supervision. (FF #s 11, 22.) The paraprofessional was the individual providing Students with accommodations and behavioral support to ensure Students could access the general education curriculum. (*Id.*) The paraprofessional shortage resulted in Students spending time completing work prepared in advance by Case Manager that was below Students' skill level but allowed them to work quickly and independently. (FF # 63.) This practice undermined the Students' placement in the LRE.

Accordingly, the SCO finds and concludes that Students were not educated consistent with the LRE described in their IEPs, resulting in a procedural violation of 34 C.F.R. §§ 300.114(a) and 300.320(a)(5).

A procedural violation results in a denial of FAPE if it “(1) impeded the child’s right to a FAPE; (2) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or (3) caused a deprivation of educational benefit.” 34 C.F.R. § 300.513(a)(2).

Here, the SCO finds and concludes that the District’s failure to educate Students consistent with the LRE specified in their IEPs caused a deprivation of educational benefit, resulting in a denial of FAPE.

Systemic IDEA Violation

As noted above, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2).

Here, the District acknowledged that the paraprofessional shortage has impacted (and continues to impact) other students with disabilities at School. (FF # 62.) However, the evidence in the record does not indicate that the District’s violation resulted from improper procedure or

a lack of knowledge by District or School staff. Instead, this violation is the result inadequate staffing. For these reasons, the SCO finds and concludes that the violation is not systemic.

REMEDIES

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

1. Failing to revise the IEPs for Student A and Student B to address Students' changed behavioral needs, in violation of 34 C.F.R. § 300.324(b);
2. Failing to properly implement the IEPs for Student A and Student B from August 16, 2021 to present, in violation of 34 C.F.R. § 300.323; and
3. Failing to educate Students in the LRE from August 16, 2021 to present, in violation of 34 C.F.R. §§ 300.114(a) and 300.320(a)(5).

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

1. By **Tuesday, March 1, 2022**, the District shall submit to CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. Finalize Student A's IEP. The District must provide a copy of Student A's finalized IEP to CDE no later than **Tuesday, March 1, 2022**.
 - b. Finalize Student A's BIP (if not already done). The District must provide a copy of Student A's finalized BIP to CDE no later than **Tuesday, March 1, 2022**.
 - c. Finalize Student B's IEP. The District must provide a copy of Student B's finalized IEP to CDE no later than **Tuesday, March 1, 2022**.
 - d. Complete an FBA for Student B and, if necessary, convene Student B's IEP Team to develop a BIP for Student B. The District must provide a copy of Student B's finalized BIP to CDE no later than **Tuesday, March 1, 2022**.
 - e. CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, CDE will arrange to conduct verification activities to confirm District's timely correction of the areas of noncompliance.

2. Compensatory Education Services for Denial of a FAPE

- a. Student A shall receive **510 minutes of direct specialized math instruction outside the general education classroom**. This instruction must be provided by a special education teacher or a paraprofessional under the supervision of a special education teacher. This instruction may be in a small group or 1:1. All 510 minutes must be completed by **Friday, July 29, 2022**.
- b. Student B shall receive **510 minutes of direct specialized math instruction outside the general education classroom**. This instruction must be provided by a special education teacher or a paraprofessional under the supervision of a special education teacher. This instruction may be in a small group or 1:1. All 510 minutes must be completed by **Friday, July 29, 2022**.
- c. Student B shall receive **510 minutes of direct specialized reading and writing instruction outside the general education classroom**. This instruction must be provided by a special education teacher or a paraprofessional under the supervision of a special education teacher. This instruction may be in a small group or 1:1. All 510 minutes must be completed by **Friday, July 29, 2022**.
- d. Monthly consultation between the provider(s) delivering compensatory services and Director 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. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- e. To verify that Students have received the services required by this Decision, the District must submit records of service logs to CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
 - i. **By Tuesday, March 1, 2022**, the District shall schedule compensatory services in collaboration with Parent. 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. These compensatory services shall begin as soon as possible and will be in addition to any services Students currently receive, or will receive, that are designed to advance Students

toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent, and should thus be excused from providing compensatory services, rests solely with CDE.

- ii. The District shall submit the schedule of compensatory services to CDE no later than **Tuesday, March 15, 2022**. If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify CDE of the change in the appropriate service log.

Please submit the documentation detailed above to CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: Rebecca O'Malley
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the Department will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *See* 34 C.F.R. § 300.507(a) and *Analysis of Comments and Changes to the 2006 Part B Regulations*, 71 Fed. Reg. 156, 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 29th day of January, 2022.



Ashley E. Schubert
State Complaints Officer

Appendix

Complaint A, pages 1-13

- Exhibit 1A: IEP Draft
- Exhibit 2A: PWN
- Exhibit 3A: Progress Report
- Exhibit 4A: Progress Report
- Exhibit 5A: Email Correspondence
- Exhibit 6A: PWN
- Exhibit 7A: Daily Communication Sheets
- Exhibit 8A: 2020 IEP
- Exhibit 9A: 2019 BIP
- Exhibit 10A: Letter from Parent
- Exhibit 11A: Email Correspondence
- Exhibit 12A: Email Correspondence
- Exhibit 13A: Email Correspondence
- Exhibit 14A: Email Correspondence
- Exhibit 15A: Email Correspondence
- Exhibit 16A: Email Correspondence
- Exhibit 17A: Email Correspondence
- Exhibit 18A: Email Correspondence
- Exhibit 19A: Email Correspondence
- Exhibit 20A: Email Correspondence
- Exhibit 21A: Email Correspondence
- Exhibit 22A: Email Correspondence
- Exhibit 23A: PWN

Complaint B, pages 1-12

- Exhibit 1B: Prior Service Delivery Statement
- Exhibit 2B: 2019 IEP
- Exhibit 3B: 2020 IEP
- Exhibit 4B: 2019 BIP
- Exhibit 5B: 2019 BIP with Training Materials
- Exhibit 6B: Email Correspondence
- Exhibit 7B: Letter from Parent
- Exhibit 8B: Email Correspondence
- Exhibit 9B: Email Correspondence
- Exhibit 10B: Email Correspondence
- Exhibit 11B: Email Correspondence
- Exhibit 12B: Email Correspondence
- Exhibit 13B: Email Correspondence
- Exhibit 14B: Email Correspondence

- Exhibit 15B: Letter from Parent
- Exhibit 16B: Email Correspondence
- Exhibit 17B: PWN
- Exhibit 18B: Daily Communication Sheets

Response, pages 1-10

Student A:

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Notices of Meeting
- Exhibit D: Notes of IEP Team Meetings
- Exhibit E: PWNs
- Exhibit F: Progress Monitoring Reports
- Exhibit G: Daily Communication Sheets
- Exhibit H: Grade and Attendance Reports

Student B:

- Exhibit I: IEPs
- Exhibit J: BIPs
- Exhibit K: Notices of Meeting
- Exhibit L: Notes of IEP team Meetings
- Exhibit M: PWNs
- Exhibit N: Progress Monitoring Reports
- Exhibit O: Daily Communication Sheets
- Exhibit P: Grade and Attendance Reports

Both Students:

- Exhibit Q: District Policies and Procedures
- Exhibit R: Email Correspondence
- Exhibit S: List of District Staff
- Exhibit T: Verification of Delivery of Response
- Exhibit U: Other Documents
- Exhibit V: Email Correspondence

Reply, pages 1-10

Student A:

- Exhibit 24A: Email Correspondence
- Exhibit 25A: Draft BIP
- Exhibit 26A: Email Correspondence

Student B:

- Exhibit 19B: Email Correspondence
- Exhibit 20B: Email Correspondence
- Exhibit 21B: Email Correspondence

- Exhibit 22B: Daily Communication Sheets
- Exhibit 23B: Parent's Notes
- Exhibit 24B: Correspondence
- Exhibit 25B: Citizen Comments from Meeting
- Exhibit 26B: Email Correspondence

Telephonic Interviews with:

- Behavior Interventionist: January 11, 2022
- Case Manager: January 11, 2022
- Fifth-Grade Teacher: January 11, 2022
- Third-Grade Teacher: January 11, 2022
- Executive Director of Special Education: January 12, 2022
- Special Education Facilitator: January 12, 2022
- Principal: January 12, 2022
- Parent: January 13, 2022